Abstract of the PhD Dissertation

Bernadett Veszprémi

The Public Servant's System of Responsibility

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I. The Summary of Research Goals

The topic of my paper is based on the scholarly research of the public servants' system of responsibilities. Being an important element of personal policies, it is inseparably connected to the determination of the scope of public duties and the system of public services too (both of them being factors that cannot be neglected in this case), since its essential nature greatly influences the regulation of responsibilities as well. The topic does not focus solely on administrative law; it rather encompasses every related phenomena projected into the civil, penal and constitutional branches of law as well, not to mention the statutes of labour. In the light of this, the essay aims to offer a general overview on the main aspects and historical changes of the topic, with the emphasis put on its public law-related elements. In spite of this, however, we cannot neglect the aforesaid expansion to the rest of the branches, as it would break up the unity of the essay. To achieve the abovementioned goal, the essay will provide a rough outline of the regulations employed in the countries serving as models for public service responsibilities, in order to address the imperfections and at the same time, note the advantages worthy of local implementation. Due to their special nature, extra attention is given to the legal background of the public servants working at the various EU organizations.

The essay is primarily preoccupied with the institution of disciplinal responsibility, as due to its pioneer nature in legal history it became an essential factor in legal regulations; however, along with this, the presentation of damage, political, ethical, and criminal responsibilities is also recommended, in order to synthesize the public servants' system of responsibilities. Besides providing a basic overview, I aimed to point out the characteristic features, established practices, major issues and their possible remedies of every legal institution as well.

1.1. Scholarly presuppositions

The necessity of modifying the regulations of public service responsibilities, its frequent inadequacy of achieving the goals set and its inefficiency raise whether our approach to the definitions of “public servant” and “civil privity” is correct at all? Is it the effect of the various organs that should dominate or (following the footsteps of the German approach) should we bind the special legal status to activities and executive licenses?

Due to the loosening social conditions, the unstable economic situation and the headway of the information society, there arises the necessity of defining a set of new application frames: frames that do not necessarily require the legal constraints of an appointment (e.g. telework, or part-time employment). At the moment, the effective civil regulations do not meet the current needs and do not fulfil the changing requirements. The complete adoption of the tools offered by New Public Management did not solve the problem, while the effects of the neo-Weberian approach on public administration is currently far from being measurable. Thus, the task now is to set this incomprehensible system right: reconsider the possibilities of establishing legal relations, determine the proportionate rights and responsibilities, and finally, define the responsibilities according to all these in a way which would be much simpler and comprehensible than the current overregulated approach.

The regulation of responsibilities should of course conform to this; after all, the character of the system along with the rights and responsibilities of its public servants fundamentally determine the course of responsibility.

If we keep the current regulation, it must be examined whether the current approach is sufficient for our needs: can it fulfil its duties in every area and enforce the responsibilities? Does it use the correct tools? Do the legal consequences trigger the necessary effects? Do we need to narrow down or widen the scope of receivers, or should we just set up different categories of responsibilities? The current system of responsibilities is way too divaricated,

sketchy at several areas while overly detailed at others, preventing fast impeachment and the realization of the goals that form the basis of responsibilities. Thus, it must be revised in accordance to the results of legal history, the various international requirements and the trends of information communication.

If we accept the principles of the German "Beamte-Angestellte-Arbeiter" approach, then we need to completely rework the rules of responsibilities, as the three categories require entirely different approaches and rigour. On the one hand, it is (or could be) necessary to standardise public service regulations; but on the other hand, there also exists a need to specialise and differentiate the responsibilities, based on the personal scope, the nature and time of legal relations, the activity performed and finally, the rights/obligations provided.

Since the regulation of public services is directly connected to the public servants' system of responsibilities, the essay is sometimes forced to expand the topic in order to shed light on the connections and reasons behind the rules of responsibilities.

The institution of disciplinary responsibility is the most detailed system of all the legal regulatory institutions mentioned above; thus, it should come as no surprise that the primary goal of this paper is to seek out the various issues and loopholes that the institution may house in itself, to recommend means of simplifying the regulations, and to work out solutions on how to achieve the responsibility-related goals.

1.2. The Timeliness of the Topic

The topic is justified by two factors. On the one hand, there is the importance of personnel policies; after all, the institution of public administration could function only if there exists a well-developed personnel policy. The classification of the direct administrative activities (such as internal management or organization control) and the definition of the system of

relations are not enough by themselves; it is also necessary to put the employees' legal relations, rights and responsibilities in order as well. A sufficient sense of vocation, the transformation of public services to an attractive career track and the reinforcement of public confidence in the system can only be achieved if we introduce various special licences, establish (and consistently reinforce) the required responsibilities, scout corruption with more efficient methods, retaliate every malpractice and finally, create the sense of responsibility in the public servants of the system.

On the other hand, it is inevitable to keep the known problems of public services constantly on the agenda, something which many times hindered the completion of this essay, due to the uncertainties in legislation and public administration, the increased tensions within the public service and the new tendencies that arose following the elections. The timeliness of the topic (and the representation of its numerous factors) was just reinforced by the gradually delaying entry (and then the termination) of the new civil code, not to mention the uncertain definition of government officials – a step, pivotal in determining the personal scope of public service.

We have arrived to some sort of crossroads. In the neighbouring countries, the fundaments have already been laid down, thus the regulation is open to new tendencies and can adapt to the ever-changing demands. In stark contrast to this, the Hungarian legislation does not progress but rather roams, making a clean sweep of the previous system every now and then. This is due to the timely political aspirations of the reigning government – even though the public service is supposed to remain neutral in politics.

The need for a new direction is justified, the crisis is proved – thus, it is timely to name, implement and consistently endorse new values for public services. The best way to ensure the improvement of the system's efficiency and public confidence, and the successful realization of the value orientation of public services is the introduction of new methods strongly related to responsibilities.

1.3. The Goal of the Research

The goals of the research were to reveal the possibilities within the public service through offering a historical outline and examining the various international trends; defining the fundamental concepts of the topic (i.e. public service, public servant, responsibility, system of responsibilities); and finally, the presentation of possible remedies to the known problems by drawing the necessary conclusions from the various historical tendencies, and analysing (as temporally comparing) the modes, directions and practical realisations of development.

I also aimed to present why is there a need for a separate regulation for public servants, how does this regulation relate to the other kinds of legal relations (such as the labour code, or the act on the legal status of public servants) and whether it is possible to manage these issues organically (e.g. via a unified code of public services).

Our primary goal is to make public servants understand that in case they show undesired behaviour, they compromise not just themselves, but their organization and – in a wider sense – the entire system which employs them. It is my firm opinion that instead of increasing the severity of our penal code or introducing new states of affairs, we should "just" establish this mentality: employees of the public service should consider their position a vocation, not a stepping-stone of their career. The choice of values and their orientation have to be consistent with the regulations of responsibilities. However, to make these values and the expectations towards the public servants more than just empty words, it is necessary to use proper techniques and methods (suited to the aforesaid values) when it comes to impeachment.

The basis of responsibility is a very special phenomenon when it comes to public services: it is basically a conflict of interests. Following the identification of these conflicts, we should not press the private interests back (we could not repel them anyway); instead, we should introduce a legal regulation and compensation which would resolve the tension between public

and private interests. While the promise of legal consequences and any kind of penalty should only be used as a last resort, we have to make sure that the failure in duty, every form of corruption and any kind of damage do not go unpunished.

1.4. The Major Arguments of the Essay

Due to the forced decision making we need a new choice of values regarding the definition of public services, the public servants' degree and content of legal protection, the framework of regulation and finally, the responsibilities of public service.

Similarly to international practice, this basic framework of the public service along with the definition of the system, the basic rights and the nature of fulfilling public service duties should be regulated on a constitutional level.

In my opinion it is impossible to achieve uniform regulation in every related area, thanks to the complicated nature of the institutions of public administration and the differences present between the various administrative activities. At the same time, it is not recommended either to aspire for such a uniform approach, as even though we talk about activities carried out on behalf of the public, the diversified nature of the various branches along with the diversity of their tasks, tools and rights simply disallow such an amalgamation. The public sphere is divided into several different sections, each of them approaching politics in a different way; a characteristic feature which must be observed by the regulation as well. At the same time, this division is far from being desirable, as it causes unneeded differences among the employees of public service (I mean the narrowest sense of the concept in this case), making the system more exposed and incomprehensible.

We have to amalgamate the best parts of both the "good government" and "good governance" principles: the state should have a great role in governance and establishing its conditions (as in good government); however, this should be accompanied by the jointing of the private and public spheres,

the establishment of new modes and principles to ensure their closeness and the reinforcement of the role of social self-adjustment (as in good governance).

I myself support the reinforcement of the closed system on condition that it is modern, simple and easy to comprehend. We should not refuse the new solutions either: by implementing the proven practices of new public management, our public service could easily meet the requirements of the modern age and the ever-changing living conditions of the 21st century.

In public service, it is not the effect of the various organs but rather the character of the various tasks (strongly related to the basic functions of the administrative body), the quality and extent of the activity-related authorities and the tools for enforcing the rights, which should define the content of legal relations and the form/degree of responsibilities.

Regarding responsibilities the system requires embedded forms of responsibility bound to the original form of legal relations that emphasize and validate the elements of public law (in penal law these could be sui generis state of affairs, while in the case of civil law this might be the responsibility for damage caused within public service authority).

This regulation – in accordance with the German method – would be posed in an enabling act, expanding the personal effect of public services, generalizing the rules, but at the same time also specializing the responsibilities. Besides this, I also find it important to define the major principles and special responsibilities of public services on a constitutional level.

II. The Methods and Sources of Research

One of the primary aims of the paper was to survey the many approaches of defining the concept of public service and the determination of the subject itself (that is, the notion of being a public servant or government official). I found it inevitable to review and comment the course of public service

regulation (that is whether we should stick to a unified code or rather work out acts for every separate branch).

Following the determination of the subject of my investigation, I tried to situate the topic on a historical level and draw the attention to its timeliness and important role in today's public service in the view of the already-defined fundamental concepts.

With the expansion of the scope and reaching the effective regulations, I first started with the examination of the Hungarian practices, followed by the international examples, constantly narrowing them down to the investigation of how the responsibilities of public servants are regulated.

Finally, besides the theoretical overview I also tried to include and utilize practical experiences by processing the related statistics and legal cases.

2.1. The Special Methods of Research Stemming From the Complex Nature of the Topic

The epitome of the essay was a chronological representation of the evolution of the various systems of legal responsibilities, through which I could also provide a thorough examination of the notable manifestations of the aforesaid legal phenomena. I tried to make my paper as consistent as possible, by having every chapter and subchapter gradually approaching toward a precise survey of the regulation of responsibilities from the widest sense of the concept of public service.

In the view of this, instead of following the "traditional method", I rather aimed to present the personal scope, content, obligations and (especially) the regulations regarding public service responsibilities of the various historical eras separately, in their own self-sufficient sections, always paying attention to the right proportions.

Besides this, I tried to expand the topic with an international outlook, comparing the various techniques employed abroad. I also aimed to examine how the effective regulations work in practice, pointing out to their

issues and deficiencies. Based on all this, I studied the related judicial legal cases and statistics to be able to present the current legal practices. My main goal was to work out a set of recommendations in order to "fill the gaps", reinforce the need of consistency, and prevent any further legal obscurities.

To lay down the fundaments of the paper, I felt needed to offer a basic introduction to the theories related to the topic (i.e. good government, good governance and the neo-Weberian approach).

III. The Short Summary and Utilization of the Results either in Practice or in the Further Development of the Discipline

3.1. The Choice of Values in Public Service; Reasons to Support the System

As it was stated earlier, our best bet would be the amalgamation of the best parts of both the "good government" and "good governance" principles: thus, the state should have a pivotal role in governance and establishing its conditions (as in good government); however, this should be accompanied by the jointing of the private and public spheres, the establishment of new modes and principles to ensure their closeness and the reinforcement of the role of social self-adjustment (as in good governance).

However, the making of a unified act on public services would only be possible if the regulations of the aforesaid legal relations were included in a way that enabled the establishment of rules affecting every employee of the system either through the preservation of the older approaches or by the creation of entirely new provisions. From the already existing regulations we must choose the ones that must be applied to everyone within the public service (this could be, among others, the amount of salary or the mode of its ascertainment); furthermore, besides the arrangement of the unified code, we would gradually set-up complementary/special norms defining the various exceptions that may inevitably arise within the system.

As for me, I don't think that such a unified regulation can be achieved solely through a set of a frame-rules and assigned lex specialises. On the one hand, the abovementioned counter-arguments prevent the coercion of the regulations and the entire personnel under the scope of a single act and its provisions; on the other hand, I find it rather pointless to retain separate regulations besides the unified code solely for the sake of certain activities and branches. However, the establishment of a unified body would be more than possible in my opinion with the combination of a general and several unusual sections of provision.

I would also support differentiation if it meant the assurance of special rights and increased responsibilities to public servants (based on their nature of activities and sphere of authority), not the removal of rights and protection based on the different legal status of the various administrative organs.

In public service, it is not the effect of the various organs but rather the character of the various tasks (strongly related to the basic functions of the administrative body), the quality and extent of the activity-related authorities and the tools for enforcing the rights, which should define the content of legal relations and the form/degree of responsibilities. Besides this, it is just as important to reinforce and emphasize accountability and political responsibility of every participant of the system.

The aforesaid differentiation can manifest in the expansion of the levels and degrees of responsibility (e.g. in a sphere of activity, related to an organization, or the specification of a punishment), the restriction of licences (e.g. conditional decision rights, highlighting heads of the system) and finally, the extension of the originate forms of legal relations (like promotions, contracts, full- and part-time employment or telework).

We also have to keep up with the evolution of the information society by constantly implementing the new technological and information communicational achievements into the structure of our public administration. This implementation however also involves the reorganization of bureaucracy, the transformation of the system into a much more client-friendly, service-

centred nature, and the alignment of the institutional structure (along with the adaptation of authorities' legal practices) in accordance to all this.

3.2. Aligning the Regulation of Responsibilities to the Chosen System of Public Service

We should set the educational role of disciplinary punishment as a fundamental goal, adapting thus to the new, aspired value orientation of public services. This would be facilitated by the expansion of the scope of penal decisions, the dependency of its effect on the subject's performance and behaviour; and finally, the introduction of suspension on probation.

3.3. Modifications Pertaining to Disciplinary Responsibilities

The registration of new disciplinary punishments is worthy of consideration; these may include the withdrawal of severance pay, the diversion of salary on a balancing authority, or the combination of punishment with other compensatory elements, such as the removal of cafeteria benefits.

It is required to reinforce the assurances of disciplinary procedures along with the inevitability of impeachment. These may be achieved by the restriction of the right to disclaim, the prevention of countering impeachment during an active disciplinary procedure, or (with the implementation of the respective guarantees) the diversion of salary on a balancing authority and the extension of waiting time without conducting any disciplinary procedures.

In the spirit of solidarity, the regulation may be expanded with certain mitigations, like the possibility of deferred payment in case of a fine, or equity in case of outstanding performance.

The elimination of loopholes and the assurance of interpretability and legal security (e.g. the reduction or deprival of the 13. monthly salary) are also inevitable.

Besides all these, it might be necessary to add further details to some of

the questions of procedural law that may arise – these include the judgment of repeated breach of duty, the fusion of procedures, comprising several penalties into one decision, the prerequisites of a disciplinary decision, attaching suspension to deadline, defining the legal consequences of ignoring the deadlines of procedure, and last but not least, the jurisdiction of the disciplinal authority.

3.4. Increasing the Role of Ethical and Moral Responsibility

When it comes to ethical rules I support the adoption of voluntary principles independent from law and based on common consent. The tools of introducing them can be both legal and non-legal, the former being for example a stricter aptitude test and/or a well-developed system of evaluating the quality of work and performance, while the latter (among others) may include a code of ethics, modifications in education and the establishment of the basic ethical values/requirements.

All this of course requires the clarification of the fundamental concepts; besides this, the emphasis on the responsibilities of the superiors may also be in order.

3.5. Clarifying some Questions of Responsibility in Penal Law

Regarding penal law, it is considerable to employ the self-consistency of the structure and logic of international treaties in our penal code when it comes to proceed in cases related to the purity of public life and felonies committed against it (e.g. active bureaucratic, economic and passive crimes).

It might make sense to differentiate the circle of perpetrators similarly to that of the conducts of perpetration (such as official persons of a certain member country, national/official persons of another member state, or European/community/international official persons).

In view of the current economic situation and social expectations, it

would be necessary to revise the amounts of penalty and the tendencies of unlawful advantages in prosecution. We must differentiate the amount of these advantages (mostly appearing in case of an economic abuse or maladministration) and must adjust penalties accordingly – after all, the magnitudes are clearly different in the two spheres.

3.6. Simplifying the Responsibility of Damage in Certain Areas

We should consider the simplification of the current regulation (via inserting the rules of deductions in the Act on Public Servants, making direct references to the Act on Judicial Enforcement, or reducing the amount of deductions).

Some areas require the transformation and expansion of the system of damage responsibility (for damages caused in an administrative authority). Having more effective sanctions is also an important aim. Regulations are however rather obscure in this respect, as both the various drafts of the new civil code and its final version contained dissimilar standpoints on the issue.

IV. A List of Related Publications by the Author of the Essay

1. “Szemelvények a köztisztviselők büntetőjogi felelősségének köréből” [“Selections from the Sphere of the Criminal Responsibility of Public Servants”]. In: *Studia Iurisprudentiae Doctorandorum Miskolciensium. Miskolci Doktoranduszok Jogtudományi Tanulmányai* [*The Juridicial Studies of the PhD Students of Miskolc*]. Miskolc, 2006. Issue 7/2. pp. 393-418.

2. “Közszolgálati rendszer Magyarországon 1945-től napjainkig” [“The System of Public Service in Hungary from 1945 to the Present”]. In: *Doktoranduszok fóruma. Miskolci Egyetem Állam - és Jogtudományi Kar szekció kiadványa* [*Forum of PhD Students. Section Transactions of the Faculty of Law in the University of Miskolc*]. Miskolc, 2005. pp. 326-328.

3. “Köztisztviselők az Alkotmányban” [“Public Servants in the Constitution”]. In: *Collega*, Budapest, 2006. Volume X., Issues 2-3. pp. 67-70.

4. “A köztisztviselők etikai felelősségének szabályozása – etikai kódex szükségessége” [“The Regulation of the Public Servants’ Ethical Responsibility – About the Need of a Code of Ethics”]. In: *Doktoranduszok fóruma. Miskolci Egyetem Állam - és Jogtudományi Kar szekciókiadványa* [*Forum of PhD Students. Section Transactions of the Faculty of Law in the University of Miskolc*]. Miskolc, 2006. pp. 295-300.

5. “Az EU-ban dolgozó köztisztviselők felelősségére vonatkozó szabályozás” [“Regulations Concerning the Responsibility of Public Servants Working in the EU”]. In: *Collega*, Budapest, 2007. Volume XI., Issues 2-3. pp. 72-74.

6. “Die Vergleichung der Disziplinarverantwortung der Staatsbeamten in der Europäischen Union und in Ungarn” (“The Disciplinary Responsibility of the Public Servants of Hungary and the EU – A Comparison”). *Debreceni Jogi*

Műhely [*The Judicial Workshop of Debrecen*], www.jogimuhely.hu, 2008. (Volume V, Issue 1.)

7. "A köztisztviselők felelőssége a modern korban" ["The Responsibility of Public Servants in the Modern Age"]. In: *Doktoranduszok fóruma. Miskolci Egyetem Állam - és Jogtudományi Kar szekciókiadványa* [*Forum of PhD Students. Section Transactions of the Faculty of Law in the University of Miskolc*]. Miskolc, 2007. pp. 227-229.

8. "Az államigazgatási jogkörben okozott kár szabályozási kérdései" ["Questions on the Regulation of Damage Caused in Administrative Authority"]. In: *Glossa Iuridica* (www.glossaiuridica.hu), Issue 1/2009. pp. 33-36.

9. "Az államigazgatási jogkörben okozott kár szabályozási kérdései" ["Questions on the Regulation of Damage Caused in Administrative Authority"]. In: *Doktoranduszok fóruma. Miskolci Egyetem Állam - és Jogtudományi Kar szekciókiadványa* [*Forum of PhD Students. Section Transactions of the Faculty of Law in the University of Miskolc*]. Miskolc, 2008. pp. 179-183.

10. "A közszolgálat felelősségi rendszerének fejlődése az államalapítástól a Csemegi-kódexig" ["The Development of the Public Service's System of Responsibility from the Hungarian Conquest until the Csemegi-Codex"]. A publication of Uzhgorod National University. 2010. pp. 132-138.

11. "A közszolgálat felelősségi rendszerének fejlődése az 1800-as évek végén" ["The Development of the Public Service's System of Responsibility at the End of the 19th Century"]. In: *Miskolci Doktoranduszok Jogtudományi Tanulmányai* [*The Juridicial Studies of the PhD Students of Miskolc*]. Miskolc, 2010. Issue 10. pp. 359-377.

12. “Felelősség a közigazgatásban avagy milyen eszközökkel alakítható ki a közszolgálat felelősségtudata?” [„Responsibility in Public Administration or how can the Public Service’s Sense of Responsibility be shaped?”] *Új Magyar Közigazgatás [New Hungarian Public Administration*], Bp., 2011. /under publishing/