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Dilemmas of Justice in Law: The Privatisation of State Tasks and Its Consequences for Justice on Selected Examples from Croatia and Poland

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This article examines the privatisation of public (state) tasks through the lens of justice in law. It analyses the development of privatisation processes in contemporary Western states governed by the rule of law, using selected examples from Croatia and Poland. Particular attention is paid to terminological variation, the reasons for transferring public tasks to non-public actors, and possible limits of that process. The article also considers whether privatisation may affect not only perceptions of justice but also the institutional conditions under which justice is realised. The concluding section evaluates the research hypothesis and cautiously considers future directions. The article is intended to contribute to the scholarly debate on the relationship between the organisation of public tasks and justice.

Introduction

Justice and its conception are so broad and intellectually compelling that any meaningful analysis requires a clearly defined perspective. This article therefore approaches justice through a specific institutional problem: the privatisation of state tasks. The privatisation of public tasks has been widely discussed in legal scholarship and in other disciplines, yet its relationship with justice has received considerably less attention. This may be partly explained by the breadth of the concept itself. Justice may be invoked in relation to individual conduct, social institutions, legal rules, and even war. N. Machiavelli, invoking Livy, associates the justice of war with necessity and with circumstances in which hope is placed in armed action¹.

The theory of justice is a classic subject of reflection in philosophy, politics, ethics, and jurisprudence. The extensive literature accumulated over centuries raises a fundamental question: To what extent has reflection on justice actually changed, and can one speak of progress in this field?² The plurality of approaches, criteria and methods of systematisation has generated enduring debate with consequences across social life. Justice is therefore both an object of interdisciplinary research and a recurrent source of disagreement. One of the oldest and most fundamental argumentative moves in public discourse is precisely the appeal to justice³. M. Ossowska

¹ N. Machiavelli, *The Prince*, London 2003, p. 100.

² W. Sadurski, *Teoria sprawiedliwości. Podstawowe zagadnienia*, Warszawa 1988, p. 5.

³ K. Zeidler, *Argument ze sprawiedliwości w dyskursie publicznym*, "Gdańskie Studia Prawnicze" 2016, vol. 35, p. 577.

aply referred to the rich associative aura surrounding the concept⁴. The following remarks are necessarily selective. They are intended only to identify several points of reference that are useful for the analysis developed later in the article.

Plato's *The Republic* offers one of the classical starting points for reflection on justice⁵. The allegory of the cave illustrates the difficulty of grasping the essence of things when one has access only to their imperfect representations. Aristotle approaches justice from a different direction, treating it as a virtue and a stable disposition to act well and justly⁶. These classical approaches influenced later theories in which justice was connected with virtue, the common good, law, and the organisation of political community. In modern debates, one of the most influential accounts is J. Rawls's theory developed in *A Theory of Justice*⁷. Rawls's work is commonly situated within the liberal tradition and draws on the social-contract tradition, while also becoming a major point of reference for communitarian and other critical responses.

The major theories of justice offer different perspectives and cannot be reduced to a single formula. They nevertheless share recurring concerns, including equality, well-being, institutional fairness, and the conditions of a good social order. Following A. MacIntyre, one may therefore ask whose justice, and which understanding of rationality, should guide assessment⁸. For the purposes of this article, it is enough to recognise the plurality of competing theories and the absence of a universally accepted definition. As L. Kołakowski observed with characteristic irony, the fact that generations of philosophers, moralists and legal theorists have continued to explain justice suggests that complete clarity and agreement have not been achieved⁹.

Against this background, the central research question can be formulated as follows: Can the privatisation of public tasks affect justice? If so, what is the nature of that effect? Does it primarily influence the social perception of justice, the institutional conditions for its realisation, or both? These questions also lead to a forward-looking issue: What direction may the privatisation of public tasks take, and to what extent can that direction be assessed through the paradigm of justice?

The article also seeks to present the author's assessment of these issues and to identify possible directions for legislative policy. Although the analysis focuses on examples drawn from Croatian and Polish law and practice, the cases have been selected because they illuminate problems of broader relevance to Western legal systems. Given the breadth of the subject, the article does not attempt to provide an exhaustive comparative account. Its purpose is narrower: to identify key conceptual and institutional problems and to provide a basis for further scholarly discussion.

The research hypothesis is that the privatisation of public tasks is already an advanced process and may continue to expand, but that its further development requires careful public scrutiny and effective institutional safeguards. The hypothesis is tested through doctrinal analysis and selected case studies. The inquiry is therefore not intended to produce a universal empirical measure of privatisation; rather, it examines whether the selected legal and institutional examples support the proposed direction of argument and what qualifications they require.

The study is predominantly theoretical and systemic in character, but it is anchored in practical examples from Croatia and Poland. These cases perform two functions. First, they illustrate the general mechanisms and risks discussed in the doctrinal analysis. Second, they provide a means of testing the research hypothesis against concrete institutional arrangements. The relationship is therefore reciprocal: the hypothesis structures the examination of the cases, while the cases in turn determine whether the hypothesis can be maintained without qualification.

⁴ M. Ossowska, *Normy moralne. Próba systematyzacji*, Warszawa 1970, p. 138.

⁵ Plato, *The Republic*, Cambridge 2007, pp. 220–226.

⁶ Aristotle, *Nicomachean Ethics*, Kitchener 1999, p. 71.

⁷ J. Rawls, *A Theory of Justice*, Cambridge 1971, p. 11.

⁸ A. MacIntyre, *Whose Justice? Which Rationality?*, London 1988, p. 1.

⁹ L. Kołakowski, *Mini-wykłady o maxi-sprawach (Seria trzecia i ostatnia)*, Kraków 2000, p. 50.

I. The problem of privatisation of public tasks by modern states

In contemporary democratic states governed by the rule of law, many tasks traditionally performed within the state apparatus are now carried out, wholly or partly, by non-public actors. The extent of this process varies with the political and administrative model adopted in a particular state. In Poland, examples include private security services, mediation and other forms of alternative dispute resolution, and vehicle inspections performed by authorised diagnostic stations. Similar arrangements are found in Croatia and other European legal systems. The convergence is partly connected with European integration and partly with broader changes in the organisation of public administration and public-service delivery.

Legal scholarship has long identified a tendency for the modern state to transfer certain tasks and competences to other actors, especially where non-public providers are expected to perform them more efficiently or at lower cost¹⁰. At the same time, contemporary administration is expected to combine the advantages of centralisation and decentralisation while responding to rapid social and technological change¹¹. The concept of multi-level governance is useful in this context because it captures the distribution of decision-making and implementation across different institutional levels and actors¹². Decentralisation is not identical to privatisation, but both processes may shift the practical centre of task performance away from the central state apparatus.

The privatisation of state tasks is often discussed alongside globalisation and is frequently

regarded as controversial¹³. The controversy becomes particularly acute where the tasks concerned are treated as elementary functions of the state, including core administrative functions¹⁴. One line of argument stresses that liberalisation, privatisation, and deregulation have transformed public administration, but that the public tasks of administration cannot be reduced to the provision of services or to changing governmental objectives. Nor can the administrative system be treated merely as a universal service enterprise¹⁵. This gives rise to a further question: To what extent may tasks that public authorities are legally required to perform be entrusted, especially by civil-law contract, to private entities that are not themselves generally bound to perform public tasks?¹⁶

From the broader perspective of incorporating private-law solutions into public law¹⁷, Polish scholarship has emphasised that privatisation may alter both the legal relationship with the individual and the mechanisms of control. Replacing an administrative-law relationship with a private-law relationship may move disputes away from administrative supervision and judicial review towards forms of private-law adjudication governed by different principles and objectives. Public administration is legally oriented towards the public interest, whereas a private undertaking normally also pursues its

¹⁰ G. Gil, *Ewolucja funkcji państwa w późnowestfalskim ładzie międzynarodowym*, [in:] *Późnowestfalski ład międzynarodowy*, K. Marzęda, M. Pietraś (eds.), Lublin 2008, p. 375.

¹¹ J. Kulawiak, *Samorząd terytorialny w świetle teorii organizacji*, [in:] *Współczesne problemy społeczności lokalnych i administracji samorządowej*, E. Łojko, A. Turska (eds.), Warszawa 2008, p. 106.

¹² J.M. Sellers, A. Lidström, Y. Bae, *Multilevel Democracy: How Local Institutions and Civil Society Shape the Modern State*, Cambridge 2020, pp. 5–7, 31–32.

¹³ E. Dunn, *Prywatyzując Polskę. O bobofrutach, wielkim biznesie i restrukturyzacji pracy*, Warszawa 2008, p. 20.

¹⁴ J. Cwalińska, *Prywatyzacja zadań publicznych – przyczynek do dyskusji*, “Przegląd Prawa Publicznego” 2020, no. 3, pp. 24–37.

¹⁵ A. Błaś, *Administracja publiczna w warunkach gospodarki rynkowej*, [in:] *Współczesne europejskie problemy prawa administracyjnego*, A. Błaś, K. Nowacki (eds.), Wrocław 2006, pp. 74–78.

¹⁶ Idem, *Formy działania administracji w warunkach prywatyzacji zadań publicznych*, [in:] *Administracja i prawo administracyjne u progu trzeciego tysiąclecia*, Łódź 2000, pp. 27–28.

¹⁷ A. Kokoszkie, *Implementacja instytucji prawa prywatnego do prawa publicznego na przykładzie mediacji w kodeksie postępowania administracyjnego – remedium czy placebo?*, “Krytyka Prawa” 2017, vol. 9(3), pp. 89–103.

own economic interests¹⁸. This tension is directly relevant to the relationship between privatisation and justice and is likely to remain important for both legislation and legal scholarship.

To connect the privatisation of public tasks with justice, it is useful to place the phenomenon within the broader context of privatisation. Although the privatisation of the economy and the privatisation of public tasks are not identical, both involve a movement from public to private forms of ownership, organisation, or performance. Croatian scholarship on economic privatisation describes the transition from a state-controlled and centrally planned system towards a market system based on private ownership¹⁹. In the Croatian context, that transformation was closely linked to the transition from a planned to a market economy at the end of the 20th century²⁰. The common denominator is therefore not a single legal mechanism but a broader direction of institutional change. This comparative perspective also supports a more general conclusion: similar tensions concerning public responsibility, private participation and justice may arise in different legal systems, even where the detailed legal solutions differ.

In summary, contemporary legal systems provide numerous examples in which non-public actors participate in the performance of public tasks. Such arrangements remain controversial, especially where they concern functions closely associated with the state. The phenomenon can be analysed both within the specific doctrine of public-task privatisation and in the broader contexts of economic privatisation, decentralisation, and globalisation. Comparative examples are useful not because they are identical, but because they reveal recurring questions about responsibility, control, efficiency, and justice.

2. Privatisation, deregulation, denationalisation or debureaucratisation?

The literature uses several partly overlapping expressions, including the privatisation of public tasks, the privatisation of state tasks, denationalisation, debureaucratisation, and deregulation. These terms describe, in different ways, the withdrawal of the state from direct economic or social activity and the development of alternative mechanisms for meeting social needs²¹. Privatisation may also be understood broadly as manifestations of public administration ceasing to perform tasks through public-law forms²². In a narrower functional sense, it involves transferring the performance of public tasks from administrative bodies to private entities or non-governmental organisations, often with the expectation of cheaper or higher-quality services²³. That expectation should not, however, be treated as an axiom: private provision is not necessarily superior in every sector or under every institutional arrangement. A particularly useful doctrinal approach defines privatisation as the transfer of task performance to entities outside the public-administration system without depriving the task itself of its public character²⁴. On this view, what changes is primarily the performer and the legal form of performance, while the task continues to serve a public purpose. The process may therefore involve replacing a public-law entity with a private-law entity, replacing public-law forms with private-law forms, and changing the legal relationship between the service provider and the citizen²⁵.

This distinction has direct consequences for responsibility. Where a private entity performs a task on behalf of the state, the transfer of performance does not automatically mean that the state

¹⁸ L. Zacharko, S. Nitecki, *Umowa jako forma prywatyzacji zadań publicznych w świetle ustawy o pomocy społecznej*, [in:] *Umowy w administracji*, J. Boć, L. Dziewiecka-Bokun (eds.), Wrocław 2008, pp. 452–453.

¹⁹ J. Horaček, H. Nikolić, *Privatization in Croatia: Standpoint of Croatian Citizens in 1998 and 2018*, “Business Systems Research” 2021, vol. 12(1), pp. 1–16.

²⁰ J. Bendeković, *Privatization in Croatia*, “Ekonomski pregled” 2000, vol. 51(1–2), p. 55.

²¹ S. Biernat, *Prywatyzacja zadań publicznych. Problematyka prawna*, Warszawa–Kraków 1994, pp. 7–15.

²² *Ibidem*, p. 25.

²³ A. Błaś, *Administracja publiczna...*, p. 75.

²⁴ T. Bąkowski, *Administracyjnoprawna sytuacja jednostki w świetle zasady pomocniczości*, Warszawa 2007, p. 186.

²⁵ S. Biernat, *op. cit.*, p. 26.

can divest itself of all responsibility for the task. The precise allocation of legal liability depends on the nature of the task and the legal basis on which it has been entrusted. From the perspective of justice, this matters because an individual should be able to identify who bears responsibility when a public task is performed improperly or not at all. The potential sense of injustice may concern not only defective performance but also the prior political decision to move a task outside direct public administration. Social acceptance will therefore vary by sector. Private schools and medical practices are widely accepted in many European systems, whereas private participation in coercive security or military functions is generally more controversial. The boundaries are also historically variable: activities once regarded as exclusively public may later be opened to private participation. The relevant distinction is therefore not fixed, and neither is the social perception of what is just or unjust in this field.

Polish doctrine has accordingly argued that the state's responsibility for ensuring the performance of public tasks may remain even when non-public entities are authorised to perform them. The task itself does not necessarily cease to be public; what changes is the mode of performance, from direct provision to forms involving supervision, support and control of non-public actors²⁶. Similar views can be found in German scholarship, which also emphasises the continuing responsibility of the state or local government where tasks are performed by non-public entities²⁷.

The legal position nevertheless requires differentiation. Article 417 § 2 of the Polish Civil Code²⁸ addresses cases in which the exercise of public authority has been entrusted to another entity and provides for joint and several liability of the entity performing the entrusted task and the public entity that entrusted it. The Polish Supreme Court has stressed that entrusting such

a task does not release the public authority from liability under that provision²⁹. This public-law liability framework should be distinguished from ordinary contractual liability that may arise in relationships connected with the provision of services. The literature likewise shows that liability in privatised or outsourced public activities cannot be reduced to a single model³⁰. It is therefore too broad to say either that the state is always exclusively liable or that liability is always shifted to the private provider. The decisive factors are the legal nature of the activity, the basis of entrustment and the applicable liability regime.

This part of the analysis leads to two conclusions. First, the terminology used to describe the privatisation of state tasks is not uniform. Second, transferring the performance of a task to the private sphere does not necessarily eliminate the state's ultimate responsibility for ensuring that the public task is properly organised and supervised. This continuing responsibility has important consequences for justice: the state may retain a stabilising and guarantee function even where the immediate service provider changes. At the same time, the effectiveness of that guarantee depends on the legal mechanisms of supervision, accountability and redress available in a particular model.

3. Reasons for privatisation of state tasks

The reasons for privatising public tasks are often praxeological and economic: the search for more efficient performance, lower costs and relief for limited public resources. The literature has noted that administrations increasingly face

²⁶ *Ibidem*, p. 29.

²⁷ W.R. Kux, *Ansätze zur Privatisierung öffentlicher Aufgaben*, Berlin 1976, pp. 1–3.

²⁸ Act of 23 April 1964 – Civil Code (Journal of Laws 1964, no. 16, item 93, as amended).

²⁹ Judgment of the Supreme Court of 6 June 2014, III CSK 211/13.

³⁰ J. Kuźmicka-Sulikowska, *Zasady odpowiedzialności deliktowej w świetle nowych tendencji w ustawodawstwie polskim*, Warszawa 2011, pp. 284–326; P. Dziennis, *Podstawy prawne odpowiedzialności cywilnej za szkody wyrządzone przy wykonywaniu niewładczych zadań publicznych*, "Samorząd Terytorialny" 2003, no. 4, pp. 38–47; R. Szczepaniak, *Odpowiedzialność gmin za szkody wyrządzone w związku z działalnością organizacji pozarządowych*, "Samorząd Terytorialny" 2016, no. 9, pp. 5–16.

not only the question of taking on new tasks but also the difficulty of maintaining existing ones³¹. Budgetary constraints may therefore encourage delegation as a means of preserving the availability of public benefits³². Comparative studies have also reported efficiency advantages in some forms of private provision, although such findings should not be absolutised³³. Efficiency, moreover, cannot be the sole criterion for evaluating public tasks. The administration of justice itself provides an obvious illustration: legal systems incur substantial costs to protect rights and enforce legal norms because certain public values cannot be reduced to a simple cost-benefit calculation. The relevant question is therefore not whether justice has a price, but how financial rationality should be balanced against legal guarantees, equality, security, and other public values.

A further consideration concerns the interests of actors capable of influencing public policy. Large private undertakings may have strong economic incentives to enter sectors previously reserved to the state. This does not make privatisation inherently improper: private participation may improve poorly managed services and introduce useful organisational solutions. At the same time, scholarship has warned that privatisation can also be accompanied by coercive, exclusionary or otherwise undesirable consequences³⁴. The legal problem is therefore institutional rather than ideological. Inadequate privatisation combined with weak supervision may create outcomes that are both inefficient and difficult to reconcile with justice.

Technological development may also facilitate the privatisation of public tasks. New technologies can reduce barriers to entry, make specialised services easier to provide outside the traditional administrative apparatus, and alter the

economic assumptions on which public monopolies were historically based. Telecommunications is an illustrative example of a sector in which technological and regulatory change has enabled extensive private participation. The significance of technology should nevertheless be assessed separately in each sector, because technical feasibility does not by itself determine whether privatisation is legally or socially desirable.

The principal reasons for privatisation are therefore often economic and organisational rather than strictly legal. States may seek cheaper, faster, or more flexible methods of service delivery, and in some cases the public apparatus may lack the capacity to provide a service at the required standard. These considerations make prior assessment particularly important. Reduced costs do not necessarily correspond with justice, equal access, or citizens' sense of security. Croatian scholarship on economic privatisation is instructive in this respect: it emphasises the central role of state institutions in shaping the regulatory framework and in managing the distributional effects of privatisation³⁵. The state's dual role as regulator and participant may itself become controversial. The broader conclusion is that the state cannot treat privatisation as a neutral technical operation; it remains responsible for designing a framework capable of protecting public values.

4. Are there limits to the privatisation of state tasks?

This leads to the question of limits: Is the privatisation of state functions potentially unlimited, or are there tasks that should remain under direct public control regardless of the governing political model? The answer is directly connected with justice in law. One may ask both whether the decision to privatise a particular task is fair and whether the legal framework that authorises and

³¹ M. Wiaterek-Baron (ed.), *Ustrojowo-prawne instrumenty polityki społecznej*, Gliwice 2005, p. 32.

³² E. Knosala, *Zarys nauki administracji*, Kraków 2006, p. 78.

³³ S. Biernat, *op. cit.*, p. 8.

³⁴ J. Szalacha, *Globalizacja współpracy czy globalizacja przemocy?*, [in:] *Transformacja podsztyta przemocą*, R. Sojak, A. Zybortowicz (eds.), Toruń 2008, p. 125.

³⁵ N. Čučković, *The Privatisation Process and Its Consequences for the Distribution of Welfare: The Case of Croatia*, "MOCT-MOST: Economic Policy in Transitional Economies" 1995, vol. 5, p. 75.

regulates that decision is itself just. The issue is therefore not confined to administrative organisation; it concerns the allocation of power, responsibility, and legal protection within the state.

The literature indicates that privatisation and re-privatisation may concern a wide range of services, including transport, postal services, energy, gas, sewerage, municipal cleaning, social care, education, and certain specialised administrative functions. Theoretical possibilities are broad, although economic viability may limit particular models³⁶. From the perspective of legal theory, the proliferation of mixed public-private arrangements may also disperse power and control to such an extent that individuals have difficulty identifying who is responsible for providing security, services and effective remedies. As J. Jabłońska-Bonca observes, the individual increasingly operates at the boundary between the state and the private sphere³⁷. Clear allocation of responsibility is therefore a condition not only of administrative efficiency but also of legal certainty and perceived justice.

Without attempting to define an immutable list of tasks that must always remain public, this article proceeds from the view that certain elementary functions require particularly strong public responsibility. Even where their performance is delegated, the spheres of responsibility should be clearly separated and understandable to citizens. The blurring of public and private roles may otherwise make it difficult to determine who is accountable for a failure. The literature identifies risks on both sides of the relationship, including the weakening of the general interest in favour of profit, conflicts between sectors and barriers to access³⁸. There is also a risk that a private provider enjoying a strong or monopolistic

position will use that position to the detriment of recipients. For this reason, the delegation of public tasks should be preceded by careful analysis and accompanied by effective supervision, regulation and enforceable sanctions. The conditions of performance and the mechanisms of control should be defined when the task is entrusted, not only after problems arise³⁹.

No universal boundary of privatisation can be drawn in the abstract. The appropriate limit depends partly on the constitutional, political, and administrative model of the state and on the nature of the task concerned. Armed forces, internal security, the administration of justice, and core public administration are commonly treated as functions requiring particularly strong public control, although even these sectors may contain auxiliary activities performed by private actors. The question of limits has direct implications for justice. Excessive withdrawal by the state from functions regarded by citizens as fundamental may be perceived as unjust, while carefully designed organisational reform may be perceived as increasing fairness by improving accessibility, quality or efficiency. The legal framework must therefore evaluate both benefits and risks rather than treating either public or private provision as inherently superior.

5. Examples of privatisation of public tasks in Croatia and Poland

The Croatian and Polish examples discussed below are situated within the broader transformation of Central and Eastern European legal and economic systems after 1989. They serve as *sui generis* tests of the research hypothesis because they show that institutional arrangements which appear attractive at the level of general policy may produce more complex results in practice. Their value is not that the two sectors or legal systems are identical, but that both illustrate the importance of institutional design, supervision and the possibility of revising earlier choices.

³⁶ B. Thiemann, *Verfassungsrechtliche und finanzwirtschaftliche Aspekte der Entstaatlichung öffentlicher Leistungen*, "Der Staat" 1977, vol. 16(2), p. 175.

³⁷ J. Jabłońska-Bonca, *Soft state?*, [in:] *Abiit, non obiit. Księga poświęcona pamięci księdza Profesora Antoniego Kościa SVD*, A. Dębiński (ed.), Lublin 2013, p. 138.

³⁸ L. Zacharko, *Prywatyzacja zadań publicznych gminy*, Katowice 2000, p. 21.

³⁹ S. Biernat, *op. cit.*, p. 102.

In this sense, the examples also expose the danger of evaluating privatisation through slogans rather than through the actual operation of the adopted legal model.

Croatia provides a useful example of the limits of private participation in municipal services. The literature on Croatian waste governance and public-private partnerships points to persistent regulatory, institutional and implementation problems, and to the importance of clear public responsibility⁴⁰. A particularly clear Zagreb example, however, concerns wastewater treatment rather than municipal solid-waste collection. A private concession concluded in 2000 placed the city's central wastewater treatment plant under private management for 24 years. In August 2024, the City of Zagreb transferred possession and management of the plant to the city-owned company Vodoopskrba i odvodnja, ending the private concession before its originally planned expiry in 2028. The case should therefore not be presented as proof that Zagreb's entire solid-waste system was privatised and subsequently re-municipalised. More narrowly, it demonstrates that a major municipal infrastructure task may move from a long-term concession model back to direct public operation when the public authority reassesses the institutional and financial advantages of the earlier arrangement.

A comparable change in direction, although in a different sector, occurred in Poland's emergency medical services. The 2006 Act on State Emergency Medical Services⁴¹ created a framework in which public and non-public providers could participate in the system. The decisive move towards a more public model came from the Act of 10 May 2018 amending the State Emergency Medical Services Act and certain other acts⁴². The amendment strengthened the position of public or publicly controlled providers and introduced transitional rules: contracts concluded before the amendment could generally remain in force no longer than until 31 March 2019, while an exception allowed contracts with other providers until 31 December 2020 where an insufficient number of qualifying public or publicly controlled providers was available. It is therefore more accurate to describe the reform as a legislatively driven re-publicisation of emergency medical teams with transitional arrangements than as a blanket ban introduced in 2017 or only after 2021. The example nevertheless supports the broader argument that a state may reverse or substantially modify an earlier model of private participation where public responsibility for a sensitive service is reassessed.

The two examples do not establish a general rule that privatisation necessarily fails. They do, however, show that mixed or private-participation models in sensitive public services require continuous evaluation and may be revised when their institutional assumptions no longer appear satisfactory. In both cases, the public authority retained or reasserted a significant role in the organisation of the service. For the purposes of the present argument, this supports a more cautious conclusion than a simple opposition between privatisation and public provision: justice depends substantially on the quality of the legal framework, the allocation of responsibility, the effectiveness of supervision, and the accessibility of the service to citizens.

⁴⁰ I. Stanić-Maruna, J. Fellner, *Solid Waste Management in Croatia in Response to the European Landfill Directive*, "Waste Management & Research" 2012, vol. 30(8), pp. 825–838; B. Ribić, N. Voća, B. Ilakovac, *Concept of Sustainable Waste Management in the City of Zagreb: Towards the Implementation of Circular Economy Approach*, "Journal of the Air & Waste Management Association" 2017, vol. 67(2), pp. 241–259; A.-M. Boromisa, N. Golubovac, N. Vetma, *Governance of the Waste Management in Croatia*, "Journal of Legal, Ethical and Regulatory Issues" 2022, vol. 25, p. 4; J. Mašović, L. Draganić, Z. Bubaš, *Public-Private Partnerships in Croatia: A Systematic Literature Review*, "International Journal of Contemporary Business and Entrepreneurship" 2024, vol. 5(1), pp. 19–35; Grad Zagreb, *Nakon 24 godine pročištač otpadnih voda prelazi gradskom poduzeću Vodoopskrba i odvodnja*, 2024, <https://www.zagreb.hr/nakon-24-godine-procistac-otpadnih-voda-prelazi-gr/200409> (access: 13.08.2026).

⁴¹ Act of 8 September 2006 on State Emergency Medical Services (Journal of Laws 2006, no. 191, item 1410, as amended).

⁴² Journal of Laws 2018, item 1115, as amended.

Conclusions

Earlier scholarship on the privatisation of public tasks anticipated a model in which the state might withdraw from direct performance while retaining the roles of initiator, supporter, and supervisor. It also envisaged parallel forms of service provision by public and non-public entities, while warning that abuse of a monopoly position by a private provider is no more acceptable than comparable conduct by a public provider⁴³. Contemporary practice partly confirms that prediction. At the same time, the examples examined above suggest that the state has not simply retreated from essential functions. In some sectors it continues to perform them directly; in others it relies on non-public actors while retaining regulatory and financial responsibility; and in still others it may return to more direct public provision. The future is therefore likely to involve changing combinations of these models rather than a linear movement towards privatisation.

Geopolitical, economic, and security crises may reinforce this tendency by increasing expectations that states retain the capacity to perform essential functions directly. At the same time, the complexity of contemporary governance makes extensive participation by non-public actors difficult to avoid. The relevant question is therefore less whether the state or the private sector will ultimately prevail and more how responsibility will be divided between them. Different sectors and different states may legitimately adopt different solutions, provided that the institutional arrangements remain compatible with the rule of law and with the protection of public values.

At a more local level, some processes described as alternatives to direct central-state provision may be better understood as decentralisation rather than privatisation. Public tasks may be transferred from central government to local government and, within local structures, closer to local communities. In Poland, participatory budgeting is one manifestation of this

broader tendency towards citizen involvement in decisions on local public expenditure⁴⁴. Such mechanisms differ from privatisation in the strict sense because they do not necessarily transfer tasks to profit-oriented private providers, but they do illustrate the wider movement away from exclusive central administration.

Local associations and voluntary fire brigades provide further examples of non-state or community-based participation in the performance of public tasks. Depending on the legal framework, such organisations may contribute to fire protection, civil protection, public safety, culture, and sport. Their role is analytically important because it shows that the alternative to direct state provision is not always commercial privatisation; public tasks may also be carried out through civic, non-profit, and community structures.

Comparable processes can also be observed in the broader field of dispute resolution. Settlements, arbitration and mediation have long provided alternatives to adjudication, and consensual methods are increasingly present in the legal culture of European states⁴⁵. In Polish civil procedure, a settlement concluded before a mediator and approved by the court has the legal effect of a court settlement⁴⁶; where it is approved by an enforceability clause, it may constitute an enforceable title under Article 183¹⁵ of the Polish Civil Procedure Code⁴⁷. This does not amount to a complete privatisation of the administration of justice. Private or consensual mechanisms operate within a public legal framework and, where coercive enforcement is concerned, remain depen-

⁴⁴ K. Bandarzewski, *Czy jednostki pomocnicze staną się nowym stopniem samorządu terytorialnego? Uwagi na tle projektowanych zmian*, "Samorząd Terytorialny" 2019, no. 9, pp. 7–19.

⁴⁵ A. Czajer, *Problem zależności między ugodą a umową administracyjną w kontekście możliwości wprowadzenia umowy administracyjnej do polskiego prawa. Odautorska propozycja rozwiązań*, "Przegląd Prawa Publicznego" 2017, no. 10, pp. 26–33.

⁴⁶ Act of 17 November 1964 – Civil Procedure Code (Journal of Laws 1964, no. 43, item 296, as amended).

⁴⁷ J. Dominowska, *Uгода zawarta przed mediatorem a ugoda sądowa*, "Przegląd Prawa Handlowego" 2018, no. 6, pp. 37–41.

⁴³ S. Biernat, *op. cit.*, pp. 145–146.

dent on public authority. The example therefore illustrates the central thesis of this article: private participation may coexist with continuing public responsibility. Its consequences for justice depend on the design of the mechanism, the guarantees available to participants, and the effectiveness of public supervision. Each institutional arrangement must accordingly be assessed on its own terms rather than through general assumptions about the superiority of either public or private provision.

The research hypothesis can now be assessed. The material examined confirms that the privatisation of public tasks is an advanced and well-established feature of contemporary legal systems. The hypothesis is therefore supported in its first element. The second element – that the process will necessarily continue to intensify – requires qualification. The Croatian and Polish examples show that states may also restrict, redesign, or reverse earlier forms of private participation.

Selected examples demonstrate that tasks once regarded as typically public are today frequently performed with substantial participation by private or non-public actors. It is neverthe-

less impossible to predict with confidence that this tendency will develop in only one direction. Political, economic and security conditions may encourage states to restore direct public provision in some sectors, while technological change, fiscal constraints and organisational complexity may favour further delegation in others. What can be affirmed more strongly is the final part of the hypothesis: the process requires close public scrutiny, clear allocation of responsibility, and effective supervision. Without these safeguards, privatisation may become merely formal and may undermine both the practical realisation and the perception of justice. Delegating a public task is an expression of institutional trust that the task will be performed at an appropriate standard and under conditions at least as protective of the public interest as direct provision. A failure of that arrangement can therefore affect not only service quality but also confidence in the fairness of the legal and institutional order. The relationship between privatisation and justice is consequently conditional rather than predetermined: the decisive issue is how the particular model is designed, supervised, and corrected when it fails.

Abstrakt

Dylematy sprawiedliwości w prawie. Prywatyzacja zadań państwa i jej konsekwencje dla sprawiedliwości na wybranych przykładach polskich i chorwackich

Słowa kluczowe: państwo i prawo; zadania państwa; zadania publiczne; prywatyzacja; prywatyzacja zadań państwa; sprawiedliwość

Artykuł poświęcony jest analizie zagadnienia prywatyzacji zadań publicznych (państwowych) z perspektywy sprawiedliwości w prawie. Przedmiotem analizy jest rozwój procesów prywatyzacyjnych we współczesnych demokratycznych państwach prawa modelu zachodniego na podstawie wybranych przykładów z Chorwacji i Polski. Szczególną uwagę poświęcono różnicom terminologicznym, przyczynom przekazywania zadań publicznych podmiotom niepublicznym oraz ewentualnym ograniczeniom tego procesu. W artykule rozważono również, czy prywatyzacja może wpływać nie tylko na postrzeganie sprawiedliwości, lecz także na pewne warunki instytucjonalne, w ramach których taka sprawiedliwość jest realizowana. W części podsumowującej dokonano oceny hipotezy badawczej oraz ostrożnie rozważono przyszłe kierunki zmian. Artykuł ma na celu wniesienie wkładu w debatę naukową na temat związku między zadaniami państw a sprawiedliwością w prawie.

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