SUMMARY

The dissertation focuses on examining the nature of authority exercised by entities typically classified as private entities. Within this group I carried out a detailed examination of: parental authority exercised by parents towards a minor child, the authority of a personal data controller towards a data subject, the authority in employment relationship, as well as corporate authority, whilst for the latter category, I used the example of a joint-stock company and its bodies as a model for analysis.

At the beginning of the study I assumed three hypotheses:

1. all authority in the legal sense comes from a single source, located outside the system of legal norms;
2. all authority in the legal sense is public in nature;
3. all entities performing such authority have a public status within this regard.

In the first chapter I have reflected on the notion of 'authority' in natural language and identified meanings that will be useful for further study. In the same chapter, I carried out a detailed analysis of the concept of ‘authority’ and its meaning through the centuries of European culture and tradition. For that purpose, I have distinguished three periods in the history of European culture: the age of ancient Greek philosophy, the age of Christian Europe and the age of modern Europe (after the French Revolution). The analysis showed that it is a permanent feature of European culture to identify the source of all authority as an external, transcendent entity. Whether that source is defined as the God or the sovereign People, those exercising authority are always only intermediaries to whom authority has been entrusted. They do not, therefore, possess authority by mere nature.

The chapter also focuses on the question of why the Polish people find it so difficult to talk about authority. I look for the causes of this phenomenon in the recent Polish history, when authority was identified with an oppressive communist system. I also point out that in the period of political transformation of 1989 and the early ‘90s neoliberalism in its extreme version became the binding doctrine, which in a way was opposite to the previous period. The conclusions of the chapter were illustrated by the findings of the Dutch sociologist Geert Hofstede who distinguished power distance as one of the factors in the study of national culture. According to Hofstede’s study, Poland is characterised by a quite high power distance

factor, which implies that it is not typical for Poles to enter into partnerships with those in authority. The considerations of the first chapter therefore speak in favour of the first of the research hypotheses.

The second chapter focuses on dogmatic-legal analysis of legal provisions of Polish legal system, aimed at finding the proper understanding of the notion of ‘authority’. The most important legal act that deals with legal authority on the most primal level is the Constitution of the Republic of Poland. The conclusions of the analysis of the constitutional provisions are consistent with the conclusion made on the social-cultural ground. The Constitution of the Republic of Poland identifies a single source of authority, located outside the system of legal norms, and this source is the Nation referred to Article 4. Therefore the dogmatic-legal analysis on the grounds of the provisions of the Constitution of the Republic of Poland has finally confirmed the validity of the above thesis.

On the basis of an analysis of lower-ranking legal provisions, it may be noted that the notion of 'authority' in the material sense is almost non-existent. However, this deficit is dealt with by legal doctrine. Administrative law has developed the concept of administrative governance exercised on the basis of competences. Based on a dogmatic and legal analysis, it might be concluded that this administrative governance is in fact the authority referred to in the Constitution of the Republic of Poland. In detail, administrative governance falls within the framework of executive power in the classical tripartite system.

Administrative governance is a type of governance exercised by administrative bodies and administering bodies. Especially this second group of entities is extremely interesting, since in the modern world a great many entities can be included within it, which makes them classified as public administration bodies in the functional sense. According to the test of the administering body formulated by M. Stahl, to be classified as one, an entity should fulfil the following criteria:

1. establishment of an entity based on a law or an act of an administration body;
2. performance of public tasks imposed on it by law;
3. acting with authority;
4. supervision of the activities of the entity by the administrative authorities.

In the course of the study, however, I came to the conclusion that it is possible to distinguish a group of entities who do not meet all the criteria of the above test, and thus

cannot be regarded as administering bodies, but still are endowed with a different type of public governance, and within the scope of its exercise they act as public bodies. In the second chapter, I also undertook a polemic against the theory of horizontal operation of constitutional norms and the theory of private legal authority. This chapter therefore indicates the validity of the second and third research hypotheses I formulated.

Given the uniform and public origin of all power in law, and the fact that authority is exercised in vertical relations, characteristic of public law, I also assumed that all authority in the law is public in nature. This thesis was confirmed at the stage of analysing the exercise of authority by the abovementioned categories of 'private' entities.

The verification of the status of the distinguished categories of entities exercising authority was carried out with the use of the test of an administering body developed in the doctrine of administrative law. This analysis made it possible to prove that all of these entities perform acts of imperious nature, and that their actions serve to perform the public tasks imposed on these entities. At the same time, the use of the test of an administering body allowed to distinguish two main groups of these entities.

The first of the two groups, which includes personal data controllers as well as work establishment bodies, fulfils all the prerequisites of the test of an administering body. This means that the abovementioned entities enjoy administrative authority amounting to the exercise of public authority. What is more, the entities exercising this administrative authority, as administering bodies, should be qualified as public administration entities in the functional sense. In exercising this authority, the controller of personal data and the bodies of the work establishment are therefore not private entities and their activities should be seen in the category of activities of public bodies.

The second group includes parents exercising parental authority over a minor child, as well as joint-stock company bodies (which served as a model for examining the issue of corporate authority). As indicated above, the acts of these entities are of imperious nature and are performed in view of public tasks, but their actions are not subject to supervision by the administrative authorities, which determined the impossibility of classifying them as administering bodies. However, the whole analysis supports the statement that these bodies as well exercise public authority, acting as public bodies in this respect, but not as administering bodies. The above-mentioned conclusions also lead to the conviction that even entities

established and classified typically as private, in the exercise of public authority, act as public bodies.

The thesis on the public character of authority and the entities exercising it, as adopted on the grounds of the dissertation, is extremely beneficial from the perspective of the persons subjected to this authority. The public perspective emphasises the rights and freedoms of persons, as well as the public subjective rights to which they are entitled. A person subject to authority is protected against excessive interference of public authorities by provisions of constitutional rank. At the same time, the body exercising authority is, in its relations with the subordinated person, a party bound by the obligation to guarantee the rights and freedoms of that person, as well as a party obliged to carry out public tasks aimed at realising the common good. Thus the public law analysis undertaken in the dissertation opens up a completely new and valuable research perspective.

The third chapter opens up the analysis of specific legal institutions connected with exercise of authority. Parental authority is the subject of this chapter. I first reflect on the relationship of parental authority from the Family and Guardianship Code to the constitutional right of parents to bring up their child according to their own beliefs. On the basis of well-established views of the family law doctrine, I have concluded that upbringing is only a part of the parental authority exercised over children and only this part is referred to by the above-mentioned constitutional provision. At the same time I have determined that in the context of my research, the part of parental authority that consists in directing the person of the child will be significant, i.e. parental authority *sensu stricto*.

The exercise of parental authority by parents meets most of the criteria of the test of the administering body. It is worth noting that the parents are performing the public tasks imposed on them by law, which consist of pursuing the welfare of the child and the interests of society. Parents exercise their tasks using forms of authority, which amounts to legally directing the person of the child. However, parents are not subject to supervision by administrative authorities, which means that they cannot be considered as administering bodies. At the same time, it must be recognised that the authority exercised by parents should be considered public authority. That is because it is exercised in order to fulfil public tasks, and the parents' authoritative competences are exercised in a vertical relationship which is characteristic of public-law relations. The State, moreover, retains custody of the exercise of that authority through a broad catalogue of competences of the family courts.

The above therefore indicates that parents are entrusted with public governance, and in exercising it they act as public bodies. Thus, the considerations of the third chapter confirm the second and the third of the formulated research hypotheses.

The fourth chapter focuses on the authority exercised by the personal data controllers. Due to the scope of the research, it deals with private-law entities, i.e. mainly sole traders and corporate companies. The consideration of this chapter indicates that controllers of personal data undertake authoritative acts with respect to each person's right to privacy. The chapter explains why the data subject's consent, taking action at the request of the data subject, or processing of personal data on the basis of a legitimate interest of the personal data controller do not affect the imperious nature of the controller's acts.

The analysis proves that personal data controller fulfils all the criteria of the administering body test. Therefore the controller, as an administering body, should be classified as public administration in the functional sense. This also means that the kind of authority performed by personal data controller should be classified as administrative governance. The conclusions of the fourth chapter confirm the second and the third of the formulated research hypotheses.

The fifth chapter presents an analysis on authority in employment relations. In the study I adopted the concept developed by A. Sobczyk, according to which a workplace is an administrative establishment. I have therefore distinguished a number of bodies operating within the workplace. Two of them, of the most significant nature are: the employer as the founding body of the workplace and the manager of the workplace (the person who manages the workplace on behalf of the employer) as the management body of the workplace.

In this chapter, I carried out a legal analysis which has made it possible to delimit the scope of competences of the two bodies mentioned above. This was necessary due to the 1996 labour law reform, which technically, but not necessarily correctly, replaced the terms 'workplace' and 'manager of the workplace' with the term 'employer'. The analysis referred to the wording of the Labour Code before 1996 and the current wording of other legal acts that still distinguish the aforementioned notions.

Further on, I carried out the test of administering body with regard to the employer and the manager of the workplace (the person who manages the workplace on behalf of the employer). In both cases the test turned out positive in both cases, which means that these

bodies can be classified as administering bodies, exercising administrative governance. The analysis of the fourth chapter also confirms the thesis that the workplace belongs to the group of administrative establishments, as the organs of the administrative establishment are administering bodies endowed with administrative authority. The conclusions of the chapter therefore confirm the second and the third of the research's hypotheses.

The sixth chapter includes the last detailed analysis of performance of authority by 'private entities'. It focuses on authority in corporate organisations. For the purpose of the research, I chose the example of a joint-stock company, to carry out the examination. In the chapter I look into the corporate governance doctrine and the doctrine of corporate social responsibility, seeing them as legal, and not only moral or ethical obligations.

During the course of the research I distinguished four organs of a joint-stock company: the general meeting, the management board, the supervisory board and the staff council. For all of them I carried out a test of administering body. The analysis proved that all the four organs of the company perform acts of imperious nature. Moreover, they all do perform public tasks which are: protection of minority shareholders, protection of staff and implementation of the company's interests as part of the social market economy.

All four organs of the company failed at the last criterion of the administering body test, as they are not subject supervision by the administrative authorities. However, similarly to the case of parental authority, the authority exercised by the organs of the company should be considered public authority. That is because it is exercised in order to fulfil public tasks, and within a vertical relationship which is characteristic of public-law relations. The State, moreover, is still interested in the performance of authority within companies, as special measures are foreseen for the court as regards the acts of these bodies.

Therefore, organs of the joint-stock company should not be considered administering bodies, as they do not meet all the criteria formulated within the test. However, they still should be seen as performing public governance within their role of public bodies. The analysis contained in the sixth chapter confirms the second and the third of the research's hypotheses. Consequently, all the hypotheses formulated at the beginning of the research should be seen as proved.

It must also be mentioned that the thesis on the public character of all the authority in law and the entities exercising it, as adopted on the grounds of the dissertation, is extremely

beneficial from the perspective of the persons subjected to this authority. The public perspective emphasises the rights and freedoms of persons, as well as the public subjective rights to which they are entitled. A person subject to authority is protected against excessive interference of public authorities by provisions of constitutional rank. At the same time, the body exercising authority is, in its relations with the subordinated person, a party bound by the obligation to guarantee the rights and freedoms of that person, as well as a party obliged to carry out public tasks aimed at realising the common good. Thus the public law analysis undertaken in the dissertation opens up a completely new and valuable research perspective.