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# Constitutional values and civil servant recruitment: The principles for filling revenue service positions in Poland

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## ABSTRACT

The functioning of public administration should be consistent with the general interest, common to all citizens, and independent from the particularized interests of changing political forces. A condition for the proper functioning of administration is the selection of appropriate personnel to perform the duties defined by the state. According to the premises of this paper, the recruitment of personnel based upon objective criteria is of fundamental importance for the effective realization of the administration's mission. This article analyzes the weaknesses of personnel policy in fiscal administration in Poland after 1989 against the background of the broader process of creating a Polish civil service. The study aims at determining the extent to which the actual relations between politics and administration reflect legal regulations. The article focuses on personnel policy with regard to senior positions in fiscal administration, whose occupants have leverage over decision-making processes and human resources policy in various agencies. It turns out that after every parliamentary election there is major turnover in the personnel occupying senior positions in the fiscal administration offices, that is, the persons associated with the previous governing team are replaced with individuals enjoying the confidence of those who have just come to power. In light of these findings one can infer that, contrary to the constitutional principles guiding the functioning of the government administration in Poland, its politicians have deliberately designed legal regulations in such a manner as to enable them to assume control over fiscal administration.

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## 1. Introduction

The principle of the “common good”<sup>1</sup> – found, among other places, in article 1 of the Polish Constitution of 2 April 1997 – comprises the *raison d'être* for public administration. After all, in executing state functions, such an administration should serve the welfare and well-being of the citizens. By the same token this guiding principle points to a model for the way a government should operate: the role of an administration executing the functions of the state is to realize the common good.

A government administration comprises the entire set of organs, offices, and central or territorial institutions which perform public tasks on behalf of the individual citizens and collective subjects (Zieliński, 2001: 14). According to article 153,

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<sup>1</sup> The focus of this article does not permit delving deeper into the issue of the “common good.” Its beginnings date back to Plato and Aristotle, but it is also one of the fundamental principles of social life in the social teachings of the Roman Catholic Church. A broader discussion of the common good as a constitutional principle can be found in Piechowiak (2012), Zubik (2007), Sokolewicz and Zubik (2016).

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paragraph 1 of the Polish Constitution – in order to assure professional, honest, impartial, and politically neutral performance of state duties – a corps of civil servants is employed in the offices of the administration. As the Constitutional Tribunal (*Trybunał Konstytucyjny*, TK) has indicated,

The essential significance of civil service is related to the pursuit of ensuring a desired mode of operation for the public administration, and, therefore, should be read in conjunction with a profile of the state as the common good of all its citizens (article 1, Constitution) [...]. The functioning of the state administration – seen in this broader systemic context – should be concordant with a properly understood general interest, common to all citizens, and free of particularized interests as perceived through the prism of the effects of changing political forces (TK, 14 June 2011).

A condition for the proper functioning of an administration is the selection of appropriate personnel to perform the duties of the state. As Polish scientists [Antoni and Bartłomiej Kamiński \(2004: 235–270\)](#) aptly demonstrate, the assurance of a high moral and intellectual level in the civil service requires the formation of a competitive recruitment system (based upon meritocratic criteria), appropriate remuneration, stable employment, and guarantees of the solemnity and sovereignty of the institution, that is, limiting to an absolute minimum the possibilities for politicians and other outside interest groups to gain special advantages or profits. These conditions are especially crucial in the case of fiscal administration which constitutes a key link in the system for accrual of public revenues.

The fiscal administration<sup>2</sup> is a component of a non-combined territorial government administration, subordinated to the minister governing public finance ([Zieliński, 2001](#); [Sawczuk, 2011a, 2011b](#)).<sup>3</sup> With respect to numbers, operatives of the fiscal administration comprise the largest of all groups encompassed by the civil service. In 2017, the civil service employed 119,382 persons among whom 47,179 (39.52%) were employees of tax chambers, tax offices, and tax audit offices ([Sprawozdanie Szeffa, 2018<sup>4</sup>: 20](#) attachment 1).

The state is, naturally, financed by taxes and other public contributions. In 2017, tax revenues in Poland amounted to 315, 257, 413 PLN, which constituted 90% of the state budget revenues ([Sprawozdanie z wykonania, 2018: 32–33](#)). The percentage which tax revenues present in the structure of the state budget income has remained at about the same level for the past two decades. Therefore, the goal of the fiscal administration is the gaining of such revenues in the most effective, efficient, and fair manner, under conditions of a uniformly applied tax law.

The tax system in Poland, however, displays much instability and opacity ([Brzeziński and Nykiel, 2011](#); [Uszyński, 2010](#); [Ruśkowski, 2006](#); [NIK, 2014](#)). Altogether it encompasses a sum total of 303 acts of legislation, that is, 11 laws and 292 ordinances by the minister of finance. As the findings of research by [Grant Thornton \(2017\)](#) illustrate, regulations governing personal income tax currently number 2689 pages, those governing excise tax amount to 991 pages, while those pertaining to the VAT amount to 890 pages. Yet a key problem in Polish tax law is, in addition to the voluminous provisions, their high level of changeability. The personal income tax law of 1991 has been amended 56 times; if, however, we count the corrections introduced by amendments to other laws, the total is 269 times. The 1993 act on taxation of goods and services – along with the 2004 law which superseded it – has been revised 47 times over the course of 23 years and changed a total of 99 times. Additionally, the law on corporate income tax, from the time it was instituted in 1992, has been amended to a crucial degree some 36 times; the sum total of its alterations is 187 ([Grant Thornton, 2017](#); [LEX](#)).

Testifying to the lack of clarity and abundance of complexity in the tax law is the increasing number of requests for formal interpretations to be issued by organs of the tax administration. Whereas in 2008, there were 22,478 individual interpretations, in 2015 this number had risen to 38,159 ([Grant Thornton, 2017](#)). In the face of the great changeability in Polish tax law, its breadth, complexity, and low quality, it is difficult to interpret its provisions, and yet a consequence of a revenue office's erroneous decision can be damaging to the taxpayer. Furthermore, considering the constant political pressure to increase tax revenues needed to finance mounting budget expenses in order to cover social welfare costs, the question of how to ensure high meritocratic and moral competencies among fiscal administration employees is pivotal.

The aim of this article is to analyze weaknesses in the fiscal administration system in Poland – especially those which impact the shaping of a professional workforce of civil servants therein. According to the premises of this paper, the recruitment of personnel based upon objective criteria is of fundamental significance to the efficient realization of the tax administration's mission. Special attention is paid here to the filling of positions at a senior level – the posts of the directors and vice directors of tax chambers, heads of tax offices and their deputies, of the directors and vice directors of tax audit offices; considering the current legal state of affairs, investigated, too, will be the directors and vice directors of tax administration chambers. The quality of the functioning of these offices depends upon the competencies of the individuals who occupy these positions. Appointments to these managerial positions is, in turn, connected with control over the employment policy reigning in subordinate units of this administration. In line with the assumed hypothesis, the greater the influence of political factors (rather than impartial, merit-based criteria) on the process by which positions are filled, and the

<sup>2</sup> The terms “fiscal” or “tax” administration are applied alternately in the literature, partly due to a lack of precise legal definitions. Nonetheless, the first of these is of historical lineage, appearing in descriptions of the interwar period in Poland ([Teszner, 2012: 55–63](#)).

<sup>3</sup> For more on public administration see, for instance,. On another note, the title of the minister responsible for public finance tends to vary; in present-day Poland, it is the Minister of Economic Development and Finance.

<sup>4</sup> Because versions in other languages are not available, Polish document titles will not be translated herein; however, to facilitate comprehension translation of selected titles is provided in the list of references.

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