

The role of administrative law in “illiberal democracies”. How authoritarian regimes use the instruments of ‘dual state’, on the example of Poland

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Abstract: Recent years have brought major social changes, including growing dissatisfaction with democratic institutions and the emergence of so-called “illiberal democracies”. Globalisation, economic crisis, political conflicts, and security threats also contribute to malfunctioning of modern societies. Many countries experience backsliding from the rule of law, as well as growing populist and authoritarian tendencies.

Central and Eastern European countries already experienced authoritarianism in the past. In the turbulent mid-war period of 1920s and 1930s, as well as in the communist system enforced by the Soviet Union after the WW2, the regimes struggled to navigate the economic and social challenges by resorting to non-democratic measures. After the fall of the Iron Curtain, it seemed that the reestablished democracies will be successful and resilient, and that the rule of law should be strengthened by joining the EU. However, the democratic system of government, division of power and the rule of law soon became challenged by the populist and authoritarian tendencies.

Administrative law plays a very important role in these processes. Since its main function is to protect the individual against the abuse of state power, it can be surprising to discover that it is instrumentally used by the regimes in decaying democracies. By breaking the principles of the rule of law and weakening of the constitutional values, populist governments often misuse the instruments of administrative law to limit the citizens’ rights and liberties. This process is however not always evident, as this ‘prerogative state’ coexists with ‘normative state’, where legal forms of action may be used differently depending on the addressee.

Looking at the example of Poland, it is clear that the administrative measures can be effectively used both to protect and to oppress the citizens, depending on their loyalty towards the regime. This paper aims at showing at how the ‘dual state’ works in practice, focusing on the examples of misusing the administrative law in Poland between 2015 and 2023. Even if the undemocratic processes shall be reversed after the outcome of 2023 elections, the problem remains interesting to be analysed in terms of prevention and working against in other countries.