

GENERAL OVERVIEW ON MATERIAL-FUNCTIONAL CONCEPTION OF THE STATE ADMINISTRATION

Doc. Dr. Blerton SINANI¹

ABSTRACT

The science of administrative law has accepted the view that the expression "administration" has two basic meanings: firstly, according to one of them, the term administration implies a certain circle of entities/executors (bodies or organisations), as a rule, within the state apparatus, which are different from other executors of the state activity by being entrusted the function of administration; secondly, by the term administration, a specific type of activities is indicated, which, according to some of its specific features, differs from other state activities. In the first instance, where the notion of administration is determined by the viewpoint of the executors-entities (bodies and organisations) performing administrative activity, the theoretical concept of the so-called the concept of management in formal-organisational terms. In the other case, where the function or the content of the administrative activity is taken as the basis for determining the notion of administration, the theoretical notion of administration in a material-functional sense comes into light. Whilst the functional concept of the administration tends to determine what the state administration does (what it consists of, what kind of activity or function), the organisational concept should determine who does it. Accordingly, there are two special considerations of the state administration: first, i.e., as a certain system of administrative organisations, i.e., as one single state instrument (formal-organisational term) and, second, as a separate form of state activity, meaning, system of certain functions (material-functional term). Basic innovation that determines the role of the administration in contemporary conditions is that it does not appear rather as an exclusive bearer of power, an empire, but as a system of organs whose main purpose is the enforcement of laws, under strong and continuous supervision of the government, parliament and the judiciary, and for the purpose of simplifying and efficient realisation and protection of freedoms and rights of the citizens.

Keywords: *material-functional conception; administration as public (state) power; administration as a public service.*

For the material and functional perspective of the state administration, only the substance of the administration as an activity is important, that is, the function or the content of the administrative activity is taken as the basis, and the form, that is, the organisational form is abandoned in which this function is performed. Hence, the material-functional perspective places the focus on the internal content of the administrative activity. Thus, the state administration bodies are a special

¹ Assistant Professor in the scientific legal field of Constitutional and Administrative Law and Vice-Dean of the Faculty of Law at the South East European University; blerton.sinani@seeu.edu.mk.

type of organisational unit of the state machinery, intended for undertaking administrative activities, of the affairs of the state administration². So the fundamental intention of the state administration bodies consists in the fact that they are established to perform the administrative activity as their main activity. In the Republic of Macedonia, the state administration organs, the bodies of the state administration and at the same time their organisational structure and scope were established by the Law on Organisation and Work of the State Administration of the Republic of Macedonia as of 2000. Since the affairs of the state administration bodies are, as a rule, determined by law, it depends on the will of the law-maker which works which operations shall be carried out by the state administration and in which manner shall they do so³. The bodies of the state administration of the Republic of Macedonia, within the frame of their legal competences, have been *performing the following activities*: 1) implement the enforcement policy of the law and other regulations of the Assembly of the Republic of Macedonia and the regulations of the Government of the Republic of Macedonia; 2) are responsible for the enforcement of laws and other regulations; 3) implement the guidelines and the stances of the Government on the work of the state administration bodies; 4) pursue and are responsible for the situation in the areas they were founded for; 5) take an initiative to resolve issues in the areas they are established for; 6) resolve administrative affairs; 7) supervise the legality of the acts and operations of the trade companies, institutions and other legal entities when authorised by law; 8) perform administrative and inspection supervision and other administrative matters when authorised by law; 9) draft proposals for the laws whose authorised proposer is the Government; 10) draft regulations adopted by the Government and 11) perform other duties as assigned by the Constitution and by law⁴. The superficial analysis of such legal provisions points to the difficulties that arise when in a positive definition tends to present the numerous and complex administrative matters. By virtue of this listing, in fact, only the most important administrative activities are actually determined. The drawback that arises from the inability to exhaustively list all the affairs of the administration is mitigated by the so-called indeterminate notions such as „other administrative matters“, „other technical matters“ and alike.⁵ However, within their frames, typical administrative issues may be recognised, such as a mutual, compact set that is key to defining the core of the management. In their greatest part, they consist of contentious, characteristic administrative activities that are primarily related to the adoption of administrative-legal and administrative-material/factual acts. Typically, as standard administrative

² Невенка Бачанин, *Управно право*, Крагујевац, 2000, pp. 6-8.

³ Борче Давитковски, *Организација на управата во Република Македонија*, Годишник на Правниот факултет во Скопје, Скопје, 1996/98, pp. 115-128.

⁴ Article 13 of the *Law on Organisation and Operation of the State Administration Bodies of the Republic of Macedonia*, Official Gazette of the Republic of Macedonia, no. 58/2000.

⁵ Ivo Borković, *Управно право*, Zagreb, 2002, pp. 12.

matters, the following are treated: resolving administrative matters, inspection supervision, keeping public records, issuing public certificates and undertaking coercive actions of executive character. These listed administrative matters as a whole have three substantive legal features: conductive character, authoritativeness and bound for individual life situations. The legal norms for administrative activity or function are mainly within the four most important groups of legal regulations: (1) in the regulations on the state administration - primarily regarding the subjects/ executors of the administrative activity, as well as of the „state administration affairs“; (2) in the regulations in individual administrative areas, i.e. matters; (3) in the regulations on administrative procedure - the legal norms related mainly to the course and administrative control of the administrative activity, including the executive administrative procedure; (4) in the regulations on administrative disputes - referring to the judicial control of the administrative activity⁶.

Administration in a material-functional sense comprises two basic components: *firstly*, administrative function, and *secondly*, administrative activity. According to the striking legal theorist Pavle Dimitrijevic, the separate legal regime of the administrative function consists of issuing individual administrative acts - administrative acts that determine the „primary disposition“ (the primary rule of conduct) for certain subjects in the concrete situation for the purpose of carrying out the general commandments (orders) contained in the laws and other legal regulations; carrying out acts („material operations“) by applying coercion or restriction - „of administrative actions - in order to directly implement the general and individual commandments contained in the laws and other legal regulations, as well as the individual legal acts, if a need occurs for the implementation of public interests“⁷. Starting from this conception as stated by prof. Pavle Dimitrijevic and elaborating it in a very detailed and lucid way, in determining the subject content of the administrative function, prof. Zoran Tomic constructed his own original notion of the administrative function. Therefore, according to the understanding of prof. Zoran Tomic, the administrative function consists of two pivotal elements: *first*, the administrative-operational function (i.e. resolving administrative matters) and, *second*, the administrative-corrective function (i.e. performing administrative oversight). The administrative-operational function is a quantitatively predominantly a category of the administrative function, principally turned towards the future. The essence is in the following: *first* - in the formulation of an individual legal rule based on the general legal norm and in its application, which in this situation is individualised (specified); *second* - in the direct bringing into life either of the individual legal act, or of the general one (which is a rare exception). The operability of the administrative function is reflected in the immediate abstraction in everyday life by the legal and material definition of the future behaviour of citizens and organisations. The administrative-operational

⁶ Zoran Tomić, *Opšte upravno pravo*, Beograd, 2011, pp. 53.

⁷ Павле Димитријевић, Ратко Марковић, *Управно право*, Београд, 1986, pp. 109.

function prevails in a good deal of administrative matters, especially in resolving administrative matters and issuing public certificates (and other public documents), as well as in the provision of other public services to the beneficiaries (citizens), in administrative manner. The administrative-control function is a legal activity of a corrective nature, for the purpose of further verification of the correctness of certain behaviour⁸. It is primarily oriented towards past behaviour, already undertaken actions, i.e. acts (legal and material): it intervenes, on the basis of the law, in the former social and legal relations that have occurred. The administrative-control function is the core of administrative work designated as administrative oversight. Applying the legal regulations, the public administration in that situation controls, except for itself, the others, by means of taking administrative-legal decisions and undertaking administrative-material operations. This is where the main content comes from, i.e. the subject of the administrative function that prof. Zoran Tomić qualifies as a legally regulated government supported by the state activity of an operational-corrective character, which is reduced down to the application of the legal regulations of the individual extra-dispute legal situations of the citizens and organisations, in order to meet the public and private interests⁹.

The administrative activity is a set of authoritative and non-authoritative activities that are performed for the fulfilment of the social or societal goals, i.e. the goals that are in the common interest of all citizens¹⁰. The material-functional notion of administration is graphically expressed as the god Janus¹¹ – a deity with two faces, meaning it is ambivalent, i.e. has a double sense or meaning. Accordingly, the administration in material-functional sense is understood as one of the authorities of the state and as a public service¹².

Administration as public (state) power

The term „state administration” was first used in Germany in the mid-19th century. According to its original concept, the state administration is an organ and organisation whose activity rests on the state monopoly of the enforcement of laws. Therefore, the domination of coercion is the key to its interpretation. The state administration as a public (state) government is a set of organs and organisations that constitute an „operational, non-political and purely technical part of the executive branch”, i.e. a set of organs and organisations belonging to the state

⁸ Zoran Tomić, *Opšte upravno pravo*, Beograd, 2011, pp. 52, 183.

⁹ Zoran Tomić, *Opšte upravno pravo*, Beograd, 2011, pp. 52, 183.

¹⁰ Види: Borče Davitkovski, Ana Pavlovska-Daneva, *Značaj javne administracije za stabilnost institucija u Republici Makedoniji*, Aktuelne Promene u Pravnom Sistemu Država u Regionu, Novi Sad, 2011, pp. 21.

¹¹ Janus - Ancient Italian and Roman deity, first god of the sun, later god of the years, god of war, of time and of every beginning in general. He is represented with iron in the right and a key in the left, and with two faces, one young face with the sight turned forward, i.e. in the future, and the other old face, looking back, i.e. in the past. His temple was peacefully closed, and during the war it was constantly open. – quoted as per Милан Вујаковија, *Лексикон – страних реча и израза*, Београд, 1985, pp. 372.

¹² See: Onesin Cvitan, *Uvod u upravu*, Split, 2002, pp. 36-38.

apparatus. Its main task is to implement laws by fully respecting human rights and freedoms¹³. Historically and fundamentally seen, the administration is an embryo, that is, the first form of political power that will later be constituted as a state, and even later it shall be called that name¹⁴. The administration as a public (state) authority rests on the principle of power, the empire, expressing the sovereignty of the state; in fact, it is part of the state or the political system. Actually, the state administration is not just an instrument of the state executive power; it is largely the state itself, a standardised and institutionalised form of government¹⁵. As a consequence, the administration is the fundamental factor that makes the state as what it is (organisation with the monopoly of physical coercion, disposing of a special apparatus for that purpose), and it is exactly the administration. The special activity of the state that is designated as administration has existed for as long as the state exists, as it is an integral part of the notion of the state. There is no state without administration, same as there is no administration without a state¹⁶. Only in most countries administration in the longest period of the lifespan of those states existed in the absence of law; rather as a state activity not regulated by any law (the era of the police state). The administration of the state relates to the law in the nineteenth century; in fact, it is then when the administrative law as a branch of law was constituted¹⁷.

The state administration is only part of the overall state system. It is a complex and largely hierarchical set of administrative structures that make up the „spinal” column of the state¹⁸. The state administration is a basis or foundation, a central part/central element of the state executive power. It has a role to provide or help the work of the three branches of state power: legislative, executive and judicial, through their specific interrelationships. It is as much as democratic, efficient and successful – as the society is democratic and efficient in protecting the interests of its citizens and at the same time confirming the legitimacy of the government of each state¹⁹.

According to the definition provided by Zejnnulla Balanca, the state administration is that special form of execution of the state power that qualifies as an executive order-giving power, which is carried out by the administrative bodies, on the basis and for the implementation of the law, for the immediate practical organisation of the functions of the state. Thus, according to this author, the executive order-giving activity is the very same activity and it is the only activity of the government, which simultaneously appears in two aspects, in an executive and an order-giving aspect,

¹³ Зоран Томић, *Законодавна еволуција државне управе у Југославији после 1945 године, Упоредна Искусства Државних Управа*, Београд, 2002, pp. 21.

¹⁴ Slavoljub Popović, *Organizacija i funkcionisanje uprave u samoupravnom sistemu*, Београд, 1978, pp. III.

¹⁵ Onesin Cvitan, *Uvod u upravu*, Split, 2002, pp. 9.

¹⁶ Драган Милков, *Управно право I*, Нови Сад, 2011, pp. 21.

¹⁷ Види: Eugen Pusić, *Država i državna uprava*, Zagreb, 1999, pp. 23; Onesin Cvitan, *Uvod u upravu*, Split, 2002, pp. 29-32.

¹⁸ Предраг Димитријевић, *Управно право*-Књига прва, Ниш, 2008, pp. 75.

¹⁹ Dragoljub Kavran, *Javna uprava*, Београд, 2003, pp. 50.

but which are two sides of the same state activity, which is executed from the same system of state organs and at the same time both executive and order-giving bodies²⁰. This author unifies or fuses into one single joint activity both executive and administrative activities. However, it is a notorious fact that in the Republic of Macedonia the executive activity belongs to the Government of the Republic of Macedonia as a collegial/collective state body that has the greatest political power in the society, while the administrative activity belongs to the state administration bodies as single/individual/monocratic state bodies that, as an entirety, have more professional and service-oriented than political power in the society.

In the most general classical sense, the administration as a public (state) power represents a legal manifestation of executive and order-giving authority and power that is reflected in the implementation of the legal order into practice for the purpose of achieving and protecting the public interest. In correlation with this standpoint, the state administration is a step ahead towards the citizens from the position of power, as an empire, i.e. gives commandments, imposes certain behaviours onto the subjects of the law²¹. In this context, the following examples may be cited to illustrate the administration in the capacity of an executor of state power. Thus, for example, „a police officer gives orders in the traffic where the participants should adhere to them in practice”, because „in the event of non-compliance with the orders, the punishment shall follow”. Or, the Public Revenue Office „gives orders for tax payment²²”. In these cases, a common characteristic would be that the administration appears as a „state power executive”, of course, on each of its title bearers, within the frames of their competences, as determined by law. *The conclusion here would be*, that the administration's nucleus as a state power is in the perception of the administrative activity as a sum, primarily, and predominantly, of the state-authoritarian activities. Administration, i.e. the administrative function qualifies as one of the branches (functions) of the state power, which is intended to emphasise that in the law enforcement, it is authoritative authorisations that are primarily used. In doing so, the respective authoritarian administrative powers may have a double meaning - broad and narrow. Broad - if it is extended not only to individual authoritarian legal and material acts, but also to those that are general normative - of secondary legislation character. Narrow - if authoritative prerogatives in the law enforcement process are limited solely to individual cases and to individualised persons, i.e. on the exercise of power (with specific legal acts and official actions) in individual situations²³.

²⁰ Zejnulla Ballanca, *E Drejta administrative e Republikës Popullore Socialiste të Shqipërisë*, Tiranë, 1988, pp. 3-4; 16-19.

²¹ Eugen Pusić, *Upravni sistemi*, Zagreb, 1985, pp. 232-233.

²² Esat Stavileci, *Nocione dhe Parime të Administratës Publike*, Prishtinë, 2005, pp. 73.

²³ See: Наум Гризо, Симеон Гелевски, Борче Давитковски, Ана Павловска-Данева, *Административно право*, Скопје, 2011, pp. 14; Стеван Лиштић, *Управно право*, Београд, 2013, pp. 43-45; Zoran Tomić, *Opšte upravno pravo*, Beograd, 2011, pp. 41.

Administration as a Public Service

The strengthened social function of the *Welfare State* that meets the needs of the citizens in certain areas raises the education of the new form of public administration. It strongly opposes the traditional state administration as a mastered model that rests on the monopoly of coercion in administrative-legal relations. Therefore, education, social protection and health care, scientific research, protection of the human environment and economic development become models of the new arrangement of the society in which the social and regulatory rather than the coercive features of the state are strengthened. The notion of public administration as a public service rests on the idea of achieving the complete organisation of society, while at the same time reducing the degree of persistent social uncertainties. Therefore, determining management as public service implies amplification (strengthening) of the role of the state. According to this concept, the administration is one of the activities of the state aimed at achieving the general social well-being (*bono publico*) of the citizens by reducing the degree of coercion by the administration towards the citizens²⁴.

The French legal theorist Leon Digi, who is the founder of the public service school in legal theory, says that „the whole country is just a set of public services”. Public service is any activity that is carried out by the state administration, and which satisfies a public interest. Classical examples of public services are primary and secondary education, healthcare, post, telegraph and telephone office, state railways and others. The need for provision of services of this kind by the state is explained by the lack, or inadequacy of such services in the private sector²⁵. Hence, according to Leon Digi, the basic task of the state in the new conditions (at the beginning of the 20th century) has changed (transformed). He would neglect the role of the state as power executor, and thus, the primary priority was devoted to the performance of actions that are utilitarian (useful) for all members of the state union (the public service). The state is made up of individuals who dispose of power, but they have the task to use it for the purpose of exercising and managing public services. Hence, the administrative activity consists essentially in the performance of various public services. However, the individual state-legal functions may differ in the legal consequences that the individual functions cause in the legal order. The individual functions cause various changes in the legal order with their acts. Moreover, in practice the State Council of France used to come to the conclusion that administration implies the activity of the state consisting of the performance of public services subject to the public law regime²⁶. In correlation with this, instead of exercising public authority, the state has the task

²⁴ Onesin Cvitan, *Uvod u upravu*, Split, 2002, pp. 36-39; Milan Petrović, *Nauka o upravljanju*, Niš, 2011, pp. 80-89; Стеван Лиличић, *Управно право*, Београд, 2013, pp. 32.

²⁵ Duško Vrban, *Država i pravo*, Zagreb, 2003, pp. 87.

²⁶ See: Невенка Бачанин, *Теорија управног права*, Београд, 1994, pp. 59-70.

of performing public services. This implies that Digi affirms the component of a functional service-oriented public administration, which ultimately has the main point of reaching social objectives as a set of services that are inherent (necessary) for all citizens in the society, without which one could not imagine human everyday life in modern conditions (electricity, water, telecommunications, infrastructure construction, various public transport systems etc.), but completely ignores the role and attribute of the administration as exercisers of public authorities²⁷. In other words, in carrying out its activities, the state no longer places the state government on the top, but the realisation of the general social needs and the everyday needs of citizens, where the instruments of the government, as *modus vivendi*, substitute them with new methods by not using authoritative prerogatives. For that purpose, the state itself, on its own initiative, takes over certain actions and tasks in the sphere of economic and societal-social activities, such as education, health care, social security, traffic, energy, communal services, maintenance of PTT traffic etc.²⁸

Due to the exceptional importance of these activities for the society as a community of free and equal citizens of a particular country and the quality of life of each individual, the state not only needs to ensure normal course of their activities, but also regulates and controls its work, with the establishment of the relations of inequality, which is characteristic for the relations that are established in the exercise of the state power, the state carries out the protection of the public interest. It is precisely from the stated circumstances that the state performs the above mentioned matters for the public interest (or entrusts the other entities that perform it under its control) in the French law the concept of the public service is

²⁷ See: Стеван Лилић, *Управно право*, Београд, 2013, pp. 45-47.

²⁸ Onesin Cvitan, *Uvod u upravu*, Split, 2002, pp. 39. It is about public policies of one specific state. The term public policy, in the broadest sense, refers to a science that studies the process of deciding on issues of public interest. Main determinant of public policies is that they should be the product of the interaction of the action of all stakeholders in society. The result of this interaction are certain programs, that is, a set of measures whose implementation should lead to improvement in a particular area, or at the level of society as a whole. The task of the public policy is to address the problem or problems in a particular area of public interest, thereby offering concrete proposals for possible solutions, in which the definition will always include all stakeholders. In today's basic areas of public policies of today, the following are listed: education, health, social policy, traffic, urban planning, and the preservation of the human environment are included. Public policies highlight the interests of the individual, group and people. At the same time, the public policies highlight the notion *public goods*, which represent specific values that are available to the majority of citizens to a larger or smaller extent. On the other hand, the *public choice* represents a manner of adopting certain decisions for "the public good or public choice from among the public and private good". Determinant that best describes the public administration is the creation of public goods and the expenditure of public assets. This, at the same time represents, or more precisely, it should represent a mission for each staff member of the public administration. – See: Мијат Дамјановић, *Држава, поредак и власт*, in: *Политиколошке теме*, Београд, 2002, pp. 126; Mark H. Moore, *Creating public value: strategic management in government*, Harvard, 1997, pp. 127; See: Michael E. Kraft, Scott R. Furlong, *Public policy: politics, analysis, and alternatives*, USA, 2012, pp. 3-20.

constructed²⁹. Since these activities are carried out by the state through the bodies established for carrying out the administrative function and under the regime of administrative law, the content of the activity that composes the administrative function has come to change, which content is expanded and enriched and certain things that are not of authoritarian nature, but rather of a non-authoritative character, that is, of a service character that spans things of public interest, i.e. of common good of all, the collective benefit, which belongs to society as a whole. Namely, the qualitative satisfaction of the public interest (of the citizens) should be the main attribute and essential determinant in the activity of a particular state administration. So there is insinuation and the insistence on the service-oriented public role of the state, and with that of the administration thereof. Moreover, citizens organize themselves in the state and finance its existence, in order to serve as a service in the exercising and protection of their rights, needs and interests, in the area of judiciary, administration, social protection, health care, property and legal relations etc.³⁰

The institute of public administration has firstly created the practice of the State Council of France as a separate administrative court. Namely, the State Council, resolving specific cases that came before it, began to apply its own perceptions of the content of the administrative function by including the activities that contained all the features of public services³¹. In this manner, the administration has become a separate activity of the state that encompassed both the activities of the exercise of power and the activities of the immediate satisfaction of a range of important needs and interests of the citizens. Otherwise, the conception of the State Council for Public Services was formulated in the decisions that this Administrative Court adopted in 1903 in the Terrier case. The Terrier case refers to a dispute that brought the citizen Terrier before the State Council with a lawsuit on the occasion of the decision of the Regional Assembly of Saoan-e-Loire to distribute award for eradication of poisonous snakes. Unhappy with the prefect's decision on the amount of the award, Terrier filed a lawsuit against the State Council against the department as a public-legal body. In this dispute, Digi says: „The State Council has been declared competent, considering that the Regional Assembly of Saoan-e-Loire has created a genuine public service, which the government commissioner compared to the service for the eradication of

²⁹ See for more: Леон Диги, *Преображају јавног права*, Београд, 1929, pp. 35-66.

³⁰ See: Стеван Лилић, *Управно право*, Београд, pp. 45-47.

³¹ Public services are organisations that were founded to “meet specific needs of the general interest, taking care of the general good and as such, they need to be specified by law”. The general interest in this case is a factor having impact on the development of the society. Seen most extensively, the general interest represents freedom, peace, human health, etc. When the general interest is defined and précised in compliance to certain legal norms, it becomes a public interest, that is, interest of the state. – quoted as per Стеван Лилић, *Државна управа – инструмент власти или јавна служба*, Упоредна искуства државних управа, Београд, 2003, pp. 55.

wolves and which actually exists in many departments". Accordingly, a dispute concerning the performance of a public service is in question and therefore the State Council is competent as an administrative court³². In this decision, the State Council formulated its position on the content of the administrative activity, arguing that in the administrative activity it includes everything related to the organisation and functioning of the public services³³. This attitude of the French State Council, together with the then prevailing learning of the French administrative theory of public services, led to a nebulous on the content of the administration in French law. Conceived as a specific activity of the state, the administrative activity encompassed a set of authoritative and non-authoritative activities that, with legal regulations, were placed within the scope of the administrative bodies. All these activities were regulated and were subject to the norms of a single legal regime, the legal norms of administrative law³⁴.

With the administration we come across almost in every step and every day, because the state administration, except as an instrument of the state apparatus through which the state performs its activity, is broad and versatile, which extends into various fields of social, political and economic life, also appears as a public office/service, which should meet the requirements and needs of the citizens³⁵. In fact, there are many examples of people appearing in the „counters of administration" to meet „a certain need" with the administration not acting as a „power", but rather appearing as a „public service for citizens". In regard to the administration, there is a very impressive aphorism of prof. Esat Stavileci³⁶ that is worth sharing: „The administration counters are still low, in a way that „would force the citizens" to „beg the authorities" so that a service is provided to them³⁷". This aphorism openly refers to the justifiable conclusion that staff in public administration should be the only mission in operation to be the quality service of the consumers. *This aphorism* openly refers to the justifiable conclusion that the only mission of the staff in public administration in their operation should be the provision of good quality service to the consumers. These legitimate and legal requirements and needs are the right of the *citizen* – not as „giving something to someone, at the will of the one who decides or as „mercy" that is provided to him³⁸. Hence, it is necessary the fact

³² Леон Диги, *Преображај јавног права*, Београд, 1929, pp. 170-171.

³³ Public administration experts regularly emphasise that public services are way more wide concept compared to public administration, which from lower grades of generality arise – public and state administration. – See: Dragoljub Kavran, *Javna uprava*, Београд, 2003, pp. 23.

³⁴ Невенка Бачанин, *Теорија управног права*, Београд, 1994, pp. 61.

³⁵ Neven Šimac, *Europski principi javne uprave*, Zagreb, 2002, pp. 7.

³⁶ The Academician Esat Stavileci in Kosovo is considered the founder of the development and the rise of administrative-legal science at the Law Faculty at Hasan Pristina University in Pristina, just as Academician Aleksandar Hristov in Macedonia is considered founder of the development and the rise of the administrative-legal science at the Faculty of Law at the University of Saints Cyril and Methodius in Skopje.

³⁷ See: Esat Stavileci, *Nocione dhe Parime të Administratës Publike*, Prishtinë, 2005, pp. 27, 367; Peter Cane, *Administrative law*, Oxford, 2011, pp. 3.

³⁸ Dragoljub Kavran, *Javna uprava*, Београд, 2003, pp. 70.

should be instilled in the mental code of the employees in the administration that they primarily exist for the qualitative servicing of their clients (citizens and legal entities), whose public funds actually align/finance the operation of the public sector and which, as taxpayers hold „the sacred” right to efficient and effective way to exercise their rights and obligations³⁹. Therefore, the civil servants⁴⁰ should be primarily in the service of citizens, to qualitatively service the demands and needs of their own clients and to successfully effectuate the public interest. The ultimate goal would be: satisfied consumers of administrative services – satisfied staff – professional state administration⁴¹.

³⁹ Дејан Вигански, *Плата според учинокот*, Нова Македонија, 19.07.2012; Robert Blažević, *Управна znanost*, Zagreb, 2010, pp. 386-393; Ivan Koprić, *Современа јавна управа и њезино проучавање – комплексност и интеграција*, Годишник на Правниот Факултет “Јустиниан Први”, Скопје, 2014, pp. 19.

⁴⁰ Servants are an important integral element of public life and without them one can not imagine the performance of state functions in contemporary civilisation, that is, the regular and efficient functioning of civil services that meet the general social needs on a daily basis. According to Eugen Pusić's view, the quality of the state administration's work, as an organisation, depends to a large extent on the commitment, ability and honesty of public servants, of which, above all, highly technical, professional, creative, initiative and responsive work is required, in accordance with the law. The administration cannot be better than the people working in it, with the leading role and responsibility of the managerial staff, given the fact that it represents a hierarchical organisation, and the quality of its peak performance has crucial impact on the overall quality of work in the execution of operations within its competencies and scope. In the comparative law, the modern office system, or the so-called *merit-based system* (meritocracy system), which is solely applicable to the modern rule of law, is characterised by the goals that it wants to achieve and the methods by which set goals are accomplished. The merit-based system *seeks* to increase the efficiency and legality of the state administration's work, handing the position in the administration to members of only one social layer or a political party should be avoided, so that the attitude of political loyalty or patronage is avoided, to enable access to administration and public services only to those who have the necessary expertise and experience, that is, the most professional and creative personnel, and to accomplish the principle of access to the position in the civil service, under equal conditions for all, depends solely on their capabilities. These objectives are achieved, first and foremost, by the strict selection of candidates when they are admitted to the service by conducting a public competition and checking their abilities and knowledge through testing, sitting appropriate exams or probationary work; by establishing and applying the objective criteria for assessing the work of the employees and, in this regard, for their advancement and classification on the basis of the established nomenclature of titles, ie the established posts; with the introduction of a standardised salary system and the institutions of the Central Office Commission, whose task is to ensure uniform application of the regulations in the field of labour relations and personnel policy, to participate in drafting those regulations, to take care of the selection of the best candidates for the civil service and to decide on remedies submitted in relation to the exercise of the rights and obligations of the work and on the basis of the work and thus limit the arbitrariness of political officials in the acceptance, deployment and dismissal of administrative and other officers, etc. One typical example of the merit-based system, undoubtedly, is the office system established in the UK, which has long served and still serves as a model and inspiration for the normative arrangement of this matter in the respective foreign countries. The civil servant in the UK, by definition, is a servant of the crown, who is given a salary from the budget that is fully and directly voted or approved by the parliament. – See: *Hrestomatija upravne znanosti*, Eugen Pusić, *Kvaliteta ljudi u upravi*, Zagreb, 1998, pp. 215-235; Gordana Marčetić, *Službenici u suvremeno doba*, Javna uprava, Zagreb, 2006, pp. 112-114; Robert Blažević, *Управна znanost*, Zagreb, 2002, pp. 81-90.

⁴¹ See: Симеон Гелевски, *Статусот на работните луѓе во органите на управата*, Зборник на Правниот факултет “Јустинијан Први” Скопје, 1996, pp. 39.

Practice shows and proves that the administration staff⁴² they generally treat the citizens as subjected and subordinated applicants (*power addresses*), and somehow they are missing code of ethics⁴³, but at the same time they must not touch the human dignity on purpose and should not play with the destinies of the users of administrative services. As a consequence, the administration is today spoken of in an unfavourable way, especially for its inhumane and uncivilised behaviours towards citizens, and it is required to create better conditions in the society for the administration in a way that it is transformed „from an unlimited power“ into a „good public service“ for the citizens⁴⁴. The public administration does not enjoy the „respect of the public“. The reason lies in the fact that it „has compromised and corrupted the legal system“. The syndrome that constitutes the amount of these phenomena is characteristic of the unstable transitional states.⁴⁵

*Almost nobody is happy with the state administration: neither the citizens, who are in constant relation with it; nor societies that pretend to „build democratic orders“ within them; nor the states, in the conditions and in the circumstances of their new roles; nor the citizens to whom „the trust in it is being proclaimed“, and, lastly, neither the administration staff who „work and earn from it“*⁴⁶. After all, from the end of the XIX century, Frank Goodnow noted that „the greatest problem of modern public law is solely the administration. If the past time was the time of constitutional reform, the present time is the time of administrative reforms⁴⁷“. Hence, it is right to ask the question: What should be done in the society to have an administration that is: *first*, institutionally organised; *second*, operatively more functional; *third*, professionally more rational; *fourth*, procedurally more efficient; *fifth*, socially more controlled; *sixth*, politically more accountable; *seventh*, technically perfected; *eighth*, more acceptable from humanistic point of view. The more complete answer to these questions shall systematise the following: *first*, the need for developing a new theory of administration within the new conditions and circumstances of the development of society in general and the changing role of the state in particular, and that for more realistic evaluation of the administration analysis and studies should be conducted, both in width and depth, would detect the causes of stagnation or congestion of the administration on the path of its general transformation, although it is a long-term

⁴² Види: Robert Blažević, *Upravna znanost*, Zagreb, 2010, pp. 81-100.

⁴³ According to the research results coded under the title „*Secret Agent*“ conducted by the Ministry of Information Society and Administration of the Republic of Macedonia, through analysis, it was established that the clients were requesting information from the Cadastre Offices in Tetovo, Gostivar and Kriva Palanka are utmostly unhappy with the regional cadastre units. „Citizens complaint from the slowness in the resolution of cases. Also, they react against inappropriate behaviour of the desk officers. Hence, insufficient level of manners and etiquette towards clients is noted“. – *Alsat-M National Television*, 12/08/2014.

⁴⁴ Esat Stavileci, *Nacione dhe Parime të Administratës Publike*, Prishtinë, 2005, pp. 29.

⁴⁵ Neven Šimac, *Evropski principi javne uprave*, Zagreb, 2002, pp. 108.

⁴⁶ Бранислав Марковић, *Есеји о управи*, Крагујевац, 2001, pp. 1, 65.

⁴⁷ Ivo Borković, *Upravno pravo*, Zagreb, 2002, pp. 3.

process; *second*, the administration is not „subjected”, neither as much as it should be, nor as it should be, to „its adaptation” towards the new socio-economic and political relations; *third*, the requirement to create adequate legislation in relation to the conditions and circumstances that society and the state pass through today; *fourth*, the need for higher professionalism in administration, which could help eliminate the negative phenomena, even the pathological behaviours of the administration towards the citizens; the recommendation for strengthening the mechanisms of control and accountability of the administration and raising its political awareness and responsibility; *fifth*, the suggestion for further perfection of the work of the administration, which implies its computerisation⁴⁸. At the same time, the contemporary administrative legal theory fosters the established opinion that, in fact, without modern, organised, functional, rational, efficient, controlled and responsive administration, „a lawful state cannot be built”, neither a modern society, a market economy, nor democracy, because the public administration extends to all areas of social life⁴⁹.

Conclusions

We may conclude from the above that the administration, originally, in its development is a state administration and changes within the evolution of the political system of a particular state. It is, together with the state, part of the institutional network of the society, which means that it is also changing under the influence of the transformation of society as a whole, to a wider framework of general societal development⁵⁰. As a consequence, the administration is no longer determined traditionally only as a function of power, but also as an activity that goes beyond the frame of the function of state power, embracing *the overall activity* of the administration, in addition to the activities of exercising power (enforcement of laws by adopting acts of power and carrying out material operations through the application of state coercion), also the activities are included of satisfying the vital needs of the citizens (performing public services). Thus, in the contemporary developmental social and European trends in the area of state administration, the theory of public services comes to life and it is explained that from the overall administrative activity in a quantitative dimension it manifests itself as a public service. It starts from the fact that the modern administration is of a service character, being a „service to the citizens”, by which a state is implemented for the wellbeing of its citizens. Explaining the administration as a public service is undoubtedly very important and strategically conceptual, but above all – functional and practical. Modern society requires a service state and an administration that must be at

⁴⁸ Esat Stavileci, *Nocione dhe Parime të Administratës Publike*, Prishtinë, 2005, pp. 52.

⁴⁹ Бранислав Марковић, *Есеји о управу*, Крагујевац, 2001, pp. 1.

⁵⁰ Eugen Pusić, *Nauka o pravu*, Zagreb, 2002, pp. 69.

service to citizens as their clients and partners, rather than subjects. The modern administration grounds its legitimacy on the real support of its measures and acts by the citizens. Therefore, the administrative action should be reduced to a lesser extent only to the legal manifestation of the state power, and to promote itself as an active driver of social flows, i.e. transformation of the administration is essential from the apparatus and instrument of the government, into efficient service for the citizens⁵¹. There is increasing strive that the administration approaches the citizens, and especially its „service“ role towards the citizens, in order to exercise their freedoms and rights as guaranteed by the Constitution, instead of executing gross power only, to exclusively protect state interests, etc. The new administration must obey to the legal regulations and act legally, but at the same time the principle of legality is not an ultimate intention. The administration must effectively carry out its activity and work in the interest of the state, but also safeguard the interests of the citizens.⁵² Furthermore, prof. Esat Stavileci rightly claims that „regardless of the unlimited exercise of power through the administration in opposition to any form of democracy, the administration without power cannot work, and vice versa⁵³“. It is so because the administrative activity of a state is, in fact, „one tool for exercising its functions“ and at the same time, achieving the administrative goal – the public interest⁵⁴. Nevertheless, it is considered impossible to exclude the traditional element of power, or the classical attribute of the domain found and manifested in the administrative activity. Namely, it is undisputable fact that the authoritative treatment was and remains *differentia specifica* – distinctive feature of the state's activity in general and the administrative function in a special way. In some administrative matters, the element of power is flagrant and absolutely present (for instance, in the performance of inspection work and even more in the repressive activity). But it is considered that that power must be carried out on the basis of legal regulations with a new spirit, eagerness and approach towards the citizens that should be respected, and that is the so-called concept of state *administration with a human face* (physiognomy)⁵⁵.

⁵¹ Стеван Лилић, *Управно право*, Београд, 2013, pp. 30.

⁵² Предраг Димитријевић, *Управно право*-Књига 1, Ниш, 2008, pp. 178.

⁵³ Esat Stavileci, *Nocione dhe Parime të Administratës Publike*, Prishtinë, 2005, pp. 27.

⁵⁴ Zoran Tomić, *Opšte upravno pravo*, Београд, 2011, pp. 43.

⁵⁵ Предраг Димитријевић, *Управно право*-Књига 1, Ниш, 2008, pp. 178.