GENERAL FEATURES OF PUBLIC LAW – THE SLOVENIAN PERSPECTIVES

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CHAPTER THREE
ADMINISTRATIVE AND CIVIL SERVANTS' LAW

This book is intended is to be used as an aid in understanding general features of legal systems – i.e. main institutions of law and the state. Its purpose can be found in an idea from the Roman philosopher and orator Marcus Tullius Cicero: *Non enim tam praeclarum est scire leges quam turpe nescire,*[1] which freely translates as: It is not so much that it is extraordinary to be familiar with the law, but that it is shameful to be ignorant of it.

Therefore, basic legal knowledge is expected of every intellectual, and especially of every future natural or social sciences graduate, even if he or she is not a law-school graduate.

The book has three parts, presented in three chapters.

The first chapter deals with the state, its essential elements, and the various types of states, taking into consideration a range of criteria. The state is necessary for the functioning of a legal order, as only the state ensures repressive legal sanctions in the event of violations of the legal rules. This chapter explores the main elements of the organisation of the state and discusses in what manner the state is subordinate to its own – i.e. national – law, and what the different types of states are concerning their form of governance, government, political system, and power structure.

The second chapter introduces the basic constituent parts of the law and the forms of legal order in which these parts are vertically and horizontally incorporated. The terms are sometimes simplified in order to bring law and an understanding of it clos-

er to readers who are not lawyers. This chapter contains basic definitions and explanations of legal terms, such as law and legal science, international and national law, positive and natural law, continental/civil and common law, substantive and formal law, and private and public law. It also contains a short outline history of the development of law, with an emphasis on Roman law.

The third chapter is devoted to defining basic terms of administrative and civil service law. Administrative law consists primarily of the legal norms which regulate the foundations of the organisation of the state, the position, organisation and functioning of the state and other organisations and communities of public law, and the relations between power holders and individuals. The last part of this chapter is devoted to civil servants. The Civil Servants Act defines civil servants as natural persons employed in the public sector. The public administration reform is presented and followed by an outline of key goals of the new arrangement of the civil service system. The main emphasis is on definitions of basic terms and principles of civil service law. Furthermore, the employment procedure and the relationship between general labour law and civil service law are explored. The laws governing the salary system for holders of public office and civil servants are addressed at the end of the book, which focuses on the basic principles and terms of the legal regulation of salaries and the structure of salaries in this context.

Authors

CHAPTER ONE

THE STATE

A) INTRODUCTION TO THE STATE

The state

The state is a territory-based organisation of of authority comprising of a population and legal entities which are connected by political power in the territory. The state is a legal entity.[2]

The state is an organisation of society that has exclusive and supreme power in its territory to require certain conduct of all subjects, natural persons and legal entities.[3]

The notion of the state replaced words that formerly denoted the organisation of power. In non-Slavic languages, it is etymologically rooted in the Latin word *status*,[4] which entails a situation or state of affairs. From this word there derive, for instance, the English word state, the German word *Staat*, and the Italian word *stato*. In Slovenian and other South Slavic languages, the word država (state) derives from an old-Slavic expression denoting existence or permanency.

The root of the word *država* in South Slavic languages is a word means "to stick together", which also denotes the permanency and persistence of such an organisation.[5] In this context, the Greek *polis*[6] must also be mentioned, i.e. an ancient Greek city-state, such as Athens and Sparta, which is the etymological root of the contemporary words politics and police. The word *civis* from the Roman period of antiquity is also interesting. This word first denoted the personal status of a member of the Roman Empire, i.e. a Roman *citizen*, and was later extended to set-

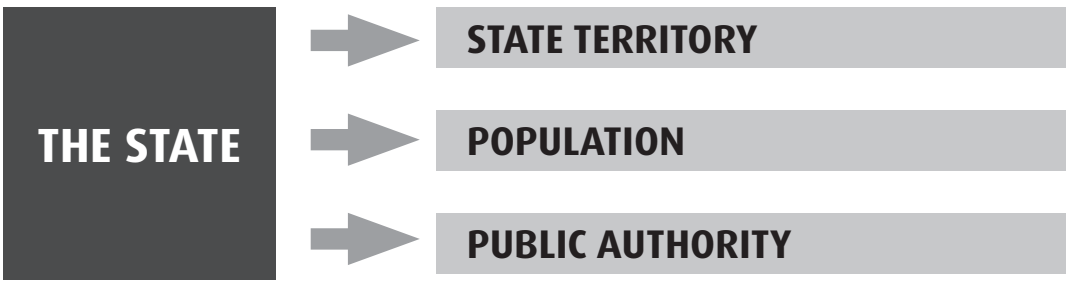
tlements, i.e. civitas, which were established from conquered well-organised, tribal settlements.[7]

Civitas

***Civitas* is the etymological root of the word citizen as well as a collective name for all non-state, i.e. independent from the state, organisations i.e. civil society.**

In modern languages, the word civil entails the absence of a uniform, which most of all indicates that there is no connection between the armed forces and the police of the state. We will now focus on the concept of the state which derives from the understanding of the modern state. In Europe, the modern state developed after the French Revolution (1789). Today this concept is most often used to define the territorial organisation of the supreme, public authority in an individual society. It is naturally also used more broadly, most of all when referring to political power. Hereinafter, the state will be discussed according to its modern understanding developed in French and German theory of the 20th century, i.e. as an organisation of coercive power that is limited to a state territory and to the population living there.

Diagram 1: **THE ESSENTIAL ELEMENTS OF THE STATE**[8]



The criteria for a modern understanding of the state are contained in Article 1 of the Montevideo Convention on the Rights and Duties of States of 1933. In the Convention, the notion of state is defined as the viewpoint of its legal subjectivity, and thus a **state is an international legal person that should possess** the following qualifications:

The state is an international legal person which should possess

a) A permanent population;
b) A defined territory;
c) Government; and
d) Capacity to enter into relations with other states.

The legal subjectivity of the state is emphasised by its external sovereignty.

The types of sovereignty will be discussed in the following sections. However, the remaining three basic state substrates (i.e. components) will be discussed first.

A state territory

A state territory is a precisely demarcated and determined three-dimensional space where the population of the state resides and where the state enforces its authority.

In accordance with international public law rules, a state must therefore be precisely demarcated from its neighbouring states. However, the internal state power within the state territory is not absolutely unlimited. Coastal states must, for instance, allow foreign ships innocent passage, whereas foreign ships must comply with the rules of the coastal state and the rules of international law of the sea on navigation through territorial waters.

Citizens

Citizens have a certain bond with the state which entails a collection of special citizen rights and obligations. Citizens permanently reside within the territory of the state.

The personal substrate of the state consists of its subjects. These consist of the natural persons, i.e. human beings who reside in its territory, and legal entities which have their head office in its territory. Natural persons can be citizens or foreigners.

Foreigners

Foreigners are citizens of other states or stateless persons who are temporarily within the territory of the state.

The concept of the personal substrate is broader than the concept of citizenship, as the state enforces its monopoly on internal and absolute power not only over citizens, but also over aliens who are in its territory. Citizens are residents who are recognised as having a special legal connection with the state by the national legal order. This is demonstrated by their legal position (i.e. citizenship status), which comprises of citizen rights and obligations. Residents of the state may acquire citizenship status in the following ways:

1. by origin or blood relation with parents who are citizens (i.e. the right of blood – *ius sanguinis*);

2. by the territorial principle or place of birth (i.e. the right of soil – *ius soli*); or by long-term residence in the territory of the state (i.e. the right of residence – *ius domicili*).

3. The latter is acquired in administrative proceedings by a decision on citizenship.[10]

4. Pursuant to established international law principles, citizenship in the Republic of Slovenia is acquired by birth in the territory of the Republic of Slovenia and through naturalisation. The latter entails that citizenship is acquired in special administrative proceedings on the basis of an application. Since 1st May 2004, when Slovenia joined the European Union, all Slovenian citizens are also citizens of the EU.

Citizenship of the European Union and all rights deriving therefrom is additional to and does not replace national citizenship. In addition to national citizen rights, citizens of the EU also enjoy the following specific citizen rights referring to the citizenship of the Union:[11]

Citizenship

- The right to enjoy the protection of the diplomatic and consular authorities of any Member State;
- The right to vote and stand as candidates in elections to the European Parliament;
- The right to vote and stand as candidates in municipal elections in their Member State of residence, under the same conditions as nationals of that State;
- The right to file petitions and legislative initiatives[12] with the European Parliament;
- The right to apply to the European Ombudsman;
- The right to address the institutions and advisory bodies of the Union;
- The right to file an application with the Court of Justice in Luxembourg;

- The right to move and reside freely within the territory of the Member States and to change one's permanent and temporary residence;
- The right to be employed in any Member State, under the same conditions as nationals of that State; and
- The right to acquire movable property and real estate in any Member State, under the same conditions as nationals of that State.

In the Republic of Slovenia, individuals can lose their citizenship by dismissal, renunciation, revocation, or in accordance with a ratified treaty. A dismissal is possible only upon the request of the citizen who acquired the citizenship of another state, although the authority deciding on the dismissal may reject such a request if this is in the national interests of the state. Renunciation of citizenship entails that any adult citizen of the Republic of Slovenia born in a foreign country and residing there who also has foreign citizenship may renounce his or her citizenship of the Republic of Slovenia before they reach the age of 25. The citizenship of a citizen of the Republic of Slovenia who resides abroad and has foreign citizenship can be revoked if it is ascertained that his or her activities are contrary to the national interests of the Republic of Slovenia. Citizenship ceases pursuant to a treaty if this is explicitly determined and if the treaty is ratified and transposed into the Slovenian legal order.

Citizenship can be reacquired by reintegration. This entails that a person who has lost the citizenship of a certain state can once again acquire citizenship of that state. In such cases, certain legal systems prescribe more lenient requirements and simpler proceedings.

Aliens are residents of other states and stateless persons[13] who are temporarily in the territory of the state. Persons without citizenship or stateless persons are legally the least protected group of aliens. Therefore, the international community strives to improve their position by means of certain treaties, which, however, have hitherto been ratified by a relatively small number of states.[14]

In addition to stateless persons, there are also persons with **dual and multiple citizenship.** Legal systems in general strive to ensure that there are as few as possible persons with dual or multiple citizenship in their territories, as by double or multiple statuses the personal substrate of the state is not transparent and interferes with the enforcement of the internal sovereignty of the state.

Dual and multiple citizenship

The third legal-political substrate of the state is its unlimited and supreme authority. This is demonstrated in the organisation and in the monopoly of the authority, i.e. sovereignty.[15]

Sovereignty is a supreme, unlimited, and independent authority.[16]

Sovereignty

In modern states, authority is subordinate to two principles: the principle of the separation of powers into the legislative, judicial, and executive branches of power, and the principle of the unity of power.

The principle of the separation of powers is a predominant model of governance in parliamentary democratic systems, i.e. in the majority of Western democracies. The principle of the unity of power is a model of governance in assembly-based sys-

tems of governance. It was applied, for instance, in the states of the former communist systems (e.g. the former Yugoslavia).

The system of the separation of powers

The system of the separation of powers applies in the Republic of Slovenia. The Constitution of the Republic of Slovenia determines that Slovenia is a democratic republic where power is vested in the people.[17] Citizens exercise this power directly (i.e. via referendums, public initiatives, and petitions) and through elections (i.e. direct and indirect elections), consistent with the principle of the separation of the legislative, executive, and judicial powers. Slovenia is thus a republic considering its form of government, and its power structure is that of a unitary state in which the system of governance is based on the principle of the separation of powers. The concept of sovereignty will be discussed in this context. Sovereignty is a supreme, unlimited, and independent authority. Different types of sovereignty are discussed in legal theory and are presented in the diagram below.

Diagram 2: **SOVEREIGNTY**

State sovereignty is double – internal and external.

Internal sovereignty

Internal sovereignty defines the state as the strongest social organisation in the state territory that in an unlimited,

independent, and continuous manner exercises authority over the population in its territory. In doing so it does not allow any other social organisation in the same territory to become a competitor in leading and controlling the population and the territory.

External sovereignty defines the state as an independent entity under international law in relation to other states and the international community. Within this ambit, independence entails that no other state or international organisation can force an obligation on the state unless the state voluntarily agrees to such.

External sovereignty

Popular sovereignty or the sovereignty of the people entails that the bearers of sovereign state power are the people. Power stems from and is vested in the people. The Greek word for people – *demos*[18] – is also the etymological root of the word democracy, i.e. the power or rule of the people.[19] Popular sovereignty is exercised indirectly through the election of the people's representatives in state authorities and directly via referendums, public initiatives, and petitions.

Popular sovereignty

The Slovenian system of representative governance is based on the direct election of representatives of the legislative power, i.e. the deputies of the National Assembly, and the direct election of the President of the Republic. The deputies of the National Assembly and the President of the Republic have a representative mandate which entails that they govern in the name and on behalf of the people. A different rule applies to the members of the **National Council**, who are elected indirectly and do not have a representative but imperative mandate, i.e. they are bound by the instructions of those who elected them.

National council

In the Slovenian legal system, executive power is constituted indirectly (if we overlook the fact that the directly elected

President of the Republic is also a representative of the executive branch of power, however, only in a state of emergency, he or she may, on the proposal of the Government, issue decrees with the force of law). The executive power is constituted in a manner such that the representatives of the legislative branch of power, i.e. the deputies of the National Assembly, upon the proposal of the President of the Republic, first vote on a candidate for President of the Government and entrust him or her with the authorisation, i.e. mandate, to form a government and to propose candidates for ministers to the National Assembly. The future President of the Government is called the *formateur* (German: *Mandatar*). The Government, as the highest body of the executive branch of power, is then constituted by a vote in which the ministers are appointed.

The judicial branch of power is also constituted indirectly, such that judges are elected by the representatives of the legislative branch of power. A particularity of the judicial branch of power in the Republic of Slovenia is that, in accordance with the Constitution, the office of the judge is permanent. This ensures independence in the functioning of the judicial branch of power from the legislative and executive branches.

National sovereignty

National sovereignty is the sovereignty of a nation as a special social community, which is united by a common language, culture, history, and national conscience. In a legal sense, national sovereignty is demonstrated in the right of the nation to self-determination. In Slovenia, the right to self-determination is laid down in the Preamble to the Constitution of the Republic of Slovenia.

The organisation of power is also reflected in the constitutional system of state power. Such a system can be parliamentary, presidential, or assembly based. Parliamentary and presidential systems of the organisation of power are based on the

principle of the separation of powers, whereas assembly-based systems are based on the principle of the unity of power.

As mentioned above, the Slovenian system of organisation of governance is a parliamentary, democratic system. This entails that in Slovenia power is vested in the people, i.e. there is popular sovereignty, and this is divided into legislative, judicial, and executive branches of power, i.e. the principle of the separation of powers.

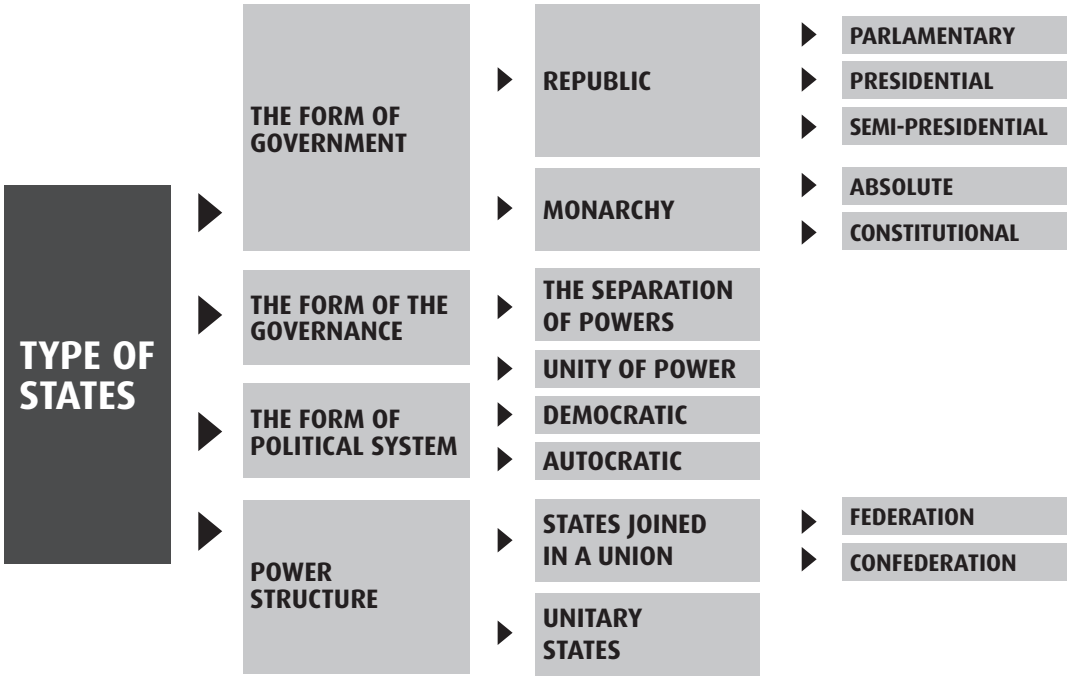
Power is legitimate if it is justified and acceptable.

Legitimacy is an ethical category and entails moral justification.[20] It should be distinguished from the concept of legality, which entails that authorities are bound by legal principles, standards, and rules.[21]

B) CLASSIFICATION OF STATES

States can be classified using various criteria. For a basic understanding of the functioning of such official territorial organisation, four criteria will be applied: the form of government, political system, governance, and the power structure.

Diagram 3: **THE CLASSIFICATION OF STATES**



The following sections will discuss individual aspects of the classification of states in accordance with the above-mentioned criteria, taking into consideration the above diagram.

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The classification of states from the aspect of their form of government offers an answer to the question of how the head of state is organised.

In the past, the head of state of a monarchy was a sovereign who was neither politically nor legally accountable, while he or she also had the highest powers with regard to deciding on the rights and obligations of others. Such a government is a **monarchy** or the rule of one. Monarchy as a form of government is attributed to a concept that arose during feudalism. Monarchs most often come to power by hereditary rule and ruled for life, but there are various types of monarchies.

Monarchy

An absolute monarchy entails that the monarch is an individual (e.g. a king, an emperor) who is the highest, strongest, and supreme authority in the state, while a constitutional monarchy entails that the power of the monarch is limited by the constitution. The third type of monarchy is a parliamentary monarchy. This type gradually developed in the United Kingdom in the 18th and 19th centuries. The monarch lost legislative power, which was transferred to the parliament, executive power, which was vested in the government, as well as judicial power, which was exercised by the judiciary. A monarch was thus left only with the task of representing the state without any official decision-making function. The power of a monarch in this context is traditional and symbolic, whereas the form of government is similar to that of a parliamentary republic.[22]

A **republic** is a form of government in which the head of state is an elected president. The president is elected either by

Republic

the citizens or a legislative body. As regards the president's executive position, republics are further divided into parliamentary and presidential republics. In a presidential republic, the president is also the head of the executive branch of power (as in the USA). In a parliamentary republic, the president mainly represents the state. The government is at the top of the executive branch of power. The president does not have executive power and mainly represents the republic, without taking any executive decisions. The president's powers include the promulgation of laws, appointing candidates for the highest state offices (especially candidates for the office of president of the government), deciding on granting clemency to condemned individuals, and he or she also has executive power in the event of a state of emergency (e.g. in the Republic of Slovenia and all its neighbouring states). The form of government in which the executive power is divided between the president of the state and the government is called the **semi-presidential** model (e.g. France).

Semi-presidential

The form of the political system of the state is defined with reference to the relations between state power and its population. These relations are demonstrated most of all through answers to the following questions: How do citizens influence the formation of state authorities and their decisions; and what is the level of protection of the fundamental human rights and freedoms? From this point of view, states are divided into democratic and autocratic states.[23]

Democracy

Democracy is the type of political system in which power is vested in the people. This entails that most of the population to a certain degree participates in the formation of the state organisation. A democratic system proceeds from the presumption that power is not vested in an individual or in a group of

individuals, but in all citizens of a certain state. These citizens exercise power directly and through elections.

People can also exercise power directly via referendums (i.e. the most important form of direct democracy, by which citizens decide on important acts or questions), public initiatives (e.g. a legislative initiative, a proposal to initiate the procedure for amending the constitution), or petitions (i.e. petitions filed with representatives of state authorities to change the legal order of the state).

Citizens exercise power indirectly through elections. An electoral system or voting system is a collection of rights and procedures that refer to the appointment of candidates standing for election and to the election of members of representative bodies of state authorities. An electoral system in a narrower sense entails a system for the distribution of seats in a legislative body (i.e. parliamentary seats). Electoral systems include the following types:

A majority system, which involves the election of individual candidates standing for election, as a general rule, in constituencies. A proportional representation system, which entails the election of lists of candidates, as a general rule, in the entire state. And finally a combined system, which is a combination of the first two systems.

A majority system encourages parties to align and establish stable governments (e.g. the USA and UK), while a proportional representation system enables a greater number of political parties to enter parliament and the proportional representation of these therein (e.g. the Republic of Slovenia and its neighbouring states).

Autocracy

The opposite of a democracy is an **autocracy**, which entails that an individual or a smaller group of individuals rule by themselves. This is a political system in which individuals cannot influence the functioning of the state authorities, cannot control the state authorities, nor can they require that the state authorities be held liable. Twentieth-century autocracies included Fascist Italy, National Socialist Germany, and the Stalinist Soviet Union.[24]

As regards the form of governance, states can be divided into those that are based on the concept of the separation of powers and those that are based on the concept of the unity of power.

System of the separation of powers

The **system of the separation of powers**, or the checks and balances system is based on the separation of power into three branches: executive (i.e. today the government, in the past the monarch), legislative (i.e. parliament), and judicial.

The system of the separation of powers should ensure the separation and diffusion of power, as well as a balance among the three branches of state power, and consequently it should ensure the legitimacy – i.e. moral justification and acceptability – of the power itself.

Montesquieu

Montesquieu[25] (1689–1755) was the father of the idea of the separation of power into three parts. He thought that freedom was not possible without such a separation. James Madison (1788) later adopted this idea in his articles and essays that he published in the collection entitled *The Federalist Papers*.[26]

Although the idea of the separation of power into three branches is relatively old, it is still one of the most important ideas regarding the legitimate functioning of contemporary Western democracies.

The principle of the separation of powers is of fundamental importance and a central constitutional provision regulating the organisation of the state and consequently also the division of competences. **The Constitution of the Republic of Slovenia** determines that in Slovenia power is vested in the people and that citizens exercise this power directly and through elections, consistent with the principle of the separation of legislative, executive, and judicial powers. The separation of powers determined in such a manner ensures and requires that the mechanism of checks and balances, i.e. the mechanism that enables and requires control and restriction among the above-mentioned three branches of state power, is incorporated into the organisation of power (i.e. the state order).

Constitution of the Republic of Slovenia

In Slovenia, the same as in other democratic states, the principle of the separation of powers is therefore one of the fundamental principles of the regulation and functioning of state power, which is exercised through various official functions of the state.[27]

State authorities, each one performing a different state legal function, cannot play a direct role in the performance of the functions of another state authority, and furthermore cannot under any circumstances perform the functions of another authority. The separation of powers thus concerns the division of the legal functions of the state or the division of state activities into various independent authorities separate from each other. This concerns the division of functions into individual elements in a manner such that each element is separate from the other and, within the ambit of its functions or tasks, equal to the other.

From the historical perspective, the principle of the separation of powers played a role as a means of compromise between

the feudal aristocracy and the monarch, who led the bourgeoisie during the period in which the former was weakened and the latter was not yet powerful enough to assume power.[28]

French Revolution

Especially after the **French Revolution** (1789 and even before that, for instance, in the USA in 1787), the principle of the separation of powers inspired the constitution framers who considered this in the famous Declaration of the Rights of Man and of the Citizen of 1789, according to which a society in which the separation of powers is not defined has no constitution at all.

The principle of the separation of powers is implemented in the legal-technical sense as a formula in numerous constitutions. This principle entails such an organisation of state power in which state legal functions are divided among various executers (i.e. authorities), so that the executer of one function is not simultaneously the main executer of some other function, whereby each authority has its position and role recognised by the other two, and within this framework they also recognise the acts of the other bodies. Various functions of state power are thus divided between various executers, among which a special balance is created while they simultaneously limit and control each other. In this relation, it is especially important that there exists the supremacy of the legislative (i.e. representative) body, which is democratically elected, as its acts are the highest legal acts in the state.

Separation of powers

Legislative, judicial, and executive

From the principle of the **separation of powers** there proceeds the traditional division of state bodies into the **legislative, judicial, and executive** branches. State power is thus expressed in the above-mentioned three basic forms, whereas the legal manifestation thereof is the three types of acts issued by these bodies. A legislative body (i.e. the parliament) issues abstract general legal acts in a form of laws. Judicial bodies (i.e. courts of

law) issue judgments as specific and individual decisions on what in an individual case is compliant with the law. Executive-administrative bodies (i.e. the government and ministries) issue implementing regulations for the implementation of laws, substantive acts or actions, and decisions as specific and individual acts by which they establish, change, declare, or terminate individual rights and obligations and perform substantive acts.

Legal theory discusses the vertical separation of powers as a special type of separation of powers that can be found in federal states. In unitary states, such as the Republic of Slovenia, this principle is implemented in the constitutional position of local self-government as "a specific type of vertical separation of powers"[29] with the independent election of its bodies, the characteristics of a subject under public law, its own assets, and financial resources.

In addition, the principle of the separation of powers in a broader sense also includes the principle of the independence of each of the above-mentioned branches of power, naturally within the ambit of their positions as determined by the Constitution of the Republic of Slovenia. Concerning the executive branch of power,[30] it is determined that within the scope of their powers the Government and individual Ministers are independent and accountable to the National Assembly. Furthermore, regarding administrative bodies, the Constitution determines[31] that they perform their work independently within the framework and on the basis of the Constitution and laws, while judicial protection of the rights and legal interests of citizens and organisations is guaranteed against their decisions and actions.

Regardless of the fact that the system of the separation of powers prevails, another concept must also be mentioned,

System of the unity of power

namely the **system of the unity of power.** Its founding father is the French philosopher Jean-Jacques Rousseau (1712 – 1778). In his famous book *The Social Contract* (French: *Du contrat social*) of 1762, influenced by ideas on popular sovereignty, he argued that the entire power is centred in a legislative body to which the administrative-executive and judicial powers are completely subordinate.[32]

The third possible model of the form of governance, which entails unity of power, is the assembly-based or directorial-based power. It developed as a transitional form in the 18th century in France.

The advantages of the separation of powers were historically denied mostly in the socialist and communist systems of the 20th century, which justified their power on the basis of the unity of the people's power. The Communist Party, as the only permissible political option, was in these regimes the vanguard of the working people and represented an entity to which the unity of the peoples' power was delegated.

The power structure of the state determines whether a state is unitary or whether states are joined in a union, i.e. federations and confederations. Both types of states can also be determined on the basis of the level of political decentralisation of the state power – on the basis of the relation between the central (state) authorities and the authorities of lower (local) organisational units.

Unitary state

A **unitary state** is a state governed as one single unit in which there exists only one centre of state power that ensures a unified legal order for the entire state. Unitary state power can be organisationally decentralised so that official state functions are delegated to territorial state units, such as administrative re-

gions or administrative units in the Republic of Slovenia. A state can also be politically decentralised so that local communities, i.e. municipalities, regulate their original powers themselves. However, a state organised in such a manner is still unitary, as local communities do not have even limited sovereignty.

In contrast, states that are joined in a union have their own, limited sovereignty. The most common instances of states that are joined in a union are confederations and federations.

Confederation

A **confederation** is a state structure that is relatively rare today. A confederation is created by a treaty by which two or more states establish certain common authorities, although they do not renounce their own sovereignty. Decisions of confederal authorities become binding for the member states of the confederation only when they explicitly accept them. A confederation is not a state in the legal sense, but a more or less permanent form of intergovernmental cooperation between individual states. Historical confederations included Switzerland (until 1848, while it still retains the initial CH, i.e. Confederation Helvetica, on vehicle plates, today Switzerland is a federation) and the German Confederation (1815 – 1866). At present elements of confederation can be found in the Commonwealth of Nations, which unites the states of the former British Empire. Moreover, some authors also cite the European Union as a type of confederation.[34]

Federation

A **federation** entails a much stronger connection between a federal (i.e. central) state and its members. The founding and highest act of a federation is a federal constitution. Sovereignty belongs to the federal state, while its members have limited sovereignty. In federations member states usually have a common financial structure (i.e. federal budget), and common police and

armed forces. Armed forces are in general federal, while the police are in general organised at the federal level as well as at the level of member states, regions, or cities. Modern federations denote the form of their organisation in their name, e.g. the United States of America, and the Federal Republic of Germany.

Regional state

A **regional state** is an intermediate level between a unitary state and a federation. A state can be divided into regions or provinces. Instances of regional states are Ireland, Italy, and Spain. In such states the independence which is held by regions entails more than merely administrative decentralisation. Regions are ensured independence by a constitution which is demonstrated through the independent structure of the legislative and executive bodies. However, in comparison with federal units, regions are much less independent. They can have, for instance, their own statutes, but these must be in compliance with the constitutional order of the regional state, and only enter into force when approved by the legislative body of the central state.[35]

C) STATE AUTHORITIES AND THEIR POWERS

A modern state is a complicated organisation. It comprises numerous state authorities as well as decentralised authorities of local communities. State and local authorities furthermore comprise individuals who were elected or appointed to state or local offices (i.e. high officials), and individuals who carry out state and local tasks and are employed by the state (i.e. civil servants).

The tasks of authorities are precisely determined. They are encompassed in the concept of competence, which entails the duty and right of authorities to perform official tasks and adopt decisions in the name of the state or a local community, and finally to decide on the rights, obligations, and legal entitlements of natural persons and legal entities based in the territory of the state.

The field of work of authorities is their subject matter (i.e. substantive) jurisdiction, while their geographical area of work is their territorial jurisdiction. Authorities decide at various levels in instances, and thus their functional jurisdiction, i.e. which court handles a case at which phase of the proceedings, must also be determined. The rule is that authorities in the first instance are first to take a decision.

Finally, the personal jurisdiction of individuals (i.e. natural persons) who perform official tasks must also be determined. These individuals are officials who must meet the prescribed conditions in order to be able to decide in the name of the state or local community.[36]

Regarding the composition, manner of formation, manner of deciding, and whether they are armed or not, state authorities can be divided as follows:

- Single-person and multi-person authorities – regarding the number of persons composing a state authority;
- Monocratic and collegiate authorities – regarding the manner of deciding;
- Elected (i.e. democratic), appointed (i.e. bureaucratic), forced (i.e. autocratic), and hereditary authorities (i.e. monarchical) – regarding the manner of formation;
- Legislative, administrative-executive, and judicial authorities – regarding the official state function;
- Political (i.e. institutional) and professional (i.e. instrumental) authorities – regarding the type of deciding;
- Civil (i.e. unarmed) and armed authorities – regarding whether they are armed or not. The armed forces and police comprise the latter category. In democratic states, armed authorities are always subordinate to unarmed authorities.[37]

Regardless of their diversity, state authorities must constitute a unified and coordinated state organisation that is, as a general rule, arranged hierarchically. The hierarchical relations of superiority and subordination as well as the liability of individual authorities to adopt state decisions must be clear.

D) EXECUTION OF STATE POWERS BY THE HOLDERS OF PUBLIC OFFICE (EXAMPLE OF THE REPUBLIC OF SLOVENIA)

State functionaries

Holders of public office (**state functionaries**) may be defined as persons who execute state powers.[38] Because some civil servants also execute power,[39] Slovenian legislation provides a somewhat more specific definition, and defines holders of public office as:

1) Persons who obtain a mandate to perform an office through general elections;

2) Persons who obtain a mandate to perform an office of the executive or judicial power by being elected or appointed in the National Assembly of the Republic of Slovenia or in a representative body of a local community; and

3) Other persons who, in accordance with the law, are elected or appointed as holders of public office by holders of legislative, executive or judicial power.[40]

This definition is not complete, as it does not take into account those persons who are elected or appointed holders of public office by representatives of state bodies who do not belong to one of the three (classic) branches of state power.[41] In this respect, a holder of public office may be defined as a person who:

1) Is the holder of powers of a state body, a local community body or an EU institution; and

2) Who does not perform his or her work based on a classic employment relationship, but on the basis of a mandate obtained either through election or appointment in general elections, or through election or appointment in state bodies or local community bodies.[42]

Holders of public office can be broken down using a number of criteria.

Type of office

By the **type of office**:

- Political (e.g. deputies of the National Assembly of the Republic of Slovenia, Ministers);
- Judicial (e.g. judges and State Prosecutors);
- Independent supervisory (e.g. judges of the Constitutional Court of the Republic of Slovenia).

Bodies

By **bodies**:

- State bodies (e.g. President of the Republic of Slovenia);
- Self-governing local bodies (e.g. mayors);
- International bodies (e.g. Members of the European Parliament).

How the mandate was obtained

By **how the mandate was obtained**:

- Election (e.g. members of a municipal council);
- Appointment (e.g. Governor of the Bank of Slovenia).

By the **length of term of the mandate**:

Length of term of the mandate

- Limited mandate (e.g. State Secretaries);
- Unlimited mandate (e.g. State Prosecutor).

By **how the office is performed**:

How the office is performed

- Career (e.g. Prime Minister of the Republic of Slovenia);
- Non-career (e.g. members of the National Council of the Republic of Slovenia).

Political holders of public office

Political holders of public office are persons who receive a mandate to perform an office through political channels, that is, through direct elections or appointment by the National Assembly or Government. These persons make political decisions and are politically accountable. The term of their mandates is limited; the dismissal of those appointed by the National Assembly or Government may also be political.[43] On the level of the state, political holders of the public office include the President of the Republic, the President, Vice Presidents and deputies of the National Assembly, the President and members of the National Council, the Prime Minister of the Republic of Slovenia, Ministers, the Secretary-General of the Government and State Secretaries. On the local level, they include members of municipal councils, mayors and deputy mayors. These holders of public office perform their office on a career basis, except for members of the National Council and municipal councils, for whom the performance of office is not career-based. Mayors and deputy mayors may perform their offices on a career or non-career basis – a mayor may decide on this for him- or herself, while the deputy mayor requires the consent of the mayor in his or her decision.[44]

Holders of public office in independent supervisory bodies

Holders of public office in independent supervisory bodies are the President and judges of the Constitutional Court of the Republic of Slovenia, the President and Deputy Presidents of the Court of Audit of the Republic of Slovenia, the Human Rights Ombudsman of the Republic of Slovenia, the Information Commissioner of the Republic of Slovenia, the President and Deputy President of the National Review Commission for Reviewing Public Procurement Procedures of the Republic of Slovenia and the Chief Commissioner and Deputy Commissioner of the Commission for the Prevention of Corruption of the Republic of Slovenia.

Although most of these holders of public office are appointed by the National Assembly and the term of their mandate is limited, professional criteria and standards play an important role in their appointment, and their work takes place in accordance with professional standards. Although the offices listed above are of a markedly professional nature, the influence of politics on appointments to these offices in the National Assembly cannot be entirely avoided.[45]

Judicial holders of public office

Judicial holders of public office are judges, State Prosecutors and the State Attorney. Judges and State Prosecutors have an unlimited mandate, while State Attorneys have a limited one.[46] The criteria and standards for the appointment of these holders of public office are solely of a professional nature, and the work they perform takes place exclusively in accordance with professional standards. Their office is professional, and they serve on a career basis. In light of these features, the legal regime of judicial holders of public office closely resembles the legal regime of civil servants.[47]

The distinction between holders of public office and civil servants is already established by the Constitution of the Repub-

lic of Slovenia,[48] Article 120 of which states that the appointment of holders of public office in (state) administration is regulated by the law. Additionally, Article 122 states that employment in administrative offices is possible only on the basis of open competition, except in cases provided by law. Holders of public office in the state administration are political holders of public office, that is, persons who function politically within the executive branch of power and who are appointed or elected on the basis of political criteria, in line with the will of the ruling political party or coalition. Because the processes for appointing the Prime Minister and Ministers are provided elsewhere in the Constitution, the constitutional provision applies to all other political holders of the public office whose work, alongside that of those listed above, takes place within the executive branch of power.[49] The establishment of boundaries between political offices and civil servant work posts in state administration is therefore at the free discretion of the legislator. From a comparative perspective, high-ranking leadership posts in the state administration are occupied by civil servants and not political holders of public office. The same holds true for the Slovenian legal order – under the current system, within the various Ministries only the Ministers and State Secretaries are political holders of public office.[50]

The respective roles of political holders of public office and civil servants differ – within the process of public administration the former input political decisions (that is, value judgements), and the latter prepare professional bases for the adoption of these decisions and then execute them in accordance with the rules of their profession. Thus there is no demand for professionalism with regard to political holders of public office, whereas this is not the case with civil servants.[51]

The respective roles

The legal position of holders of public office is regulated by the Constitution, systematic legislation, field-specific legisla-

tion and statutory regulations.[52] In general, it can be said that certain special rights as well as certain limitations and prohibitions are in force for holders of public office.[53]

An organic law

An organic law which primarily provides for the rights of holders of public office on the state and local levels is the Officials in State Administration Bodies Act of the Republic of Slovenia (also referred to by its Slovenian acronym, ZFDO).[54] When it entered into force, this law mainly regulated the material position of holders of public office, that is, pay for career holders of public office and compensation for non-career holders of public office, and the rights of holders of public office after they have left office. Because the salary system for holders of public office now falls under a new law, and because the position of individual groups of holders of public office was outlined by field-specific legislation, the significance of the Act in practice is limited; additionally, the terminology used in the Act is rather dated.

The organic law that primarily covers the limitations, duties and prohibitions of holders of public office is the Integrity and Prevention of Corruption Act (also referred to by its Slovenian acronym, ZIntPK).[55] With the aim of enhancing the functioning of the rule of law, this Act provides measures and methods for enhancing integrity and transparency, preventing corruption and preventing and resolving conflicts of interest.

Commission for the Prevention of Corruption

One way in which the objective of the Integrity and Prevention of Corruption Act has been achieved was through the founding of the **Commission for the Prevention of Corruption** (also referred to by its Slovenian acronym, KPK) as a freestanding, independent state body. The Commission consists of the President of the Commission and two deputies; all three have the status of holders of public office, and are appointed by the President of the office. They are appointed by the Presi-

dent of the Republic.[56] The Commission functions and renders decisions as a collegiate body. It discusses matters at sessions, where it also renders opinions, views and other decisions. Two votes are needed for a decision to pass.[57]

The Commission has greater competencies within the new legal order, from consulting to collaboration in the preparation of regulations and issuing opinions. The Commission forms opinions of principle regarding individual acts on its own initiative, or on the basis of reported concrete occurrences of corruption. However, these opinions do not represent a decision on the accountability of the natural or legal persons involved.

Aside from the foundation of the Commission for the Prevention of Corruption, the Integrity and the Prevention of Corruption Act also contains provisions that apply to preventing conflicting interests and oversight over personal assets, receiving gifts and lobbying. The Act covers a broad spectrum of subjects. The term "holder of public office", as used in the public sector, is very broadly defined,[58] and a part of the Act also applies to family members of holders of public office.[59]

The prevention of conflicts of interest and oversight over accepting gifts cover, in terms of content, four areas:

1) **Incompatibility, which encompasses:**
   a. The incompatibility of performing an office and
   b. the prohibition on membership in or the performance of management, supervision or representation in certain organisations.
2) **Prohibitions and restrictions on accepting gifts.**
3) **Restrictions on business operations.**

4) Avoiding conflicts of interest.

Career holders of public office may not perform a career activity or some other activity intended to produce income or material gain alongside their public office. They may, however, perform pedagogic, scientific, research, artistic, cultural, athletic and publishing activities, and run a farm and manage their own assets except where another law states otherwise.[60]

A career holder of public office may not serve as a member of nor perform a management, supervisory or representative function in commercial enterprises, economic interest groups, cooperatives, public institutes, public funds, public agencies and other entities of public or private law, with the exception of associations, institutions and political parties.[61]

A holder of public office may not accept gifts or other benefits in conjunction with the performance of office, unless these gifts are of a protocol nature or small material value accepted on certain occasions. Regardless of their value, a holder of public office may not accept gifts which have influenced or which could influence the objective, impartial performance of his or her office. These prohibitions and restrictions are also valid for family members of a holder of public office.[62] State bodies, the local community and holders of public powers may accept gifts only in the cases and under the conditions provided by the law. Regardless of the provisions of other laws, they may not accept gifts that influence or that could influence the legality, objectivity and impartial nature of their performance.[63]

Operating restrictions

Operating restrictions are also valid for holders of public office, both for the time period in which they perform an office and for a set amount of time following the cessation of the performance of that office. In the case of the former, these restric-

tions are also valid for family members of the holder of public office. The Commission for the Prevention of Corruption publishes a list of persons subject to these restrictions on its website each month.[64]

The law also regulates the duty to **avoid conflicts of interest**, the consequences for failing to fulfil this duty and procedures for determining the existence of conflicts of interest, although these provisions are not used for procedures in which the removal of an official person is provided by another law.[65]

Avoid conflicts of interest

The holders of public office for whom the supervision of assets is in force are career holders of public office, non-career mayors and deputy mayors and citizens of the Republic of Slovenia who perform an office in institutions and other bodies of the EU and in other international institutions, insomuch as these duties are not regulated by the rules of these bodies or organisations. Immediately upon leaving office, and no later than one month following his or her dismissal and cessation of office, a holder of public office must report information on his or her assets to the Commission. He or she must also provide this information one year after ceasing to hold office.[66] If the Commission finds that a holder of public office has not submitted information on his or her offices, activities, assets and income, it invites him or her to do so within the timeframe determined by law. If the holder of public office fails to do this, the Commission for the Prevention of Corruption decides that his or her salary or salary compensation be reduced in the amount of 10% of his or her base salary each month following the expiry of the deadline, although this shall not continue beyond the point where said compensation would fall below the minimum salary.[67]

Information on the income and assets of a holder of public office is, in respect of the restrictions provided by the law on

personal data security and tax confidentiality, accessible to the public with regard to any income and assets acquired during the period in which the person performed a public office or activity and for one additional year following the cessation of the performance of the office or activity.

If the assets of a holder of public office have increased disproportionately since the previous report, the Commission for the Prevention of Corruption may invite him or her to clarify how the disproportionate increase occurred. If he or she fails to do so or if his or her explanation is not comprehensible, the Commission for the Prevention of Corruption will notify the body in which the holder of public office holds office or the body responsible for his or her election or appointment; if suspicion arises of other violations, other competent bodies may also be notified.[68] Except in the case of directly elected holders of public office, these bodies may then initiate the procedure for the termination of the term of office or for dismissal or other procedures and will notify the Commission for the Prevention of Corruption of this.

CHAPTER TWO

THE LAW

A) INTRODUCTION TO THE LAW

Law arose when organised society started to emerge (*ubi societas ibi ius*).[69] Legal history deals with the history, significance and institutions of law, the structure of the state and its normative order, which is limited in time, and the former legal relations between legal subjects. The law also develops through the study of legal history.[70]

Written human history is at least 6,000 years old. The history of law began when chaos ended, and individuals were ensured minimal security, which can be identified as the beginning of civilisation. The history of law began when chaos ended, and individuals were ensured minimal security, which can be identified as the beginning of civilisation.

Civilization

The modern understanding of **civilization** entails social order, which ensures economic, scientific, and cultural development.

Five constituent elements are needed for the establishment of civilisation:[71]

1. POLITICAL ORGANISATION;

2. ECONOMIC PROVISION;

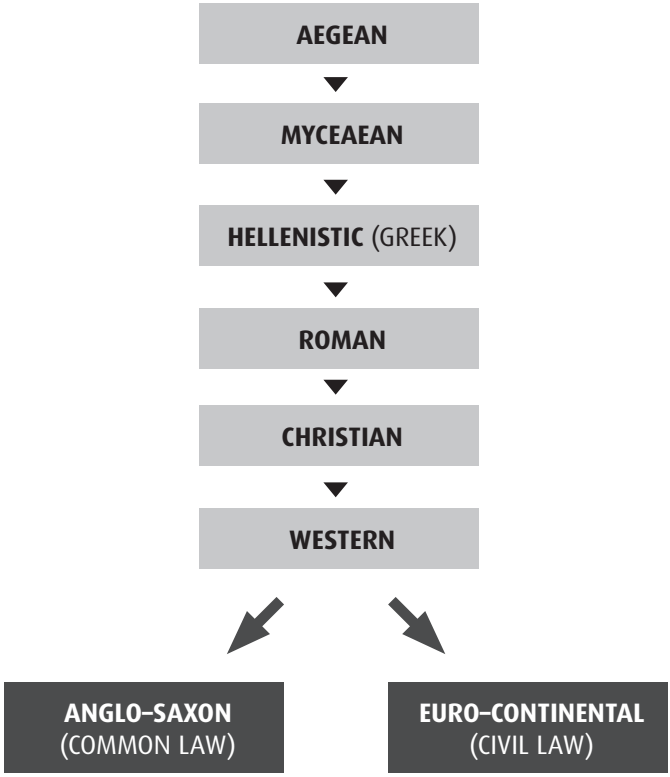
3. NORMATIVE ORDER (THE BEGINNING OF LAW);

4. SCIENCE;

5. ART.

The beginning of civilisation entailed the historical basis for the establishment of the state and law. Civilisations in Europe developed as follows:

Diagram 4: **THE DEVELOPMENT OF CIVILISATIONS IN EUROPE**[72]



One of the historical sources of modern law is case law (i.e. *usus fori*) composed of court decisions (i.e. *iudicati*). In Anglo-Saxon law, case law is binding on courts. This is a difference between the legal systems known as the common law or case law legal systems and the continental European legal systems, which were established with the reception of Roman law.

For an understanding of the law, it is thus important to understand **Roman law**.

Roman law

The existing structure of modern law was significantly influenced by the historical phenomenon and development of Roman law. The Romans were the first who systematically defined the legal terms that are to a great extent still applied today. The development of Roman law did not cover a short period in history, but comprised a period of more than 1,000 years, known today as "ancient Rome".

Ancient Rome denotes the historical civilisation of the Western Roman Empire. This lasted for thirteen centuries, from the establishment of the city of Rome in 753 BC, until the last Western Roman Emperor Romulus Augustus was dethroned in 476 AD.[73]

In this context, Roman law is historically a broad term that also includes the period after the fall of the Western Roman Empire. It comprises of the applicable law and legal system of the Roman state, which had been developing from the beginning of ancient Rome, when the city of Rome was founded (*ab urbe condita*), until the death of the Byzantine Emperor Justinian in 565 AD, who was the main codifier of Roman law.

The traditional historical division proceeds from several periods of Roman law, which are marked by typical changes in the development of political and socio-economic relations.[74] Therefore, the Roman state and Roman public law through the entire period of ancient Roman civilisation were not static. They were influenced by the changing political and socio-economic environment, as well as the level of development of the legal institutions in individual periods.[75]

There are various approaches to the division of the historical periods of Roman civilisation. In the writings of Roman jurists, Roman law is divided into four periods.[76] The first period is the period of the establishment of the Roman state, the period of the Roman Kingdom, and the first three centuries of the Roman Republic. This is the period of the Law of the Twelve Tables (*ius civile*). The second period is that of the last two hundred years of the Roman Republic, i.e. the period of *ius honorarium*. The third period, or the classical period of Roman law, is the period of the Principate, extending from 27 BC, when Caesar Augustus came to power, until the death of Severus Alexander in 235 AD. The last, fourth period, is the period of the Dominate or the post-classical period of Roman law, extending from 235 AD until the death of Emperor Justinian in 565 AD.

When Romans spoke about their state they used the following terms: *populus Romanus* (i.e. the people of Rome); *civitas* (from the word *civis*, meaning a citizen); *res publica* (i.e. public affair); and the Latin initialism SPQR (i.e. *Senatus populusque Romanus* – the Senate and People of Rome).[77]

Res publica

During the Patrician Republic[78] and in the early Principate the term ***res publica*** became a synonym for the Roman Republic. The initialism SPQR entailed the state and the government of the Patrician Republic, and encompassed the presumption that power in the Republic was not vested in an individual, but in the Senate and the people of Rome. However, the concept of democracy is historically not implicitly connected to the concept of a republic. A modern understanding of a republic can entail the type of government in which power is vested in the people and exercised through elected representatives and an elected president, or the type of government in which power is held by a narrow circle of people, as is the case with undemocratic repub-

lics. The Patrician Republic[79] had a similar system where citizens elected two consuls and other magistrates every year.

In all aspects of the functioning of ancient Roman society, in the public and in private lives of Roman citizens, the foundation of social and legal relations had been developing throughout the centuries as *mores maiorum*. *Maiorum* means ancestors, and, etymologically, the word *mores* – or customs – is the root of the English word *morals*, entailing a normative system of the rules of custom, and thus both words together mean the rules of our ancestors.

The Roman principle of justice proceeded from *mores maiorum*, and justice was the moral foundation of life in ancient Rome. It was defined by Ulpian (170 – 223 AD) through the main precepts of the law: "*Iuris praecepta sunt haec vivere, alterum non laedere, suum cuique tribuere*." (The following are the precepts of the law: to live honourably, to harm no one, to give to each his own.)[80] Justice entails living honourably, not harming anyone, and giving each his or her own. In Roman law, justice is therefore understood as a principle in accordance with which every man is rendered his due (*suum cuique tribuendi*)[80].

The reception of Roman law was based on the conviction that it should be applied in cases in which the (new) national law did not provide an answer, which in practice entailed the application of the institutions of Roman law in legal and court practice.

After the decline of the Roman Empire, there was a revival of interest in Roman law in Europe beginning around the 12th century through the works of glossators. During the Middle Ages more complex legal relations began to emerge, and medieval law no longer sufficed for the resolution of conflicts. The law of

that time was not structured, systematic, or of sufficient quality for everyday use. Therefore, the institutions of Roman law, which regulated similar legal relations in detail and systematically, were applied. Roman law was thus applied subsidiarily, a process known as the reception of Roman law.[81]

Ancient Greek jurists gave profound thought to the nature of law and its position in society. In contrast, ancient Romans did not devote much attention to legal theory. They widely employed Greek philosophy, whereas they applied the law in individual proceedings, usually without special definitions of the institutions. Roman law was thus foremost binding on the citizens of Rome, and was important for its universal applicability. It was applied in cases in which the Roman state enforced legally protected rights against citizens or in cases in which citizens of Rome exercised legally protected rights against other citizens. The rules of Roman law were developed through the practice of professional Roman jurists. Their legal argumentation techniques became very sophisticated through many years of practice. Furthermore, the reception of Roman law influenced the development of all modern European legal systems.[82]

Contemporary law is a set of binding and permanent rules that regulate organised life in society. [83]

Law

Law is a system of rules and principles that regulate, within the boundaries of legal regularity, the vitally important external conduct and behaviour of the subjects in a state-organised society.[84]

Law is a phenomenon of history and civilisation. Its development began with the emergence of civilisation, and it contin-

ues to develop today.[85] There are numerous theories and points of view as regards what the essence of law is. Immanuel Kant, for instance, in his time claimed that lawyers were still looking for the essence of the law.[86] Indeed, legal theoreticians have still not agreed on a uniform definition of the essence of the law.

Law can also be understood instrumentally, as an instrument – a tool.

Instrumental law

Instrumental law is a tool prescribed in advance which is composed of rules that are suitable for preventing and resolving conflicts between subjects in society.

Legal science comprises of several fields. Legal history, for instance, deals with the applicable law of the past, whereas the focus of interest of the science of positive law is the currently applicable law. Legal science is divided into the legal sciences of individual fields of law, i.e. legal disciplines. Legal science studies various levels of law: e.g. legal dogmatics deals with its normative structure, the sociology of law observes law as a social phenomenon, the politics of law evaluates its normative elements, and legal theory determines what the general legal terms and general rules are.[87]

Law is systematised in a legal order or legal system.

A legal order or legal system

A legal order or legal system is the integrated whole of the hierarchically regulated principles of law, rules, and general legal acts which apply in a certain state, are published, and enter into effect from a certain date following adoption.

The term legal order is used as a synonym for the term legal system. A legal order reflects the entirety of the mutually connected normative and factual elements which are reflected in legal relations. A legal order entails the applicable law at a certain time, defined in advance, and in effect in a certain territory of a certain state.

Legal acts, legal principles, legal rules and legal relations

The elements of the legal order are legal acts, legal principles, legal rules and legal relations.

The factual elements of the legal order are the legally relevant facts (e.g. the relevant course of time, the fulfilment of a condition) and the legally relevant behaviour and conduct of legal subjects which have legal consequences.

The connecting elements of the legal order and the practical application of the law entail legal relations. These are defined in the second part of this book as the basic form of the application of law in practice.

Igonrantia iuris nocet

The legal order is based on the presumption that "being ignorant of law harms": ***Ignorantia iuris nocet***[88].

This entails that claiming that one does not know the principles of law, legal rules, and general acts does not result in exculpation.[89] The excuse that there was a mistake of law, which is another term for being ignorant of the law, is usually not a recognised defence. Legal certainty is based on the presumption that all subjects know the law, and thus no one can excuse their unlawful conduct by stating that they were unaware of a certain rule or that such conduct was not allowed.

In exceptional circumstances, a mistake of law can be the basis for exculpation, but only within the scope of criminal law.

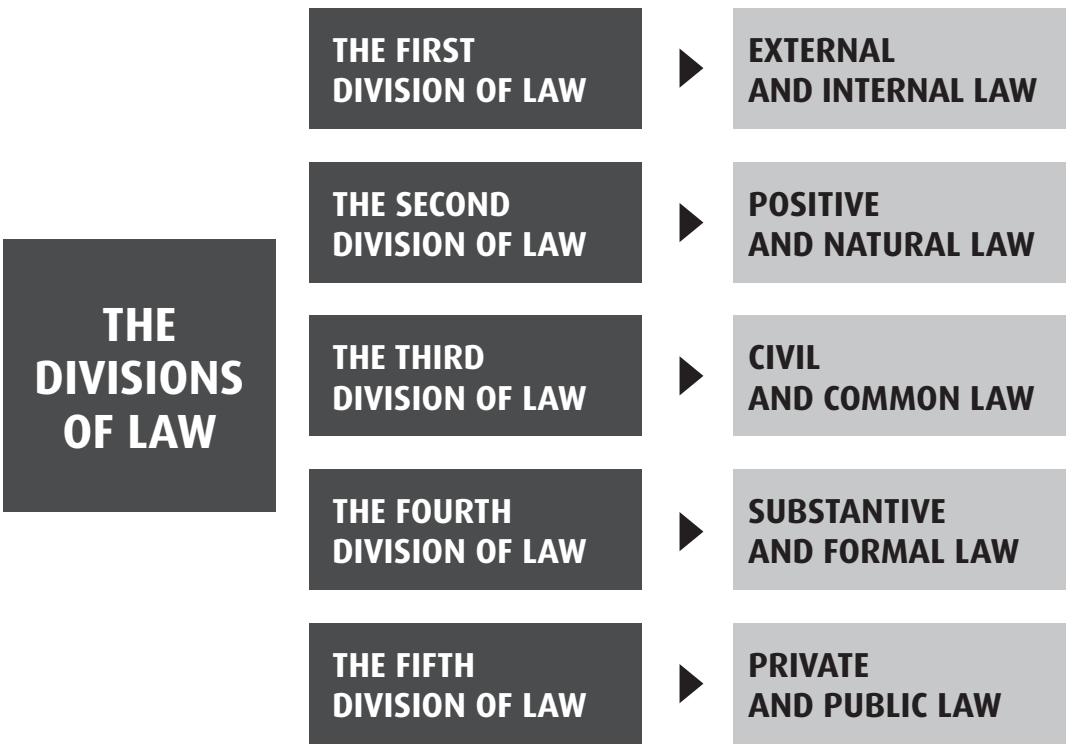
Regardless of the above-mentioned exception, a legal order is based on the presumption that being ignorant of law harms. Thus, every person must know the law, as every person bears the consequences of being ignorant of it.

A further characteristic of the systemisation of law is double divisions.[90]

B) THE DIVISIONS OF LAW

With reference to these, the law is divided as follows:

Diagram 5: **THE DIVISIONS OF LAW**



International or external law is a set of principles and rules that regulate the behaviour and conduct of countries and international organisations (e.g. the United Nations, the Red Cross, UNICEF). It comprises of diplomatic and consular law, interna-

tional law of the sea, the law on good neighbourliness, as well as the laws of war and international humanitarian law. One characteristic of international law is that in cases of violations of its rules there is no organisation which can impose direct coercive sanctions against subjects who have violated it. However, a violation of international law can trigger or be a cause for unarmed or even armed interstate conflict – in other words, a war.

National law comprises of a different set of rules than international law. Such rules consist of national state principles and rules that only apply in the territory of a certain state; they also regulate the behaviour and conduct of state authorities, local community authorities, citizens, aliens, and all legal entities in a certain state territory. With its coercive apparatus (i.e. police, armed forces), a state has a monopoly and absolute authority regarding the imposition of sanctions for the violation of state rules.

Positive law[91] is the law that has been laid down and applies in a certain territory at a certain time[92].

Positive law

The applicable law can be adopted as internal law, i.e. national law, and adopted as external law, i.e. international law. Positive law is applicable in a certain territory at a certain time. It always applies in advance, which means that it must be adopted beforehand in legally determined forms of legal acts.

Natural law is the opposite of positive law.[93]

Natural law comprises the rights that every human being has on the basis of the natural order of things, i.e. as a human being.

Natural law

Natural law originates in nature. It is in the nature of humans that through their consciousness and freedom they perceive with their minds the sensible natural order as a source of principles which they must realise in their existence. Modern natural law – proceeding from a modern understanding of science – strives to avoid the problems with this definition and attempts to be constituted as rational natural law. It considers a human being to be a rational being, but also a being of interests and needs.

Law in Europe has historically developed according to two concepts, namely the continental European concept of civil law and the Anglo-Saxon concept of common law.

The concept of codified, positive law is the basis for the regulation of the legal systems of the countries of continental Europe. This includes all the countries of Central Europe, the countries on the Iberian Peninsula, the Scandinavian countries, and the countries of Eastern and Southern Europe. In continental Europe, it is positive law that is codified in applicable legal acts.

In contrast, the concept of uncodified law is based on precedents. Such a system can be found in the UK and those countries that trace their legal heritage to it, i.e. its former colonies. Common law is not based on formalised sources of law, but on court decisions adopted in similar cases. These are known as precedents. **Precedents** are the judgments of the highest courts in Anglo-American legal systems(i.e. common law). The rationale for the decision in an individual case (i.e. *ratio decidendi*) has the effect of a general and abstract legal rule. The higher court adopts a precedent, and the lower courts are bound by it when deciding subsequent cases with similar issues. Common law based on precedents arose as the

Precedents

courts had to carry out integrative and law-creating functions, which in continental European law is reserved for the legislative branch of power.

The countries that adopted the common law system are the USA and the members of the Commonwealth of Nations. The latter is a community of nations – originally the British Commonwealth of Nations, but from 1964 named only the Commonwealth of Nations, and now usually just the Commonwealth – which is composed of 54 independent sovereign states, which are almost all former territories or colonies of the British Empire (the exceptions being Rwanda and Mozambique).

The main criteria for the substantive regularity of any modern law, be it civil or common law, are human rights and fundamental freedoms. They are universal and are a constituent part of the legal orders of all democratic countries.

Law can also be divided into substantive and formal law. **Substantive law** determines the substance of the rights, obligations, and legal entitlements of subjects under law. **Formal law** regulates the organisation and procedures regarding the conduct of subjects under law.

Substantive law

Formal law

Within the continental European concept of law, both substantive and formal law comprise of legal rules and principles which are written in legal regulations.

Substantive law entails all the legal rules which determine the substance of the rights, obligations, and legal entitlements of subjects and which are static. Substantive law consists of a number of various laws in which the substantive rights, obligations, and legal entitlements of legal subjects are determined.

Formal law determines the organisation and powers of state authorities and other aspects of public administration, as well as all general and specific rules of legal procedures. Procedural law, i.e. procedural formal law, is dynamic. It determines the actions of legal subjects which must be performed in order to ensure the enforcement of rights and obligations whose substance is determined in substantive law.

In addition to substantive rights and obligations, in legal procedures subjects also have procedural rights and obligations. These rights are intended for the lawful exercise of procedural acts.

Only when all substantive and procedural rights and obligations are entirely respected can this result in a legally binding decision that constitutes the individual rights or obligations of individual subjects.

The final classic division of law is that into private and public law.

The development of the division of law into public and private law dates back to the ancient Roman state, where public matters were interwoven with private interests, and vice versa. At the same time, coercive authority as a public matter was also subordinated to the private interests of those who held power. The main law developed in those times was private law, primarily contract law.

Ius publicum

Only a small number of institutions and rules referred to public matters. Such matters were those in which in addition to private interests there were also the interests of the state. The classical Roman jurist Domitius Ulpian[95] named this law ***ius publicum***. As he put it: "Public law is concerned with the or-

ganisation of the [Roman] state, while private law is about the well-being of individuals" – *Ius publicum est quod ad statum rei publicae spectat, privatum autem quod ad singulorum utilitatem*. Ulpian thus developed the division of **private and public law**, which has been preserved in legal systems up to the present day.[96]

Private and public law

Private law relations are primarily contractual relations. This entails that dispositive rules (i.e. *ius dispositivum*) apply to such. The free will of the contractual parties has precedence over state regulation. Only if the contractual parties do not agree is the law applied. Such application of the law is secondary, i.e. subsidiary.

In the following sections the modern systematisation of law and individual fields of law, i.e. ***legal disciplines***, will be introduced from the viewpoint of whether they are a part of private or public law. In the systemisation of law, the fields of law comprise the principles of law and the legal rules which affect a certain field of social relations in the same manner.[97]

Legal disciplines

c) LEGAL RULES AND BASIC PRINCIPLES OF THE LAW

Legal norm

A **legal norm** is a basic element of each law and each legal discipline. *Norma* in Latin means a rule,[98] and therefore, the term system of norms is a synonym for the term system of rules. In addition to law, which is a normative system of rules sanctioned by the state, there exist other normative systems in society. These include moral rules, general social, personal, and family rules, the rules of religious communities and church rules, the specific rules of voluntary associations, and so on.

Morals

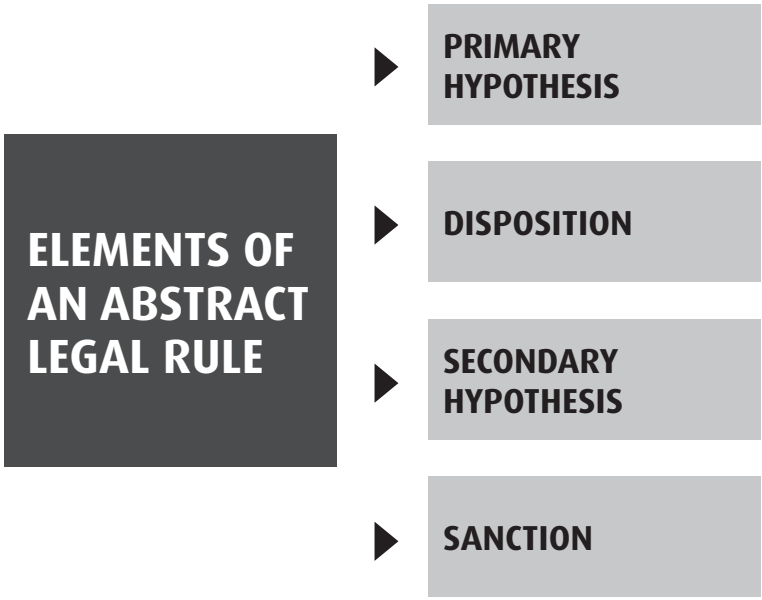
The word **morals** derives from the Latin word *mos*, meaning custom (plural *mores* – customs). Morals entail a person's attitude towards the world, other people, and towards himself or herself. In a normative system morally relevant actions are assessed as either good or bad. What is good is morally correct, and what is bad is morally incorrect. Morals comprise the values and customs of the people in a given society. In general, morals include unwritten rules, which apply not only to individuals, but also to the entire society. Law should include the most important moral rules and thus represent the minimal moral code. It holds true for all the above-mentioned normative systems which are not legal systems that in cases of a violation of their rules the imposed sanctions never entail the use of state coercion. For instance, if a person violates a moral rule, a negative consequence of or sanction for such violation is contempt, social devaluation, the loss of one's good reputation, etc. If a person violates a family rule, other family members impose sanctions on them in a

manner such that they make them feel bad, they lose a certain benefit, or have a bad conscience (e.g. if children violate family rules, they might not be given pocket money by their parents).

Modern positive law rules are general and abstract, on the one hand, and specific and individual, on the other. Regulations are general and abstract, whereas contracts and decisions which cause direct rights and obligations of legal subjects are specific and individual.

Legal rules are mandatory rules of social behaviour and conduct. They are implemented by the state when applying coercive means in a lawful manner. As we noted above, a synonym for a legal rule is a legal norm. A legal rule is the central and most important part of the law. It is the fundamental normative element of the law. Ethical values and moral rules are also part of the normative system of every society. However, they are different from the normative system in that moral rules are usually not written down (i.e. formalised), and the sanctions imposed for violating such rules are not coercive sanctions enforced by the state. Moral sanctions for the violation of moral norms are, as previously mentioned, things like the loss of status or one's good name, whereas sanctions for the violation of legal norms are imposed by the state using its legal and legitimate monopoly on coercion.

Diagram 6: **PRESENTATION OF THE ELEMENTS OF ABSTRACT LEGAL NORMS**



The primary hypothesis is the initial part of a general and abstract legal rule. It sets forth a certain hypothetical state of facts as an abstract supposition of possible circumstances. When these arise, legal subjects must act in accordance with the disposition. Thus, a specific and individual norm does not contain a hypothesis, but a relevant state of facts which caused legal consequences.

The disposition is the most important part of the legal rule. According to its definition, a disposition determines the behaviour or conduct of legal subjects, as laid down by the creator of a legal rule. There are several types of dispositions.

A secondary hypothesis is an abstract description of the violation of the disposition. It describes an abstract state of facts which is contrary to the command, prohibition, or permission laid down in the disposition.

Legal sanction is a consequence that follows a violation of the disposition of a legal rule, i.e. a punishment.[100]

A rule, as defined above, is an abstract and general rule which is laid down in regulations. By a court or administrative decision, it becomes a specific and individual rule and the hypothesis is replaced by the state of facts. The state of facts are the facts and circumstances which entail a specific realisation of the general rule in an individual legal relation.

The most important part of a general or specific legal rule is the disposition. The disposition is a command, prohibition, or authorisation of the legislature to the addressee of the legal norm which determines his or her behaviour or conduct.

Several types of dispositions

There are **several types of dispositions**.

Cogent disposition

Absolute or **cogent** (i.e. categorical) **dispositions** are the strictest. They command or prohibit certain conduct. They are in general needed in cases in which the public interest and fundamental human rights and freedoms must be protected. They can be found in criminal and administrative law.

If the disposition does not contain a command but allows or enables certain behaviour or conduct, then it gives authorisation. Entitled legal subjects may then decide whether they will use such authorisation.

In certain cases, the legislature allows legal subjects to substitute a written disposition with their own agreed disposition. A

variety of possible conducts is offered in a norm. Subjects may decide which possibility to choose, or a body deciding on such will do so instead of them. In such cases a disposition is optional.

In norms in which legal subjects have the greatest scope of freedom and specific conduct is not determined, the legislature leaves it to legal subjects to agree on what kind of a rule they will create. The determined disposition can be substituted for by their own disposition. Such a disposition is dispositive, and this can be found mostly in civil law and partly in labour law.

Discretionary disposition

A **discretionary disposition** is the least determined. These can be found in administrative law and can only be determined by substantive regulations. Discretion is not allowed in formal regulations. Although it, in general, applies that the conduct of administrative bodies must be determined in detail so that abuse of power or excessive interference with human rights does not occur, it is nevertheless impossible to always predict all the circumstances which are relevant for a decision. In such cases, in a discretionary norm, the legislature allows an administrative body the right to discretion in deciding on the rights and obligations of legal subjects (e.g. a decision on whether to grant citizenship or to issue a permit to carry arms). In cases of discretionary norms, the legislature uses the following phrases: a body may, a body shall, a body has authority, and so on. Regardless of the same state of facts, by applying a discretionary disposition an administrative body may issue two different decisions and both are legally correct. Therefore, the principle of legality must be strictly observed when reviewing the application of such a disposition. The importance of the right to discretion in administrative law is discussed in the following sections, most of all in the section dealing with the exceptions to the principle of legality.

There are also **various types of sanctions**, with a sanction being the closing part of a complete legal norm. The word sanction has a negative connotation, as its ultimate consequence entails the use of the state's monopoly on coercion in cases where a disposition was violated.

Various types of sanctions

However, a sanction also entails positive measures (e.g. incentives, rewards, tax exemptions, and tax relief) for legal subjects who act in accordance with the disposition. That said, these types of legal sanctions are rare.

Sanctions for unlawful conduct can be retributive and/or restitutive. The first are a characteristic of private law, while the latter are a characteristic of public law, most of all criminal law. Courts impose **restitutive sanctions** by judgments in cases of civil delicts, violations, and the abuse of rights. The most common types of **retributive sanctions** are fines for minor offences and punishments for criminal offences.

Restitutive sanctions

Retributive sanctions

A **punishment** is imposed in cases in which a criminal offence has been committed. Fines are the most common type of punishment, while a prison sentence is imposed in cases of the most serious criminal offences.

Punishment

Due to the fact that there are various types and manners of violations of dispositions of legal norms, as well as the nature of legal norms, it is understandable that there are a variety of sanctions. They mostly pursue the principle of proportionality. This entails that coercive interference of the state with the legal sphere of the legal subjects on whom sanctions were imposed must be within the boundaries of the necessity of the interference, and within the boundaries of the rationality of the law. This entails that sanctions must be such that in cases in which the use of coercion is necessary in order to restore legality and

justice because the disposition was violated, the objective of the legislature is achieved and not exceeded.

Legal principles

Legal principles are value criteria which as legal systemic guidelines direct the determination of legal rules regarding their content as well as their implementation.[101]

Legal principles together with the legal rules (i.e. norms) laid down in regulations comprise a basic definition of law as a system of rules and principles.

Legal principles do not contain sanctions, while legal rules do. Legal principles consist of value-based and systemic criteria that are a part of the legal system contained in the constitution and laws. Legal principles also consist of criteria implemented by case law and which are a result of the scientific systemisation and study of the legal subject matter.

There are many legal principles, but in order to understand the basic concepts of the state and law, special attention will be devoted to the principle of a state governed by the rule of law.

The principle of the rule of law

The principle of a state governed by the **rule of law**[102] entails that the state must decide the rights and obligations of subjects lawfully, in a legally predictable and legally certain manner, as determined in advance by law, without the possibility of retroactive applicability of the law, based on trust in the work of state authorities. In addition, this principle entails that the state is objectively liable (i.e. nonculpable liability) for any damage caused to individuals by state authorities. The principle of a state governed by the rule of law is a synthetic legal principle composed of several other principles and principled prohibitions. In accordance with the principle of a state governed by the rule of law, the legal system must be based on the

following key points: all individuals are ensured legal certainty; obligations toward the state are determined in advance; regulations do not have retroactive effect; the prohibition of excessive measures when performing state tasks applies; and in cases in which the state applies excessive measures, individuals are ensured personal integrity and the state is liable for damages.

The principle of a state governed by the rule of law is not explicitly determined in regulations, but it proceeds from the legal order of every democratic state. Its foundations are contained in constitutions, while it must also be respected in all hierarchically lower legal regulations.

The principle of a state governed by the rule of law is framed by the principles of constitutionality and legality. These are the fundamental principles of modern democratic states.

The principle of constitutionality

The principle of constitutionality is a primary principle in comparison with the principle of legality. In a formal sense, this entails that in the hierarchy of legal acts the constitution is the highest act. Laws must be in conformity with the constitution, while the principle of legality also entails the direct implementation of the principle of constitutionality. The principle of constitutionality can be defined through two concepts: (i) the principle of the supremacy of the constitution, and (ii) the principle of functional constitutionality.

The principle of the supremacy of the constitution entails that in the hierarchy of legal acts the constitution is at the top of the pyramid – it is the strongest act, and all other acts must be in conformity with the constitution. This is formal supremacy, which entails that lower acts must formally be consistent with the constitution. In addition to the formal supremacy of the constitution, the constitution is also substantively the highest legal

act. This also entails that the substance of lower legal rules, i.e. those contained in laws and implementing regulations, must be in conformity with the constitution. The substance of the constitution, i.e. *materia constitutionis*,[103] thus sets the legislature's substantive framework within which it may constitute, reconstitute, and abolish the rights and obligations of individuals which apply in the legal order. The principle of the supremacy of the constitution also contains the authority that in democratic states only the legislative branch of power may constitute and abolish new rights and obligations of individuals by laws which are the second highest legal acts after the constitution. This furthermore entails that, from the perspective of the constitution, other law is instrumental. The legislative branch of power promotes the constitutionally protected values of individuals in a state-organised society by laws, the executive branch of power by implementing regulations and administrative decisions, and the judicial branch of power by court decisions.

Moreover, functional constitutionality entails that all offices of state authorities must have their basis in the constitution and must be performed within the frameworks of the constitution. The principle of the liability of bearers of public authority, i.e. authorities and public servants, is also associated with functional constitutionality.

The principle of legality

The principle of legality most of all entails that a democratic state is allowed only what is permitted by legal rules, while subjects are allowed everything that is not explicitly prohibited. The principle of legality has similar content to the principle of constitutionality. The difference is that the principle of legality refers to legal acts which are lower than laws. The principle of legality also has two aspects, i.e. the formal supremacy of laws over lower legal acts and the substantive or functional conformity of lower

acts with the substance of the laws. In administrative law, in addition to the principle of legality, there also applies the principle of the conformity of individual administrative acts (i.e. decisions) and administrative substantive acts with higher abstract and general regulations. With reference to such, the statutory basis for issuing an individual and specific administrative act must be cited in every such act, so that a person liable can file a complaint if an administrative body did not proceed in accordance with the law. In practice, this also entails that the constitutional right to legal remedies (e.g. an appeal, an objection) is implemented through the application of the principle of legality.

In addition, individual administrative acts that administrative bodies issue using their right of discretion must also be in conformity with the principle of legality. This right must be determined in a law (i.e. *lex certa*) and not in a lower act. Furthermore, a law must determine the scope of authority (i.e. mandate) on the basis of which an administrative body uses its right of discretion. An administrative body may decide to use its discretion if there is a clear authority in the law for this, whereas a decision must be substantiated in accordance with the principle of legality so that the public interest and the rationality of the decision are protected.

The principle of legality depends on the applicability of regulations. In cases in which an administrative body issues an individual decision, this must be based on a law and implementing regulations until it becomes final. The formal finality of a decision entails that the decision can no longer be challenged by ordinary legal remedies. Substantive finality entails that a right or obligation of an individual has been constituted and that it is no longer necessary that it is permanently consistent with the law and implementing regulations. If the statutory basis ceases

to apply and the right or obligation had been finally constituted, it retains its independent legal existence. What is more, through the principle of the prohibition of the retroactive effect of legal acts, an acquired right is protected to the extent that not even the state can retroactively deprive a bearer of such right.

Promulgation of laws

The principle of legality ensures that administrative rules are determined in advance and that newly adopted rules cannot have retroactive effect. Regarding the adoption of rules, the principle of **promulgation of laws** and publication applies, which entails that abstract and general norms contained in laws must be promulgated by the president of the republic in republics and by monarchs in monarchies, and published in the prescribed gazette or official publication (e.g. in Slovenia, laws are published in the Official Gazette of the Republic of Slovenia).

Vacatio legis

In Slovenia, before the law takes legal effect, at least a 15-day period, as determined by the Constitution of the Republic of Slovenia, must elapse. This period is called ***vacatio legis***. It ensures that all subjects can learn of the new statutory rules and thus, in case of their violation, they cannot claim that they did not know about them.[104]

The principle of legality[105] ensures that the rights of individuals are respected. As regards the understanding of the principle of legality with reference to the state, there are two approaches.

In accordance with the first approach, the state functions freely, while general legal rules entail only a limitation of such free functioning which cannot be against the law, i.e. *contra legem*. In accordance with the second approach, the state must have a basis in the law for each action and act, which entails that administrative bodies must act according to the law, i.e. *secundum legem*. The functioning of state authority must thus

be based on laws, and also be in conformity with the laws in a substantive sense.

In modern states, the principle of legality is understood in the sense that the state must have a legal basis for each action and not, as applies to individuals, that everything that is not explicitly prohibited is allowed.[106] The functioning of state authority must thus be based on laws, and also be in conformity with the laws in a substantive sense.

The concept of legality includes the principle that lower legal norms must be in conformity with higher legal norms.

The question that arises with reference to the principle of legality is how to resolve inconsistencies between legal regulations, i.e. inconsistencies of the acts of a lower legal level with the acts of a higher legal level. Such cases concern a special type of dispute, i.e. a dispute on the constitutionality or legality of a certain act – a constitutional dispute.

Regular judicial disputes, which are resolved by regular courts, concern disputes on subjective rights or obligations between the parties, whereas a constitutional dispute concerns a normative act and its conformity with constitutional or statutory provisions.

The essence of a constitutional dispute is thus in establishing whether a legal norm of a lower legal level (i.e. rank) is in conformity with a higher legal norm or with the norm of the highest rank, i.e. the constitution. In cases of nonconformity (whether formal, substantive, or both), it is necessary to establish an instrument which will enable the inconsistencies to be remedied or by which it will be established whether laws, implementing regulations, and other general acts are in conformity with the

constitution. In the event of the establishment of nonconformity, the sanction is that the unconstitutional or unlawful norms or regulations are "eliminated" from the legal order. A sanction may have *inter partes* or *erga omnes* effect, depending on the system of the judicial control of constitutionality.

In modern legal systems, in the structure of state authorities, constitutional courts[107] are bodies that have the power to decide on the conformity of laws with the constitution and can annul or abolish unconstitutional laws or their individual provisions. However, constitutional courts are also bound by constitutional provisions in cases when they have the power to decide

Example:

A summary of certain characteristics of the principle of legality. The principle of legality entails the rule of law (as opposed to the state and other authorities acting in an arbitrary manner) and especially the fundamental guarantee of the protection of the rights and freedoms of individuals, as manifested in the hierarchy of legal acts. From "the arrangement" of legal acts in levels, it follows that legal acts of the lower level must be in conformity with legal acts of the higher level (this is especially important for implementing regulations of executive bodies, which must be in conformity with the legal acts of the legislature), whereas specific and individual legal acts "draw" the basis for their issuance and content from general legal acts; the requirement that, in practice, laws and other regulations must in fact be applied and respected, that there is no "gap between normative and factual"; the requirement that, in given circumstances, the state and other bodies holding authority apply against individuals and entities only what they are entitled to by law (e.g. activities, measures, legal and other decisions), while individuals and entities are given the possibility to effectively protect their rights, i.e. by means of appeal and other legal remedies, the judicial review of administrative acts, and the constitutional complaint.

in accordance with the constitution. When deciding in such cases, constitutional courts are thus bound by the constitution and laws. Constitutional courts annul or abolish statutory norms which they establish are not in conformity with the constitution.

If the proclamation of equality before the law during the French Revolution was most of all directed against the special rights of the high aristocracy and clergy (in the provisions of the first constitutions and in the Declaration of the Rights of Man and of the Citizen of 1789 they mostly strived to abolish differences between social classes, i.e. to prevent "class legislation"), today equality entails the prohibition of "any legal discrimination", which has become one of the fundamental democratic constitutional standards globally. In modern law, the principle of equality is a constituent part of the concept of justice.[108]

The Constitution of the Republic of Slovenia contains a provision on equality before the law in the chapter on human rights and fundamental freedoms, while this is in fact a general legal principle which refers to all constitutional and other rights. In accordance with the Constitution (Article 14), all are equal before the law. In Slovenia everyone is guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status, disability, or any other personal circumstances.

The Constitution of the Republic of Slovenia thus prohibits any discrimination before the law and determines equality under the law.

The constitutional provision that all are equal before the law naturally does not entail that, for instance, a law could not regulate the positions of legal subjects differently, but it entails that

such regulation may not be arbitrary, without sound and objective reasons. Different treatment must pursue constitutionally admissible objectives that must have a sound connection with the subject of regulation, while that different treatment must be appropriate for achieving those objectives. This thus entails that there must be a sound reason (depending on the nature of the matter which is being regulated) for different treatment.

In practice, equality is shown by the fact that for essentially equal situations, the same general and abstract legal norms apply, and that essentially equal situations should be considered and resolved in the same manner. In law, equality thus most of all entails the same application of laws for all essentially equal situations or, in other words, that all are equal before the law under the same conditions (i.e. the legalistic approach to equality). In essentially equal situations a law may not be applied in a different manner, which entails that taking arbitrary decisions is not allowed, and in the decisions of the Constitutional Court of the Republic of Slovenia it can also be observed that equality before the law entails the nonarbitrary application of the law in relation to legal subjects. Furthermore, the European Court of Human Rights in its decisions stated that there must be "objective and reasonable justification" for any different treatment, otherwise it is discriminatory and legally inadmissible.

Right to appeal

Attention must be drawn to the fact that, in accordance with the Constitution of the Republic of Slovenia (Article 22), everyone is guaranteed the **right to appeal.** This helps ensure equal protection of rights in any proceedings before a court and before other state authorities, local community authorities, and bearers of public authority that decide on a person's rights, duties or legal interests.

In addition, the **principle of equality** is to a great extent also implemented through proceedings determined in advance (e.g. criminal, civil, administrative) in which state authorities decide, whereby the uniformity of proceedings in the application of the law is ensured.

Principle of equality

Ensuring legal certainty is a constitutional principle and a constituent element of every modern democratic legal system. It is an important component of the principle of a state governed by the rule of law. Legal certainty ensures the transparency and predictability of the functioning of the state, so that individuals have confidence in the legal system. This principle furthermore serves as a guideline to the legislature when adopting substantive legal rules.[111]

Legal certainty entails that, as a general rule, the **prohibition of the retroactive effect** of legal acts is ensured. In such a manner the confidence of individuals is legally protected with regard to not being in a worse position upon the adoption of new legal rules due to the unpredictable retroactive effect of the newly adopted rules.

Prohibition of the retroactive effect

Example:

The Constitution of the Republic of Slovenia in Article 155 (Prohibition of the Retroactive Effect of Legal Acts) determines: "Laws and other regulations and general legal acts cannot have retroactive effect. Only a law may establish that certain of its provisions have retroactive effect, if this is required in the public interest and provided that no acquired rights are infringed thereby."

The retroactive effect can be allowed in exceptional cases and only under conditions determined in the Constitution. A

certain statutory norm can have a retroactive effect only if this is required in the public interest and no acquired rights are thereby infringed (e.g. denationalisation legislation). As a general rule, only dispositive individual acts that depend on the free will of the subjects who agreed on them can have a retroactive effect.

From the viewpoint of the implementation and protection of the rights of individuals in relation to the state, the question arises as to what the possibilities are that an individual succeeds with an appeal in cases in which a competent authority based its decision on the provisions of an implementing regulation which is not in conformity with the law.

Exceptio illegalis

The possible imbalance between hierarchically higher and lower regulations can be remedied by the institution of ***exceptio illegalis***, which allows a court reviewing the legality of an individual decision to ignore an implementing regulation which, in the court's opinion, is inconsistent with the law, and so the court decides directly on the basis of the law.

Regulations are in force until the termination of their validity – in order to establish that the validity of a regulation (the same, in general, also applies to individual legal norms) is terminated, certain rules apply. In general, it can be established that it is not explicitly stated in regulations how long they will be in force. In cases in which a period for which a certain regulation was adopted is determined therein, its validity terminates with the expiry of the so-determined period.

In most cases, the validity of a regulation terminates upon the adoption of a new regulation of the same or higher level, whereby its final and transitional provisions determine that on the day of the entry into force of the new regulation, the old one ceases to apply. The title of the former regulation and the offi-

cial gazette or other official publication in which the regulation was published are stated. There are several examples of this in practice: e.g. a new law with the same title and content contains a provision on the termination of the validity of the former law; a new law determines that upon its implementation several former laws cease to apply; or a new law states which provisions of other laws thereby cease to apply. In cases in which it is not explicitly determined in a new regulation that a former regulation ceased to apply, the rule *lex posterior derogat legi priori* must be applied, as otherwise the same subject matter would be regulated by two different legal norms,[112] which can cause legal uncertainty. On the basis of this, it can be concluded that the termination of the validity of a certain regulation is most often stated in the more recent regulation of the same or higher level. It must be added that – although rarely – in certain cases when special reasons exist, a specific regulation is adopted (e.g. an act on the termination of the validity of a certain law) whose primary content is that a certain regulation thereby ceases to apply.

It is somewhat more complicated to determine what applies in cases of indirect termination of the validity of regulations. Such cases arise when a new constitution determines that all regulations in force that are in conformity with the new constitution remain in force, whereas regulations that are not in conformity with the new constitution cease to apply.[113]

A special type of termination of the validity of a regulation is termination on the basis of a constitutional court decision when this abrogates a certain law or its individual provisions. Furthermore, there is a rule in accordance with which regulations that were issued for the implementation of a basic regulation cease to be in force when the basic regulation itself ceases to be in

force. In other words, an implementing regulation ceases to be in force when the regulation for the implementation of which it was adopted ceases to be in force.

Territorial application

An important aspect of regulations is their **territorial application**. A question which arises especially with reference to regulations that are adopted by state authorities and municipal bodies is the area (i.e. territory) in which they apply. Territorial application of regulations entails an area in which a certain regulation applies and takes effect.

Territorial application of legal norms and legal regulations in general depends on the territorial competence of the authorities that adopted these, and normally overlaps with the territorial competence of the respective authority. In every state, the constitution and laws determine in more detail who adopts and issues acts and in which area, i.e. territory. In unitary states, problems in this regard generally do not arise, but this is not the case for federal states. In unitary states, legal and other acts of the representative bodies of the state have the broadest territorial applicability. They apply in the entire territory of the state unless the representative body limited their applicability to a certain narrower territory or excluded their applicability from a certain territory or with regard to a certain group of persons.

Regarding the area of applicability of a certain regulation issued by a certain authority within the scope of its territorial competence, it can be concluded that, in general, it applies that a regulation can be issued for the area that falls within the competence of such authority. However, the applicability of a regulation can be narrowed considering the subject matter that is regulated therein, while broadening the applicability of a regulation is never allowed.

A gap in the law entails social relations that are not regulated in legal regulations, although their nature is such that they should be regulated.

A gap in the law

Gaps in the law are divided into two groups. The first comprises classic or statutory gaps in the law, and the second group comprises gaps in the law in the broader sense.

Statutory gaps in the law are when a certain potentially conflicting social relation that should be regulated by a statutory legal rule is not regulated by the law.

Gaps in the law in the broader sense are when there are entire fields of law that are not regulated. Such gaps arise as a result of very significant social changes (e.g. the foundation of the new state).

In individual legal relations, gaps in the law can be addressed by individual acts of the state (i.e. judicial and administrative decisions). When deciding an individual case where there is a gap in the law, a state body applies **analogy** or a process of arguing from the similarity of a regulation. First, the body decides based on the similarity of a regulation in the same law (i.e. analogy *intra legem*). If it still cannot decide, it decides based on the similarity of a regulation in other similar laws (i.e. a*nalogia legis*).[114]

Analogy

The interpretation of the law in a broader sense is a synonym for understanding the linguistic signs that comprise a legal rule or a legal principle.[1165]

The interpretation of the law

Law is composed of linguistic signs and words that compose legal rules and principles. Therefore, when interpreting legal rules and principles in order to prevent future conflicts or in order to resolve existing ones, the methods of legal interpretation

must be applied. There are several methods of interpretation that are used, based on the aims that the interpreters have.

Linguistic method

The primary method of interpretation is the **linguistic method**.[116] The subject of the linguistic method of interpretation is a legal rule which is composed of linguistic signs. The meaning that the interpreter is looking for is the rule itself, its constituent parts, and the linguistic meaning of these parts. This is the most basic method of interpretation, as in most instances linguistic signs and words have a general and clear meaning.

Other methods of interpretation

Other methods of interpretation include the following: systematic interpretation, which proceeds from the legal system; historical interpretation, which considers the developmental aspects of the legal rule; teleological interpretation, which entails looking for the objective of the legislature when adopting the rule, and interpretations by means of analogy, which were mentioned above in the section dealing with gaps in the law.

D) SOURCES OF LAW

Sources of law are mutually connected legal elements which are necessary for the existence of a legal phenomenon. Sources of law may be direct or indirect. The former are comprised of legal regulations and customs, while the latter are comprised of case law and legal science.

Sources of law

Direct sources of law may be formal or informal. Regulations are formal normative acts, whereas customs are informal normative acts. Collections of customs are termed usages.

In the following sections, regulations will first be discussed from the viewpoint of which authority issues them, followed by a discussion of customs.

Regulations are legal acts which are formal, general, abstract, and published.

Regulations

The principal sources of continental European law are regulations. The general nature of regulations entails that they apply to everyone – all are equal before the regulations, and regulations must apply equally to everyone. The abstract nature of regulations entails that they refer to undetermined yet envisaged social relations. Regulations must be adopted and published in a manner prescribed by law, which is described below in the section dealing with the principle of legality. Regulations can be placed hierarchically in a pyramid from highest to lowest.

Diagram 7: **THE HIERARCHY OF REGULATIONS**

The regulations furthermore have different mutual relations, and their correct application is ensured by three binding rules of interpretation:

1. ***LEX SPECIALIS DEROGAT LEGI GENERALI –***
   SPECIFIC LAW PREVAILS OVER GENERAL LAW.
2. ***LEX POSTERIOR DEROGAT LEGI PRIORI –***
   MORE RECENT LAW PREVAILS OVER EARLIER LAW.
3. ***LEX SUPERIOR DEROGAT LEGI INFERIORI –***
   SUPERIOR GENERAL LAW PREVAILS OVER INFERIOR SPECIFIC LAW.

The above-mentioned rules of interpretation connect and bind regulations into an integrated whole of positive law.

The principal regulation is a law, which is discussed in more detail in the section below dealing with the legal acts of the legislature.

In the legal system, a law is applied in such a manner that in cases in which the same legal relation is regulated by a general and specific law, the regulation of the specific law prevails (i.e. *lex specialis derogat legi generali*).[117]

In cases in which the same relation is regulated by an earlier and a more recent law, the more recent law prevails (i.e. *lex posterior derogat legi priori*). However, specific laws have priority over general laws, and thus a later general law thus does not prevail over the earlier specific law (i.e. *lex posterior generalis non derogat priori speciali*).[118]

The rule that a higher regulation is stronger than a lower regulation (i.e. *lex superior derogat legi inferiori*) entails the rule of the supremacy of a higher regulation over a lower regulation. However, when applying regulations in practice, this is less important, as the consistency of lower regulations with higher regulations is decided primarily by courts. If such court proceedings are not initiated, the parties involved must respect the legal regulations as they were adopted until the Constitutional Court abrogates or annuls them by a decision, or until the state authority which adopted them amends or repeals them.

In the following sections the types of regulations will be introduced from the viewpoint of which authority adopts and issues them.

The supremacy of EU law

The supremacy of EU law entails that the legal acts of the EU prevail over the legal acts of the Member States. Member States must take all appropriate measures to not jeopardise

compliance with EU law, and thus every violation of EU law by the authorities of any Member State also entails a violation by the state itself. [119]

Before joining the EU, candidate states have to align their national law with EU law, and then correctly apply it from the day they become members of the EU.

As a special type of supranational organisation, the EU does not have any bodies in the Member States in the form of ministries or branch offices which would implement decisions adopted by EU institutions,[120] therefore the state authorities of the Member States are charged with the implementation of EU policies and EU law.

Within the framework of EU law there is a distinction between primary and secondary sources of EU law.

Primary sources of EU law

The **primary sources of EU law** are the founding treaties with all subsequent amendments, annexes, and protocols; the treaties of accession of new EU Member States with annexes and protocols; and agreements with third countries.

Secondary sources of EU law

Secondary sources of EU law are the regulations, directives, decisions, recommendations, and opinions of the EU. The difference between these acts is whether they are binding or not, whether they are general or individual, whether they must be transposed into national law, etc.

Regulations and directives, as general binding acts, interfere to the greatest extent with the national laws of the Member States and with the position of individuals. There are important differences between a regulation and directive.

Unification of EU law - an EU regulation can be compared with a law – it is directly applicable in its entirety and does not need to be transposed into the national law of the Member States.

Unification of EU law

Harmonisation of EU law – an EU directive, as a general rule, cannot be applied directly, contrary to what applies for EU regulations. A directive can be addressed to all or only certain Member States, which then must transpose the content and objectives of the directive into their national law by means of binding regulations of the national legal order in light of the objectives which the directive pursues; however, the choice of form and methods for achieving this is left to the national authorities of the related Member States. A directive is thus binding as to the result to be achieved regarding each Member State to which it is addressed, but leaves to the national authorities the choice of form and methods. A directive requires action by the national legislative body, which must transpose it into national law, whereby the legislature must ensure that the national legislation is in conformity with the requirements of the directive, which entails that a national regulation which is not in conformity with the directive must be amended or that a new regulation be adopted in cases in which, for example, a directive regulates an area which is not yet regulated in the national legislation.

Harmonization of EU law

National state regulations are adopted by state authorities. The most important in this regard are the legal acts of the legislature, i.e., in the case of Slovenia, the National Assembly of the Republic of Slovenia.

National state regulations

The constitution is a fundamental general, normative legal act that is adopted by the legislature by a two-thirds majority vote. The legislature is in this case the constitution framer. The

constitution contains principles and rules of the highest legal importance. The principles contained in the constitution are the foundation of the activities of all citizens, state authorities, local communities, legal entities, and aliens in the territory of the state.

National laws

National laws (i.e. constitutional acts, statutes, etc.) are a fundamental direct source of law. Laws regulate fundamental social issues that are important for the legal order. Laws are subordinate to the constitution and superior to other law in the state.

Laws regulate the content of the constitution in more detail. The content of the constitution is as a general rule not directly applicable to the regulation of specific and individual legal relations, except in the field of human rights.

Laws have a double guarantee:[121]

1. **The guarantee of the applicability of a law entails that only the legislature has the constitutional authority to prescribe rights and obligations in the country (and to amend and abrogate them).**
2. **The guarantee of the existence of a law entails that the existing law cannot be abrogated other than by a new law which must be a regulation of the same or higher level.**

Laws are a fundamental source of law.

This also proceeds from the Constitution of the Republic of Slovenia, in accordance with which[122] the rights and duties of citizens and other persons may be determined by the National Assembly only by law. With reference to this, it must be emphasised that implementing regulations and other general legal

acts must be in conformity with the Constitution and laws. Furthermore, individual acts and actions of state authorities, local community authorities, and bearers of public authority must be based on a law or regulation adopted pursuant to law.[123]

Treaties ratified by the National Assembly are applied directly and are thus a source of law.[124]

In addition to the Constitution and laws, the National Assembly of the Republic of Slovenia also adopts the state budget, declarations and resolutions, national programmes, ordinances, recommendations to the Government and other state authorities, authentic interpretations of laws, the Rules of Procedure of the National Assembly, and decisions.

The National Assembly also adopts programmatic documents. These are: national programmes for the future development of individual policies; declarations stating general positions on domestic and foreign policy issues; resolutions evaluating the state of affairs and problems in society; recommendations, opinions and guidelines comprising proposals for the work of national authorities; and authentic interpretations of laws adopted by the legislature itself.

In the case of Slovenia, the most important implementing **legal acts are adopted by the Government** of the Republic of Slovenia.

Legal acts are adopted by the Government

Decrees are the most important general, implementing regulations issued by the Government. By decrees the Government regulates in detail and defines certain relations determined in a law or another act of the National Assembly in accordance with the purpose and criteria of the law or another regulation. The Government of the Republic of Slovenia Act determines that a

decree on the exercise of the rights and obligations of citizens and other persons may only be issued in accordance with an express authorisation in a law.

The Government defines certain relations determined in a law by decrees. Decrees are hierarchically lower than laws. The Government of the Republic of Slovenia does not have legislative authority on the basis of which it could directly affect the rights and obligations of individuals. Only a law can constitute, reconstitute, or abolish the rights and obligations of individuals.

The Government does not need special statutory authorisation to adopt independent decrees, thus it may adopt them independently. These are organisational decrees by which the Government regulates in more detail the internal structure of the administration and work processes in the administration.

The Government adopts interpretational or explanatory decrees on the basis of a general statutory authorisation, i.e. a general clause. The Government adopts interpretational or explanatory decrees in instances in which it assesses that more detailed operationalisation of the provisions of a certain law is needed for the implementation of this.

Supplementary decrees are not independent. The Government must adopt these on the basis of a special statutory authorisation or an executive clause. Decrees supplement a law in a manner such that they define certain statutory rules whereby they may not interfere with the statutory subject matter, which is a domain reserved for the legislature.

By ordinances the Government regulates individual issues or adopts individual measures of general relevance. Furthermore, it adopts other decisions for which it is determined by

a law or decree that they be regulated by a government ordinance.

Through the budget memorandum the Government presents to the National Assembly the fundamental objectives and tasks of the economic, social, and budgetary policy of the Government and the global frameworks of overall public finances for the following year.

By a strategy for regional development in Slovenia, the Government determines objectives, policies, and tasks with regard to regional development in Slovenia. The Government regulates its internal organisation and work by its Rules of Procedure. It issues decisions on appointments and dismissals in administrative matters within its competence, and on other specific matters within its competence. Finally, the Government issues an order whenever it does not decide by any other act.

In Slovenia, Ministers issue rules, ordinances, and instructions for the implementation of laws, other regulations, and acts of the National Assembly and regulations and acts of the Government.[125]

Legal acts issued by a Minister

Rules are the most important **legal acts issued by a Minister**. Rules define individual provisions of a law, some other regulation, or an act on its implementation.

Measures of general relevance are determined by an ordinance. The content of an ordinance regulates an individual situation of general relevance.

An instruction prescribes the manner of implementing individual provisions of a law, other regulation, or act. An instruction thus mainly regulates issues of a technical nature.

Ministers and heads of departments within Ministries issue orders and decisions when deciding on administrative matters.

Local matters which municipalities may regulate independently, and which concern only the residents of a certain municipality fall within the competence of the given municipality. **Legal acts that are adopted by municipalities** are primarily statutes, rules of procedure, and decrees. These types of acts are the most common ones. Furthermore, municipalities adopt budgets; they may also adopt ordinances, rules, and instructions.

Legal acts that are adopted by municipalities

A municipality, more precisely a municipal council, adopts statutes. The statutes of a municipality determine the basic principles of the organisation and operation of the municipality; the establishment and competence of municipal bodies; the manner of participation of members of the municipality in adopting decisions by the municipality; and other issues of common interest in the municipality as determined by law.[126] A municipality regulates matters from its competence by municipal decrees. A municipality regulates matters from its vested competence by decrees and other regulations determined by law. Rules of procedure regulate the organisation and work of municipal councils, as well as the procedure for adopting decrees and other general acts.

In addition to general legal acts, customary law and case law (i.e. *usus fori*) are supplementary and additional sources of law.

In general, it can be noted that in the Republic of Slovenia customary law is relatively insignificant. It is a supplementary source, and can be applied only in the event of a gap in the law.

Objective and subjective reasons must naturally be taken into consideration in cases in which case law is applied in practice. From an objective point of view, this is a means which ensures the uniform application of the law.

Attention must furthermore be drawn to a special type of source of law, i.e. the decisions of the Constitutional Court of the Republic of Slovenia, especially in cases in which the Court acts as a "negative" legislature and abrogates unconstitutional statutory and implementing norms.[127]

Any person who suffers harmful consequences due to a regulation or general act which has been annulled by an individual act issued on the basis of such is entitled[128] to request that the authority which decided in the first instance change or annul such individual act. If such consequences cannot be remedied, the entitled person may claim compensation in a court of law.

With reference to Constitutional Court decisions, attention must also be drawn to its interpretative decisions, i.e. decisions in which the Court does not decide that the provisions of the challenged act are inconsistent with the Constitution or a law, but determines in the operative provisions of the decision in which manner they must be interpreted in order to ensure that their application in individual cases is consistent with the Constitution.

Finally, as was stated above for the decisions of Slovenian courts, as well the judgments of the European Court of Human Rights in Strasbourg and the Court of Justice of the European Union in Luxembourg (i.e. the Court of Justice and the General Court – in the case of the latter, judgments issued in preliminary ruling proceedings, which are a source of law in the indi-

vidual cases in which they were issued, are in this regard the most relevant) must be taken into consideration as a source of law within the framework of administrative proceedings and decisions.

E) LEGAL RIGHTS

A legal right is a legally protected, individual, and specific entitlement of subjects under law.

A legal right

In law the word **subject** is used as a synonym for the word entity. A subject or an entity is entitled to a right. There are two groups of subjects or entities under law: natural persons and legal entities, which are discussed in more detail below in the section "Entities under Law".

Subject

A legal right is a legally protected entitlement (i.e. *facultas agendi*). On the basis of a certain right, a subject has a legal entitlement to act in a certain manner.

In cases of legal rights, with its coercive apparatus the state protects the private interests of the legal subject which are in actual or potential conflict with the interests of other subjects.[129]

The interests of a subject may also be in conflict with the interests of the state; however, a state governed by the rule of law must protect the subject's interests to the subject's benefit, not the state's. Therefore, only the law, as a special and unique normative system, in fact limits the state against its arbitrary or discretionary use of state – monopolised – power.

Furthermore, a legal right of a subject under law always entails the **obligation** of other subjects to act in a certain manner or to refrain from certain conduct to the benefit of the subject who has the legal right.

Obligation

The term legal right has a double and ambiguous meaning. In its substance, every right is comprised of a legally protected interest of one legal subject and a legally determined duty of another legal subject. Overall, from the viewpoint of both, a right is in fact a **claim-right**, as upon its legal implementation an exchange of legally protected interests between both subjects occurs.

Claim-right

Diagram 8: **CONSTITUENT PARTS OF A LEGAL RIGHT**

The ambiguity of a word or phrase means that it has more than one meaning in the given language. A legal right is comprised of two entitlements: a basic entitlement and a claim.

Basic entitlement

a) A **basic entitlement** allows subjects to exercise their own interests if they are in accordance with the legal purpose of the entitlement.

Legal claim

b) A **legal claim** contains the possibility that the state will, in the interests of the subject, impose a coercive sanction if a subject who has an obligation arising from the right does not act in accordance with their obligation.

A right thus contains an entitlement of one subject on the one hand, and a duty or obligation of another subject on the

other. Therefore, broadly speaking (e.g. in accordance with the will theory and interest theory), a right is a claim right of the subject.[130]

A fundamental division of rights (and obligations) can be made into absolute and relative rights.

a) **A right is absolute** if it applies to everyone (i.e. *erga omnes* – e.g. property rights, human rights). **Absolute right**

b) **A right is relative** if it applies only between legally bound subjects (i.e. *inter partes* – e.g. obligation rights). **Relative right**

A right comprises several entitlements, and it must comprise at least two entitlements. The first is a basic entitlement which enables a subject to exercise their legally protected interest (e.g. the repayment of a loan), and the second is a legitimate interest in the proceedings, i.e. a legal claim (e.g. a civil action, overdue payment notice, offset) which may be activated in cases in which the basic entitlement has been violated.[131]

As regards the types of subjects under law, rights may be divided into **personal, property, and administrative rights**. **Personal, property, and administrative rights**

Only persons have personal rights, whereas together with legal entities they also have the majority of property and administrative rights which have no personal character.

Example 1:

Constitution of the Republic of Slovenia (1991): Article 17 (Inviolability of Human Life); Article 18 (Prohibition of Torture); Article 21 (Protection of Human Personality and Dignity in Legal Proceedings); Article 27 (Presumption of Innocence); Article 28 (Principle of Legality in Criminal Law); Article 29 (Legal Guarantees in Criminal Proceedings); and Article 41 (Freedom of Conscience).

Example 2:

The rights of citizens to participate either directly or through elected representatives in the management of public affairs in accordance with the law; the right to file petitions and to pursue other initiatives of general significance; the prohibition of the extradition or surrender of Slovenian citizens; and the right of asylum for foreign nationals and stateless persons.

Administrative rights

Subjects under law also have **administrative rights** (and obligations). Administrative rights can be bound to a person or thing, and they can be personal or non-personal, i.e. legal entities can also acquire them.

The right to operate a vehicle is a personal right of a driver and is obtained by acquiring a driving license. On the other hand, the right to participate in traffic is an administrative right which is granted with regard to a thing, i.e. a vehicle, on the basis of the vehicle registration certificate and regardless of the fact of whether the owner of the vehicle is a natural person or legal entity. Similarly, citizenship can only be granted to natural persons, whereas planning permission can be granted to both natural persons and legal entities.

Subjects acquire administrative rights based on administrative decisions. These are individual, specific administrative acts, and are discussed in the second part of this book in the section dealing with the definition of a legal relation.

F) ENTITIES (SUBJECTS) UNDER THE LAW

There are two groups of entities or subjects under law, i.e. natural persons and legal entities.

a) **Natural persons** are humans, i.e. individuals. ▸[**Natural persons**

b) **Legal entities** are artificial legal subjects established by a legal act. ▸[**Legal entities**

A natural person under the law is a living human being.

Legal entities are artificial social structures that are given the status of a legal subject by law. The word subject[132] derives from the Latin word *subiectus,* which in the legal sense means owing obedience to a legal order. As a general rule, not only natural persons but also legal entities have legal rights and obligations. However, only natural persons have personal rights. Legal entities are thus subjects which can have, the same as natural persons, rights and obligations or duties that are recognised by the legal order. A legal entity is an artificial social structure whose status as a legal subject is based on legal fiction, and is an institution under law.

For the definition of a legal entity, it is essential that it is a holder of rights and has obligations in legal relations. This is recognised by the legal order, i.e. a law. A legal entity is thus an organisation of individuals or assets or both, having legal capacity and being an independent subject in legal relations. A

legal entity does not begin with a natural birth, as a natural person does, but with its articles of association, i.e. by a legal act.

A condition for the legal existence of a natural person is birth, as a natural person becomes a subject under law when he or she is born. One condition for this is that the child is born alive.

Example:

Pursuant to French law, a person must be alive[134] (French: vivant) and viable (French: viable).[135] A dead newborn is not a legal subject. A dead person cannot be a holder of rights and cannot have obligations. The ability to live entails that when born a person must have all organs which enable independent life. If a competent state authority in France establishes that a newborn child is not capable of independent life, it issues an act by which it declares such child to be "a child without life", i.e. un acte d'enfant sans vie (Loi n° 93-22 du 8 janvier 1993).

In order to define natural persons from the legal perspective, fundamental defining elements of their status as legal subject must be identified. These are the following: legal status (i.e. a position), name, residence, and nationality.".

The ancient Romans distinguished three groups of personal legal statuses: (1) family position (i.e. *status familiae*) – head of a family (i.e. *pater familias*) and other members of the family; (2) civil position (i.e. *status civitatis*) – Roman citizen or foreigner; and (3) social and legal position (i.e. *status libertatis*) – free person or slave. By law, the head of a family (i.e. *pater familias*) had the strongest legal position and the authority in the family (i.e. *patria potestas*), was a Roman citizen (i.e. *civis Romanus*), and a free person. It is essential that a person has legal and contractual capacity in order to enter into legal transactions.

The legal capacity of a person under law entails that they are capable of being holders of rights and having obligations. This is passive capacity.

The legal capacity

In addition to legal capacity, a natural person must also have contractual capacity in order to enter into legal transactions. This is active capacity.

The contractual (business) capacity of a person under law is the capacity to perform legally binding actions. It also includes criminal capacity. This is active capacity.

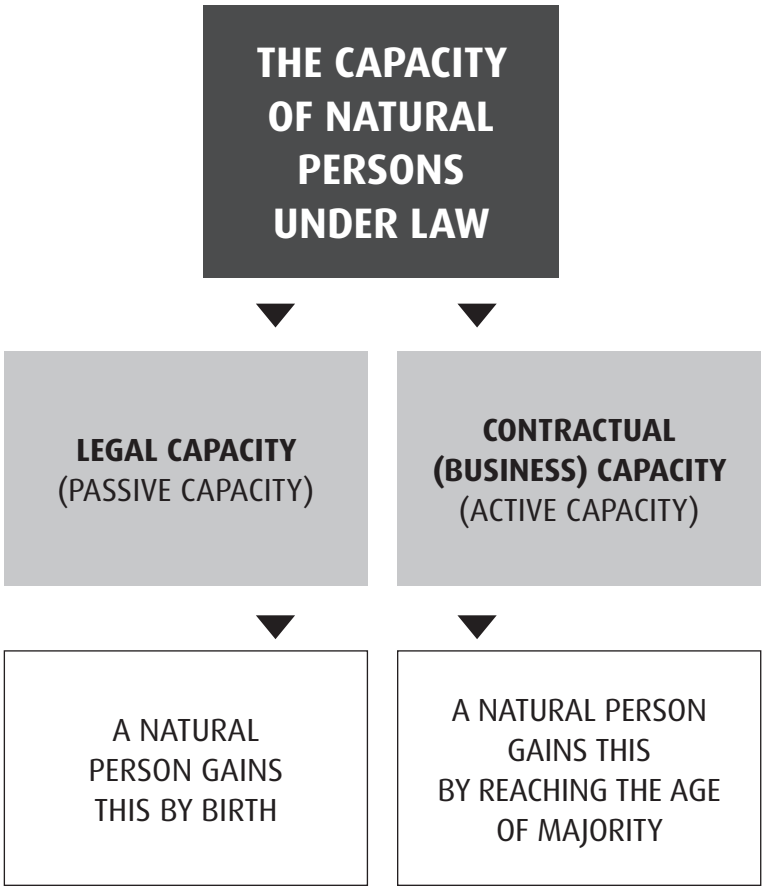
The contractual capacity

In Slovenia a person gains contractual capacity upon reaching the age of majority. This is when the parental right, on the basis of which parents are legal representatives of a child until the child reaches the age of majority, ceases. When a child reaches 18 years of age or if they marry between 15 and 18 years of age, they gain contractual capacity. A minor does not lose contractual capacity if the marriage ends before they reach the age of majority nor is the parental right re-established.

Furthermore, a minor who becomes a parent can gain contractual capacity if important reasons exist for this, and this rule should enable minor parents to legally represent themselves and their child. The procedure for gaining contractual capacity is regulated by the rules on non-litigious proceedings.

In order to gain contractual capacity before the age of majority, a person must be physically and emotionally mature and capable of living independently. This is established either by a competent social services centre when deciding whether to permit a minor to marry, or by a court when deciding whether a minor can gain contractual capacity.

Diagram 9: **THE CAPACITY OF NATURAL PERSONS**



The principle of the general and equal legal capacity of natural persons already proceeds from the Declaration of the Rights of Man and of the Citizen of 1789, which stresses that "men are born and remain free and equal in rights", and from the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in 1948, which determines that "everyone has the right to recognition everywhere as a person before the law".

The concepts of legal capacity and legal personality overlap. Legal capacity is abstract and, as a general rule, general. Legal capacity is a characteristic of a person. It is not a specific right but a personal characteristic that is the foundation of all rights and obligations. The abstract nature of legal capacity entails that a person is capable of accepting certain rights and obligations in legal relations if the conditions that are specifically prescribed for this are fulfilled. Furthermore, the general nature of legal capacity entails that it refers to all rights and legal relations and that there are no reservations for the acquisition of any of the specific rights and legal positions if the conditions for this are fulfilled. However, in addition to general legal capacity, the law also recognises specific legal capacities which apply only to certain persons.[136]

Contractual capacity is divided into the capacity to act and criminal capacity.

The capacity to act is the capacity to enter into a contract, and this entails the capacity to decide on facts that have legal consequences.

Criminal capacity is the capacity to be culpable for actions that a legal order prohibits. In Slovenia, this capacity is partly gained at 14 years of age. Full criminal capacity is gained at 18 years of age, i.e. upon reaching the age of majority.

Legal capacity is not an inborn human characteristic, but rather a certain social characteristic which proceeds from the necessity to protect the individual's ability to have civil rights and obligations and the possibility to acquire new rights and obligations. This characteristic is given to a person by a legal order. Legal capacity arises and terminates by virtue of law. A law also determines its substance and scope. Legal capacity may not be transferred, it cannot be established or terminated

by an agreement, and it cannot be denied. Legal transactions by which legal capacity is limited are void. Only a law can expand or reduce the scope of legal capacity.

A legal entity

A legal entity is an artificial legal structure which comprises assets intended for a certain purpose or a group of individuals, and a legal order recognises legal entities in the position of subjects under law.[137] In addition to natural persons, legal entities are also subjects of legal relations. A legal entity is a social structure whose legal capacity has been recognised by the legal order. In order for a certain group of people or organisation to acquire the status of legal entity the following fundamental conditions must be fulfilled. The group or organisation must:[138]

1. **HAVE A CERTAIN PURPOSE;**
2. **HAVE A MEANS TO ACHIEVE THIS PURPOSE;**
3. **BE INTENDED TO ACHIEVE THIS PURPOSE FOR THE SUBJECTS JOINED IN SUCH MANNER; AND**
4. **HAVE SATISFIED THE APPLICABLE LEGAL REGULATIONS REGARDING SUBJECTS BEING ORGANISED IN A SPECIFIC LEGALLY RECOGNISED FORM OF LEGAL ENTITY.**

Legal regulations thus must allow for the possibility that a certain group of people may become a subject of rights and obligations, i.e. a legal entity.

In the field of private law, laws determine the *numerus clausus* – the principle of a limited number – of legally recognised

forms of legal entities. Only legal entities determined by a law regulating the forms of legal entities may be established.

This principle does not apply in the field of public law, as legal entities that were not determined beforehand in regulations regulating the permissible forms of legal entities may be established by specific laws.

Legal entity status entails that:

1. **THE ENTITY CAN OWN MOVABLE PROPERTY AND REAL ESTATE;**
2. **THE ENTITY CAN ACQUIRE RIGHTS AND ASSUME OBLIGATIONS;**
3. **THE ENTITY CAN TAKE LEGAL ACTION;**
4. **LEGAL ACTION CAN BE TAKEN AGAINST THE ENTITY; AND**
5. **THE ENTITY IS RESPONSIBLE FOR ITS OBLIGATIONS WITH ALL ITS ASSETS.**

A legal entity has a certain form of legal personality. The legal order recognises a legal entity as having the status of a subject under the law and its legal capacity due to its particular characteristics. The legislation prescribes the conditions for the establishment and existence of legal entities, such as the purpose of the establishment of the legal entity and its bodies, organisation, and assets. The legal order determines the moment when a legal entity is established, which is usually upon registration in an appropriate register.

In order to define a legal entity from the legal point of view, basic defining elements of its status as a legal subject must be identified. These are the following: the form of legal personality, name (i.e. that of a firm), the head office, and assets.

Legal entities must also have the legal capacity and contractual capacity. Different from natural persons, legal entities, as a general rule, gain both capacities when a decision on their registration in a court register becomes final. As artificial structures, legal entities are holders of rights and have obligations, whereas in legal transactions an authorised legal representative (e.g. a company manager) or a collective body (e.g. a management board) expresses a given entity's contractual capacity. A legal representative can be the entity's director, management board, president, principal, chancellor, etc. Various names of legal representatives are determined by various laws.

Legal entities are further divided into corporations and institutions. A division of legal entities into corporations and foundations can be found in the majority of legal systems. A fundamental legal principle is the principle of there being a limited number of legally recognised forms of legal entities, i.e. the *numerus clausus* principle, which was defined above in the section on the elements that must be fulfilled in order for a legal entity under private law to be established.

A corporation (i.e. *universitas personarum*) is a membership organisation, whereas the essential element of a foundation (i.e. *universitas bonorum*) is that it has assets (i.e. *universitas rerum*), which the founders of the foundation intended for a special purpose. As such, a foundation does not have members, but only assets intended for a certain purpose.

A defining element of a corporation is that it unites several entities in a manner such that a new entity is established, which is different from those entities that compose it. The corporation remains an entity, regardless of the fact that its founders, i.e. the entities that were united in the corporation, change. Entities that establish a corporation are members that form and express the will of the corporation, which is an entity with its own legal capacity. A corporation can have certain assets, although this is not necessary, depending on the type of corporation. Members do not have real property rights with regard to assets, but only membership rights with regard to the legal entity. The bodies of the corporation (e.g. the management board and representatives) act in its name in legal transactions. Members influence the management and business operations of the corporation by electing members of the bodies and giving them instructions as regards the relevant circumstances. Both natural persons and legal entities can be members of a corporation. Moreover, associations, business companies, and cooperatives can also be considered corporations. Some corporations can furthermore be considered to be public corporations, such as the state, municipalities, and various associations of persons. On the other hand, foundations are considered to be various forms of assets that are allocated, as a general rule, to non-profit fields.

A foundation is a legal entity whose basis is assets. The foundation's assets are managed by the management for a certain purpose and not by the foundation's founders, in accordance with the principle of membership. Foundations do not have members or partners, but only management and possibly other bodies determined by law. The will of its founders is essential for the establishment of a foundation. Foundations can be divided into capital and executing foundations. The latter execute

activities that are directed towards the purpose for which the foundation was established. Such activities are either profit-oriented activities, whereby a surplus of income over expenditure is directed towards the purpose for which the foundation was established, or, more often, non-profit activities.

One fundamental division of legal entities is the division into legal entities under private law and legal entities under public law. The basic purpose of this division is that the legal order distinguishes between the fact that the activities of entities under private law are directed primarily towards the personal benefit of their founders, whereas the activities of entities under public law are mostly conducted most in the public interest. The concept of an entity under public law is one of the central concepts of administrative law, and thus the difference between legal entities under private law and legal entities under public law is important, as their legal position and regulation depend on this distinction.

CHAPTER THREE

ADMINISTRATIVE AND CIVIL SERVICE LAW

A) ADMINISTRATIVE LAW

Administrative law represents a "subsystem" of legal norms and a freestanding area of law which falls under the framework of public law. It consists primarily of the legal norms which regulate the foundations of the organisation of the state, the position, organisation and functioning of the state and other organisations and communities of public law and the relations between power holders and individuals. It is an area of law whose fundamental characteristics are that it regulates the realisation of state power and its orientation towards regulating and protecting public interests. As a special legal discipline, administrative law has its origins in the realisation that in a given legal system there exists an integrated group of legal norms which differ from others, and that these may be considered norms of a special area of law – administrative law. Regardless of this fact, there exist multiple approaches to and perceptions of the content and dimensions of administrative law, primarily in respect of the individual fields of legal regulation and norms that different authors consider to be norms of administrative law.[140]

Administrative law is **public sector law**. A comprehensive definition states that administrative law is the general and special substantive (or material) and formal (or procedural) rules written into the general or individual acts of a primarily compulsory (or cogent) nature through which power holders (the state, a municipality and holders of public powers) render decisions on the rights and obligations of liable persons (clients). The use of administrative law to regulate relations between bodies and clients arises when

▶[**Public sector law**

a conflict occurs between the interests of clients and the public interest. Administrative law primarily protects the latter.

Administrative law is an independent area of law. It consists mostly of legal rules (norms) and principles which regulate the position of state administration, local communities, holders of public powers and providers of public services and procedural relations between holders of the executive branch of power and clients. Clients are physical and legal persons with private interests who in the framework of the system of administrative law must behave in such a way as to not harm the public interest.

From the standpoint of its particular legal material, the system of administrative law consists of two parts: the general and special part of administrative law. Under the general part fall treatments of issues that are fundamental to the entire field of administrative law. This part also covers basic principles of organisation, functioning and the performance of tasks, and oversight over the work of state and public administration, as well as regulations, institutions, principles and terms common to all or multiple fields of public administration.

The points where administrative and employment law overlap are primarily located in the field of employment relationships of employees (and also holders of public office, for whom specific arrangements are also in place) in bodies and organisations in the field of public administration, where certain special provisions are valid in the framework of regulations on civil servants. Here the general principles and norms of employment law are valid. However, due to certain specific features of these fields (for example, the military, police, customs) there exist special norms in the framework of administrative law.

Administrative law relations concern relations between unequal legal subjects. Furthermore, such relations are decided in administrative proceedings that terminate with the issuance of an administrative decision.

A decision issued in administrative proceedings is a specific administrative act by which a competent authority decides a certain right, obligation, or legal entitlement of an individual, a legal entity, or another subject that can be a party to administrative proceedings. By an administrative decision, an existing general substantive regulation is thus applied in a specific, individual case.

A decision is always issued by a state authority, an organisation, or an individual who has special public authorisation to issue one. One of the subjects in the decision is thus always known in advance.

An administrative matter entails every individual case of deciding on a right, obligation, or legal entitlement of a natural person, legal entity, or another party from a particular field of administrative law.

Administrative matters include, for instance, the issuance of a building permit or passport, and a decision on the assessment of personal income tax or customs duty.

The constituent parts of an administrative decision will be discussed below.

Diagram 10: **CONSTITUENT PARTS OF AN ADMINISTRATIVE DECISION**

NAME OF THE BODY **ADDRESS OF THE BODY** Number of the Decision Date and Place of the Decision
INTRODUCTION
NAME (DECISION)
OPERATIVE PROVISIONS
REASONING
INSTRUCTION ON LEGAL REMEDIES
Signitutre of the official (who conducted the proceedings) Seal Signitutre of the official (who made the decision)

The name of the body and its full address as well as the number and date are stated at the top of a decision.[141,142]

The introduction of the decision contains the name of the body issuing the decision, the regulation which determines that this body is competent to make the decision, the way proceedings were initiated, the name of the party and his or her legal representative or authorised representative, and a short indication of the case which has been decided on in the proceedings.

The operative provisions of the decision must be short and clear; they can be divided into items if there is a need for such. Operative provisions contain a decision on the subject matter

of the proceedings and on all claims of the parties. Operative provisions may, in accordance with the law, determine conditions or orders which refer to the decision of the body on the subject matter of the proceedings. If a certain action is required by the decision, a time limit in which this must be performed is also determined in the operative provisions. In cases in which it is prescribed that an appeal does not suspend the execution of the decision, this must be stated in the operative provisions. Furthermore, the operative provisions also determine whether there are any costs of the proceedings that the parties are liable for.

The reasoning of the decision comprises the following: the reasoning of the parties' claims and their allegations regarding the facts; the established state of the facts and evidence which support this; the reasons decisive for the review of individual items of evidence; the provisions of the regulations on which the decision is based; the reasons which, regarding the established state of the facts, require this decision; and the reasons due to which certain claims of the parties were not granted. If an appeal does not suspend the execution of the decision, the reasoning must also contain a reference to the regulation that determines this.

The instruction regarding legal remedies follows the reasoning. The instruction on legal remedies informs the parties whether they may file an appeal against the decision or whether they may initiate proceedings for the judicial review of an administrative act or some other proceedings before a court.

A decision is signed by the official who issued it. The decision is furthermore signed by the official who conducted the proceedings or who drafted the decision.

Finally, a decision is authenticated by the seal of the body that issued the decision. This confirms that a decision issued by a certain body is authentic.

B) CIVIL SERVICE LAW

Civil service law is the area of public sector law which regulates the legal position of civil servants.

With the formation of the Slovene state in 1991, one of the priority tasks was **public administration reform**. This framework also implied the reform of civil service law and, concomitantly, of the civil servant system. The most recent substantial changes to the civil servant system date to the period from 2000 to 2003, when the Republic of Slovenia had to implement certain rules and standards, in part due to the process of accession to the European Union. These are the rules and standards valid in the so-called European Administrative Space. Although the agreement on European Union membership did not include generally binding provisions[143] which must be respected by EU member states in their legal regimes regarding the civil servant system, in order to provide comparable normative structures and assess efficiency, certain standards have been created. In arranging its civil servant system Slovenia was one of the countries that implemented these standards.

Public administration reform

These standards were presented to candidate countries for accession to the European Union by the organisation SIGMA.[144] At a conference held in Vienna in 1998, the content of these standards was specified. On the basis of these standards, the national legislation is to pursue the following **objectives**:

Objectives

- the establishment of professional, politically neutral public administration;

- The better delivery of public administration to service users through faster administrative responses to the demands of the environment;
- Ensuring an environment that enables the development of professional conduct and accountability for work results and that encourages staffing of the highest possible quality and is open for the inclusion of this staff;
- Establishing an organisation of work which would enable the rational execution of work processes and management of human resources;
- Establishing an effective system of internal and external oversight over the functioning of the system.[145]

The modern concept of a civil servant system

The modern concept of a civil servant system is based on professional, politically neutral and rapid responses to the demands of the economy and citizens, and in this sense represents first and foremost a service for providing support to the functioning of the economy and for realising the public interest.

Pursuant to the above, in 2002 a law regulating the civil servants system entered into force – the Civil Servants Act of the Republic of Slovenia (also referred to by its Slovenian acronym, ZJU).[146] The Civil Servants Act is divided into two parts. The first part (up to and including Article 21) defines the fundamental concepts and the joint provisions and principles of the civil servant system. These are valid for the entire public sector, as defined in Article 1 of the Act. In the second part, the Act gives a more precise definition of the rules of the civil servant system and of employment relationships for state bodies and local community administrations. This means that the Civil Servants

Act leaves the regulation of employment relationships in the so-called broader public sector to labour law legislation and to the field-specific regulations or collective agreements that regulate individual activities in the public sector. Here is should be pointed out that the Civil Servants Act is also used subsidiarily with regard to specific regulations that regulate the individual aspects of the civil servant system within state bodies and local community administrations. In this sense, the Civil Servants Act is a general law that regulates civil servant relationships and that may not encroach on field-specific regulations, which, in view of the specific nature of the activities in question, regulate concrete areas of operation within a concrete activity.[147]

Key goals

The **key goals** of the new arrangement of the civil servant system were:

- To define the term "civil servant" and to establish uniform elements of the civil servant system for the entire public sector;
- Comprehensively regulate the system of civil servants' in state bodies and local community administrations;
- To respect to the greatest possible extent the regulations or normative environment which regulate the rights and obligations of employees in the economy, yet in doing so to respect specific features arising from the execution of the public interest;
- To decentralise and simplify decision-making processes regarding personnel matters, and at the same time to centralise and strengthen oversight and establish accountability and sanctions for violations;

- To introduce elements of a career system that would motivate personnel of the highest quality to enter the civil servants system and prevent a drain of top personnel;
- To ensure the conditions for the formation of high-quality administrative experts and administrative managers (with a training system, selection process, promotion, incentive system);
- Clearly to delineate, through the establishment of key administrative positions, professional/expert management in administration from political positions/offices;
- To ensure professional public administration independent of political changes, and in doing so to still permit, to a limited extent, the employment of civil servants whose employment relationships are tied to the personal trust of a holder of public office (for example employment in the cabinet of a Minister for the duration of the latter's term of office);
- To provide mechanisms for the rationalisation of operations in administration;
- To provide uniformity to the system of employment planning in administration and with it the economic use of public funds;
- To enable greater flexibility in the flow of the workforce, and thus the transfer of employees between individual bodies;
- To involve trade union representatives in processes for preparing regulations and other acts that affect the rights and obligations arising from the employment relationships of civil servants.

Below, special emphasis will be placed on defining key terms used in describing the civil servant system and on the principles of the system which provide for the achievement of the objectives of the new civil servant system.

The central term of the public sector is civil servant. The Civil Servants Act defines **civil servants** as natural persons employed in the **public sector**. In accordance with the Civil Servants Act, the public sector is comprised of:

Civil servants

Public sector

- **State bodies and the administrations of self-governing local communities;**
- **Public agencies, public funds, public institutes and public utility institutes and**
- **Other entities of public law, insomuch as they are users of the budget of the state or the budget of the local community.**

Public companies and commercial enterprises where the state or local community has a controlling interest or prevailing influence are not part of the public sector under the Civil Servants Act. This means that civil servants in Slovenia are various consultants and other officials at Ministries and administrative units, police officers, judicial police officers, customs officers, soldiers, tax collectors, teachers, doctors, nurses, and social workers working in centres for social work and other social care institutions, individuals employed in institutions for culture/the arts, and so on.[148] On the other hand, persons employed by commercial organisations that provide waste management, rail, postal, energy and electrical services are not civil servants, even though these organisations are public companies or commercial organisations in which the state or local community has a prevailing influence.

Holders of public office are also not civil servants, as they are not persons who enter into classic employment relationships in the public sector (see first chapter).

Civil servants in state bodies and local community administrations may be divided into two categories:

Officials; and

Professional-technical civil servants.[149]

The former perform tasks linked to the realisation of the public interest and the execution of power, so-called public tasks, while other civil servants ensure the uninterrupted performance of official tasks, i.e. perform so-called ancillary tasks.

An employer is a legal entity with whom a civil servant has entered into an employment relationship. The employer in a state body is therefore the Republic of Slovenia, and in a local community administration it is the self-governing local community (a municipality, for example). Such a definition of "employer" has an important impact on the rational use of human resources in administration. If, for example, a need arises to reduce the scope or even cease the performance of certain tasks in a given state body, an annex may be added to a civil servant's employment contract regarding the performance of tasks in another body without having to draft a new employment contract, as the employer is the same in both cases. Here a special feature otherwise deemed unacceptable from the standpoint of the general rules governing employment relationships pursuant to the Employment Relationship Act of the Republic of Slovenia (also referred to by its Slovenian acronym, ZDR) [150] should be noted. Specifically, in the case of employment relationships of civil servants in state bodies and local community administra-

tions, the employer may, in accordance with the law, unilaterally alter the employment contract if certain issues of the employment relationship are involved. This means that the concurrence of the wills of the two contractual parties (that is, the employer and the civil servant as an employee) is not required.[151] The Civil Servants Act even states that the contract itself must contain provisions allowing the employer to unilaterally change or alter, in accordance with the law, individual contents of the contract, whereby the purpose of this is primarily to enable the employer to make efficient use of human resources and respond rapidly to demands from the environment with regard to the specific nature of the performance of tasks linked to executing power and realising the public interest.

State body

For the needs of civil service law, a **state body** means 1) a state administration body and 2) other state bodies. According to the Civil Servants' Act, state administration bodies are: Ministries, bodies within Ministries, government offices and administrative units.[152]

Ministries

Ministries are state administration bodies founded by law on the departmental principle. A Ministry is headed by a Minister; in the absence of the latter, it is headed by a State Secretary.[153] The broadly delineated areas of work of the Ministries are organised into directorates led by Directors-General. Fields of activity, in the framework of which direct support is provided for the execution of administrative tasks, are generally organised in secretariats led by Secretaries-General. The Minister and the State Secretary are political holders of public office; Directors-General and Secretaries-General in Ministries (so-called administrative managers) are civil servants. The distinction between holders of public office and civil servants also represents the boundary separating politics in the sense of the execution

of government policy and professional work within the Ministry, which provides a foundation for the stability of the execution of administrative roles by the administration.

Bodies within Ministries

Bodies within Ministries are relatively independent units of Ministries. They have the status of state bodies, their own representative, who is a civil servant, and their own personnel and financial plans. Regardless of this, the Minister proposes the personnel and financial plans. He or she also provides orientation and instructions for the work of the body within a Ministry and conducts oversight. These bodies are founded through an act of government for the performance of specialised professional tasks, executive and developmental administrative tasks, inspection-related and other supervisory tasks and tasks in the field of public services. A body within a Ministry may be founded to execute these tasks to a greater extent if: 1) this would facilitate greater efficiency and quality in the performance of tasks, or 2) due to the nature of the tasks or area of work it is necessary to provide a greater degree of independence in the performance of tasks.[154]

Goverment offices

Government offices provide political coordination, organisational, and professional support to the government and execute tasks in a number of fields, from arranging matters of protocol and communicating with the public to macroeconomic analyses and development, state statistics, issues regarding the harmonisation of acts of government with legislation, intelligence-security matters, and the like. They are headed either by political holders of public office (for example a Minister without a portfolio, a State Secretary) or civil servants (managers).

Administrative units

Administrative units are founded because the nature of certain administrative tasks dictates that these tasks be carried

out on a territorial basis. They are therefore territorially organised state administration bodies that represent the dispersion of administrative services for users. The regions of administrative units are determined with an act of government and are defined in such as way as to ensure the rational, efficient performance of administrative tasks. The region of an administrative unit generally encompasses one or more self-governing local communities. Each administrative unit is headed by the Head of the Administrative Unit, who is a civil servant. The Head issues decisions in the administrative process on the first level, coordinates the work of the internal organisational units, ensures the performance of professional and other tasks shared by all the internal organisational units, performs other organisational tasks pertaining to the operations of the administrative unit, decides on the rights and obligations and employment relationships of employees at the administrative unit and on other personnel issues, and oversees cooperation with the local communities covered by the administrative unit. An administrative unit conducts matters from its area of work under the expert leadership and supervision of the Ministries under whose areas of work individual matters fall.

Other state bodies

According to the Civil Servants Act, **other state bodies** are the National Assembly of the Republic of Slovenia, the National Council of the Republic of Slovenia, the Constitutional Court of the Republic of Slovenia, the Court of Accounts of the Republic of Slovenia, the Human Rights Ombudsman of the Republic of Slovenia, judicial bodies, the Commission for the Prevention of Corruption of the Republic of Slovenia, the National Audit Commission of the Republic of Slovenia, the Information Commissioner of the Republic of Slovenia and other state bodies that are not state administration bodies. These are freestanding bodies independent for the most part of the government, and

their representatives are appointed by the National Assembly in its capacity as a body of the legislative branch of power.

The principal of a body

The principal of a body is the person who manages the work of a state body or local community administration.[156] The principal represents the body, is accountable for the professional and legally sound work of the body and renders decisions in administrative matters pertaining to the rights and obligations of civil servants. A principal may have the status of a holder of public office (a Minister, for example) or the status of a civil servant (the Director-General of a body within a Ministry, for example).

A work post

A work post is the smallest organisational unit of a state body, local community administration or another legal person of public law. In state bodies and local community administrations, work posts are divided into official posts and professional-technical posts. Work posts in which so-called public tasks are performed are official work posts; work posts in which ancillary tasks are performed are professional-technical work posts. Public tasks are tasks which fall under the field of activity of a state or local community body or tasks for which a legal person of public law has been established. Typical public tasks include preparing proposals for regulations, executing regulations (for example, the management of administrative processes), conducting supervision[157] over the execution of regulations, performing developmental tasks, and so on. Ancillary work encompasses tasks that pertain to personnel and financial operations, material and technical operations, maintenance and technical support tasks, etc.

A position

A position is an official work post in which powers pertaining to the management, harmonisation and organisation of work within an organ are exercised.[158] In terms of the employ-

ment process, the Civil Servants Act regulates the highest positions in state administration:

1) Directors-General of directorates;

2) Secretaries-General in Ministries;

3) Directors of bodies within Ministries;

4) Directors of government offices; and

5) Heads of administrative units.

Title

A **title** is a personal status on the basis of which an official performs public tasks. An official is appointed to a title through a decision, and this may occur once an employment relationship has been entered into or following a transfer or a promotion. The title acquired is relinquished on the day the employment relationship of the official ends, both in cases of dismissal and cases of promotion to a higher title.

Jobs systemisation

Jobs systemisation is an internal act which determines the work posts required for the performance of tasks by a state body, local community administration or legal person of public law. It contains a description of the criteria for tasks performed by individual work posts.

This act serves as the basis for publishing vacant work posts and concluding employment contracts, as the publication of the vacant work posts may not list criteria and task descriptions not stemming from the act on jobs systemisation. Jobs systemisation must be adapted to the mission and field of activity and/or tasks of the organisation and to the business processes that take place within the organisation; it must be designed in such a way as to

ensure that work is as efficient as possible. In public administration bodies and in judicial bodies, the systemisation is regulated through an act of government,[159] and the contents of the systemisation in respect of salaries are determined by the law regulating salaries in the public sector, which is valid for the entire public sector and not just for public administration bodies and judicial bodies.[160]

Personnel plan

The **personnel plan** is the central regulator of employment and determines the number of allowed employees at an employer. This is intended to serve as a basis for preventing non-critical hiring, that is, hiring which does not arise from an actual need to perform the tasks of the employer. Although the public sector generally does not constitute an activity regulated by the market, due to the financing of the activities of budget users and the economical use of public funds, the need to ensure the rational management of resources is as present in the public sector as it is in market-regulated systems and commercial organisations. The personnel plan shows actual employment status and planned changes in the number of civil servants for a period of two years. A proposal for the personnel plan is prepared taking into account budget capacity, the foreseen volume of tasks and the programme of work. It is proposed by the principal when preparing the budget. The proposal for the personnel plan must therefore be harmonised with the proposed budget. The harmonisation of proposals for personnel plans is handled in a similar manner as the harmonisation of proposals in the preparation of the budget. The adoption of a personnel plan means that the employer (budget user) has secured financial means for the number of employees stipulated in the personnel plan and that the foreseen tasks can be performed exclusively by this number of civil servant employees. The personnel plan may be amended in the framework of the accounting period, but only on the following conditions: a permanent or temporary increase has occurred in the volume of

work, which it would not be possible to handle with the existing number of civil servants, and financial means have been secured for the new employees.

On the basis of the proposals for personnel plans for individual bodies, joint personnel plans are prepared for state administration and judicial bodies, whereby the person proposing the personnel plan must obtain the opinion of a trade union representative. The joint personnel plan for state administration bodies is adopted by the government, while the plan for judicial bodies is adopted by the Supreme Court of the Republic of Slovenia, the State Prosecutor's office, or the State Attorney's office.

The provisions of the Civil Servants Act regarding the personnel plan are also valid for local community administrations, public agencies,[163] public funds, the Health Insurance Institute of the Republic of Slovenia, the Pension and Disability Insurance Institute of the Republic of Slovenia, the Employment Service of the Republic of Slovenia and the National Education Institute of the Republic of Slovenia.

Central personnel records are kept for state administration. They are managed by the Ministry in charge of administration, tracked as computerised databases, and intended for the efficient implementation of policy pertaining to human resource management within state administration bodies. The records include all relevant data on civil servants and thus make it possible for the knowledge and skills of civil servants to be put to use to the greatest possible extent. Among other things, this is important because of records of the internal labour market at state administration bodies.

Central personnel records

The Civil Servants Act contains **common principles** of the civil servant system, which are valid for the entire public sector,

Common principles

Special provisions

and **special provisions**, which pertain to civil servants in state bodies and in local community administrations. Standards valid for the administrative field in the framework of the so-called common European administrative space are built into the principles and provisions.

Common principles

1. **Principle of equal access.** This principle states that the hiring and employment of civil servants must be conducted in such a way as to provide equal access to all work posts to all interested candidates under equal conditions, and in such a way as to ensure the selection of the candidate who is best professionally qualified to perform the tasks of the work post. This includes conducting adequate procedures for the selection of employment candidates as well as standards or criteria defined in advance which provide a basis for determining, through the selection process, which candidate is best professionally qualified to perform the tasks of a given work post.

2. **The principle of legality.** This principle establishes the legality of the performance of tasks by civil servants as a primary imperative. Civil servants are obliged to execute tasks within the framework and on the basis of the Constitution, ratified and published international treaties, laws and executive regulations. "Legality" therefore means the rectitude or legality of the performance of tasks in this context.

3. **The principle of professional conduct and accountability for results.** A civil servant is obliged to execute

public tasks with due expertise and in a timely, conscientious manner. In his or her work, he or she must abide by the rules of his or her profession, and for this purpose must engage in continued training and receive additional qualifications. The employer must in turn provide conditions for professional training and the acquisition of additional qualifications. A civil servant is also accountable for the quality, timely and efficient performance of public tasks.

4. **The principle of honourable conduct.** This principle states that in performing their tasks civil servants are to act in an honourable manner and in accordance with the rules of the ethics of their professions. This is meant to ensure, among other things, respect for the dignity of service users and their respectful treatment in procedures involving the authorities. On the basis of recommendations made by the Council of Europe, in 2001, the government of the Republic of Slovenia ratified a Code of Civil Servant Conduct.[164] It is meant to provide an orientation for the adoption of the codes of conduct of individual professions in the public sector; the code may also be applied, within reason, to Ministers and other holders of public office. Additionally, in 2011, the Officials Council ratified the Code of Ethics for Civil Servants in State Bodies and Local Communities.[163]

5. **The principle of restrictions in respect of the acceptance of gifts.** This principle addresses the prevention of civil servant conduct which could imply corruption or the abuse of power. As such, a civil servant performing public tasks may not accept gifts, although gifts of small material value, such as gifts of a protocol nature

and gifts given on certain occasions, are an exception. The law prescribes a clear border regarding the value of gifts which a civil servant may accept. Such gifts may not exceed a value of €62 per gift. The total value of gifts received within a one-year period, if such gifts are received from a single person, may not exceed €125. Restrictions in respect of the acceptance of gifts are also valid for a civil servant's spouse, the person with whom a civil servant is living in an extramarital union, and the civil servant's children and parents and others living in the same shared household as a civil servant.

6. **The principle of confidentiality.** This principle states that a civil servant must protect the confidentiality of information regardless of how he or she learned of the information. It constitutes a valid standard of loyalty to the employer and ensures the protection of the public interest. The obligation to maintain the confidentiality of information remains even after the employment relationship has ceased, and remains until such time as the civil servant's employer relieves him or her of this obligation.

7. **The principle of managerial diligence.** This principle states that a civil servant must use public funds in an economical and efficient manner. This principle, which covers the individual conduct of civil servants, is linked to two principles of the Public Finance Act of the Republic of Slovenia that apply to the conduct of the employer and that state that in preparing and executing a budget the principles of efficiency and diligence must be respected.

8. **The principle of the protection of professional interests.** This principle is exercised in two ways: by the

employer protecting a civil servant from harassment, threats and similar actions that jeopardise the performance of the civil servant's work, and by the employer providing the civil servant with access to paid legal assistance in the event that a criminal or civil suit is filed against the civil servant due to the performance of public tasks and the employer feels that the public tasks in question were executed in conformity with the law and in accordance with the rights and obligations stemming from the employment relationship. With this principle, a standard is established for respecting the role a civil servant has with regard to his or her employer pursuant to the employment contract and for advocating the public interest.

9. **The principle of the prohibition of harassment.** In accordance with the principle of the prohibition of harassment, civil servants are prohibited from engaging in any physical, verbal or non-verbal act based on any personal circumstances that would create an intimidating, hostile, degrading, shaming or insulting work environment for a person, or insulting his or her dignity. This principle is especially applicable in light of "mobbing" as defined in the legislation of the Republic of Slovenia through the Employment Relationship Act. Pursuant to the provisions of the Penal Code of the Republic of Slovenia, mobbing may also be treated as a criminal act. Behind harassment of this kind lies the intent to create an environment wherein the civil servant him- or herself decides to terminate the employment relationship. The principle of the prohibition of harassment as defined in the broader context by the Civil Servants Act is to be understood in connection with

the principle of the prohibition of discrimination on the grounds of one's nationality, social origin, gender, skin colour, medical condition, disability, religion or beliefs, age, sexual orientation, family situation, trade union membership and personal financial situation, as provided by the Employment Relationship Act.[164]

Special provisions and principles of the civil servant system

The special provisions and principles of the civil servant system are valid for civil servants who have entered into an employment relationship in a state body or local community administration; they are especially valid for officials.

1. **The principle of social partnership.** This principle ensures the standard of social dialogue is respected in instances where the rights and obligations arising from the employment relationship of civil servants are involved. The government or a Minister must submit every regulation which bears on the employment relationships of civil servants to the representative trade unions for their opinion or for harmonisation. In the case of a general legal act or an internal act of a body which affects the employment relationships of civil servants, each principal must also enable the representative trade union at the body to give its opinion on the act within a reasonable timeframe before the act is adopted. If the representative trade union gives its opinion before this deadline, the proposer of the act must take the opinion into consideration or invite the representative trade union at the body to harmo-

nise the proposed act. If the proposer does not achieve the harmonisation of the proposed act or decision with the opinion of the representative trade unions at the body, an unharmonised act or decision may be adopted. However, the reasons why the opinion of the representative trade unions at the body was not respected must be explained in writing and sent to the representative trade unions in the body whose opinion was not respected.

2. **The principle of open competition.** For vacant official work posts, the Civil Servants Act states that an open competition procedure must be held.[165] Unlike the Employment Relationship Act, which is a general law regulating employment relationships and which, in respect of the publication of vacant work posts, is used for professional-technical civil servants and for civil servants who have entered into an employment relationship at a public institute, public agency, public fund or public utility institute, the Civil Servants Act prescribes a special process for officials – open competition. This process is not limited to publishing a vacant work post and issuing a notification regarding the selection of a candidate to the selected candidate and to those candidates who were not selected, but constitutes a special, specifically prescribed process which commences with the issue of a decision on the selection to both the selected candidate and to the candidates who were not selected. This means that those candidates who were not selected have the possibility of an appeal; should this occur, appointment to a title and the conclusion of an employment contract with the civil servant who received a decision on his or her se-

lection is postponed. Following the issue of a decision regarding selection or non-selection, each candidate who participated in the selection process may, under the supervision of an official representative of the relevant body, view all data and information submitted by the selected candidate in his or her submission to the open competition showing that the candidate fulfils the criteria of the competition. All candidates may also view all materials pertaining to the selection process. A candidate who submitted an application in the open competition but was not selected has the right to appeal to the competent appellate commission if he or she feels that the selected candidate does not fulfil the criteria of the competition, or that the selected candidate was clearly not the candidate who achieved the most favourable result according to the criteria of the selection process, or if the candidate who was not selected feels that although he or she fulfilled the criteria for participation in the competition, he or she was not given an opportunity to participate in the selection process. A candidate who was not selected may also appeal if he or she feels that fundamental violations of the open competition process or selection process have occurred. An administrative dispute is permitted against a decision of the appellate commission.

It follows from the above that through the principle of open competition special efforts are made to protect the public interest by ensuring that the candidates who perform tasks linked to the realisation of the public interest and the execution of power are the best available candidates, and were truly selected on the basis of expertise and in light of the fact that they fulfil all the required criteria for performing concrete public tasks, and not

on the basis of nepotism or other circumstances.[167]

Open competition is conducted to fill all vacant official work posts, including positions. A special open competition process is foreseen for the following high-ranking official positions:

1) Director-General at a Ministry;

2) Secretary-General at a Ministry;

3) Director of a body within a Ministry;[168]

4) Director of a government office; and

5) Head of an administrative unit.

In the case of the positions in state administration bodies listed above, a competition commission is appointed by the Officials Council upon each publication of a vacant work post.[169] In the selection process, the commission determines which candidates fulfil the criteria for the position and are suitable for the position in terms of their professional qualifications. The competition commission submits a list of candidates who, in its estimation, are suitable for the position in terms of their professional qualifications to the holder of public office to whom the official in the position is accountable.[170] The holder of public office to whom the official is accountable then selects the candidate who, in his or her opinion, is most suitable, and need not provide a special explanation for his or her choice. If the holder of public office to whom the official in the position is accountable feels that none of the candidates from the submitted list is suitable, he or she may demand that the Officials Council repeat the process, or he or she himself or herself may name a competition commission to conduct the process.

Regarding the appointment of public officials to high-ranking positions, the following must also be taken into account:

1) Employment relationships at these positions are entered into for a fixed amount of time – five years. An employment relationship for the same amount of time may be once again entered into with a public official in one of these positions without publishing an open competition.

2) Civil servants who have applied in an open competition for these positions and who have previously had an employment relationship in the same state body or a different state body or in a local community administration are transferred to work posts suited to their title and for which they fulfil the criteria following the end of their term.

3) Directors-General and Secretaries-General in Ministries, principals of bodies within Ministries and principals of government agencies are appointed by the government on the proposal of the holders of public office to whom the officials in these positions are accountable. Heads of administrative units are appointed and dismissed by the Minister in charge of administration.[171]

4) An official may be dismissed at no fault. This may occur within one year of appointment to the position or within one year of the date upon which the holder of public office to whom the official is accountable in his or her work assumes his or her office.[172]

One characteristic of the reforms to public administration and the civil servant system is the way they aim to apply the professional conduct of administration to reduce the number of holders of public office heading broader fields of activity in administrative bodies and to install in their place administrative managers or experts as the heads of these fields. In this way, the principle of professional conduct is supposed to prevail over the principle of political loyalty in the management of broader, integrated fields of activity in administrative bodies. Prior to the reforms, these fields were as a rule headed by holders of public office; since the new law regulating state administration[173] and the Civil Servant Act entered into force, these fields have been led by officials selected on the basis of criteria pertaining to their expertise. Although it is the holder of public office who, in the final phase of the selection process for the highest administrative positions, decides on the selection of one of the candidates proposed by the competition commission, the important factor is that each of these candidates is an expert in the specific administrative field in question.[174]

1) **The principle of political neutrality and impartiality.** As already follows from the principles of legality and professional conduct, an official must perform tasks in accordance with the valid normative framework and rules of his or her profession. This principle ensures that public tasks are performed to the benefit of the public and in a politically neutral, impartial manner.[175]

2) **The career principle.** An official is able to pursue a career through promotion. The Civil Servants Act delineates 16 degrees of titles, which it further divides into five career classes. The system of titles facilitates promotion at the same work post, a result of which is,

among other things, a higher base salary.[176] One's career is dependent on professional training and other work-related and professional qualities and on work results.

3) **The principle of transferability.** Civil servants may be transferred from one body to another in line with the requirements of work processes, whereby they are not required to conclude new employment contracts, as their work takes place within the framework of the same employer. In state bodies, the employer is the Republic of Slovenia. For this reason, when a civil servant is transferred from one state body to another, an annexe may be added to his or her employment contract; the annexe is signed by the civil servant, the principal of the body in which the civil servant is employed and the principal of the body to which the civil servant is being transferred. The principle of transferability ensures that civil servants may be formally transferred, even against their will, to another body in line with the requirements of the working process. This is done by unilaterally altering the employment contract after issuing a decision.[177]

4) **The principle of publicity.** This principle states that a body must inform the public about its operations and the results of the work completed by officials. With the public administration reform, a large step was taken in this field in the direction of bringing the operations of administration nearer to the public and to service users. This is not limited to the Act on Access to Information of a Public Nature (also referred to by its Slovenian acronym, ZDIJZ),[178] which provides a basis for a body's

obligation to provide all information requested by a person who demands access to information of a public nature, with the exception of information regarding which the law expressly states is not of a public nature (for example, personal information, classified information, etc.), but also encompasses the entire system of e-administration, which provides updated information about the work of both the government and other bodies.

Besides the common principles of the civil servant system and certain other issues of this system used for the entire public sector (that is, not just state bodies and local community administrations), the way in which rights stemming from the employment relationships of civil servants are determined also needs to be highlighted. This is a special characteristic which distinguishes employment relationships in the public sector and in the framework of administrative law from employment relationships characteristic of commercial activities. Specifically, a public sector employer may not grant a civil servant rights to an extent greater than that determined by the law, relevant regulations or the collective agreement if doing so would constitute a burden on public funds.

For civil servants in state bodies and local community administrations, the rules regarding elements of the employment relationship are determined to an exceptional degree by the law or relevant regulations. In these cases, the employer has practically no room to manoeuvre in negotiating additional rights or a greater extent of rights when concluding an employment contract with a civil servant. This applies, for example, to so-called provisions regarding the number of days leave and especially to provisions pertaining to a civil servant's salary (base salary, bonuses and performance pay as a part of salary). All of the ele-

ments listed above are determined pursuant to the law regulating salaries in the public sector and relevant regulations issued on the basis of this law, the General Collective Agreement for the Public Sector[179] and the collective agreements of activities or professions (the part thereof regarding tariffs).

C) THE PUBLIC SECTOR SALARY SYSTEM

The public sector salary system is a legal system for the regular monthly pecuniary calculation and paying out of base salaries, performance pay and bonuses for employed civil servants and holders of public office, and a legal system for harmonising salaries among social partners and removing disparities between the salaries of individual categories of public sector employees.

In 2002, the Public Sector Salary System Act of the Republic of Slovenia (also referred to by its Slovenian acronym, ZSPJS) was adopted.[180] When it entered into force, it replaced the Act Regulating Wage Rates in Public Institutions, State Bodies and Local Community bodies of 1994. For most public sector employees, the Public Sector Salary System Act began to be used in August 2008.[181] The new public sector salary system regime introduced a fundamental new feature in comparison with the earlier law, as it stated that for most public sector employees base salaries and bonuses, as well as criteria for the payment of funds for the regular work performance of employees, are to be determined through a collective agreement for the public sector or through a collective agreement for an individual activity. In this way, a range of work posts/titles and the classification thereof into salary grades is determined for most public sector employees by a collective agreement as the result of the negotiation process between social partners (employer representatives and public sector trade union representatives). The fundamental objective of the new salary system was to decide on a common foundation of the public sector

salary system for the implementation of the principles of equal pay for work at similar work posts, titles and functions, and to ensure transparency of the salary system and offer motivating salaries.

The current public sector salary system in the Republic of Slovenia encompasses civil servants and holders of public office in state bodies and local communities, public agencies, public funds, public institutes and public utility institutes and other legal persons falling under public law who are indirect users of the national budget or local community budget. This system does not include public companies and commercial enterprises in which the state or local community holds a prevailing interest.

Normative level

On the **normative level** the salary system is regulated by the Public Sector Salary System Act and the relevant regulations issued on the basis of the Public Sector Salary System Act (in particular decrees), the General Collective Agreement for the Public Sector and collective agreements for activities or professions.

The Public Sector Salary System Act establishes rules for stipulating, calculating and paying out salaries, rules for earmarking the amount of funds for salaries, and the procedure for altering the relations between salary groups and salary subgroups in the public sector.

Fundamental principles

The **fundamental principles** introduced by the Public Sector Salary System Act are as follows:

- equal pay for work performed at comparable work posts and by servants with comparable titles and functions;
- transparency of the salary system and
- motivating salaries.

The new public sector salary system introduced several new **key terms**.[182] Compared to the previous system, the definition of these terms on the level of law provides transparency of the salary system on the one hand and, on the other, allows the interested public to quickly access relevant information on the salaries of holders of public office and all civil servants.

Key terms

Key terms of the public sector salary system

The **catalogue** of offices, work posts and titles is a list of offices, work posts and titles in the public sector. The catalogue is published by the Ministry responsible for the public sector salary system. It includes offices, work posts and titles for all salary subgroups, from A1 do J3. The catalogue is not a legal act, but a list that includes the following:

Catalogue

- A serial number for the office, work post and title;
- An ID number for the office or work post;
- The name of the office or work post;
- The tariff group of the work post;
- The ID number of the title;
- The name of the title;
- The salary grade of the office, work post or title without promotion;
- The highest salary grade of an office, work post or title which may be achieved through promotion.

The catalogue must encompass all offices determined by the Public Sector Salary System Act, all work posts and titles determined through collective agreements, and all work posts and titles determined through decrees and general legal acts. The catalogue may not be altered unless the acts listed above have been previously altered, as it is a list which is the result of matters which have previously been negotiated on the normative level. Such an arrangement makes is impossible to intervene unilaterally in the range of offices, work posts and titles and salary grades. To include, for example, a new work post/title in the list, it is necessary to alter the collective agreement (negotiations), a decree or a general legal act (harmonisation with social partners) pursuant to Article 13 of the Public Sector Salary System Act, which establishes the way work posts/titles are classified into salary grades.

Salary group

A **salary group** consists of 1) the offices or work posts and titles characteristic of an activity, or 2) work posts of the same type across all activities (salary group J). Each salary group is divided into **salary subgroups** based on the characteristics of the offices, work posts and titles.

Salary subgroups

Diagram 11: SALARY GROUPS IN THE PUBLIC SECTOR SALARY SYSTEM

salary group	salary subgroup
A – Offices in state bodies and local communities	A1 – President of the Republic and holders of public office of the executive branch of power
	A2 – Holders of public office of the legislative branch of power
	A3 – Holders of public office of the judicial branch of power
	A4 – Holders of public office in other state bodies
	A5 – Holders of public office in local communities
B – Management bodies at budget users	B1 – Principals, directors and secretaries
C – Official titles in state administration and local community administrations and other state bodies	C1 – Officials in other state bodies
	C2 – Officials in state administration, judicial administration and local community administrations
	C3 – Police officers
	C4 – Military personnel
	C5 – Customs officers
	C6 – Inspectors, judicial police officers and other officials with special powers
	C7 – Diplomats
D – Work posts in the field of teaching and education	D1 – University-level teachers and university-level associates
	D2 – Lecturers at trade schools, high school and elementary school teachers and other expert associates
	D3 – Kindergarten teachers and other expert associates at kindergarten
E – Work posts in the field of health care	E1 – Doctors and dentists
	E2 – Pharmaceutical workers
	E3 – Nurses and health technicians
	E4 – Health care workers and health care associates
F – Work posts in the field of social care	F1 – Expert workers
	F2 – Expert associates
G – Work posts in the field of culture and information	G1 – Professions in the arts
	G2 – Other professions in the field of culture and information

salary group	salary subgroup
H – Work posts and titles in the field of science	H1 – Researchers H2 – Expert associates
I – Work posts in public agencies, public funds, other public institutions and in public utility institutes and other budget users	I1 – Expert workers
J – Ancillary posts (applies to the entire public sector)	J1 – Expert associates J2 – Administrative staff J3 – Other technical staff
K – Work posts in the field of social welfare	K1 – Expert workers

Salary scale

The **salary scale** is a system that breaks down the nominal salaries for the work posts of holders of public office and civil servants in the public sector into salary grades. The salary scale consists of salary grades and is Appendix 1 to the Public Sector Salary System Act. In line with the agreement between social partners, the salary scale changes in such a way that the nominal amounts of base salaries listed in the pay scale change.

Salary grade

The **salary grade** is the part of the salary scale that contains a value expressed as a nominal amount.

Tariff group

The **tariff group** expresses the degree of difficulty of work posts and titles in terms of the education or training required. The base salaries of civil servants are also determined on the basis of the classification of work posts and titles into tariff groups.

The salary of a civil servant and holder of public office

Salary of the civil servant and holder of public office

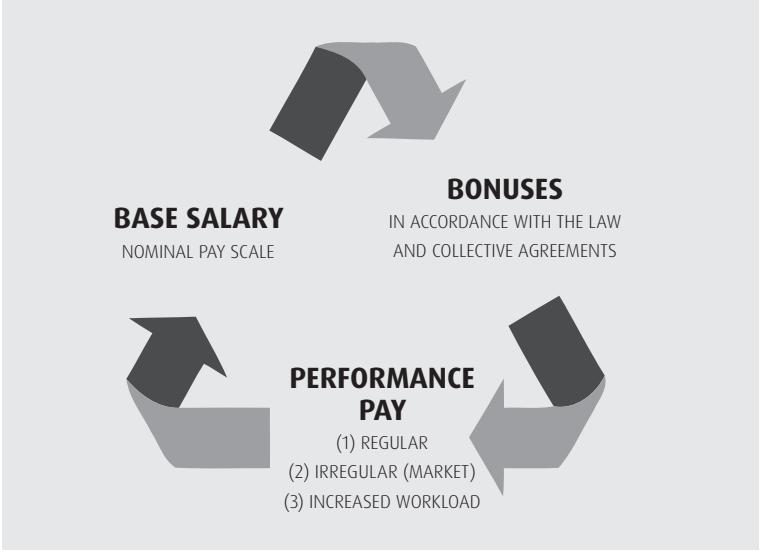
The **salary of a the civil servant and holder of public office** consists of three parts:

1) base salary,

2) bonuses and

3) part of the salary as performance pay.

Diagram 12: **THE SALARY OF A CIVIL SERVANT AND HOLDER OF PUBLIC OFFICE**



Base salary

The **base salary** is the nominal amount of the salary grade in the salary scale for the individual work post, title or office, or the nominal amount of the salary grade which the civil servant

or holder of public office has achieved through promotion. The base salary is the part of the salary the civil servant and holder of public office receive at a given work post, title or office for the work performed during full-time working hours in a single month.

Offices, work posts and titles are classified into salary grades in the following ways:

- By law (offices are classified in the Public Sector Salary System Act);
- By decree (for example, the work posts of principals, directors and secretaries);
- By collective agreement (for example, orientational work posts and titles are outlined in the General Collective Agreement for the Public Sector, titles are outlined in state administration bodies with collective agreements for individual activities);
- By an act of a state body (for example, work posts or titles in the C1 salary subgroup).

Orientational work posts and titles

Due to a large number of work posts and titles in the public sector and to facilitate simplified classification into salary grades, **orientational work posts and titles** have been established, assigned values and classified into salary grades. Orientational work posts and titles are therefore select work posts and titles which enable comparisons within salary groups and between different salary groups. They were determined and classified into salary grades by the General Collective Agreement for the Public Sector, and a common methodology was used to assign these work posts and titles values. Work posts and titles in the public sector are thus classified into salary

grades by taking into account the classification of orientational work posts and titles.

Promotion

On the basis of this law, a civil servant may be **promoted** to a higher salary grade at his or her work post or title. Promotion is decided upon by the competent body or its principal. In work posts where it is possible to be promoted to a higher title, a civil servant may be promoted up to five salary grades within a given title; in work posts where promotion to a higher title is not possible, civil servants may be promoted up to ten salary grades. The criterion for the promotion of civil servants to a higher salary grade is **performance** displayed in the promotion period. Performance is assessed on the basis of:

Performance

- Work results;
- Independence, creativity and punctuality in the performance of work;
- Reliability in the performance of work;
- Quality cooperation and work organisation; and
- Other abilities pertaining to the performance of work.[183]

Bonuses

Bonuses are the part of the salary of the civil servant and the holder of public office paid out for special conditions, hazards and burdens which are not taken into account when assigning a value to the difficulty of a work post, title or office. The different **types** of bonuses are defined in the Public Sector Salary Act, and their amounts are determined by law, an act of government, or the General Collective Agreement for the Public Sector.

Types of bonuses

Civil servants

Civil servants are entitled to the following bonuses:

1) Position bonus;
2) Bonus for employment period;
3) Mentorship bonus;
4) Bonus for specialisation, masters degree or doctorate if these are not a prerequisite for holding a work post;
5) Bonus for being bilingual;
6) Bonuses for less favourable working conditions not taken into account when assigning a value to a work post or title;
7) Bonuses for hazards and special burdens not taken into account when assigning a value to a work post or title; and
8) Bonuses for work during less convenient working hours.[184]

Holders of public office are only entitled to receive a bonus for their employment period; holders of public office in the judiciary are an exception, as they are also entitled to bonuses for being bilingual, position bonuses, bonuses for work during less convenient working hours and bonuses for preparedness.

Performance pay

Performance pay is the part of the salary which the civil servant may receive for above-average performance in his or her work in a particular period. The Public Sector Salary Act divides this part of the salary into three types:

1) Regular work performance;

2) Wwork performance stemming from an increased workload; and

3) Work performance stemming from the sale of goods and services in the market.

Regular work performance

A civil servant is entitled to the part of the salary for **regular work performance** if, in the period for which the bonus is paid, he or she achieves above-average work results in performing his or her regular work tasks. This part of the salary may amount to no more than two of the civil servant's base monthly salaries per year and is paid out at least twice a year. The total amount of funds earmarked for the payment of performance pay may amount to no less than 2% and no more than 5% of the annual funds for base salaries.[185]

Increased workload

A civil servant may be paid the performance part of his or her salary for performance in the framework of an **increased workload** if the work he or she has performed exceeds the expected work results in an individual month and if in this way it is possible to achieve the more rational performance of tasks by a budget user.[186]

Sale of goods and services in the market

Budget users who, besides funds for performing a public service receive funds from the **sale of goods and services in the market**, may use a portion of the funds thus obtained for performance pay related to the sale of these goods and services. Revenue from the sale of goods and services in the market and a cap on the amount of funds which may be paid out are determined by the government through a decree; the criteria for the payment of this part of the salary are determined by the Public

Sector Salary System Act. Among these criteria, the first states that the institution or body in question conducts public services in the agreed-upon volume and at the agreed-upon level of quality on the basis of adopted work programmes.

Transparency of the use of public funds

The rule in modern systems is that **transparency of the use of public funds** should take precedence over the protection of data on salaries, as only in this way is it possible to ensure oversight over this crucial segment of the budget. Public sector salaries are made public on the website of the Agency of the Republic of Slovenia for Public Legal Records and Related Services (commonly referred to by its Slovenian acronym AJPES). Pursuant to the Public Sector Salary System Act, salaries in the public sector are public: the public has access to information on work posts, titles and offices, base salaries, bonuses and the performance part of salaries, but information on employment period bonuses is not available to the public.[187] Budget users are required to submit information on salaries to AJPES. Information is shared in accordance with the methodology prescribed by the Minister in charge of the public sector salary system.

Information about salaries consists of information on base salaries, performance pay and bonuses. Information on public sector salaries is therefore not to be linked to the names of civil servants but is intended to reveal information on the salary to which an individual function, title or work post is entitled.

The competent Ministry is required to keep records with the aim of ensuring public sector salaries are comparable with those of other current systems, and to prepare, analyse and publish this analysis in a suitable form.

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[2] See PERENIČ A. (2005), *ibidem*, p. 11.

[3] See VIRANT G. (2004). Pravna ureditev javne uprave. Univerza v Ljubljani, Fakulteta za upravo, Ljubljana, p. 23.

[4] See BRADAČ F. (1990), p. 501.

[5] See PERENIČ A. (2005), *ibidem*.

[6] Greek, plural πόλεις (poleis).

[7] Latin *oppidium* (plural *oppida*).

[8] [...] and legal entities with a head office in its territory.

[9] See SHAW M. N. (2003). International Law. Cambridge University Press, Cambridge, p. 178. "Article 1 of the Montevideo Convention on Rights and Duties of States, 1933, lays down the most widely accepted formulation of the criteria of statehood in international law. It notes that the state as an international person should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) a government and (d) capacity to enter into relations with other states." See also JASENTULIYANA N. (Editor) (1995). Perspectives on International Law. Kluwer Law International, London, p. 20.

[10] For more on citizenship, see DEBELAK S., RAKOČEVIČ S. (2002). Upravnopravne notranje zadeve. Univerza v Ljubljani, Visoka Upravna šola, Ljubljana.

[11] See Articles 20 – 24 of the Treaty on the Functioning of the European Union.

[12] For a citizens' initiative in the EU at least one million signatures of EU citizens are needed.

[13] Latin *patria* (homeland, native land), a person without a homeland is *apatrid* (from French *apatride*).

[14] See PERENIČ A. (2005), p. 15.

[15] The word *sovereignty* derives from the Old French *soverain*, from the Latin *super*, meaning *above*, and *reignier*, meaning to reign.

[16] See The American Heritage Dictionary of the English Language (2004). Houghton Mifflin Company. Accessible at: http://dictionary.reference.com/ browse/sovereign (accessed 22 February 2010).

[17] See Article 3 of the Constitution of the Republic of Slovenia.

[18] Greek, δῆμος.

[19] The principle of popular sovereignty is determined in Article 3 of the Constitution of the Republic of Slovenia.

[20] See PAVČNIK M. (1997), *ibidem*, p. 89.

[21] See BOHINC R., CERAR M., RAJGELJ B. (2006), *ibidem*, pp. 181 – 189.

[22] See PERENIČ A. (2005), *ibidem*, pp. 32, 33.

[23] See PERENIČ A. (2005), *ibidem*, p. 33.

[24] See Leksikon Cankarjeve založbe - Pravo (2003), *ibidem*, p. 22.

[25] Charles-Louis de Secondat, baron de La Brède et de Montesquieu (1689 – 1755).

[26] This idea was presented in "Federalist No. 51". The essays were published in 1788 under the pseudonym *Publius*.

[27] The functions of the state are understood as a set of the same kind of official activities of the state, each one with its own characteristics, and performed by different authorities.

[28] The founder of this idea was John Locke (in Two Treatises of Government, 1690). Later, in the 18th century, it was further developed by Charles Montesquieu (in The Spirit of the Laws, French: *De l'esprit des lois*, 1748).

[29] With reference to this, the fundamental requirements for the independent status of self-governing local communities are namely the following: a certain territory in which they are established, a status and

basic rights and obligations determined by law, and powers ensured by law.

[30] See Article 110 of the Constitution of the Republic of Slovenia.

[31] See the second and third paragraphs of Article 120 of the Constitution of the Republic of Slovenia.

[32] See PERENIČ A., (2005), *ibidem*, p. 41.

[33] See BOHINC R., CERAR M., RAJGELJ B. (2006), *ibidem*, p. 56.

[34] See PERENIČ A. (2005), *ibidem*, p. 43.

[35] *Ibidem*, p. 45.

[36] See JEROVŠEK T., TRPIN G. (Editor), BUGARIČ B., HORVAT M., KERŠEVAN E., KOVAČ P., MUŽINA A., PLIČANIČ S. VESEL T., VIRANT G. (2004). Zakon o splošnem upravnem postopku s komentarjem. Inštitut za javno pravo pri Pravni fakulteti v Ljubljani and Založba Nebra, Ljubljana, pp. 148 – 160.

[37] See BOHINC R. *et al.* (2006), *ibidem*, p. 61.

[38] See VIRANT G. (2009). *Javna uprava*. Fakulteta za upravo, Ljubljana, p. 195.

[39] Officials are civil servants who perform public tasks in bodies. Public tasks in bodies are tasks directly linked to the execution of power or protecting the public interest (Article 23 of the Civil Servants Act).

[40] As determined, for example, by Article 2 of the Public Sector Salary System Act. The draft Act on Holders of Public Office of 30 June 2006, which was not (yet) adopted contains the same definition. Cf. the definition in Article 4 of the Integrity and Prevention of Corruption Act, Official Gazette of the Republic of Slovenia, no. 45/2010 and amending acts.

[41] An example of these are the Supreme State Auditors of the Court of Audits of the Republic of Slovenia. Supreme State Auditors are appointed and dismissed by the President of the Court of Audit through a decision. They are named for a period of nine years. A Supreme State Auditor assumes office by swearing an oath before the President of the Court of Audit (Article 14 of the Court of Audit Act, Official Gazette of the Republic of Slovenia, no. 11/2001 and 20/2006 (ZNOJF-1)).

[42] See also Article 1 of the Civil Servants Act, which, among other things, states the following: "A civil servant is an individual who enters into an employment relationship in the public sector. Holders of public office in state bodies and local community bodies are not civil servants." Article 38 of the Bank of Slovenia Act, Official Gazette of the Republic of Slovenia no. 58/2010 and amending acts states otherwise: "Members of the Governing Board of the Bank of Slovenia must conduct their function full-time on the basis of an employment relationship with the Bank of Slovenia". Cf. Article 1 of the Judicial Service Act, Official Gazette of the Republic of Slovenia, no. 19/94 and amending acts, which states that: "A judge is in a labour relationship with the Republic of Slovenia". See also NOVAK, M. (2006): Civil Servant and Holder of Public Office. *Pravna praksa*. Year 25, no. 19/20, p. 33.

[43] VIRANT G., 2009, pp. 196–197. An act of dismissal is a decision on the basis of political discretion which, unlike administrative discretion or decision-making, is, for the most part, not legally bound and which is aimed at shaping the public interest on the basis of value judgements of holders of power and not at judging which decision would be most correct in line with a public interest determined in advance by regulations, as is the case with administrative discretion (for a more detailed explanation see BREZNIK, J., KERŠEVAN, E. (eds.) (2008). *Zakon o upravnem sporu s komentarjem.* GV Založba, Ljubljana, pp. 58–64*).*

[44] 34. Article 34 of the Local Self-Government Act, Official Gazette of the Republic of Slovenia, no. 72/1993 and amending acts.

[45] This is confirmed by the debates of deputies of the National Assembly and by a number of texts and commentaries in the media, particularly regarding offices that are highly visible to the public eye, such as Constitutional Court Judges and the Human Rights Ombudsman.

[46] The State Attorney General is appointed on the proposal of the Government by the National Assembly. He or she is appointed from among the State Attorneys for a period of six years, with the possibility of reappointment; the State Attorney and the Deputy State Attorney are appointed by the Government on the proposal of the Minister in charge of the judiciary after receiving the provisional opinion of the State Attorney General, for a period of eight years with the possibility of reappointment (Article 29 of the State Attorney Act, Official Gazette

of the Republic of Slovenia, no. 20/97 and amending acts).

[47] VIRANT G., 2009, pp. 197–198.

[48] Constitution of the Republic of Slovenia, Official Gazette of the Republic of Slovenia, no. 33I/1991 and amending acts.

[49] ŠTURM L. (ed.) (2002). *Komentar Ustave Republike Slovenije*. Fakulteta za podiplomske državne in evropske študije, Ljubljana, p. 867.

[50] See Article 17 of the Public Administration Act (ZDU-1).

[51] Formal criteria, such as criteria pertaining to the level or orientation of education are not prescribed in the case of the appointment of Ministers, while such criteria are prescribed for civil servants (see for example Article 79 of the Civil Servants Act).

[52] In recent times, the significance of the ethical nature of the conduct of holders of public office and civil servants has grown. Attempts to achieve this goal are made through the law on the one hand, which traditionally represents a moral minimum, and by various codes on the other. For a more detailed discussion, see the chapter on the principles of civil service law.

[53] This involves, for example, the right to return to a previous work post and the right to receive salary compensation for a certain period of time following the cessation of one's term if it is not possible to return to one's previous work post (see for example Article 38 of the Deputies Act, Official Gazette of the Republic of Slovenia, no. 48/92 and amending acts). Restrictions and prohibitions are primarily regulated by the Integrity and the Prevention of Corruption Act (for a detailed discussion see below).

[54] Officials in State Administration Bodies Act, Official Gazette of the Republic of Slovenia, no. 30/1990 and amending acts.

[55] Integrity and Prevention of Corruption Act, Official Gazette of the Republic of Slovenia, no. 45/2010 and amending acts.

[56] The Integrity and the Prevention of Corruption Act provides strict criteria for appointment to these offices – these criteria are not only of a professional nature, but also pertain to character. The President of the Commission and his or her deputy must be persons for whom it may be firmly concluded, on the basis of their work to date, actions or behaviour, that they will perform their office in the Commis-

sion legally and in accordance with the rules of their profession (Article 7 of the Integrity and Prevention of Corruption Act).

[57] Articles 10 and 11 of the Integrity and Prevention of Corruption Act.

[58] According to the Integrity and the Prevention of Corruption Act, holders of public office are deputies of the National Assembly, National Council members, the President of the Republic, the Prime Minister, Ministers, State Secretaries, Constitutional Court Judges, judges, State Prosecutors, holders of public office in other state bodies and self-governing local communities (hereinafter local communities), European Parliament Members from the Republic of Slovenia, insomuch as their rights and obligations are not otherwise regulated by acts of the European Parliament, and other holders of public office from Slovenia in European and other international institutions, the Secretary-General of the government, former holders of public office for the duration of the period in which they receive salary compensation pursuant to the law, and holders of public office of the Bank of Slovenia, insomuch as their rights and obligations are not otherwise regulated by the law that regulates the Bank of Slovenia and other regulations to which the Bank of Slovenia is bound (Article 4 of the Integrity and Prevention of Corruption Act).

[59] According to the Integrity and the Prevention of Corruption Act, family members of a holder of public office are the spouse, children, adopted children, parents, adopted parents and siblings of the holder of public office and the persons living with him or her in a shared household or extramarital union (Article 4 of the Integrity and the Prevention of Corruption Act).

[60] Provided another law does not state otherwise, the Commission may also allow a career holder of public office to perform a career or other activity intended to produce income, whereby the Commission takes into account the public interest and the degree of risk that the performance of this activity could influence the objective and impartial performance of the office or threaten its integrity (Article 26 of the Integrity and Prevention of Corruption Act).

[61] Similar restrictions are valid for non-career holders of public office. See Article 27 of the Integrity and Prevention of Corruption Act.

[62] A list is kept of gifts that exceed the value of €25 and their values. Gifts of a protocol nature or gifts given on certain occasions which exceed the value of €75 become the property of the state, local community or organisation in which the holder of public office performs office (Article 31 of the Integrity and Prevention of Corruption Act).

[63] On problems surrounding gifts on the local level, see RAKAR, I. (2007). Etika, korupcija in darila: nekaj misli o etiki na občinski ravni in darilih v javnem sektorju. Časospis, no. 42/43, pp. 4–7.

[64] Articles 35 and 36 of the Integrity and Prevention of Corruption Act. See https://www.kpk-rs.si/sl/zavezanci-in-njihove-dolznosti/omejitve-poslovanja/seznam-omejitev-poslovanja.

[65] One example is the General Administrative Procedure Act, Official Gazette of the Republic of Slovenia, no. 80/1999 and amending acts.

[66] The content of this information is provided in Article 42 of the Integrity and the Prevention of Corruption Act, which, among other things, lists yearly income counted as a tax base, real estate and various forms of financial assets if the value of the latter exceeds €10,000.

[67] This is not valid in the case of non-career mayors and deputy mayors (Article 44 of the Integrity and Prevention of Corruption Act).

[68] If the Commission for the Prevention of Corruption has reasonable grounds to suspect that the assets of a liable person have increased disproportionately and that, at the same time, there exists a reasonable danger that he or she will use these assets or hide or alienate them, the Commission for the Prevention of Corruption may recommend to the State Prosecutor or the competent body in the field of the prevention of money laundering, taxes or financial supervision that said body do everything in its legal power to temporarily halt the transaction or securing of the money or assets with the intent of seizing gains or money not acquired in accordance with the law and assets of illegal origin (Article 45 of the Integrity and Prevention of Corruption Act).

[69] See KRANJC J. (2008), *ibidem*.

[70] See PAVČNIK M. (1997), *ibidem*, p. 371.

[71] See DURANT W. (1954), The Story of Civilization: Part I, Our Oriental Heritage, Simon and Schuster, New York, p. 116.

[72] See VILFAN S. (1991), Uvod v pravno zgodovino, ČZP Uradni list, Ljubljana, p. 22.

[73] CANCIK H., SCHNEIDER H., LANDFESTER M. (Hrsg.) (2003), Der Neue Pauly. Enzyklopädie der Antike. Das klassische Altertum und seine Rezeptionsgeschichte, J. B. Metzler, Stuttgart 59 See KRANJC J. (2008), ibidem, p. 62.

[74] See STEIN P. (1999), Roman Law in European History, Cambridge University Press, Cambridge; KOROŠEC V. (1989), Rimsko pravo, Univerzum, Ljubljana; MOMMSEN T. (1980), Rimska zgodovina: izbor (translated by Kastelic J.), Cankarjeva založba, Ljubljana; ROMAC A. (1992), Rimsko pravo, 4th Edition, Narodne novine, Zagreb.

[75] See ROMAC A. (1973), Izvori rimskog prava, Narodne novine, Zagreb; SCARRE C. (1995), The Penguin Historical Atlas of Ancient Rome, Penguin Books, London; PAULY A., WISSOWA G., KROLL K., WHITE K., MITTELHAUS K, ZIEGLER K. (1894–1980), Paulys Realencyclopädie der classischen Altertumswissenschaft: neue Bearbeitung, J. B. Metzler, Stuttgart.

[76] See KRANJC J. (2008), *ibidem*, pp. 43 – 83.

[77] See BUJUKLIĆ Ž. (2007), Forum Romanum, Pravni fakultet Univerziteta u Beogradu, p. 593.

[78] BRATOŽ R. (2007), Rimska zgodovina, Part I, Ljubljana, Filozofska fakulteta – Študentska založba, p. 47.

[79] *Ibidem*, p. 46.

[80] Ulp. – D. 1,1,10,1. See KRANJC J. (2008), ibidem, p. 205. STOJČEVIČ D., ROMAC A. (1984), ibidem, p. 194

[81] See KRANJC J. (2008), p. 198. WALKER D. (1980), The Oxford Companion to Law, Oxford University Press, Oxford, p. 1041. “and feudal laws were taken into the legal systems of Germanic countries [...]”. See LANGE H. (1997), Römisches Recht im Mittelalter. Beck, München, pp. 1 – 23.

[82] See STEIN P. (1999), *ibidem*.

[83] See HESS-FALLON B., SIMON A. M. (2003), Droit civil, Éditions DALLOZ, Paris, p. 1.

[84] Leksikon Cankarjeve založbe - Pravo (2003), Editor: PAVČNIK M., Cankarjeva založba, Ljubljana, p. 284. The definition only refers to natural persons, i.e. human beings. However, legal entities are also legal subjects, therefore, the definition was changed to [...] the conduct and behaviour of subjects [...], which includes human beings and legal entities. See BRADAČ F. (1990). Latinsko-slovenski slovar, Državna založba Slovenije, Ljubljana, p. 288.

[85] For more on the essence of law, see CERAR M. (2001), (I)racionalnost modernega prava, Bonex založba, Ljubljana, pp. 241 and 337.

[86] See PERENIČ A. (2005), Uvod v razumevanje države in prava, Fakulteta za varnostne vede, Ljubljana, p. 69.

[87] See Leksikon Cankarjeve založbe - Pravo (2003), *ibidem*, p. 274.

[88] BRADAČ F. (1990), *ibidem*, p. 340.

[89] Latin: *culpa* means blame, *exculpare* means exculpate.

[90] See Leksikon Cankarjeve založbe - Pravo (2003), *ibidem*, p. 329.

[91] BRADAČ F. (1990), *ibidem*, p. 392.

[92] The Latin expression *de lege lata* means *the law as it exists*. Usually it is used with the Latin expression *de lege ferenda*, which means *what the law should be*.

[93] See SUŠA S. (2011), Naravno pravo, državljanska neposlušnost in anarhija. http://www.radi- ostudent.si/projekti/demokracija/tekst i/26anarhija.html (accessed 7 January 2011).

[94] A synonym for procedural law is adjective law.

[95] KRANJC J. (2008), Rimsko pravo, GV Založba, Ljubljana, p. 155. The Roman jurist Ulpian was one of the greatest classical jurists. He lived and worked in the 2nd and 3rd centuries. In 223 he was murdered by a mob. About a third of the content of Justinian's *Digest* come from Ulpian's writings.

[96] See Leksikon Cankarjeve založbe - Pravo (2003), *ibidem*, p. 120. STOJČEVIĆ D., ROMAC A. (1984). Dicta et regulae iuris, Savremena administracija, Belgrade, p. 249.

[97] See Leksikon Cankarjeve založbe - Pravo (2003), *ibidem*, p. 329.

[98] BRADAČ F. (1990), *ibidem*, p. 340.

[99] See PERENIČ A. (2005), *ibidem*, pp. 119 – 135.

[100] See BOHINC R., CERAR M., RAJGELJ B. (2006), Temelji prava in pravne ureditve, GV Založba, Ljubljana, p. 77.

[101] See Leksikon Cankarjeve založbe - Pravo (2003), *ibidem*, p. 281.

[102] See BOHINC R., CERAR M., RAJGELJ B. (2006), *ibidem*, p. 176.

[103] *Ibidem*, pp. 40, 41, 67, and 68.

[104] *Vacatio legis* does not apply to implementing regulations (e.g. decrees of the Government, the rules of Ministers). *Vacatio legis* also does not apply automatically to municipal regulations. Municipalities determine the period in which municipal decrees take effect in municipal statutes.

[105] GRAFENAUER B., BREZNIK J. (2009), Upravno pravo, GV Založba, Ljubljana. The principle of legality is substantiated especially by three reasons: 1) political, as it is through this principle that administrative bodies "subordinate" themselves to the decisions, mainly the constitution and laws, which were adopted by the representative body; 2) technical, as it is through this principle that the correct functioning of the entire administrative apparatus is ensured; and 3) psychological, as it is through this principle that the legal certainty of citizens is created, so that administrative bodies do not act as they please, but in accordance with regulations adopted in advance that the citizens can learn of.

[106] *Ibidem*. In accordance with *ultra vires* doctrine, the executive branch of power may not act outside the scope of its authority granted by the legislature; the executive branch of power must have a basis for its functioning in laws.

[107] GRAFENAUER B. (2009), ibidem. Judicial control of constitutionality is a result of the realisation that state authorities can also violate the constitution. It arose in different social, political, and historical circumstances – therefore a unified understanding of this institution has not developed. The conceptual foundation of the constitutional judiciary is captured in the view that the constitution is the highest legal act and is hierarchically above other legal acts (most of all, laws), whereas the constitutional court is the "peak" in the development of legal remedies for the protection of constitutionality and legality.

[108] See MURKO V. (1937), Davčne olajšave in oprostitve, Pravna fakulteta, Univ. tiskarna in litografija d.d., Ljubljana. Equality is a constituent part of justice. Justice is what is equal and general.

[109] GRAFENAUER B. (2009), *ibidem*. It can be stated that legal equality comprises primarily the following: equal subordination to laws and state authorities; equal enjoyment of civil and political rights; equality regarding public burdens, either personal or real.

[110] The principle of equality cannot be deemed a simple general equality of everyone, but equal treatment of essentially the same states of facts. Different states of facts require normative differentiation.

[111] LANG J. (1989), Verantwortung der Rechtswissenschaft für das Steuerrecht, StuW, pp. 201, 203.

[112] In this respect, a supplementary rule which is applied especially when establishing which regulation should be applied or which regulation is in force in a certain case, is the rule that specific law prevails over general law, i.e. *lex specialis derogat legi generali* (e.g. if there exists a general law regulating institutions which applies for all institutions and a specific law which applies for institutions in the field of education). It must be pointed out that this rule in general refers to the question of which legal norm in force must be applied in an individual case, and thus it does not entail that by the implementation of a specific law general law (automatically) ceases to apply.

[113] As an example of such in the past, Article 4 of the Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia [Ustavni zakon za izvedbo temeljne ustavne listine o samostojnosti in neodvisnosti Republike Slovenije] of 1991 can be mentioned, which reads as follows: "Until the issuance of appropriate regulations by the Republic of Slovenia, those federal regulations that were in force in the Republic of Slovenia when this Act entered into force shall be applied *mutatis mutandis* as regulations of the Republic of Slovenia, insofar as they are not contrary to the legal order of the Republic of Slovenia and unless otherwise provided by this Act."

[114] See BOHINC R., CERAR M., RAJGEL B. (2006), *ibidem*, pp. 126 – 130.

[115] See PAVČNIK M. (1997), *ibidem*, p. 348.

[116] *Ibidem*, p. 355.

[117] See STOJČEVIĆ D., ROMAC A. (1984), *ibidem*, item 149, p. 262.

[118] See STOJČEVIĆ D., ROMAC A. (1984), *ibidem*, item 138, p. 262.

[119] Article 4 of the Treaty on European Union reads as follows: "The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives." It must be added that a Member State that does not respect such may also be liable for compensation for damages caused to individuals on these grounds, as individuals may challenge specific and individual acts (e.g. administrative decisions) of their state due to noncompliance with EU law by an action brought before the Court of Justice.

[120] This is also connected to the fact that in the EU there is no classic division into legislative, executive, and judicial powers.

[121] See ČEBULJ J., STRMECKI M. (2005), Upravno pravo, Fakulteta za upravo, Ljubljana, p. 85.

[122] See Article 87 of the Constitution of the Republic of Slovenia.

[123] See Article 153 of the Constitution of the Republic of Slovenia.

[124] See Article 8 of the Constitution of the Republic of Slovenia.

[125] It proceeds from the above-mentioned that this concerns implementing acts which are based on some higher regulation and that their substance proceeds from them. In addition, from the above-mentioned it can be concluded that there are two groups of regulations: the first group is issued for the implementation of laws, other regulations, and acts of the National Assembly, whereas the second group is issued for the implementation of regulations and acts of the Government.

[126] This is determined in Article 64 of the Local Government Act [Zakon o lokalni samoupravi], Official Gazette RS, Nos. 94/2007, 27/2008, 78/2008.

[127] For example, in cases in which the Constitutional Court of the Republic of Slovenia abrogates a law, it abrogates or annuls an implementing regulation and withholds the implementation of the legal act. Declaratory decisions of the Constitutional Court must be considered a binding general act when deciding on individual relations which have not yet been finally decided at the time of the deciding of the Constitutional Court, whereas such decision may only have *ex nunc* effects. Due to the fact that the Constitutional Court established that the first paragraph of Article 1 of the Civil Servants Act [Zakon o javnih uslužbencih], in accordance with which the highest officials can be replaced during their entire term of office, is inconsistent with the Constitution of the Republic of Slovenia, the court of first instance had to respect the Constitutional Court decision and annul the decision of the mayor on the dismissal of the director of the municipal administration (Supreme Court Judgment, No. I Up 1477/2005, dated 15 March 2006, VS 17890).

[128] [...] within three months of the day of the publication of the Constitutional Court decision, provided no more than one year elapsed from the service of the individual act to the lodging of the petition or request.

[129] See PAVČNIK M. (1997), Teorija prava, Cankarjeva založba, Ljubljana, pp.

[130] See Leksikon Cankarjeve založbe - Pravo (2003), *ibidem*, p. 264.

[131] See PAVČNIK M. (1997), *ibidem*, pp. 117 – 118. See also JHERING R. (1968), *Geist des römischen Rechts*, III 9th Edition, Aalen, pp. 351 – 352.

[132] See BRADAČ F. (1990), *ibidem*, p. 508.

[133] A legal fiction is an absolute and irrebuttable presumption (the opposite is a presumption which is relative and rebuttable.

[134] The exception to this rule is *nasciturus*. This is a child who has not yet been born when a testator died. Such a child can be heir under certain conditions; however, the child must be born alive.

[135] See HESS-FALLON B., SIMON A. M. (2003), *ibidem*, p. 91.

[136] The following, for instance, are special legal capacities: testamentary capacity (only a testator has testamentary capacity); the legal

capacity to inherit (e.g. persons disqualified from inheriting lack the legal capacity to inherit, i.e. due to unworthiness to inherit and disinheritance); the capacity to draw or endorse checks (e.g. banks have capacity to draw checks).

[137] See BOHINC R., TIČAR B. (2006). Upravno pravo – splošni del, Fakulteta za varnostne vede, Ljubljana, the chapter on Legal Entities under Public Law.

[138] See http://www.eracunovodstvo.org/blog/podjetnisko-pravo/kdo-so-pravnisubjekti/

[139] For example, various international organisations, social organisations, and professional organisations which do not function as societies, trusts, etc.

[140] See Grafenauer in: GRAFENAUER B., BREZNIK J. (2009). *Upravno pravo*. GV Založba, Ljubljana.

[141] The latest amendments to the Administrative Procedure Act [Zakon o splošnem upravnem postopku] determine that the number and date of a decision are no longer constituent parts of the decision – according to the proposer of the amendments, because this question is resolved by implementing regulations with reference to document management (i.e. The Decree on Document Management by Public Administration Bodies [Uredba o poslovanju organov javne uprave z dokumentarnim gradivom].

[142] Ibidem.

[143] Exceptions are decisions on the free flow of people in respect of employment.

[144] This organisation is a joint project between the European Union and the Organisation for Economic Co-operation and Development (OECD). The acronym SIGMA stands for Support for Improvement in Governance and Management in Central and Eastern European Countries.

[145] PIERRE and PIERRE (2007, p. 313) note that in post-Communist states, the adoption of civil service legislation is considered a panacea for addressing problems such as politicisation, fragmentation and instability.

[146] The Civil Servants Act, Official Gazette of the Republic of Slovenia, no. 56/2002 and amending acts. Although the Civil Servants Act entered into force in 2002, due to the fundamental incursions it made into the previous regime and practices and the large amount of work required to adapt to the new system, it began to be used on 28 June 2003.

[147] Thus the Civil Servants Act does not regulate the powers and obligations of police officers, tax inspectors, customs officers, military personnel, etc., even though these persons are employed in the public sector and certain general rules and principles of the civil servant system as determined by the Civil Servants Act apply to them. Police powers are determined by the Police Act, the powers of tax inspectors by the Tax Administration Act, the powers of customs officers by the Customs Service Act, etc.

[148] Roughly 160,000 persons, of whom about 40,000 are employed in state bodies and local community administration; the remaining 120,000 are employed in public institutes, public agencies, public funds and public utility institutes. There are around 820,000 employed persons in Slovenia and around 110,000 unemployed persons. See http://www.stat.si/novica_prikazi.aspx?ID=4782

[149] *German administrative law* delineates three groups of civil servants: officials (*Beamten*), white-collar workers (*Angestellte*) and workers (*Arbeiter*). See HOFFMANN-RIEM, W., SCHMIDT-AßMANN, E., VOßKUHLE, A. (Hrsg.) (2009). *Grundlagen des Verwaltungsrecht (Band III)*. Verlag C. H. Beck, München.

[150] The Employment Relationship Act, Official Gazette of the Republic of Slovenia, no. 42/2002 and amending acts.

[151] A typical example of the unilateral alteration of an employment contract is the transfer of a civil servant to a different work post against his or her will. If the civil servant does not consent to the transfer and does not sign the annex to the employment contract, his or her employer may issue a decision on the transfer and thereby unilaterally decide that the civil servant will perform tasks at a different work post (of course, the civil servant must have adequate qualifications for this work post). The civil servant may invoke legal protection against the

decision (file an appeal), but in this case the appeal does not postpone the enforcement of the decision.

[152] The highest instance of state administration is the Government. Because the Government is made up of holders of public office, issues surrounding their status do not fall under the framework of the Civil Servants Act.

[153] Under the current system, a Minister may have up to two State Secretaries.

[154] Typical designations for bodies within Ministries include administration, office (which covers several different Slovene words), inspectorate, direction and agency; non-typical designations include police, archive and General Staff of the Slovenian Armed Forces.

[155] Judicial bodies include the court, the State Prosecutors Office and the State Attorney's Office.

[156] The mayor is the principal of a municipal administration; the work of the municipal administration is directly led by the director of the municipal administration.

[157] Inspection of the enforcement of the Civil Servants Act is carried out by inspectors for the inspection of the civil servants system. The provisions of the law regulating inspection, the Inspection Act, do not apply to these inspectors. Their work is exclusively regulated by the provisions of the Civil Servants Act.

[158] A position is also an official work post in which tasks for the substitution of and direct assistance to officials in the positions of Secretary-General and Director-General in a Ministry or director of a body within a Ministry or government service (so-called deputies) are performed.

[159] Decree on internal organisation, posts classification, posts and titles in the bodies of public administration and justice, Official Gazette of the Republic of Slovenia, no. 58/2003 and amending acts.

[160] Public Sector Salary System Act, Official Gazette of the Republic of Slovenia, no. 56/2002 and amending acts.

[161] The Securities Market Agency and the Insurance Supervision Agency are exceptions.

[162] Code of Civil Servant Conduct, Official Gazette of the Republic of Slovenia, no. 8/2001.

[163] See http://www.arhiv.mju.gov.si/fileadmin/mju.gov.si/pageuploads/Uradniski_svet/Code_of_Ethics_final_text.doc (retrieved 28.6.2012). The Faculty of Administration has prepared a model for a code of ethics for administration (see VLAJ, S. (ed.) (2006): *Etično upravljanje občin*: *z modelom kodeksa.* Inštitut za lokalno samoupravo pri Fakulteti za upravo, Ljubljana). Only a single code has been adopted on the basis of this code, even though there are 212 municipalities in Slovenia.

[164] Equal treatment is also provided on the normative level by the Implementation of the Principle of Equal Treatment Act, Official Gazette of the Republic of Slovenia, no. 50/2004 and amending acts. The Constitution of the Republic of Slovenia otherwise includes the principle of equal treatment and the prohibition of discrimination, and the conventions of the International Labour Organization, agreements and directives of the European Union and especially the European Social Charter are also directly binding for the Slovenian legal order.

[165] Open competition is already foreseen in the Constitution: "Employment in administrative services is only possible on the basis of open competition, except in cases provided by law." (Article 122 of the Constitution of the Republic of Slovenia).

[166] In accordance with the Civil Servants Act, the appellate commission renders decisions on appeals of decisions issued by a principal regarding the rights and obligations stemming from the employment relationships of civil servants. In the case of state administration bodies and judicial bodies, appeals of employer decisions are decided upon by a commission appointed by the Government. In the case of appeals from civil servants arising from employment relationships in other state bodies, the commission of a different state body renders decisions; in the case of civil servants in local community administrations, appeals are decided upon by a commission in representative associations of local communities (the Association of Municipalities of Slovenia, The Association of Municipalities and Towns of Slovenia, the Association of Municipalities of the Republic of Slovenia). The Civil Servants Act states that in the event that these associations do not establish a commission for appeals stemming from employment relationships, a commission named by the government will render decisions on appeals from civil servants

in local community administration. This is the currently valid practice.

[167] General information on recruitment in public administration in PETERS (1995, pp. 89-134).

[168] This is not valid for the Director-General of the Police and the Chief of General Staff of the Slovenian Armed Forces – these two procedures are regulated by sector-specific laws.

[169] The Officials Council was founded by the Civil Servants Act as a special state body. Its tasks are: a) determining standards for the knowledge and training for the positions of the highest-ranking administrative managers in state administration; b) giving opinions for the National Assembly and Government regarding regulations that regulate the officials system and positions; c) appointing competition commissions for the selection of the highest-ranking administrative managers in state administration. The Officials Council has 12 members. Three members are appointed by the President of the Republic from among recognised experts in the public sector field, four are appointed by the Government, three are elected by officials from among officials in titles of the first and second degree (for example, senior secretaries and secretaries) and two are appointed by the representative trade unions for activities or professions at state bodies. Members of the Officials Council serve a six-year term.

[170] For example, the competition commission for selecting a Director-General for the Budget Directorate submits a list of the most suitable candidates to the Ministry of Finance.

[171] Directors of municipal administrations are appointed by the mayor.

[172] The Constitutional Court of the Republic of Slovenia ruled on the constitutionality of this legal provision. It found that these dismissals are constitutionally permissible if a chronological limit is in place. See decision no. U-I-90/05 of 7 July 2005, available at http://odlocitve.us-rs.si/usrs/us-odl.nsf/o/35D0EBA0EB28B482C125717200288DF7 (Slovene text, retrieved 29.6.2012).

[173] Public Administration Act, Official Gazette of the Republic of Slovenia, no. 52/2002.

[174] The basis for judging the suitability of officials for the highest position are the standards adopted by the Officials Council. These consist of two sections: 1) experience and managerial abilities and 2) expert knowledge. In the framework of the first section, the following are judged: 1) quality of experience with work, management and administration, 2) value of vision for the development of the body in question and 3) management ability; in the framework of the second section, the following are judged: 1) understanding of the body's mission and its role in the system, 2) familiarity with the problems of the body's area of work and 3) familiarity with planning and the use of resources. See http://www.mpju.gov.si/fileadmin/mpju.gov.si/pageuploads/Uradniski_svet/STANDARDI_URADNISKI_SVET_8._11._2010.pdf (Slovene text, retrieved 29.6.2012).

[175] Compare with PEČARIČ (2008), pp. 77-819.

[176] Promotion to a higher title has been frozen for some time as a result of measures aimed at balancing public finances. See Articles 162 and 163 of the Fiscal Balance Act, Official Gazette of the Republic of Slovenia, no. 40/2012.

[177] As already noted, this system is valid only for state bodies and local community administrations; otherwise it is not possible to unilaterally alter an employment contract in accordance with the general labour law legislation. In public institutes, public agencies, public funds and public utility institutes or other persons of public law who are budget users, the institution of transfer is not used, and a new employment contract is concluded instead.

[178] Act on the Access to Information of Public Character, Official Gazette of the Republic of Slovenia, no. 24/2003 and amending acts.

[179] General Collective Agreement for the Public Sector, Official Gazette of the Republic of Slovenia, no. 57/2008 and amending acts.

[180] Public Sector Salary System Act, Official Gazette of the Republic of Slovenia, no. 56/2002.

[181] This is valid for civil servants. Holders of public office entered into a new salary system in January 2008, and directors in the public sector entered a new system in March 2006.

[182] Terms which have an identical definition in the Civil Servants

Act or other regulations presented above, i.e. public sector, holder of public office, civil servant, work post, systematisation, etc. will not be presented in the following chapter.

[183] Promotion to a higher salary grade has been frozen for some time as a result of measures aimed at balancing public finances. See Articles 162 and 163 of the Fiscal Balance Act.

[184] Principals, directors and secretaries are an exception, as they are not entitled to a position bonus, bonuses for less favourable working conditions, bonuses for hazards and special burdens and bonuses for work during less convenient working hours. Only directors of public institutes who simultaneously perform work in their main careers are entitled to a bonus for work during less convenient working hours provided that in order to ensure the uninterrupted performance of an activity they perform, with the consent of the competent Minister or principal, work outside full-time working hours or work that requires being on standby or in a state of constant readiness.

[185] As a result of measures aimed at balancing public finances, this part of the salary has not been paid out for some time, a development which does not stimulate civil servants to enhance the quality of their work. See Article 160 of the Fiscal Balance Act.

[186] The amount of these funds determined by the Public Sector Salary System Act was reduced by the Fiscal Balance Act. See Article 161 of the Fiscal Balance Act.

[187] This is not valid for information on the salaries of civil servants in intelligence and security services.

Reviews

I have read the manuscript as a non-lawyer involved in criminological and criminal justice research for decades.

The presented scientific monograph provides a comprehensive overview of basic concepts for understanding the general features of the state, general institutes of the law, and the administrative law's primary framework.

The monograph is a welcome contribution to comprehensive state and law perspectives. The monograph is essential for the Erasmus+ students interested in taking a subject on the Slovenian legal perspectives. The book consists of detailed thematic explanations, definitions and reflections on examples that make the study material more comprehensive for the students.

The traditional teaching of law emphasizes the close link between the organization of the state, the rule of law, and the basic features of administrative law. Based on the premise that the general legal framework constitutes legal norms relating to the state, the book shows the organization of the state, a description of the central general legal institutes and an explanation of essential features of administrative law in the Republic of Slovenia.

The book's first chapter covers a well-structured overview of the state's organization of different types of states in general. The second chapter presents basic legal concepts. At last but not least, the book contains also a presentation of administrative law features.

The legal position of the holders of public offices in Slovenia (i.e. political functionaries) and the legal position of Slovenian

public servants are analyzed at the end of the book in a perspective of the public-sector salary system.

The English language level in the entire publication is proper for a subject meant for Erasmus+ exchange students. The style of writing is clear and comprehensive.

I also recommend the book for Slovenian students and practitioners who want to get acquainted with basic concepts of the state, the law in general and especially administrative law.

Professor Gorazd Meško, Ph.D.

Ljubljana, 31 January 2023

The scientific monograph »General Features of Public Law – The Slovenian Perspectives« provides a rounded view on basic concepts and features of the state, main elements and characteristics of legal system and general framework of administrative law. In the monograph, the authors address, on the one hand, the basic elements and characteristics of law and legal system in general and, on the other hand, the key elements and features of the legal system and state regulation of the Republic of Slovenia with an emphasis on the Slovenian administrative law.

The monograph is divided into three chapters and several sub-chapters. In the first chapter, the authors first define the basic concepts and elements of the state. They pay special attention to the concept of sovereignty, which they divide into internal, external, popular and national sovereignty. The authors deal with the typology of states from the viewpoint of the form of government, political system, and governance, and the power structure. As regards the form of governance, they claim that states can be divided into those that are based on the concept of the separation of powers and those that are based on the concept of the unity of power. They maintain that the system of the separation of powers should ensure the separation and diffusion of power, as well as the balance between the three branches of state power, and consequently, it should ensure the legitimacy, (i.e. moral justification and acceptability) of the power itself. The first part of the monograph ends with an overview the state authorities in the state structure of the Republic of Slovenia

and their powers. The authors demonstrate how state powers are executed by the holders of public offices by distinguishing between political, judicial and independent supervisory holders of public office and classifying them by type of bodies they belong to, by how their mandate was obtained and hoe their office is performed, and by the length of their mandate.

The second main chapter is dedicated to law and legal system. In the introductory subchapter, a brief description of the historical development of law is followed by the definitions of law, legal order and legal system. The divisions of law and fundamental elements of the legal order (i.e. legal rules and principles, legal acts and legal relations) are addressed in more detail. Dealing with legal rules and principles, the authors refer to the structure and types of legal rules (i.e. general and abstract legal rules, on one hand, and specific and individual, on the other, categorical and optional legal rules, discretionary legal rules, etc.) and to types of sanctions for the violation of legal rules. In this part of the chapter, special attention is paid to some constitutional and other most important fundamental principles of the legal order of the Republic of Slovenia.

The second chapter of the monograph continues with exploring the main sources of law (i.e. their types, divisions and hierarchy) and methods of legal interpretation. Special emphasis is given to acquis communautaire (i.e. to the sources of the legal order of the European Union).

The authors conclude the second chapter by shedding light on legal entities (subjects) and legal rights. Referring to legal subjects, they differentiate between natural persons and legal entities as artificial legal subjects established by a legal act, drawing special attention to the legal and contractual capacity of the former and the typology of the latter (i.e. the authors differentiate

between legal entities under private law and legal entities under public law and between corporations and foundations).

In its third and final main chapter, the monograph addresses administrative law and civil servant's law. Referring to administrative law as a »subsystem« of legal norms, the authors see it as an independent and self-standing area of public law whose fundamental characteristics are that it regulates the realisation of state power and its orientation towards regulating and protecting public interests. It consists primarily of legal rules (norms) and principles which regulate the position of state administration, local communities, holders of public powers and providers of public services and procedural relations between holders of the executive branch of power and clients. The authors discuss, inter alia, administrative decisions and their constituent parts and conclude the monograph by a brief but comprehensive presentation of the Slovenian public servants law.

After reading the manuscript, I can say that the monograph is definitely a relevant contribution to general knowledge of the Slovenian (administrative) law, especially because it is written in English. To the best of my knowledge, it provides one of the most transparent presentations of the fundamental characteristics of the legal system of the Republic of Slovenia and the Slovenian administrative law in the broader context of the fundamental elements and characteristics of the modern legal systems. As such, the book will be an informative and useful tool for students, both Slovenian and foreign students studying in Slovenia under the Erasmus+ and other student's exchange programs. The book will also be useful for all those non-Slovene readers who would like to familiarize themselves with the structure of the state and legal system and basic elements and characteristics of the Slovenian administrative law. All in all, I

recommend the book to everyone who does not yet know much about (administrative) law, but would like to familiarize themselves with its fundamental concepts and features.

Associate Professor Benjamin Flander, Ph.D.

Šentjošt nad Horjulom, 31 January 2023

The scientific monograph »General Features of Public Law – The Slovenian Perspectives« (hereinafter: the book) is the scientific monograph, which provides the reader with a comprehensive legal and theoretical overview of the fundamental issues of the state and the law, and in this context, the narrower law of civil servants and their wages system. The book gives a general theoretical view with highlights from the constitutional and legal order of the Republic of Slovenia.

In the first part of the book; (THE STATE) in addition to basic explanations about the state, the classification of states, state authorities and their powers, and especially execution of state powers by the holders of public office (example of the republic of Slovenia) are presented

The second part (THE LAW) first explains the basic theoretical knowledge about law and the classification of law further about legal rules and legal principles and sources of law, about human rights and about persons in law.

In the third part (ADMINISTRATIVE AND CIVIL SERVANTS' LAW) concepts such as administrative law, civil servants' law and common principles and special provisions and principles of the civil servants system are explained. In this part, the key terms of the public sector salary system are first discussed, and then the rules on the salary of the civil servants and holdesr of public office are explained (THE PUBLIC SECTOR SALARY SYSTEM).

The book is rich in visual representations; it thus contains as many as 12 displays that vividly illustrate the explained legal contents and concepts. For example, diagrams with the essential elements of the state and the concepts such as sovereignty, or the classification of states are presented. There is also an interesting presentation of the development of civilizations in Europe and the famous divisions of law. The elements of abstract legal norms or abstract rules and the hierarchy of regulations are also presented in a diagram form. Concepts from the field of legal theory, administrative law, and the law of civil servants and the salary system are also shown on the diagram.

As the authors themselves point out, the book is intended to be used as an aid in understanding general features of legal systems – i.e. main institutions of law and the state.

To my understanding, the book is theoretically in-depth enough, but also educational. It will satisfy both the more demanding thinkers of legal theory, as well as all those who are just getting through the basics of legal civilization and the general theory of the state and law.

The book is one of the rare scholarly works that presents not only the general theory of law, but also the main legal elements of the Slovenian constitutional legal system in a popular way and in English. Therefore, the book will be an interesting and extremely useful tool for all those who want to familiarize themselves with and also deepen their knowledge of law in general and also of the Slovenian legal system.

Professor Rado Bohinc, Ph.D.

Ljubljana, 11 January 2023

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Prof. Bojan Tičar, Ph.D. (1965) is a full professor at the University of Maribor (Faculty of Criminal Justice and Security and Faculty of Law); University of Primorska (Faculty of Management); and MLC, Management and Law College, Ljubljana. He holds several academic degrees: Doctor of Legal Sciences (Ph.D. – Faculty of Law, University of Ljubljana, 2001), University Graduated Lawyer (BA – Faculty of Law, University of Ljubljana, 1990), Master of Public Administration (MPA – Faculty of Social Sciences, University of Ljubljana 1995) and Certified Managerial Accountant (CMA – Accounting Institute and College of Accounting, Ljubljana, 2013).

Maša Tičar (1996) is a legal manager specialising in international business and corporate law with professional experience in European and international legal environments. She graduated with honours (*cum laude*) obtaining her Master of Laws degree at the Faculty of Law (University of Ljubljana) and completed international exchange programmes in Heidelberg (Germany) and the ELTE Budapest (Hungary). She won first place in the international moot court competition "Big Deal" in corporate law, legal due diligence, and negotiation, and third place worldwide in the "International Tax Law Moot Court".

Title

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GENERAL FEATURES OF PUBLIC LAW - SLOVENIAN PERSPECTIVES

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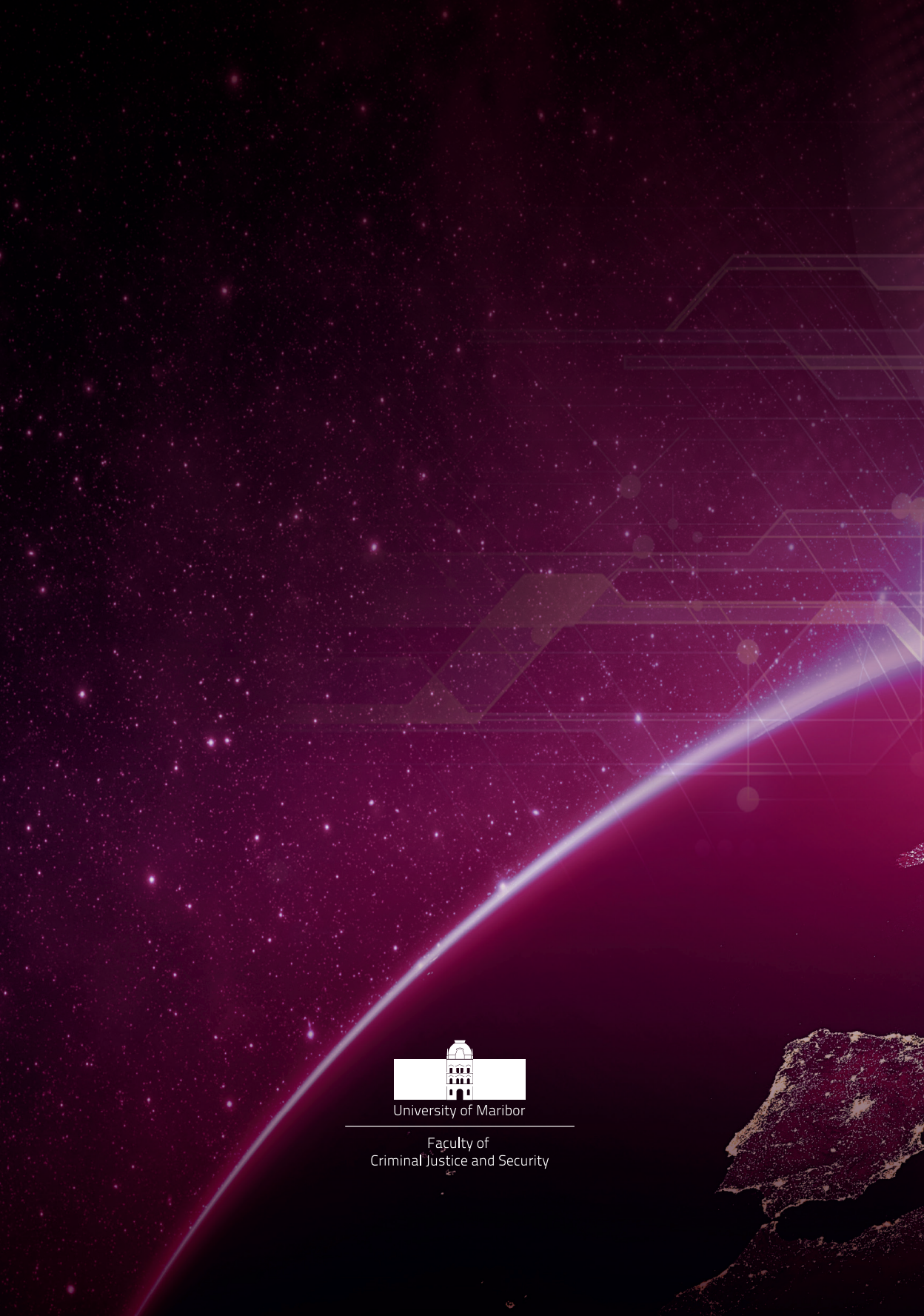
This book is intended is to be used as an aid in understanding general features of public law from Slovenian perspective. The book has three parts. The first chapter deals with the state, its essential elements,and the various types of states, taking into consideration a range of different criteria. The second chapter introduces the basic constituent parts of the law and the forms of legal order in which these parts are vertically and horizontally incorporated. The terms are sometimes simplified in order to bring law and an understanding of it closer to readers who are not professional lawyers.The third chapter is devoted to defining basic terms of administrative and civil service law. Administrative law consists primarily of the legal norms which regulate the foundations of the organisation of the state and local communities. The last part of this chapter is devoted to civil servants and public salary system.



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