# General Principles and Challenges of Public Administration Organization in Central Europe

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# General Principles and Challenges of Public Administration Organization in Central Europe

*Edited by*
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# Basic Concepts and General Framework of Public Administration Organization

Gábor HULKÓ

**ABSTRACT**

This chapter addresses some of the fundamental issues pertaining to the functioning and organization of public administration, offering a comprehensive overview over these topics. Subsequently, country studies are presented to deliver a comprehensive examination of the national regulatory issues pertaining to public administration law. The present text offers a general definition of the concept of public administration, a classification of some of its fundamental operational principles, and a description of the general issues pertaining to the systems of public administration. Particular emphasis is placed on the organizational issues and principles of central and territorial state administration, and on the organizational provision of certain aspects of public services. Additionally, the chapter includes a brief overview of self-governing systems, with specific attention to local and regional municipalities as the unique, autonomous intermediaries of state power in relation to citizens.

**KEYWORDS**

public administration, state organization, principles of public administration, state administration, local self-governments

## 1. Public administration and its organization

In its most general sense, public administration can be defined as the management of the state, encompassing the activities of all organizations and individuals that influence the behaviour of members of society in the public interest. The function of public administration is to serve the members of society and promote the public interest, and at its core is the implementation of public policies, which in turn are necessarily linked to the functioning of the social system and the provision of efficient and high-quality public services to society members. A defining feature of public administration is thus its commitment to the public interest, as it provides essential services to members of society and ensures access to public goods. What follows is

Hulkó, G. (2024) 'Basic Concepts and General Framework of Public Administration Organization' in Hulkó, G. (ed.) *General Principles and Challenges of Public Administration Organization in Central Europe.* Miskolc-Budapest: Central European Academic Publishing. pp. 11–22; https://doi.org/10.54171/2024.gh.gpacopaoce_1

that public administrators must respond to the needs and preferences of members of society and ensure that public resources are used wisely and efficiently.[1]

The public administration is also accountable for the performance of its activities and must ensure operational transparency. As public authorities exercise public power, they are politically and legally answerable for the exercise of that power and, as they utilise public resources, they are answerable to the public for the performance of their activities. Public administration is a complex activity encompassing the following: the actualisation of central and local government objectives, constitutional rights, obligations, and goals; the rational management and influence on the life and functioning of society and individual communities; the utilisation of an array of legal means of implementation. This complexity means that the disciplines dealing with public administration (i.e. the science of public administration) provide a multitude of definitions of public administration based on different approaches. In a sense, the manifold approaches are interconnected, and a strict divide between them is neither possible nor necessary. Nevertheless, and in alignment with the research structure of this book, the organizational approach will be emphasised in this paper, focusing on public administration as a set of bodies and persons who carry out administrative activities and public tasks. The initial area of focus will therefore be placed on public administration organizations.

Public administration organs are professional bodies in the field of public administration, and the individuals who carry out public administration activities inside these organs are professionals who have acquired a distinct status. These organs derive their power from the state's power, which affords them distinctive capabilities for action, intervention, and coercion. In contrast, private organizations are constrained to exercising only organizational power. In the context of organizational power, the administrator is constrained to making decisions that are binding on the members of the organization, meaning that they are not authorised to utilise state coercion to enforce their decisions, and their authority extends only to the exclusion of those who act in contravention of the decision. It is evident, nevertheless, that public administration cannot function exclusively through the exertion of power; in modern states, public administration organs are responsible for providing a complex set of public services, or service-like activities.[2]

In summary, public administration is the management of the members of society and their organizations by a specialised body of professional civil servants, primarily in possession of public authority, and separate from other state organizations (e.g. courts). The function of public administration is the professional preparation of public decisions affecting society as a whole and the future of society, as well as participation in the implementation of these decisions through legislation, law enforcement, and other administrative and organizational means.[3]

1 Gyurita et al., 2024, pp. 21–23; Patyi, 2017; Hulkó, 2024, pp. 36–67.
2 Lapsánszky, Patyi and Varga, 2024.
3 Gyurita et al., 2024, p. 23; Patyi, 2019, pp. 283–310; Rozsnyai, 2017.

## 2. On some of the principles of public administration

The fundamental principles of public administration are the most general principles affecting such administration, and their significance lies in their ability to encapsulate the fundamental expectations of society with regard to public administration. Consequently, they serve a pivotal role in shaping and orienting the reality within which public administration operates. While there is no consensus regarding the precise list of principles that should be considered fundamental to public administration, the most crucial ones can be identified as a) legality, b) effectiveness, and c) democracy.[4]

The legality of public administration has been a fundamental aspect of modern public administration since its inception, undergoing significant evolution and adaptation in response to societal changes and challenges. The foundation of this principle is the necessity to guarantee respect for human dignity, which can only be achieved when an individual is subject to the authority of the law and not that of another person. However, the rule of law is called into question when the same authority is responsible for both creating and applying the law. In this regard, the principle of separation of powers necessitates the establishment of a system of checks and balances between the legislature, the executive, and the judiciary. Concurrently, the legality of public administration entails the limitation of the power of public administration and its interventions. This is achieved through the binding of public administration action, the protection against arbitrary and unjustified administrative intervention, and the prevention of the abuse of power. Additionally, this secures the predictability of public administration decisions.[5] In general, the principle of legality in public administration can be understood as part of the modern constitutional paradigm of the rule of law. Bodies vested with public authority conduct their activities within the organizational framework established by law, within the rules of operation established by law, and within the limits set by law in a manner that is known to the citizen and predictable. The aforementioned principle within the scope of the public administration domain asserts that:

> public administration be subject to the law is a stipulation derived from the rule of law in relation to the activities of public authorities. Public authorities, when intervening in social relations in the exercise of their public powers, take their decisions within the organisational framework laid down by law, in accordance with the procedural order regulated by law, and within the framework laid down by substantive law.[6]

4 Gyurita et al., 2024, pp. 23–26.
5 Patyi and Varga, 2012; Kálmán and Lapsánszky, 2017.
6 See Constitutional Court Decision No.38/2012 (XI.14.) [Online]. Available at: https://net.jogtar.hu/jogszabaly?docid=A12H0038.AB&txtreferer=A1200002.TV (Accessed: 12 February 2024).

Importantly, the legality of public administration is subject to varying degrees of scrutiny. In conclusion, the principle of legality in public administration can be defined as follows: a) the organization of public administration is based on law; b) the public administration may act only on the basis of a legal authorisation; c) the public administration may act within the limits of its authority, in accordance with its purpose, and without abuse of that authority; d) public authorities are obliged to comply with and enforce the provisions of the law; e) a system of guarantees must be established to ensure the lawful functioning of the public administration.[7]

The principle of administrative effectiveness can be defined as the necessity for public administration to attain public objectives and pursue the public interest to the greatest extent and in the highest quality. This must be done while simultaneously utilising the material and human resources available to them in the most efficient manner, that is, with the least possible expenditure and the greatest possible outcome. This effectiveness is reflected in the satisfaction of members of society or government actors with the functioning of the public administration and the manner in which it fulfils its obligations, as well as in the assessment of customers regarding the handling of their affairs.

The efficacy of public administration can be classified into two categories based on the orientation of the administrative action. The external effectiveness of public administration can be defined as the ratio between the effort and the result of achieving a given objective, as well as the social satisfaction with public administration. Indicators of this can be, for example, accessibility to services, client burden, resource management, preparedness, or client satisfaction. The assessment and measurement of external effectiveness in public administration presents a significant challenge owing to the inherent characteristics of such administration, as it typically holds a monopoly position, operates without competition, and cannot be dismantled nor abolished.[8] There is also the internal effectiveness of public administration, which can be defined as an assessment of the internal organizational work required to carry out the external tasks of public administration. These tasks include for instance the setting up of the administrative organization, the establishment of the internal structure within the public administration, the definition of department tasks, the organization of the tasks and systems for handling files, and the operation of the administrative infrastructure. Internal effectiveness is more readily quantifiable than external effectiveness and can be evaluated in terms of the number of individuals engaged in each task, along with the time and cost involved for a task.

In the most general sense, democracy can be defined as a system of governance in which the majority rules, with legal guarantees provided by the freedoms included among fundamental human rights and civil liberties. However, the internal functioning and decision-making processes of public administration are typically not based on the principles of democracy. This is because the heads of these bodies are not

7 Gyurita et al., 2024, pp. 23–24; Patyi, 2024, pp. 751–766.
8 Ibid., p. 24; Hulkó, 2024, pp. 36–67.

elected by the staff, and decisions are typically made by a single individual rather than a majority. Exceptions to this include collegial bodies and atypical cases. The democratic nature of public administration implies that it is subject to certain limitations and forms of oversight. A society can be considered democratic to the extent that it ensures that public administration acts in the public interest in a multifaceted manner.[9]

Thus, the involvement of citizens and social organizations in the execution of administrative duties can be regarded as a direct manifestation of democratic principles. There are numerous forms of participation, including the assumption of administrative responsibilities, and a direct form of democracy may manifest as participation in the legislative process (e.g. the consultation of partners on local building codes and town planning regulations). Alternatively, it may be expressed in the monitoring of public authorities, such as public hearings and village assemblies. Furthermore, an action represents a direct form of democratisation insofar as it pertains to the open nature of the administrative field and of the conditions of employment. An indirect form of democratisation is the transparency of public administration, which allows for the observation of its operations and activities. The most significant guarantees of transparency are access to data of public interest and data in the public domain, the right of access to documents as regulated by specific procedural laws, and the public reporting of certain decisions.[10]

## 3. Central and territorial state administration

There are multiple perspectives from which the various subsystems of the organization of public administration can be examined. The term public administration is used in a broad sense to encompass all organizations that exercise administrative functions and powers, regardless of their relationship to one another, their organizational form, or whether they are self-governing. The administrative organization encompasses the system of self-governments (territorial or functional decentralisation), public service institutions and public bodies, various state-owned or municipally owned companies, and the sub-system of the state administration. In addition, there is a clear distinction in most countries between the central and regional levels of state administration.

The organization and concept of state administration encompasses primarily those bodies that are ‘classically’ administrative in nature. In most cases, these bodies perform official tasks subject to the hierarchical control of the government, and can include (depending on each country’s system) the government, ministries, government headquarters, central bureaus, local/territorial government bodies, autonomous and regulatory bodies and law enforcement agencies. The organization of state administration in any country also represents a significant financial burden,

9 Hulkó, 2024, pp. 36–67.
10 Gyurita et al., 2024, p. 26.

is inextricably linked to the country's competitiveness, and directly impacts the population, including public policy issues. It is beyond question that public administrative and non-administrative tasks must be performed in some way and within some administrative organizational framework. Even the European Union has a relatively limited ability to influence this matter, as it is constrained by the freedom of the individual European Union Member States to organize themselves in accordance with their own constitutional and legal frameworks. The European Union does, however, set certain limits through legal sources, with an example being the case of organizations requiring administrative autonomy or other forms of independence.[11]

The following is a list with some elements of the state administration system that can be considered the most crucial: a) the ability to implement the government's policies and programmes in an effective and professional manner; b) the pursuit of cost-effectiveness from a financial perspective; c) the proximity of the system to the population, ensuring the satisfactory fulfilment of public duties; d) the assurance of the system's ability to perform all public functions and to promote the competitiveness of the country. However, as each government adheres to a distinct set of principles and views regarding the optimal structure for public administration, the organizational system of public administration is inherently variable. Of course, this variability is not consistent across all countries; for example, we can create a list where Anglo-Saxon legal order countries have the most consistent organizational system of public administration, followed by Western European countries (which are also consistent but less so than Anglo-Saxon legal order countries), and then post-regime Central and Eastern European countries or developing countries. One of the reasons for the frequent and fundamental changes in the organization of public administration in Central and Eastern European countries is that their administrative law is the 'youngest' in Europe, and the field of law is newly emerging in free and democratic post-socialist states. Another evident rationale is that the budgetary constraints of these countries required the constant exploration of optimal approaches to public administration and service delivery, so as to ensure the effective and high-quality functioning of public administration along with public accountability.[12]

In addition to the organs of central state administration, the organs of territorial state administration also play a significant role in this subsystem. The organization of state administration at the local or territorial level is a complex undertaking and features challenges inherently diverse and dynamic, with one significant challenge being striking a balance between central authority and local autonomy. While a centralised approach ensures uniformity and cohesive national policies, it can stifle local initiatives and fail to address specific regional needs. Conversely, granting extensive autonomy to local administrations might lead to policy implementation inconsistency

11 Ibid., pp. 158–200; Balázs, 2013.

12 For more on this topic, see Gyurita et al., 2013, pp. 155–184; Franczel, 2013, pp. 17–44; Fábián and Hoffman, 2014; Hulkó and Kálmán, 2013, pp. 1–8; Lapsánszky, Patyi and Varga, 2024; Patyi, 2019, pp. 283–310; Rixer, 2014; Patyi and Varga, 2012.

and disparities between regions, especially if there are vast differences in economic, social, or political capacities. Furthermore, there is the challenge of coordination and communication between different levels of government. The effective functioning of a government system depends on the ability of central authorities and local administrations to interact in a seamless manner. However, various factors, including bureaucratic inefficiencies, overlapping jurisdictions, and differing priorities, can impede this process. It is thus of the utmost importance to establish transparent and well-defined lines of authority, responsibility, and communication, and yet this proves a challenging task in practice.

The territorial level of state administration can be organized in several ways that can be considered broadly rational. For example, there is a method where the performance of territorial public administration tasks is the exclusive responsibility of various types of specialised state administrative organs (e.g. territorial/local specialised state administration bodies, or specialised state administration bodies established only at the local level). Another method is one where a territorial state administrative body with general powers is responsible for the execution of all tasks pertaining to territorial administration and is not accompanied by a special (deconcentrated) administration. In this model, the territorial state administration body with general powers is usually essentially under the direct control of the government. A third possible method is one where a territorial state administration body with general competence is responsible for the majority of territorial state administration tasks, but there are, concomitantly, territorial state administration bodies with special competence that operate independently of the aforementioned administration. These bodies with special competence focus on performing certain state administration tasks, but the territorial state administration body with general competence is responsible for coordinating, controlling, and exercising other powers in relation to the specialised state administration bodies within its area of competence. There is also a method where no general or special public administration body shall be established for the performance of territorial public administration tasks, and such tasks shall instead be entrusted to the organization of the local government administration operating in the territory concerned. In such cases, the performance of public administration tasks and local government tasks, along with their responsibilities, shall be separated.[13]

The most crucial factor in determining the structure of territorial state administration is the nature of the public task and the necessity of providing it in a more accessible manner to the population. In essence, the most prevalent model of territorial administration across countries is the mixed system, wherein the various methods mentioned above are integrated. Additionally, federal states possess a distinctive quality, which is the capacity to establish federal state territorial authorities, thereby introducing an additional layer of territorial administration.

13 Gyurita et al., 2024, pp. 203–205.

## 4. The state and self-government

A common conceptualisation of the term self-government is the right of a community or body to manage its own affairs. In general, self-government can be understood as an organizational principle (i.e. referring to the institutionalisation of the activity of self-government), an operational mechanism (i.e. encompassing the definition of objectives and the representation and protection of interests), and a procedural technique (i.e. involving the institutionalisation of arrangements for participation). Moreover, self-government includes the following elements: self-organization, -regulation, -governance, -development, -correction, and decision-making in its own right. The original conceptualisation of self-government was predicated on the assumption that the participants in it had identical preferences. While this homogeneity has been largely overturned over the centuries, it remains true today that a collective is self-governing if the decisions taken on its behalf align with the preferences of the majority of its members.[14] In summary, self-government represents the situation where the execution of defined public matters has been entrusted by law to separate public entities as an expression of the decentralisation of the exercise of public authority. The subject of self-government is the administration of public affairs at the local (territorial) level or in connection with the exercise of a specific profession (e.g. professional chambers).[15]

Local governments have numerous similarities with other types of self-governments (public bodies and non-governmental organizations), and yet they also have a few significant differences. A local government is distinguished from municipalities organized on a professional and occupational basis primarily by its democratic-political basis and its general powers. In contrast to local authorities, which represent the entire population of a given area, municipalities organize and group the population on a personal basis. Furthermore, it is important to highlight the highly-regulated public status and strong historical roots of municipalities.[16]

Furthermore, while the concept of local government has a long history in Europe, it is perceived differently across European countries. In general, democratic societies in Europe recognise a degree of independence, self-determination, and the right of certain communities to determine their own affairs.[17] As aforementioned, self-governments are administrative entities that operate with a degree of autonomy, allowing local communities to manage their own affairs within the broader framework of the state. These governments are typically elected by the residents of the area they serve, reflecting the democratic principle of local representation and participation. Indeed, the core idea behind self-government is to empower local populations to make

14 For comparison see Patyi, 2019, pp. 283–310; Lapsánszky, Patyi and Varga, 2024; Tamás, 1994; Balázs et al., 2014, pp. 1–61, 61.
15 Sládeček, 2019, p. 12.
16 See Lapsánszky, Patyi and Varga, 2024; Balázs et al., 2014, pp. 1–61, 61.
17 In more detail: Rixer, 2014; Patyi and Varga, 2012; Lapsánszky, Patyi and Takács, 2017.

decisions that directly affect their lives, fostering a more responsive and accountable form of governance. Self-governments are also generally characterised by financial independence, often having the power to generate revenue through local taxes, fees, and other sources, allowing them to fund local initiatives and services. Nonetheless, their financial capacity can vary widely depending on the economic resources of the area they govern, which can create disparities between wealthy and less affluent regions.

The European Charter of Local Self-Government,[18] developed within the framework of the Council of Europe, defines local self-government as 'the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population'.[19] It is therefore a combination of administrative and regulatory activities directed towards the performance of public affairs and exercised within a legal framework. In summary, self-governments are vital institutions that embody local autonomy, democratic participation, financial management, and cultural preservation, while also functioning within the broader national framework. They enable communities to take an active role in shaping their destinies, reflecting the unique character and needs of their regions.

## 5. Private entities with administrative function

In the most general approach, private entities with administrative power are non-governmental organizations or corporations that have been granted, or have assumed, authority typically associated with public administration. This authority allows them to regulate, manage, or make decisions that affect public welfare, policy, or individual rights, often in areas traditionally overseen by government bodies. Despite being part of the private sector, these entities can influence or control various aspects of public life through enforcement, oversight, or operational functions.

The administrative tasks undertaken by the private sector and the regulatory solutions it implements can vary considerably by country. This is especially so because their specific solutions are typically contingent on the historical traditions of the country in question; for instance, among the countries surveyed, those that were formerly socialist tend to make less use of public power methods, whereas the legal systems of countries in the Western European region tend to employ such regulatory solutions more frequently.

18 European Charter of Local Self-Government [Online]. Available at: https://www.coe.int/en/web/impact-convention-human-rights/european-charter-of-local-self-government#/ (Accessed: 12 February 2024).

19 European Charter of Local Self-Government, Article 3 (1).

## 6. Conclusion

Public administration is of paramount importance owing to its integral function within the governmental apparatus and its role in public policy implementation. It serves as the mechanism through which the will of the state, as expressed through legislation and policy decisions, is translated into concrete actions that impact citizens' lives. The effective implementation of legislation and policy depends on a well-organized and efficient public administration system that ensures the consistent and equitable execution of governmental directives. Meanwhile, the basis for administrative activities is largely provided and implemented through its organizational system.

The organization of public administration is of fundamental importance, directly affecting the efficiency, effectiveness, and accountability of government operations. An organized public administration provides the following: ensures that government mechanisms are structured in a way that enables the effective implementation of policies and the delivery of services to the public; secures a clear delineation of responsibilities and authorities within government agencies, which is essential to avoid effort duplication and safeguard efficient task completion; allows for a systematic approach to public resource management where planning, coordination, and execution are streamlined to achieve the desired results; helps in the development of specialised functions and expertise within different segments of the government, increasing the overall competence and effectiveness of government services.

In addition, the organization of public administration is essential for the maintenance of its accountability and transparency. Establishing clear lines of authority and responsibility makes it easier to track decision-making processes and outcomes, as well as to identify who is accountable for specific actions and decisions, thereby fostering a culture of accountability and reducing the potential for corruption and misuse of resources. Effective organizational structures also support mechanisms for oversight and audit, which are critical to ensuring that public funds are used appropriately and that government actions are subject to scrutiny.

In essence, the organization of public administration is critical to ensuring that government functions are carried out smoothly, efficiently, and transparently. It underpins the successful implementation of policies, the effective delivery of public services, and the maintenance of accountability, all of which are essential to fostering public trust and achieving the broader goals of governance.

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# European Regulatory Aspects of the Organizational Law of Public Administration

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**ABSTRACT**

The organization of public administration has traditionally been considered an internal affair of the state. This paper goes beyond the traditional approach to public administration to reveal the interrelationships that today limit the organizational autonomy of individual states. Following an examination of the basic theoretical issues of organizational law, the paper addresses the relationship between administrative organization and sovereignty. In doing so, it examines international law and European Union (EU) norms containing rules directly or indirectly affecting administrative organization. The study particularly highlights the function of international organizations in making best practices available to states. EU primary and secondary legislation appears to respect EU Member States' autonomy, but there are also various rules that oblige EU Member States to shape their administrative organization. There is also a focus on EU agencies, European Groupings of Territorial Cooperation, and other bodies linked to national administrations as specialised EU administrative structures. Overall, the study contributes to an examination of the extent to which EU Member States' autonomy is limited today and by what means.

**KEYWORDS**

public administration, organization, structure, sovereignty, autonomy, agency, Council of Europe, European Union, secondary legislation, soft law

## 1. Introductory thoughts from the theory of public organization

### *1.1. Relationship between organization, association, and public function*

Organization is an essential element of public administration, the latter carrying out its functions in and through the first and exercising its powers through it. This organization is, as we shall see, a normatively ordered reality. The administrative organization, like all other organizations in society, is ultimately a specific form of human association, with its own members, hierarchy, and objectives which it seeks

Gerencsér, B. Sz., Sabjanics, I. (2024) 'European Regulatory Aspects of the Organizational Law of Public Administration' in Hulkó, G. (ed.) *General Principles and Challenges of Public Administration Organization in Central Europe.* Miskolc-Budapest: Central European Academic Publishing. pp. 23–52; https://doi.org/10.54171/2024.gh.gpacopaoce_2

to achieve.[1] Importantly, and as András Tamás stresses, the organization—and thus the administrative organization—is not a community (*communitas*), but an association (*societas*),[2] the latter presupposing that its 'regularity is based on the idea of contract'.[3] According to Edwin O. Stene, what all social organizations have in common is that (1) they are made up of people, (2) carried out by a collective effort, and (3) for a common purpose.[4] Nonetheless, the most important difference between social association and administrative organization is that the latter's purpose is administration itself (i.e. the functioning of the organs of the state) and its tasks are not determined by its members ('internal'), but rather ordered by law ('external'). Thus, the 'contract' will not be concluded by the members, as would be in the case of a company or an association, but its legitimacy *is* derived from popular sovereignty (democratic legitimacy).

The creation of government bodies, municipalities and autonomous bodies is based on the public function and task entrusted to them by the legislator (i.e. the state itself), implying that the organization and the task are most closely linked. It could also be said that the task will determine the organization's nature, and that, for instance, the purpose of a local government is to ensure local representation, presupposing that the elected representatives exercise their powers as a body. A possible inference here is that a local government's organization will be collegiate in nature because of its purpose. However, the tax authority or public health authority have completely different roles, as one applies the tax law and another decides mostly on health issues of individual cases. The enforcement scheme requires a more concentrated, hierarchical organization.

### *1.2. Organization, rule of law, legitimacy, and normativity*

For the state to be able to carry out the above rational organization activity, it must establish a normative declared organization. The exposition thus far renders clear that the main purpose of public administration is to administer outside its organization and perform public functions, the most specific of which is the exercise of public power. The requirement of the rule of law accepted by democratic systems of government presupposes that not only their functioning but also their organization must be predictable, as follows:

> One of the fundamental requirements of the rule of law is that bodies vested with public authority must carry out their activities within the organizational framework laid down by law, within the limits of a legal framework which is known and predictable by law.[5]

1 Baumgart and Muster, 2023, p. 179.
2 Tamás, 2010, p. 169.
3 Tamás, 2010, p. 169.
4 Stene, 1940, pp. 1124–1137.
5 Decision 56/1991 (XI. 8.) AB of the Constitutional Court of Hungary.

In the above 1991 decision, the Constitutional Court of Hungary emphasises the need for transparency and predictability in public administration, linking the whole of such administration, including its organization, to legality and legal certainty. A similar conclusion is reached by the Venice Commission in its 2011 report on the rule of law, in which the first two substantial or material elements of the rule of law are these two legal principles.[6]

Administrative bodies, and the organizational law governing them, are subject to the same rule of law requirements as substantive and procedural rules. The legitimacy and legality of public authority is determined precisely by a normative command establishing what conduct is to be followed and how it may be enforced in a procedure.[7] There is also interdependence between organizational, substantive, and procedural rules (i.e. they interact continuously), and they have an equal relationship with the rule of law, in that a breach of the rule of law in any one of them affects the whole administration.

### *1.3. Organization, rationality, order, and structure*

The administrative organization is also closely related to rationality.[8] According to Waldo, administration is a 'cooperative human action' implying a high degree of rationality, and two concepts define the essence of public administration, 'organization and management', where organization 'may be defined as the structure of authoritative and habitual personal interrelations in an administrative system'.[9] Waldo also proposes that the conceptual element of organization is that it is organized, therefore rational. According to Tamás, however, this is relative, since it varies in space and time depending on the perspective a person uses to look at rationality.[10] This is why administrative systems can vary so widely worldwide, and yet each be rational in its own reality. Thus, administrative organization is rational because it is organized and structured.

If, based on these delineations, we accept that an administrative organization is created by a normative command and that it lays down the conditions for its operation, then its legitimacy comes from outside (i.e. from the legislator) and the rule of law principle applies. From this normativity follows the orderliness and systematicity of public administration, and from this systematicity items its structuredness.[11] By structure here we mean actual organizational forms, referring to the practical design, depth, composition, and openness/closedness of the administrative organization. As aforementioned, from the correct definition of the public task of the organization we can arrive at its rules of conduct (substantive law), which then a

6 Report on the Rule of Law, Adopted by the Venice Commission at its 86th plenary session (Venice, March 25–26, 2011) CDL-AD(2011)003rev, para. 41.
7 Tamás, 2010, p. 308.
8 Waldo, 1948, p. 41.
9 Waldo, 1955, pp. 5–6.
10 Tamás, 2010, p. 39.
11 Tamás, 2010, p. 60.

reasonably structured organization (organizational law) will implement in a bound procedural order (procedural law). Thus, the organization requires a structure which, as described, is closely adapted to the nature of its task, and the rationality of this structure is represented by internal principles of order (e.g. management, leadership/supervision, and control).

This implies that, first, the legal environment is the basis of the rule of law, on which the public administration can firstly build its powers and subsequently its procedures and its organization.

Second, the staff are the guarantee that the structure works. Whether the public administration is a public authority, service, institution, or anything else, the actual performance of its tasks is carried out by its staff, irrespective of their relationship with the organization. This legal relationship can of course vary considerably depending on the nature of the task and the organization—ranging from the strict civil service regime, to the general employment relationship, and to the contract of employment—and so can there be a difference between the legal relationship of a head of a ministry, a public health inspector, a teacher, a police officer, or an information technology specialist working for public administration.

Third, the structure also requires material means. Tangible and intangible assets (e.g. from buildings and infrastructure to computer hardware and software) are elements of the organization that guarantee the elementary conditions for its operation. In this context, public administrations rely heavily on technology, especially when considering the digitisation of workflows or data security.

## 2. International law and the administrative organization

### *2.1. A thought on sovereignty*

Public administration, and in particular its organization, is traditionally determined by the states themselves. It is also said that state administration is a matter of its internal affairs, namely, an *internal* question of its sovereignty. Regarding sovereignty, its simplest formulation is afforded by Varga, saying that 'the (principal) power exercised in fact and in principle exclusively over a given territory and a given group of peoples, and recognised as such by other similarly situated power-holders'.[12] As we have seen in the previous chapter, democratic legitimacy traces sovereign power back to the people and not to international law. Therefore, to recognise an act of public authority by an administrative body, it must be traceable to the people alone. Nevertheless, the exclusivity of public administration—or, as international law more broadly puts it, of 'internal affairs' (i.e. activities falling within the scope of internal jurisdiction)—has been interpreted within an increasingly narrow range over the last hundred years or so.[13]

12 Varga, 2020, p. 259.
13 Ádány, 2020, p. 237.

Article 2 paragraph 7 of the United Nations (UN) Charter clearly states that international law cannot interfere in matters 'which are essentially within the domestic jurisdiction of any state (...)'. The question of sovereignty must hence begin with an examination of its internal features. Again, using Varga's terminology, the internal aspect of sovereignty comprises 'the depositary of the supreme power and the rules which it makes. Hence the so-called (internal) sovereign rights are the right to command and the obligation to submit (obey)'.[14] Among the external features of sovereignty, the notion of independence (alongside the principle of equality of states)[15] is correct until we reach the notion of interdependence, which has significantly weakened the traditional view of the internal autonomy of states and created the external features of our present-day view of sovereignty.[16] Indeed, in the 20th century, and especially after 1945, the accelerating codification of international law (normative expansion) has transformed the system of relations between sovereigns in such a way that it created a complex system of diverse international commitments, in which the limitation of sovereignty is no longer necessarily based on the direct will of the sovereign.[17] Striking examples can be seen in the economic, financial, and security policy areas, as areas where various external sovereignty-limiting acts are taking place.[18] An instance would be the legislative obligation imposed on European Union (EU) Member States by the United Nations Security Council with regard to the combat of international terrorism and its financing.[19]

Although EU Member States are mostly given (or rather, assume) actions and obligations in the field of substantive law, organizational law is not immune to external influences.[20] Consider, for example, that under an international treaty[21] or under EU

14 Varga, 2020, p. 259.
15 Kardos, 2018, paragraphs 5–24.
16 Jennings and Watts, 2008, pp. 339–379; Crawford, 2012, pp. 448.
17 Ádány, 2020, p. 233.
18 Ádány, 2020, p. 237.
19 S/RES/2462 (2019): 'all States shall – in a manner consistent with their obligations under international law – ensure that their laws and regulations make it possible to prosecute and punish, as serious criminal offenses, the provision or collection of funds, resources and services intended to be used for the benefit of terrorist organizations or individual terrorists'.
20 Koopmans, 2011, pp. 394–395.
21 As an example, see Article 6(1) of the Prüm Treaty on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime, and illegal migration, which states that 'For the purposes of the provision of the information referred to in Articles 3 and 4, each Contracting Party shall designate a national contact point. The status of the contact point shall be governed by the relevant national law'. In Hungary, this was promulgated by Act CXII of 2007. We note that a much stronger implementation of the limitation of European Union (EU) Member States' sovereignty can be seen in criminal law: the 2015 Additional Protocol to the Convention on the Prevention of Terrorism (CETS 196) lists the offenses that EU Member States must include in substantive criminal law.

law,[22] EU Member States are required to designate contact persons (so-called 'contact points') or departments for a specific purpose. This is an organizational legal act that the EU Member State has not decided as a sovereign, but has had to take to apply a positive international legal rule. An international treaty may also, albeit rarely, establish an additional organizational legal obligation, such as the 1989 Convention on the Rights of the Child, which stipulates that signatory states shall contribute by 'establishing organizations' for the protection of the child.[23]

In conclusion, the sovereignty of states is far from being unlimited, and so the question that is left is who limits their sovereignty, for what reason, in what way, and to what extent. To understand further, we will consider two ways of limiting sovereignty that influence organizational law as follows: (1) directly, referring to when the state itself undertakes the limitation; (2) indirectly, describing when an international or supranational body, in connection with a previously undertaken international obligation, decides to limit the sovereignty of the state. Illustrative cases of the indirect limitation of sovereignty include the Convention on the Rights of the Child, the UNSC Resolution on the Legislative Obligation, and the secondary law created by the EU legislative bodies established by the Treaties that gave rise to the European Communities and later the EU.

### *2.2. The Council of Europe: multilateral stricti iuris norms*

It is rather rare for formulations by public international law to have an influence on organizational law. This is due to the principle of sovereignty (i.e. states are free to determine the internal structure of the state) and the continued respect for this principle worldwide. As our analysis focuses on the European legal environment, first we will present examples of the impact of the Council of Europe's documents on the organizational law of EU Member States.

22 Article 47(1) of the International Treaty of 14 June 1985 implementing the Schengen Agreement provides that Contracting Parties may conclude bilateral agreements under which one Contracting Party assigns liaison officers to the police authorities of another Contracting Party for a limited or unlimited period. This is common practice among EU Member States. See Craig, 2011, pp. 101–105; Polt, 2019, p. 76.
Another example is Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018, 'amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing and Directives 2009/138/EC and 2013/36/EU', which provides in point 30 that EU Member States shall act as a contact point for competent authorities of other EU Member States with equivalent powers. In Hungary, this was implemented, inter alia, by paragraph 49(6) of Act LIII of 2017 on the Prevention and Combating of Money Laundering and Terrorist Financing, which provides that 'the financial intelligence unit shall designate a contact person responsible for receiving requests for information from foreign financial intelligence units'.

23 The Convention on the Rights of the Child, signed in New York on 20 November 1989, Article 40(3) of which states that 'States Parties to the Convention shall use their best endeavors to promote the adoption of special laws and procedures, authorities and institutions for children suspected, accused or found guilty of offenses (...)'.

There are few Council of Europe conventions that are expressly administrative in nature, the most important of which is perhaps the Convention on the European Charter of Local Self-Government (hereinafter referred to as the Charter of Local Self-Government), signed in Strasbourg on 15 October 1985. Article 6(1) of this Charter declares the internal (organizational) autonomy of local authorities by allowing them to determine own internal administrative organization, adapted to local needs, to ensure more efficient administration. The next paragraph makes a statement on qualified staff. Importantly, although this Charter is an international treaty, it is more of a guideline for local governments rather than, in principle, a directly enforceable norm.[24] This feature is important here because it supports our earlier finding that public international law mostly avoids interfering with the internal rules of the organization of sovereigns. This organization is seen as an element that can help the administration to function properly from the background. This is particularly striking in the Additional Protocol to the Charter of Local Self-Government on the Right to Participate,[25] which refers to categories of procedures, measures, and mechanisms, but describes that these categories can only be achieved if the organization is able to accommodate them. Inclusiveness is therefore also an organizational rule. It should be noted that the underlying role of the organization is reflected not only in substantive (or procedural) rule but also in soft law documents, which will be discussed later.

There are no other international treaties that directly concern administrative organizational law, but there are many that concern substantive administrative law. Among these, there occasionally are rules of organization, but all avoid direct interventions and tend towards recommendations. An example is the European Social Charter, which sets out in its preamble the objective to be achieved by EU Member States of improving the standard of living and promoting social well-being of both urban and rural populations, in particular through appropriate institutions and measures. Article 17, which provides for the right of mothers and children to social and economic protection, is more specific. Accordingly, EU Member States undertake to take appropriate and necessary measures to this end, including the establishment or maintenance of appropriate institutions and services. Although the Treaty still does not provide for a specific organizational mandate, it does provide targeted guidance which the EU Member State will give substance to (i.e. it is for the state to decide to which body it will entrust the implementation of this task).

### *2.3. Council of Europe: soft law standards*

The notion of 'soft law' is difficult to define, especially because of its malleability.[26] It is therefore worth starting from its counterpart, the term 'hard law', even if scholars currently dispute this binary division and, especially in EU law, argue for a more

24 Varga, 2021, p. 131. Hoffmann goes further and describes the impact of the Local Government Charter as soft law. Hoffmann, 2015, pp. 55–56.

25 Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

26 Terpan, 2014, p. 73.

diverse normative system.[27] Abbott and Snydal define *hard law* as 'referring to legally binding obligations that are precise (or can be made precise through adjudication or the issuance of detailed regulations) and that delegate authority for interpreting and implementing the law'.[28] All other rules of an international normative nature weaker in their binding force, precision, or delegation are considered *soft law.*[29] The UN Special Rapporteur on Human Rights uses the following definition in his 2019 report:

> >>soft law<<< constitutes those international norms, principles and procedures that are outside the formal sources of Article 38 (1) of the Statute of the International Court of Justice and lack the requisite degree of normative content to create enforceable rights and obligations but are still capable to produce certain legal effects.[30]

In EU law, we also talk about hard and soft normative rules, but their conceptualisations differ from those outlined above regarding international law. The Grand Chamber of the European Court of Justice ruled in a preliminary ruling in Case C-911/19 that soft law documents (e.g. the recommendations and guidelines examined in this judgment) are generally not binding, are addressed to a limited number of parties who are not obliged to comply with them, and that these parties even have the possibility to derogate from the guidelines, in which case they must justify their position. In the hands of EU legislature, these instruments are intended to provide it with powers of encouragement and persuasion (pp. 41–48), but the validity of these acts can be reviewed by the Court of Justice (p. 55). The Court also underlined that the bodies have the power to issue soft law instruments to the extent expressly provided for (i.e. that their adoption could be said to be delegated and legislative in nature). Snyder summarised the concept of soft law in the following definition: 'rules of conduct that are laid down in instruments which have not been attributed legally binding force as such, but nevertheless may have certain – indirect – legal effects, and that are aimed at and may produce practical effects'.[31]

27 Chain, 2022, p. 15.
28 Abbott and Snidal, 2000, p. 421.
29 Abbott and Snidal, 2000, p. 422.
30 A/74/335 (29 August 2019): Promotion and protection of human rights and fundamental freedoms while countering terrorism, under Article 38 of the Statute of the International Court of Justice:
1. The Court, whose function is to decide in accordance with international law such disputes as they are submitted to it, shall apply:
a) international conventions, whether general or particular, establishing rules expressly recognised by the contesting states;
b) international custom, as evidence of a general practice accepted as law;
c) the general principles of law recognised by civilised nations;
d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
31 Snyder, 1993, p. 32.

After this greater focus placed on EU, let us return to international law. The Council of Europe often uses soft law as a source of law. In general, the adoption of such law is politically easier than that of international treaties, as it has no legal binding force. An important difference between international and EU soft law is that, unlike EU law, there is no constitutional review of the validity of international soft law by a court, only a review of the applicability (i.e. formal limits).[32] However, international soft law also has its value, as being 'only' a political responsibility of EU Member States allows for much more freedom in the formulation of issues in a soft law instrument that would be too sensitive or controversial to be present in a treaty.

Among the soft law documents of the Council of Europe, the Recommendation on Good Governance is the first to be mentioned, which is one of the documents *expressis verbis* applicable to public administration.[33] In the Recommendation, EU Member States adopted a 'Code of Good Governance' that basically sets out procedural legal requirements for good governance implementation, including the principles described hereinafter: legality, independence, proportionality, time-boundness, protection of privacy, transparency, and guaranteeing the legality of decision-making and judicial review. Regarding organization, a provision is included in the preamble to the Recommendation, describing that good administration is promoted by the organization and functioning of public authorities, such that it ensures efficiency, effectiveness, and cost-effectiveness. These principles require EU Member States to set targets, develop performance indicators, measure and monitor, regularly review the price and value of their services, seek the best available means, and monitor the performance of public administration and civil servants.

The vast and rich soft law documents of the Council of Europe basically avoid the issue of administrative organization. Instead, these documents propose mainly procedural and, to a lesser extent, substantive rules. For example, regarding public service, which is a part of organizational law, the Recommendation No. R(2000)6 of the Committee of Ministers on the status of public officials in Europe summarises the basic guarantees of civil service law. Similarly, the Recommendation No. R(2000)10 of the Committee of Ministers to Member States focuses on codes of conduct for public officials. Meanwhile, the Recommendation Rec(2004)15 of the Committee of Ministers on electronic governance ('e-governance') has a specific, indirect impact on public administrations. In point 2 of the Recommendation, it encourages EU Member States to work with international, national, regional, and local stakeholders to make public administrations accessible, transparent, accountable, responsive, open, and inclusive. This, of course, presupposes that the organizational law of the Member States can appropriately interpret these principles, in particular openness and cooperativeness.

32 Sand and McGee, 2022, p. 272. The authors refer to recent International Commission of Jurists' decisions on 'hardening' international environment soft law by declaring it as a part of international binding law.

33 Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration.

### *2.4. Other Council of Europe documents and opinions*

In addition to international treaties and soft law, the Council of Europe also carries out considerable analytical and evaluative work. This is done by its various advisory and consultative bodies, which usually are specialised departments responsible for a particular area such as the Consultative Council of European Judges (CCJE), Consultative Council of European Prosecutors (CCPE), and the Commission for the Efficiency of Justice (CEPEJ). Regarding criminal law, there is the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), Committee on Counter-Terrorism (CDCT), among others.

Of all these bodies, we would like to focus here on the European Commission for Democracy through Law, better known as the *Venice Commission*. The role of the Venice Commission is to provide legal advice to EU Member States, and help other states wishing to bring their legal and institutional structures into line with European and international standards in the fields of democracy, human rights, and the rule of law. In its opinions, it deals with the democratic functioning of various government bodies and, in particular, with their procedures and powers. While organizational law is not directly covered by the Commission, it does make some indirectly relevant observations, especially in the context of the rule of law. One example is the Venice Commission having issued opinions in recent years on procedural and organizational rules in the Ukrainian,[34] the French,[35] the Romanian,[36] and the Hungarian[37] judicial administration regarding the processes of appointing judges and leaders. The Commission has also previously expressed opinions in the context of administrative organization, specifically regarding the organization of the self-governments of national minorities in Hungary,[38] of the Hungarian media administration,[39] and

34 CDL-PI(2023)016-bil Ukraine – Information on the follow-up to the Urgent joint opinion on the draft law on amendments to certain legislative acts concerning the procedure for electing (appointing) members of the HCJ and the activities of disciplinary inspectors of the HCJ (Draft law no. 5068).

35 CDL-AD(2023)015-e France – Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Superior Council of Magistracy and the status of the judiciary as regards nominations, mutations, promotions and disciplinary procedures, adopted by the Venice Commission at its 135th Plenary Session (Venice, 9–10 June 2023).

36 CDL-AD(2022)045-e Romania – Urgent Opinion on three Laws concerning the justice system, issued on 18 November 2022, pursuant to Article 14a of the Venice Commission's Rules of Procedure. Endorsed by the Venice Commission at its 133rd Plenary Session (Venice, 16–17 December 2022).

37 CDL-AD(2021)036-e Hungary – Opinion on the amendments to the Act on the organization and administration of the Courts and the Act on the legal status and remuneration of judges adopted by the Hungarian parliament in December 2020, adopted by the Venice Commission at its 128th Plenary Session (Venice and online, 15–16 October 2021).

38 CDL-AD(2012)011-e Opinion on the Act on the Rights of Nationalities of Hungary adopted by the Venice Commission at its 91st Plenary Session (Venice, 15–16 June 2012), paragraph 50.

39 CDL-AD(2015)015-e Opinion on Media Legislation (ACT CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of Hungary, adopted by the Venice Commission at its 103rd Plenary Session (Venice, 19–20 June 2015).

regarding the practice of leader appointment—all along the lines of the rule of law principle. As regards structure, the Venice Commission did not publish a detailed report on government administrations in general, but did publish a report on the organizational models and different structures of prosecutors.[40] On the organization of the prosecution service, the Consultative Council of European Prosecutors (i.e. comprising the chief prosecutors of EU Member States) has also issued opinions which, by collecting good practices, are aimed more at shaping the internal management of prosecution services rather than legislation.[41]

Consultative bodies are not entitled to issue soft law. Therefore, their documents are usually referred to as 'opinions', 'studies', and even 'reports'. The specificity here is that these documents reflect only the opinion of the body and the bodies themselves do not have a mandate—not even an implicit one—from the sovereigns. This entails that these bodies and their documents do not require EU Member States to be proactively involved in document adoption, and do not and cannot have a normative content. Nevertheless, their actions are extremely important for being able to provide an external point of view and a synthesis of best practices to support EU Member States. The Council of Europe's monitoring committees[42] and consultative bodies also have an exceptionally large knowledge base that enables them to formulate focused opinions and serve as a basis for comparative law research.

### *2.5. International best practices: lessons learned*

Finally, we would like to draw attention to a specific international cooperation phenomenon, which is the supporting and informing function of international forums. International bodies, or more precisely the networks they create in their holdings, can create informal networks of contacts particularly well suited for knowledge sharing. Data collection, analyses, methodologies, and standards regarding public administration emerge from these contacts, which are therefore the furthest removed from normative relations. It can be said that such relations are more than scientific cooperation in so far as the participants are the governments or government bodies themselves. One example that operates as a global public administration-methodology network within the UN is the Public Administration Network (UNPAN). This body features a close partnership among a group of international, regional, and subregional institutions, along with prominent experts, devoted to public administration and in support of sustainable development. The members of this connection network

40 CDL-AD(2010)040 Report on European Standards As Regards The Independence of the Judicial System: Part II – The Prosecution Service, adopted by the Venice Commission at its 85th plenary session (Venice, 17–18 December 2010).

41 For example Opinion (2012) No. 7 of The Consultative Council of European Prosecutors on the Management of the Means of Prosecution Services.

42 See, for example, the Advisory Committee of the Framework Convention for the Protection of National Minorities or the Committee of Experts of the European Charter for Regional or Minority Languages. Both committees have been collecting data on normative rules and their implementation in European states for more than 20 years.

of the UN are mainly global and regional public administrations, which may also be referred to as knowledge centres.

The OECD uses a different approach, as it does not provide links to external knowledge bases but builds its own. It is important in this context that both the providers and the users of the data are the government agencies themselves. The OECD's has the most explicit delineation of organizational rules among all international organizations and organizations in the EU. The OECD can do this because it is not creating legal documents but building a dataset of good practices in management tools, implying that its documents do not intend to substitute a good normative regulatory environment but rather attempt to provide significant support for good functioning. That is, the OECD's focus on 'public governance', rather than public administration or public law, is mostly placed on operational/management and policy issues affecting governance (e.g. in education, budget, digitisation, integrity, public procurement, and regulation). Therefore, the OECD emphasises process examination along with data collection and analysis, and even its biannual Government-at-a-glance analysis only features one issue associated with organization, which is the public employment and managing human resources.[43]

## 3. Organizational rules in EU primary law

The EU can be regarded not only as a form of state cooperation but also as an administrative system that takes decisions and implements them in some way. Accordingly, the major difference between the EU and the (public) administrative systems of EU Member States is that it does not have sovereignty (statehood) without the Member States.

Although the intent here is not to provide a major deviation from the original trajectory of thought, we see the need to expound to some extent on our understanding of the relationship between (state) sovereignty and the EU. One of the first landmark decisions of the CJE/CJEU is the case *Van Gend en Loos*.[44] Sixty years have passed since its publication, so there is the danger of retrospective misinterpretation in light of the historical memory of the political and legal nature and environment of the decision. Legal scholars of the time, like Edwards[45] and more recently Weiler,[46] argued that the ECJ already established several of the core doctrines before 1963, and:

43 OECD – Governance [Online] Available at: https://www.oecd.org/governance/ (Accessed: 12 February 2024); OECD, 2023.

44 NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration. Judgment of the Court of 5 February 1963. Case 26–62.

45 Edwards, 1996, pp. 34–38.

46 Weiler, 2003, p. 151; speech by Joseph Weiler made at the ECJ's 50 years' celebration of Van Gend, 12 May 2013.

> that the decision would, or at least could, be the same under the traditional rule of interpretation of public international law. (...) The key step towards establishing what the court would term »a new legal order of inter-national law« in the judgment had already been made by the member states when they ratified the Treaties of Rome, due to the treaties' special legal and institutional nature.[47]

In the 1960s, which configured the early beginnings of the European Economic Community, peace and economic (and social) prosperity among the EU Member States was the leading principle and force of political cohesion. Notwithstanding, the arguments in the 2020s go even further and almost detach the autonomy of the EU from the theory of sovereignty. Bobek, for example, argues that a double-hatted Dutch government official is a national and EU official at the same time, and that the hat depends on the law he/she is applying.[48] It remains that even today the sovereign powers of the EU derive from the state-sovereignty of EU Member States; if it was otherwise, Article 50 of the Treaty on European Union (TEU; withdrawal from the Union) would not be a political possibility. The rhetoric arguing for the already existing EU sovereignty without the state sovereignty of EU Member States is just boosting the EU's regulatory creep.

The most important rule for the implementation, or administration, of the EU's decisions is Article 298 of the Treaty on the Functioning of the European Union (TFEU), which states that 'In carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration'. The text emphatically speaks not of 'public administration' but of 'administration', reflecting the absence of statehood on the one hand and the need for an organized system of authority as a prerequisite for implementing decisions on the other hand. This article defines the decision-making and implementation of the EU's decisions as being carried out by the 'institutions, bodies, offices and agencies of the Union'. The EU's organizational law therefore primarily applies to its own bodies, which in turn are governed by the rules of organization laid down in the TEU,[49] of which Article 13(1) sets out the EU's own institutional framework, establishing the primary institutions and bodies of the Union.[50]

These founding treaties also provide for other bodies to carry out specialised tasks, either in an advisory capacity,[51] by operating compliance mechanisms,[52] and/

47 Rasmussen, 2014, p. 139.
48 Bobek, 2017, p. 144.
49 Official Journal C 326, 26 October 2012, pp. 1–390.
50 According to Article 13 of the TEU, these are the European Parliament, the European Council, the Council, the European Commission, the Court of Justice of the European Union, the European Central Bank, and the Court of Auditors.
51 The European Economic and Social Committee and the European Committee of the Regions.
52 The European Ombudsman, the European Data Protection Supervisor, and the European Data Protection Board.

or supporting EU policy.[53] Furthermore, the organizational rules in the founding treaties first and foremost establish (statute) the aforementioned bodies, as described in Article 13 of the TEU: '[t]he Union shall have its own institutional framework'. The constitutive act also entails the definition of the main rules of competence (i.e. the main purpose of the body) and puts the body in context. For instance, the Council and the Parliament jointly exercise legislative and budgetary functions (TEU 14.1 and 16.1), the Commission supervises, manages, and implements EU law (TEU 17.1), the European Council proposes its President to the Parliament (TEU 17.7), and the Court of Justice of the European Union is composed of the Court of Justice, the General Court, and specialised courts, which together ensure respect for EU law (TEU 19.1). Similarly, for the other bodies, 'in order to promote the fullest possible coordination of the policies of the Member States to ensure the functioning of the internal market, an Economic and Financial Committee is established' (TFEU 134.1), or 'a European Voluntary Humanitarian Aid Corps is hereby set up to provide a framework for the joint participation of young Europeans in the Union's humanitarian aid operations' (TFEU 214.5). Further organizational rules (e.g. body composition, the election or appointment of the head of the body, the term of office) are laid down in the founding treaties in compliance with the specific nature of the bodies.

Importantly, the primary bodies and additional bodies established in the founding treaties have varying degrees of autonomy, but they concomitantly have their own autonomy. Moreover, this specific autonomy does not recognise the deconcentrated administration—that is, administration run, at least at the level of primary law (as the secondary law is more differentiated), from a single centre but implemented by hierarchically subordinate territorial bodies—common in EU Member States.

## 4. Organizational rules in EU secondary law

### *4.1. EU enforcement bodies*

The aforementioned Treaties in the EU, like national law and based on the principle of the rule of law, clearly distinguish between decision-making (legislative) and executive powers. The European Commission is the primary body of EU administration, and its executive functions are laid down in primary law, as follows: '[the Commission] shall exercise coordinating, executive and administrative functions under the conditions laid down in the Treaties'. (TEU 17.1) Nonetheless, EU law implementation is done not only by the Commission but also by other 'EU institutions, bodies, offices or agencies', as can be inferred from Article 23 of Protocol No 3 on the Statute of the Court of Justice of the EU. These other bodies are also capable of adopting 'acts' and have powers whose exercise can be reviewed by the Court of Justice.

53 The European External Action Service and the European Investment Bank.

### *4.2. About EU agencies in general*

After probing into EU enforcement bodies, space should be reserved now for discussions about EU agencies, which are governed by secondary law—except for the 'European Defence Agency' established by Article 42.3 of the TFEU. This article also established the EU Member States' obligation to develop their armed forces and defence. As Paul Craig notes, 'many [of the agencies] (…) developed from bodies whose principal function was to oversee the Commission (…)'.[54] To support the Commission's executive powers, the EU has used, especially since the 1970s, the agency organizational model, which is based on the principle of the division of powers.[55] The first two agencies, the European Centre for the Development of Vocational Training (Cedefop)[56] and Eurofound,[57] were created in 1975. Craig further notes that the existing agencies were created in several waves across the 1990s and 2000s.[58] Regarding the legislative basis for the statute of these agencies, it is generally Article 352 of the TFEU (former Article 308 of the TEC), albeit there are agencies with other legal bases (e.g. Eurojust, set up under Article 85 of the TFEU).

The specificity of EU agencies is that they are modelled on existing public administrations in the EU Member States, although Craig underlines that these agencies have a separate meaning from the term 'agency' used in the Member States.[59] Among the reasons for this is that, in Europe, we find a variety of valid models that range from common law authorities with regulatory powers but under government control to autonomous bodies with only individual decision-making powers but completely independent of government (i.e. the latter mostly common in continental legal systems). This administrative diversity has influenced EU agencies such that they cannot be considered as a single concept, rendering it useful to briefly review the types of agencies.

### *4.3. Types of agencies*

According to Craig,[60] the EU's agencies were previously divided until 2012 into either regulatory or executive agencies, the first having limited regulatory powers (i.e. the power to issue normative acts of general application) and the latter being created because they guaranteed (according to the Commission's reasoning) specific

54 Craig, 2012, p. 143.
55 Kálmán, 2013, p. 5.
56 Founding document: Regulation (Eec) No. 337/75 Of The Council of 10 February 1975 establishing a European Centre for the Development of Vocational Training. This was renewed by Regulation (EU) 2019/128 of the European Parliament and of the Council of 16 January 2019 establishing a European Centre for the Development of Vocational Training and repealing Council Regulation (EEC) No 337/75.
57 The founding document is Regulation (EEC) No. 1365/75 of the Council of 26 May 1975 on the creation of a European Foundation for the improvement of living and working conditions, renewed by Regulation (EU) 2019/127 of the European Parliament and of the Council of 16 January 2019 establishing the European Foundation for the improvement of living and working conditions (Eurofound), and repealing Council Regulation (EEC) No 1365/75.
58 Craig, 2012, p. 146.
59 Craig, 2012, p. 149.
60 Craig, 2012, p. 148.

expertise and relieved the Commission of the burden on technical issues.[61] To date, the Commission has set up six executive agencies to carry out administrative tasks under the Commission's authority,[62] a process which Kálmán calls a vertical (executive) and horizontal (regulatory) delegation of powers.[63] In 2012, Craig creates a much more complex division[64] encompassing the following four categories: (1) regulatory agency, which can issue normative acts in addition to individual decisions; (2) decision-making agency, which can issue individual acts that are binding on third parties; (3) quasi-regulatory agency, which can issue specific documents not legally normative but that have binding force;[65] (4) information and coordination agency, which are agencies that have their primary function associated with information and coordination, which is a necessary consideration because most other agencies also play such function to some extent. The information and coordination function is capable of achieving the most rapid cooperation between the authorities of EU Member States cooperating on matters of the EU community.

Currently, the Commission uses two general and two specific categories of agencies. In addition to the six executive agencies created previously, there are 35 decentralised agencies that are independent of the Commission, have their own budgets, and are controlled by the Court of Justice. Some of these decentralised agencies also function as regulators, such is, for example, the Euratom Supply Agency (ESA), created in 1960 to take care of the implementation of the Euratom Convention. Three other agencies support the tasks related to the Common foreign and security policy, namely the European Defence Agency (also known as EDA), European Union Institute for Security Studies (EUISS), and the European Union Satellite Centre (SatCen).

The legal basis for today's agency types was first laid down in the EU's 2002 Financial Regulation, before the Lisbon Treaty.[66] Furthermore, the EU's growing administrative activity is supported by an increasingly complex network of organizations, of which agencies are an increasingly valuable instrument. Bastos identifies this phenomenon in EU administrative law as confronting the touch of stateness.[67] These decentralised agencies do not have a central organizational rule but are defined by their statutes individually, and Article 70 of the Financial Regulation merely refers to them as follows:

61 The Operating Framework for the European Regulatory Agencies, COM (2002) 718 final, 5.
62 The European Climate, Infrastructure and Environment Executive Agency (CINEA), the European Education and Culture Executive Agency (EACEA), the European Health and Digital Executive Agency (HADEA), the European Innovation Council and Small and Medium-sized Enterprises Executive Agency (EISMEA), the European Research Council Executive Agency (ERCEA), and the European Research Executive Agency (REA).
63 Kálmán, 2013, p. 6.
64 Craig, 2012, pp. 149–153.
65 Craig considers, for example, the European Union Aviation Safety Agency (EASA) aviation safety procedures (certification) as such. Craig, 2012, p. 150.
66 Regulation 1605/2005 (n 2) Article 53(a).
67 Bastos, 2021, pp. 593–624.

> The Commission is empowered to adopt delegated acts in accordance with Article 269 of this Regulation to supplement this Regulation with a framework financial regulation for bodies which are set up under the TFEU and the Euratom Treaty and which have legal personality and receive contributions charged to the budget.[68]

The organizational legal basis for the executive agencies is also set out in Article 69 of this same Financial Regulation, as described herein:

> The Commission may delegate powers to executive agencies to implement all or part of a Union programme or project, including pilot projects and preparatory actions and the implementation of administrative expenditure, on its behalf and under its responsibility, in accordance with Council Regulation (EC) No 58/2003 (40). Executive agencies shall be created by means of a Commission decision and shall have legal personality under Union law.

The real EU organizational norm is Regulation 58/2003,[69] which gives the Commission the power to establish the organization (Article 3) and sets out the basic framework of the organization (Steering Committee and a director; Articles 7–11). The preamble stresses that the Commission must therefore 'be able closely to circumscribe the action of each executive agency and maintain real control over its operation, and in particular its governing bodies'. (para 9)

### *4.4. The evergreen issue of rulemaking*

Although the power to coordinate information can be found in the statutes of almost all EU agencies, it is their regulatory power that has been the most controversial. Early on, specifically in the *Meroni v. High Authority* case in the late 1950s,[70] the Court of Justice applied the principle *'nemo iuris transfere potest quam ipse habet'*, and held that agencies could not take over the powers of the EU's legislative institutions. With this ruling, the Court put a long stop to the creation of 'genuine' regulatory agencies on the Anglo-Saxon model. This delineation brings us to the most important difference between the types of agencies found in Europe: there is a fundamental difference between common law and continental law when we ask the question as to whether an authority's role is to create a normative act or to implement and administer the law.[71] The latter is the general model in continental European law, even if administrative authorities independent of the government are sometimes vested with some limited

68 Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union.
69 Council Regulation (EC) No. 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes.
70 *Meroni v. High Authority Case* 9/56 (1958) ECR 133.
71 Fox is critical of what he calls the 'greatest invention' to give agencies regulatory powers in the United States of America. Fox, 2012, p. 163.

legislative powers (e.g. in the field of media and communications),[72] going beyond the powers of the executive and pointing towards legislation.

Accordingly, it is understandable that Craig argues at length, building on common law foundations, that the regulatory role of agencies has many advantages in terms of professionalism and precision. In his view, a normative act by an agency is more credible because of its professional input and because it avoids the political legislative process.[73] Of course, all this would be workable if the courts were able to perform a significantly expanded review in addition to the current multi-sided control. Saurer notes that the basic activities of the agencies are already subject to supranational scrutiny by the Council, the Commission, and the Parliament, as well as the European Ombudsman and the Court of Auditors, and that EU Member States also 'seek to control agency activities'.[74]

At present, the founding treaties only give legislative powers to specific primary bodies of the EU (i.e. Council, Parliament, and Commission), and Article 288 of the TFEU is clear that only the EU institutions may issue regulations, directives, decisions, recommendations, and opinions in the exercise of their powers. The regulatory activity of the agencies, where they exist, is divorced from the normal legislative functions and is only limited.

## 5. Organizational rules applicable to Member States

This section describes EU law and other processes that directly or indirectly influence the organizational rules of national administrative law. The public administrations of 'older' EU Member States gradually evolve in a common direction, consistently taking each other's traditions and legal system into consideration, which in turn leads them towards a common journey, step-by-step, over decades of continuous cooperation. However, 'new' EU Member States get the results of this decade-long partnership usually in a non-negotiable package that has its effects on the Member States' administration.[75] Examples of the outcomes of this process are presented below, first in the order of the hierarchy of sources of law, then in the order of creation, and a summary table at the end of the chapter provides a legal overview of the material effects of the referenced sources of law.

### *5.1. European Grouping of Territorial Cooperation*

The European Grouping of Territorial Cooperation (EGTC) is not only the first in the list but also slightly out of the ordinary, as it does not directly affect the separate administrations of EU Member States, but does so indirectly through its operation.

72 Rose-Ackerman and Perroud, 2013, pp. 277–282.
73 Craig, 2012, p. 175.
74 Saurer, 2010, p. 620.
75 Jakab, 2020, pp. 48–61.

Each EGTC brings together actors from at least two EU Member States or third-party countries (e.g. local authorities, regional authorities, or the State) in a single organization with full legal capacity, legal personality, own budget, organization, and contractual capacity (i.e. it can acquire movable and immovable property and can act before the courts). The members shall jointly elect the director and set up a general assembly comprising representatives of the members, and Article 10 of *Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC)* lays down minimum requirements for the organizational structure of an EGTC. Accordingly, it is mandatory to establish an assembly comprising representatives of EGTC members and to appoint a director to represent and act on behalf of the EGTC.

### *5.2. Audit body for European Funds*

The *Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget* proposed measures for EU Member States to establish an institutional system to safeguard a more effective control of the use of EU budgetary resources, and to lay down general criteria for protecting the EU budget. In compliance with the proposed criteria, an EU Member State may set up a so-called audit authority, which in Hungary is the Directorate General for Audit of European Funds (DGAEF). This public administration body is autonomous and thus acts independently, in its professional activities, from the managing authorities, the intermediate bodies, the certifying authorities, and the beneficiaries; its main rules regarding status, organization, tasks, and procedures are laid down in Act XLIV of 2022. The DGAEF was established ten years earlier, in 2010, by a government decree.[76]

### *5.3. National media and communication authorities*

The Article 3(2) (National regulatory authorities) of *Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)* requires EU Member States to guarantee the independence of national regulatory authorities by ensuring that they are legally distinct from, and functionally independent of, organizations providing electronic communication networks, equipment, or services. Furthermore, where an EU Member State has retained ownership or control of such undertakings, it shall ensure effective structural separation of the regulatory function. The National Media and Infocommunications Authority (NMHH) of Hungary was created by the Parliament on August 11, 2010 by Act LXXXII of 2010 amending certain laws regulating media and communications and merging the National Radio

76 Government decree no. 210/2010. (VI. 30.) on the Directorate General for Audit of European Funds, in compliance with Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No. 1260/1999.

and Television Authority (ORTT; i.e. responsible for media regulation) with the National Communications Authority (i.e. supervised the communications sector). The Authority (and its predecessors) is guaranteed independence by law, with organizational and operational autonomy, a budget, and revenue in the form of a supervision fee.

### *5.4. National regulatory authorities under the Directive on the internal market in electricity*

The establishment of the national regulatory authorities (NRAs) is uniformly required by EU law for EU Member States, based mainly on market regulation and consumer protection considerations. *Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC* sets out the requirements for the role, powers, and quality of the national regulatory authority in Articles 35 et seq. Under the Directive, the establishment and independence of the national regulatory authority is mandatory, meaning that the authority must exercise its powers impartially and transparently, legally distinct and functionally independent from any other legal entity or market interest, and cannot seek or take instructions from any other authority. One of the most striking examples of independence is that the term of office of the chairman, which ranges from 5 to 7 years, is set independently from the parliamentary term. In Hungary, this national regulatory authority is the Hungarian Energy and Public Utilities Regulatory Authority,[77] established in 2013 as the successor to the former Hungarian Energy Office. In Hungary, the term of office for the president of the authority is 7 years.

### *5.5. Case analysis: specific recommendations for the EU Member State of Hungary in 2022*

This section discusses the effects of the *Annex to the Proposal for a Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Hungary* (hereinafter referred to as Proposal).[78] It specifically explores Component I.9: Governance and Public Administration, which includes measures to establish, among others, a new Directorate for Internal Audit and Integrity (DIAI), a new Integrity Authority, and a new Anti-Corruption Task Force (ATF). The institutional changes are presented starting from within the governmental organization system and moving towards autonomous public administration bodies.

77 Examples of other authorities in EU Member States are Konkurentsiamet (Estonian Competition Authority) in Estonia, Sabiedrisko pakalpojumu regulēšanas komisija (Public Utilities Commission) in Latvia, Nationalacde Reglementari in domeniul Energiei (Energy Regulatory Authority) in Romania, and Agencija za energijo (Energy Agency) in Slovenia.

78 COM/2022/686 final [Online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022PC0686 (Accessed: 12 February 2024).

### *5.5.1. Directorate of Internal Audit and Integrity*

In compliance with the Proposal milestone sequential number 224, Act XXVIII of 2022 established the Directorate of Internal Audit and Integrity within the Ministry responsible for the implementation of EU funds in Hungary.[79] This Directorate is responsible for the assessment and management of potential conflict of interest situations in relation to development projects implemented with EU funds for the programming periods 2014–2020 and 2021–2027. Its organizational requirements include full staffing in accordance with the selection methodology defined for the Integrity Authority, and the definition of the length of the mandate of senior officials, excluding the possibility of their dismissal. The Directorate for Internal Audit and Integrity has a broad remit to prevent, detect, and correct fraud, conflicts of interest, and corruption, as well as other irregularities and infringements in the implementation of EU funds, and it reports annually on its activities to the Integrity Authority.

### *5.5.2. Integrity Authority*

The establishment of the Integrity Authority of Hungary in 2022 was unique in several ways. On the one hand, the necessity for a new authority is not so common as a first solution but rather serves as an alternative for the strengthening of pre-existing authorities, like in the case of Hungary, where there were—just to mention a few—the State Audit Office, the Government Control Office, and the DGAEF, which we already discussed. On the other hand, Hungary's corruption index decreased in recent years according to OECD,[80] stagnating around Bulgaria's numbers. Another perspective on this topic would be the extraordinary effectiveness of the use of directive-like recommendations, which in most cases give the national legislator a considerable margin of legislative manoeuvre.[81] In this case, however, we see that the Proposal milestone sequential number 160 was formulated with peculiar detail.

The work of the Authority is organized and managed by a Management Board comprising a President and two Vice-Presidents. These three Board members are in turn appointed by the President of the Republic of Hungary, based on the recommendation of the President of the State Audit Office of Hungary, for a non-renewable term of six years, without the countersignature of any member of the Government. Their professional qualities, qualifications, broad and undisputed experience in legal and financial matters relating to public procurement and the fight against corruption, their internationally recognised reputation, and their proven expertise in these fields are also considered. The members of the Management Board will be selected following an open call for applications based on a binding opinion on the fulfilment of the candidates' qualifications by the Eligibility Committee established

79 As of 2023, the Directorate of Internal Audit and Integrity is established within the Ministry of Regional Development under the State Secretary of European Union Development. See §148/A. of 5/2022. (VI. 17.) MvM ministerial order.

80 OECD – Hungary [Online]. Available at: https://oecd-public-integrity-indicators.org/countries/HUN (Accessed: 12 February 2024).

81 Láncos, 2022, pp. 89–92.

for this purpose. The Eligibility Committee shall be chaired by the Director-General of the DGAEF, and is convened by this Director-General following an open call for applications. The Committee shall be composed of three independent persons with recognised experience in international institutions, with a sufficiently long, proven, and relevant experience in the field of public procurement and/or fight against corruption. Members of the selection panel must not have held an elected political office or a political position in government, have worked for a political party or political foundation, nor have performed voluntary or paid activities for such organizations within the last five years.

Conflicts of interest rules in line with the principles set out in Article 61 of Regulation (EU, Euratom) 2018/1046 shall apply to members of the selection panel for a period of five years after the issuance of the binding opinion. Members of the Eligibility Committee shall, before taking up their duties on the Committee, disclose their interests and assets and declare that they have no conflict of interest. In addition, members of the Board may not, during their term of office, engage in any remunerated activity (except for academic activities and related publications) in the course of their work for the Integrity Authority, hold a controlling interest in a company, or be a member of a political party or political foundation. A member of the Management Board may be removed from office only if, following his or her appointment, he or she has a conflict of interest or if he or she has been convicted of a criminal offense by a final judgment in a criminal case relating to the work of the Integrity Board or affecting the independence and impartiality of the member concerned. The president of the Integrity Authority is an *ex officio* member of the Public Procurement Board under Proposal milestone sequential number 166 and also chairs the ATF. The president of the Integrity Authority shall exercise its rights as an employer over the staff of the Authority, which shall comprise at least 50 full-time employees, and be selected by the Management Board on the basis of merit.

### *5.5.3. ATF*

Under the Commission's country-specific recommendations addressed to Hungary's recovery and resilience plan in accordance with *Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility*, the ATF was established. The members of the ATF, representing non-governmental actors, shall be selected by the Board of the Integrity Authority following an open call for applications and a binding opinion of the aforementioned Eligibility Committee on applicant eligibility. It should be ensured that the number of members representing non-governmental actors is half of the number of ATF members excluding the chairperson; if this cannot be ensured, the voting percentage of members representing non-governmental actors should be adjusted to half of the number of votes excluding the chairperson. The ATF chairperson shall be the president of the Integrity Authority, but the ATF shall not interfere in the activities of the Integrity Authority and shall not have access to its activities. The ATF meets at least twice a year and takes its decisions by simple majority. The members representing

non-governmental actors have the additional possibility to adopt a 'shadow report', which must be published together with the annual report of the ATF, even if the members representing non-governmental actors have voted in favour of the annual report of the ATF.

An interesting addition to the commitments that Hungary undertook in line with the Proposal milestone sequential number 169 was to ensure the creation of two additional judge positions and two court secretaries at the Central District Court of Buda no later than December 31, 2022. This is connected with the introduction of a special procedure for major offenses regarding the exercise of public power or public property management. Although this is not part of the changes to the administrative organization, it is so specific and unusual that it is worth mentioning.

It can be seen that most of the previous actual or quasi-legislation, which primarily concerned the organizational system, has retained the general formulation of the independence criterion. However, to find a satisfactory solution, the political measures taken in the form of the directive-like recommendations are very direct, clear, firm (vs. previous proposals), and do not shy away from political innovation of this kind.

## 6. Conclusions

This paper conducted and in-depth review of the international and EU legal environment for the organization of public administrations. It may be concluded that, although at first sight organizational matters seem to be the exclusive competence of states because of sovereignty, the range of influences on the organization of public administrations is so wide that it is difficult to speak of a 'complete' autonomy of sovereigns.

We specifically examined both international law and EU *stricti iuris* normative rules, as well as soft law documents. The examined international documents avoid administrative organizational rules and are careful to avoid even the appearance of interfering with the internal rules of the organization of EU Member States. The rules referring to organizational law are usually of an underlying nature (i.e. are hidden behind a substantive or procedural rule), as an EU Member State must also have an appropriate organization to comply with a substantive legal condition. Nevertheless, the international and EU rules examined suggest that, to a limited extent, direct administrative organizational rules also appear in international and EU law, implying that the sovereignty of states is limited—even in organizational law terms.

An important question that may be brought up at this point is how is this sovereignty limitation created? In attempting to answer to this question, this study finds that one category of actions that create such limitations is (a) voluntary limiting acts, coming in the format of treaties wherein EU Member States undertake to limit their organizational sovereignty to a certain extent, with examples including the contact point networks under consideration or the soft agency obligations of the

UN Convention on the Rights of the Child to protect children. The other category of actions is (b) external sovereignty limiting acts, where a multilateral treaty creates an institution empowered to impose obligations on EU Member States. Examples of the latter include the legislative obligation established by the UN Security Council, or the secondary legislation of the EU itself.

In the case of a sovereignty-limiting act coming from an external actor, it is particularly important that there is a limit in the content (i.e. limited authority) and adequate control over the issuer's activities. This is less likely to be the case in international law, which is why we have seen that orders of an organizational nature in international law are much 'softer'. The organizational law provisions of EU secondary legislation are more specific, but are limited in both content and form, and there is a possibility of judicial control.

Among the normative orders, which also concern organizational rules from external actors, EU regulatory agencies have a very special place. The EU, on the basis of the *Meroni* doctrine referred to above, avoids the creation of genuine Anglo-Saxon-type regulatory agencies and grants them only limited powers of rule-making. In our view, this issue points to a fundamental difference in legal understanding between common law and continental law from a comparative legal perspective. Moreover, the only organizational rules directly reflected in both legal and non-legal sources, such as opinions, studies, and reports, are the civil service (public personnel) and related labour law issues, as well as the appointment of organizational leaders (procedural law) and their legal relationship.

Overall, this study shows that international rules on organizational law are rarely binding. When they do, they do so to provide guarantees (e.g. the Charter of Local Self-Government) or to achieve uniformity (e.g. the organizational rule on autonomy in the ECN+ Directive under analysis) along with guarantees. However, in most cases both international law and EU law provide support, information, and coordination to ensure the interoperability of EU Member States organizational systems. The collection and sharing of good practices are consistently an evergreen theme, and also as the world becomes more globalised.

| Overview of Organizational Rules Applicable to Member States | | | | |
|---|---|---|---|---|
| | **Affected Member State organization** | **Source of law/document having legal effect** | **Organizational definition and changes in organization** | **Temporal scope** |
| 1. | European Grouping of Territorial Cooperation (EGTC) | *Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC)* | Independent budget, organization, director (elected by members), and general assembly of members' delegates. | 2020- |
| 2. | Audit body for European Funds | *Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget* | Autonomous public administration body, independent in its professional activities from the managing authorities, intermediate bodies, certifying authorities, and beneficiaries. | 2020- (2010-) |
| 3. | National media and communication authorities | *Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)* | Legally distinct from and functionally independent of organizations providing electronic communications networks, equipment, or services. | 2002- |
| 4. | National regulatory authorities under the Directive on the internal market in electricity | *Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC* | Must be established and independent, must be legally distinct and functionally independent from any other legal entity or market interest, the term of office of the president is determined independently of the parliamentary cycle: 5–7 years. | 2009- |
| 5. | Directorate of Internal Audit and Integrity (DIAI) | *Annex to the Proposal for a Council Implementing the Decision on the approval of the assessment of the recovery and resilience plan for Hungary (milestone sequential number 224)* | Full staffing according to the selection methodology defined for the Integrity Authority, and the predetermined length of the mandate of senior officials, excluding the possibility of their dismissal. | 2022- |

| | | | | |
|---|---|---|---|---|
| 6. | Integrity Authority (IA) | *Annex to the Proposal for a Council Implementing the Decision on the approval of the assessment of the recovery and resilience plan for Hungary (milestone sequential number 160)* | – Organized and managed by a Governing Board comprising a President and two Vice-Presidents.<br>– Members of the Board are appointed by the President of the Republic of Hungary, on the recommendation of the President of the State Audit Office of Hungary, for a non-renewable term of six years, without the countersignature of any member of the Government.<br>– The President of the Integrity Authority is an ex-officio member of the Procurement Council and chairs the Anti-Corruption Task Force.<br>The President of the Integrity Authority shall exercise the rights of the employer over the staff of the Authority, which shall comprise at least 50 full-time staff. | 2022- |
| 7. | Anti-Corruption Task Force (ATF) | *Country-specific recommendations addressed to Hungary's recovery and resilience plan in accordance with Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility* | – Members of ATF, representing non-governmental actors, are selected by the managing board of the IA.<br>– Half of the actual number (or voting percentage) of members represent non-governmental stakeholders, excluding the chairperson.<br>– Chairperson of ATF is the president of the IA, and there is no interference nor access from ATF into IA activities.<br>– The ATF meets twice a year, with a simple majority decision-making.<br>– Members representing non-governmental actors can adopt a so-called shadow report, which has the same publicity as the official ATF report. | 2022- |

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# General Principles and Challenges of Public Administration Organization in Austria

Antonia BRUNEDER – Maximilian ZANKEL

**ABSTRACT**

This chapter provides an overview of the Austrian administration, focusing on bodies at the federal, state and municipal levels. Furthermore, it elucidates the guiding principles of the administration, which can essentially be derived directly from the Federal Constitution. Subsequently, it also refers to current and future developments related to right to information and transparency issues. Austria is one of the few countries that continues to provide official confidentiality under the Federal Constitution. The abolition of official confidentiality and the possible right to information have long been part of political discourse. This topic is currently back on the agenda, and will likely trigger significant changes.

**KEYWORDS**

Austria, public administration, Federal Constitution, principles of administration, Federal administration, State administration, Municipal administration, administrative bodies, right to information, official confidentiality, transparency

## 1. Basic social, geographical and economic overview

The Alpine Republic of Austria is a landlocked country bordered by Germany, the Czech Republic, Slovakia, Hungary, Slovenia, Italy, Switzerland and Lichtenstein, spanning across 84,000 square kilometres,[1] with a population of 9.1 million people, as of 1st of January 2023.[2]

It is estimated that Austria's value-added gross domestic product (GDP) totalled 478.223 billion euros in 2022, ranking it 15th in the European Union (EU), despite its

1 Geography and population [Online]. Available at: https://www.migration.gv.at/de/leben-und-arbeiten-in-oesterreich/oesterreich-stellt-sich-vor/geografie-und-bevoelkerung/ (Accessed: 7 April 2023).

2 Population [Online]. Available at: https://www.statistik.at/statistiken/bevoelkerung-und-soziales/bevoelkerung/bevoelkerungsstand/bevoelkerung-zu-jahres-/-quartalsanfang (Accessed: 7 April 2023).

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comparatively limited population.[3] Calculated on the basis of the population, GDP per capita amounted to 42,563 euros in 2022, ranking it 6th within the EU.[4] Concurrently, the unemployment rate remains relatively low. In March 2023, 259,440 people reported being unemployed, representing an unemployment rate of 6.2%.[5]

### *1.1. Development of the Republic*

The Republic of Austria evolved following the collapse of the Austro–Hungarian Monarchy under the leadership of Habsburg in 1918.[6] Consequently, Chancellor Karl Renner launched efforts to draft a Constitution. Various versions were drafted and submitted to the Constituent National Assembly, or to the Constitutional Committee and the Sub-Committee for the Drafting of a Constitution. The drafts prepared by Hans Kelsen were particularly decisive during this phase.[7] After prolonged negotiations in the subcommittee of the Constitutional Committee and later the Constitutional Committee, the Constituent National Assembly finally adopted the Constitution on 1 October 1920.[8] This established Austria as a democratic republic structured as a Federal State.[9] Since the 1929 amendment, which considerably extended the powers of the Federal President, the Federal President's role has been classified as semi-presidential. Prior to that, in the original version of the Constitution, the system of government was completely parliamentary.[10]

### *1.2. Characterisation of the Constitution*

The Austrian Constitution has several characteristic features. It is easy to amend, requiring only a two-thirds majority of deputies, with at least half of them being present in the National Council (*Nationalrat*).[11] However, if this affects the competence of the States, the second chamber, the Federal Council (*Bundesrat*), is also required to provide its consent.[12] If a constitutional law results in a total revision of

3 GDP [Online]. Available at: https://wko.at/statistik/eu/europa-wirtschaftsleistung.pdf?_gl=1*t27nwo*_ga*NzU3NDk0MDUxLjE2NDAwNzkwOTk.*_ga_4YHGVSN5S4*MTY3MDkyNDY0NS43LjEuMTY3MDkyNDcxNS42MC4wLjA.&_ga=2.76910161.596406005.1670924646-757494051.1640079099 (Accessed: 7 April 2023).

4 GDP per capita in 2022 [Online]. Available at: https://wko.at/statistik/eu/europa-BIPjeEinwohner.pdf?_gl=1*1xcy8gu*_ga*NzU3NDk0MDUxLjE2NDAwNzkwOTk.*_ga_4YHGVSN5S4*MTY3MDkyNDY0NS43LjEuMTY3MDkyNDY2MS40NC4wLjA.&_ga=2.34597477.596406005.1670924646-757494051.1640079099 (Accessed: 7 April 2023).

5 Unemployment rate [Online]. Available at: https://www.ams.at/content/dam/download/arbeitsmarktdaten/%C3%B6sterreich/berichte-auswertungen/001_uebersicht_aktuell.pdf (Accessed: 7 April 2023).

6 Olechowski, 2019, pp. 99–100.

7 Olechowski, 2020, pp. 159–163.

8 Olechowski, 2019, pp. 104–105.

9 Article 1 and Article 2 B-VG (Bundes-Verfassungsgesetz, Austrian Federal Constitution BGBl 1930/1 (WV) idF BGBl I 2022/222).

10 Wieser, 2024b, pp. 10 and 18.

11 Article 44, paragraph 1 B-VG.

12 Article 44, paragraph 2 B-VG.

the Federal Constitution (*Gesamtänderung*), that is a fundamental change in at least one of the basic principles of the Constitution, a referendum must also be held.[13] Such a referendum has so far only been held in 1994 regarding the question of accession to the EU.[14]

Another characteristic is the fragmentation of constitutional law. This implies that constitutional law is not found in just one central document, but is spread across many. This concept originated in positive constitutional law, which in Article 44 of the Federal Constitutional Law (B-VG; Bundes-Verfassungsgesetz BGBl 1930/1 (WV)) provides the possibility of implementing constitutional provisions in simple federal laws. Based on this, constitutional provisions were placed in many simple laws such as the Road Traffic Act 1960 (StVO – Straßenverkehrsordnung 1960 BGBl 1960/159), Motor Vehicles Act 1967 (KFG 1967 – Kraftfahrgesetz 1967 BGBl 1967/267) and Data Protection Act (DSG – Datenschutzgesetz BGBl I 1999/165). Moreover, until 2008, it was possible to conclude international treaties with constitutional status, which is why the European Convention on Human Rights (ECHR) continues to hold constitutional rank.[15]

### *1.3. Structure of the Republic*

As mentioned previously, the Democratic Republic of Austria was established as a Federal State. Below the Federal level, at which the National Council exercises legislative power together with the Federal Council, it comprises nine States (*Länder*):[16] Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tyrol, Vorarlberg and Vienna.[17] At the level of the States, legislation is exercised by the State Parliament (*Landtag*), which is elected by the people of respective States.[18] Although there is no superordination between State and Federal law, as in Germany[19], there is a precisely defined order of competences between Federal and State legislation in B-VG, with the Constitutional Court ruling on disputes over competences.[20]

Each State is required to enact its own Constitution, which must not contravene the Federal Constitution. The enactment and amendment of these State Constitutions require a two-thirds majority in respective State Parliaments, with half of the deputies present.[21] At the Federal (constitutional) legislation level, the Federal Council (*Bundesrat*), the second chamber of the legislature, represents the interests of States. It is composed in proportion to the number of citizens in the respective Federal

13 Article 44, paragraph 3 B-VG.
14 Berka, 2021, p. 39.
15 Wieser, 2024a, p. 115.
16 Article 24 B-VG, Article 2 B-VG.
17 Article 2, paragraph 2 B-VG.
18 Article 95, paragraph 1 B-VG.
19 Article 31 of the German Constitution: 'Federal law breaks state law'. Although an identical provision is found in Kelsen's drafts, it was ultimately not included in the Constitution; cf. Ermacora, 1990, p. 69.
20 Articles 10–15 B-VG; Article 138, paragraph 1, number 3 B-VG.
21 Article 99 B-VG.

State,[22] and currently consists of 61 members.[23] Below the State level, Austria has been categorised into 94 political districts and 2,093 municipalities.[24] Both levels are administrative with no legislative competences.

### *1.4. Administration*

Alongside legislation and jurisdiction, the administration represents the third major pillar of the State's functions. Joseph Ulbrich was one of the first representatives of the administrative law scholarship. In 1927, Adolf Merkl's *'Allgemeines Verwaltungsrecht'* (General Administrative Law), created one of the first and still leading fundamental works.[25]

The tasks and actions of the administration must always be considered in the context of the country's respective development and current political situation.[26] Although information administrative law plays a major role in the State currently, social reforms were particularly important at the beginning of the 20th century owing to the difficult circumstances in Austria (economic crisis and resulting poverty).[27] As will be explained, the State of Austria is shaped by its federalist system and has grown historically.

The concept of Austrian administrative law today is to be read primarily as an organizational–formal one, which Wiederin describes as follows: 'Administrative law is the law to be enforced by administrative authorities, with the exception of constitutional law'.[28]

In addition to administrative procedure, the administrative law in Austria can be classified into general and special categories. General administrative law elaborates Austria's administrative structure, while special administrative law deals with individual subdisciplines (e.g. construction, hunting and trade laws). In the following sections, Austrian administrative law is presented without considering specific sub-disciplines.

## 2. Public administration and constitutional order

The Constitution comprises two main principles that apply to the entire administration (as well as many other provisions): the rule of law (*Rechtsstaatliches Prinzip*) and the bond of instructions (*Weisungsgebundenheit*).

22 Article 34, paragraph 1 B-VG.
23 Federal Council [Online]. Available at: https://www.parlament.gv.at/PERK/NRBRBV/BR/ (Accessed: 7 April 2023).
24 Political districts [Online]. Available at: https://m.politik-lexikon.at/bezirk/ (Accessed: 7 April 2023); Structure of the municipalities [Online]. Available at: https://gemeindebund.at/themen-zahlen-und-fakten-struktur-der-gemeinden/ (Accessed: 7 April 2023).
25 Leitl-Staudinger, 2011, pp. 198–204; cf. Merkl, 1927, Allgemeines Verwaltungsrecht.
26 Wiederin, 2010, p. 210.
27 Cf. Wiederin, 2010, p. 210.
28 Wiederin, 2010, p. 227.

### *2.1. Rule of law in the Federal Constitution*

The rule of law in Austria is not explicitly standardised in the Constitution. Rather, it is implicitly a result of several regulations. Nevertheless, the rule of law underlying the Constitution is considered to be fundamental such that a substantial change constitutes a total revision of the Federal Constitution. The essential features of the rule of law in the Austrian Constitution are briefly presented below.

#### *2.1.1. Principle of Legality (Legalitätsprinzip)*

Article 18, paragraph 1 B-VG stipulates that '[t]he entire public administration shall be based on law'. According to this provision, the administration must not only act in accordance with the laws, but may also act solely on their basis. Acting without legal basis contradicts the principle of legality. This ultimately leads to the democratic legitimisation of administrative action. However, the administration is not bound by this provision if it acts within the framework of private sector administration (*Privatwirtschaftsverwaltung*).[29]

The effect of this provision on legislation is that every regulation must be duly promulgated; therefore, every action based on the law is foreseeable. This also implies that laws must be determined with sufficient clarity.[30]

#### *2.1.2. Separation of Powers (Gewaltenteilung)*

The Austrian Constitution is fundamentally based on the principle of separation of powers. According to this principle, the three powers, legislation, execution and jurisdiction are independent of each other with mutual control mechanisms and dependencies (checks and balances). The segregation can be traced back to the 18th century, when judicial independence from the monarch was initially sought, which subsequently manifested itself in the separation of legislation and execution.[31]

#### *2.1.3. Legal protection system*

The principle of the rule of law implies that every act of the Federal State must be subject to judicial review. This applies to both, administrative acts such as rulings (*Bescheide*) or ordinances (*Verordnungen*) as well as legislative acts. Accordingly, Austria has a seamless system of ordinary, administrative and constitutional jurisdictions that guarantee the reviewability of every act. However, the mere existence of a legal protection system is insufficient. Rather, the efficiency of the proceedings must also be guaranteed.

#### *2.1.4. Protection of fundamental rights*

The protection of fundamental rights is also elementary within the framework of the rule of law. Fundamental rights are derived primarily from the Basic Act on the

29 Berka, 2021, pp. 157–158. For further details see the chapters Private sector administration (*Privatwirtschaftsverwaltung*) and sovereign administration (*Hoheitsverwaltung*).
30 Berka, 2021, pp. 159–160.
31 Grabenwarter and Holoubek, 2022, p. 319.

General Rights of Nationals (StGG – Staatsgrundgesetz über die allgemeinen Rechte der Staatsbürger RGBl 1867/142) and ECHR, both of which have constitutional rank, as well as from the Charter of Fundamental Rights, which is considered superior to the Constitution owing to its direct applicability and primacy of European law.

On an international level, it is striking that Austria guarantees the most important fundamental rights, but does not provide for any fundamental social rights. Furthermore, a right-to-good administration has also not been provided in the StGG or ECHR.

### *2.2. Bond of instructions and hierarchical structure*

The structure of the Austrian administration is strictly hierarchical.[32] This stems from the basic democratic principle of Article 1 B-VG. The requirement of a democratically-legitimised administration is met by the fact that each body is either elected by the people or appointed by a body that has been elected by the people.[33]

Article 20 B-VG specifically states that the administration shall be managed under the direction of the supreme bodies of the Federation and the States by the administrative bodies. In their official activities, all these bodies report to their superiors, and unless they are not subject to directives pursuant to Article 20 paragraph 2 B-VG, they are bound by their instructions.

### *2.3. Administrative assistance, duty to provide information and official confidentiality*

#### *2.3.1. Administrative assistance (Amtshilfe)*

According to Article 22 B-VG, among others, all Federal, State and Municipal bodies are obliged to provide mutual assistance within their legal sphere of activity. The obligation also refers to jurisdictional and parliamentary bodies, and therefore does not bind only bodies of the administration.[34]

The obligation is established by the request of the body seeking administrative assistance.[35] The aim is to ensure the most economical implementation possible, while maintaining the existing system of competences.[36]

#### *2.3.2. Duty to provide information (Auskunftspflicht)*

The legal situation presented herein after (Article 20, paragraph 3 to 5 B-VG) will cease to be in force as of September 2025. For further information on this matter, please refer to the expositions in Chapter 4.

Pursuant to Article 20, paragraph 4 B-VG, all bodies entrusted with Federal, State and Municipal administrative tasks must provide information on matters within their sphere of activity, unless a statutory duty of confidentiality precludes it.

32 Muzak, 2020, p. 186.
33 Raschauer, 2021, pp. 147–148.
34 Grabenwarter and Holoubek, 2022, p. 478.
35 Muzak, 2020, p. 203.
36 Muzak, 2020, p. 203 with reference to VfSlg 5746/1968.

The Federal Act on the Duty to Grant Information Act (AuskunftspflichtG BGBl 1987/287) as well as special State laws (implementing laws in the individual State) provide the individual a concrete legal entitlement right to information under simple law.[37]

According to § 1 paragraph 2 of the Duty to Grant Information Act, however, information is to be provided only to the extent that it does not substantially impair the performance of other administrative tasks. It shall be provided if it is clearly requested with the intention of misuse. The duty to provide information includes both acts of public administration and private sector administration.[38]

The Supreme Administrative Court (*Verwaltungsgerichtshof*) has stated on several occasions that the duty to provide information enshrined in Article 20, paragraph 4 B-VG is based on the insight of a democratic state. Not only legislation but also the administration must be accessible to the public to a certain extent because disseminating proper information to citizens and a transparent administrative process are indispensable prerequisites for an effective exercise of citizens' democratic right of participation in Federal action.[39]

The term 'information' basically encompasses an obligation to provide data regarding the activities of public authorities. The term has been concretised by the jurisdiction.[40]

Accordingly, the duty to provide information extends to the provision of legal information, the scope of which has been disputed,[41] and only goes so far as the information is available to the authority. There is no obligation to obtain this information.[42] It must be provided without delay, but no later than eight weeks after receipt of the request.[43] The duty to provide information is limited and does not encompass certain confidential data, which are standardised either by constitutional law or simple law.[44]

### *2.3.3. Official confidentiality (Amtsverschwiegenheit)*

In the Austrian Federal Constitution, the task of maintaining official confidentiality is constitutionally guaranteed under Article 20, paragraph 3. Accordingly, all bodies entrusted with the tasks of Federal, State and Municipal administration, as well as bodies of other corporations under public law, are in principle obliged to maintain confidentiality regarding facts that have become known to them exclusively in the course of their official activities, insofar as it is necessary for certain interests.[45]

37 Wieser, 2001b, p. 8.
38 Wieser, 2001b, p. 17.
39 Cf. with further proofs VwGH 13.9.2016, Ra 2015/03/0038, VwSlg 19.447 A/2016.
40 Grabenwarter and Holoubek, 2022, p. 476.
41 Muzak, 2020, pp. 195–196.
42 VwGH 25.3.2010, 2010/04/0019.
43 Muzak, 2020, p. 197.
44 Muzak, 2020, pp. 196–197.
45 The confidentiality is only required in the interest of maintaining public peace, order and security, comprehensive national defense, foreign relations, in the economic interest of a corporation under public law, for the preparation of a decision or in the overriding interest of the parties. Only the law may provide otherwise.

The duty to maintain confidentiality also extends to facts, encompassing written documents and unpublished files. Thus, the term is to be understood very broadly.[46] Specifically, this duty covers facts in which there is an interest in confidentiality. Additionally, official confidentiality may apply if it is in the interest of a designated party. However, this interest must prevail and should be assessed by authorities on a case-by-case basis.[47] Since it is not defined which affected interests of the party are considered of relevance, it can be assumed that all kinds of interests are admissible.[48]

A party within the meaning of Article 20, paragraph 3 B-VG refers to any person affected by official activities. The term must be understood in a broader sense and include all persons who come into contact with public authorities for any reason.[49]

### *2.4. Control of the administration*

#### *2.4.1. Legal control*

As previously mentioned, every federal action must be reviewable by an independent authority. Depending on the legal act, there are different possibilities for legal protection against administrative action. Therefore, legal protection against individual administrative acts (rulings and the exercise of direct administrative power of command and enforcement) is examined first, followed by legal protection against general acts of the administration.[50]

##### 2.4.1.1. Rulings and the exercise of direct administrative power of command and enforcement (Akt unmittelbarer verwaltungsbehördlicher Befehls- und Zwangsgewalt)

A ruling is a formal, sovereign, individual act of the administration issued in external relations.[51] The addressee of a ruling may appeal against a specific decision to the competent Administrative Court.[52] Similarly, the addressee of an exercise of the direct administrative power of command and enforcement—that is, a (relatively) non-procedural, direct, outward, individual act of sovereignty[53]—may also file a complaint with the Administrative Court.[54] For example, an administrative body may resolve someone's demonstration by issuing an individual order.

The Administrative Courts are set up according to the '9+2 model'. There is a Federal Administrative Court (*Bundesverwaltungsgericht*), in addition to a Federal Financial Administrative Court (*Verwaltungsgericht des Bundes für Finanzen*) and for

46 Wieser, 2001a, p. 18.
47 Grabenwarter and Holoubek, 2022, p. 475.
48 Wieser, 2001a, pp. 28–29.
49 Grabenwarter and Holoubek, 2022, pp. 474–475; VwGH 25.11.2015, Ra 2015/09/0052.
50 It is worth mentioning that there are also legal remedies within the administration as part of administrative procedures.
51 Raschauer, 2021, pp. 319–344.
52 Article 130, paragraph 1, number 1 B-VG.
53 Raschauer, 2021, pp. 367–382.
54 Article 130, paragraph 1, number 2 B-VG.

each of the nine States there is a State Administrative Court (*Landesverwaltungsgerichte*).[55] Jurisdiction is determined by the matter to be enforced. If the law does not provide for the jurisdiction of a senate, the Administrative Courts decide by single judges.[56]

All parties to the suit can appeal the decision to the Supreme Administrative Court.[57] Under certain circumstances, the complainant may also file a complaint against the decision to the Constitutional Court (*Verfassungsgerichtshof*) according to Article 144 B-VG.

#### 2.4.1.2. Ordinances

Ordinances, as acts of administration with a general circle of addressees, can be challenged before the Constitutional Court in the same manner as laws. Administrative authorities can pass ordinances to specify acts; also, Municipalities can pass ordinances, without the need of specific act, in their own sphere of action.

The constitutional provisions are laid down in Article 139, B-VG. This procedure can be initiated by a court, the Constitutional Court itself, explicitly named bodies, and persons under certain conditions.[58] In these proceedings, the Constitutional Court can repeal the ordinance.[59]

#### 2.1.4.3. Charge of public administrative bodies (Staatsrechtliche Anklage)

According to Article 142, B-VG, the Constitutional Court decides on charges against organs. Here, an indictment against the supreme bodies of the administration (Federal President, members of the Federal and State governments) as well as other bodies (representatives in the Council, President of the State school board) shall be made by resolution of the general representative bodies (*allgemeine Verwaltungskörper*) named therein.[60] A simple violation of the law is sufficient for the charge to be justified,[61] except in the case of the Federal President, where a violation of the Constitution is required.[62] Charges can also be brought against members of the State government if they act within the framework of indirect Federal administration.[63]

The sentence of the Constitutional Court must be for loss of office. In the case of particularly aggravating circumstances, political rights may be declared forfeited for a limited period of time and in the case of minor violations of the law, the Constitutional Court may limit itself to a finding of illegality.[64]

55 Berka, 2021, p. 309; Öhlinger and Eberhard, 2022, p. 290.
56 § 2 VwGVG.
57 Article 133, paragraph 1, number 1 B-VG.
58 Article 139, paragraph 1 B-VG.
59 Berka, 2021, pp. 382 and 385.
60 Berka, 2021, pp. 397–398.
61 Article 142, paragraph 2, lit. b–i B-VG.
62 Article 142, paragraph 2, lit. a B-VG.
63 Article 142, paragraph 2, lit. e B-VG.
64 Article 142, paragraph 4 B-VG.

*2.4.2. Political control*

Political control of the administration is currently understood as the possibility of auditing the administration in general, which checks its lawfulness and expediency.[65] It is worth noting at this point that only the legal situation at the Federal level has been presented here. The means of control are found in the B-VG of Articles 50–55 and are conclusively regulated.[66]

First, the right of interpellation (*Interpellationsrecht*) is enshrined in Article 52, B-VG. It is regarded as a central instrument of political control and examines the political actions of members of the government.[67] According to Article 52, paragraph 1 B-VG, the National Council and the Federal Council are authorised to review the conduct of business by the Federal Government, question its members on all matters of execution, demand all relevant information, and convey their interest on the exercise of execution in resolutions. The latter is a legally non-binding suggestion to the government.[68]

In accordance with Article 52, paragraph 3 B-VG, every member of the National Council and the Federal Council is entitled to ask members of the Federal Government short oral questions in the sessions of the National Council or Federal Council. This is called 'question time' (*Fragestunde*); the questions must be submitted at least 48 hours in advance and must be answered orally.[69]

A strong political instrument according to Article 53, paragraph 1 B-VG is the committee of inquiry (*Untersuchungsausschuss*). The committee is not open to the public, but is accessible to the media and is thus a media-effective instrument.[70] Since 2015, the committee of inquiry can also be appointed by a quarter of the members of the National Council and therefore is a minority right.[71] Pursuant to Article 53, paragraph 2 B-VG, the subject of the investigation is a specifically completed process in the Federal administration. Jurisdictional reviews were also excluded.[72] Courts and Federal, State and self-governing bodies are obliged to submit the necessary files.[73]

Comparable rights of control also exist at the State and Municipal levels, which are standardised in State Constitutions and Municipal Acts (*Gemeindeordnungen*). These regularly provide control over administrative bodies by general representative bodies.

Finally, the National Council can withdraw its confidence from the Federal Government or individual members of the Federal Government pursuant to Article 74, paragraph 1 B-VG. This means that concerned members should be removed from

65 Grabenwarter and Holoubek, 2022, pp. 480–481.
66 Critically Öhlinger and Eberhard, 2022, p. 215.
67 Kahl, 2005, pp. 10–12.
68 Öhlinger and Eberhard, 2022, p. 217.
69 Kahl, 2005, pp. 15–16.
70 Critically related to issues of data protection; Baumgartner, 2022, p. 201.
71 Öhlinger and Eberhard, 2022, pp. 217–218 and 220.
72 Bezemek, 2020, p. 76.
73 Öhlinger and Eberhard, 2022, pp. 217–218.

office. This instrument represents the strongest form of political control. The first and only successful vote of no confidence to date was held against the Government headed by Sebastian Kurz in 2019.[74]

### *2.4.3. Economic control*

In addition to judicial control, there are other mechanisms to control the administration. In Austria, in addition to political control rights, control by the Court of Auditors (*Rechnungshof*) and the Ombudsman Board (*Volksanwaltschaft*) are particularly worth mentioning.

#### 2.4.3.1. Court of Auditors

The Court of Auditors, established as an auxiliary body of the National Council, regulates the financial resources used by the public sector. It is headed by a president elected by the National Council for a twelve year-term. The president has the right to nominate the Court of Auditors, who will be appointed by the Federal President.[75]

Essentially, the Court of Auditors performs the following tasks: budget management, financial control and certain special tasks. Within the budget management framework, the Court of Auditors is responsible for preparing Federal financial statements. The primary task is financial auditing. The Court of Auditors is required to audit the annual financial statements in Article 126b, B-VG listed authorities.[76] The audit is conducted with regard to numerical correctness, compliance with existing regulations and employment of thrift, efficiency and expediency.[77]

Based on these examinations, the Court of Auditors prepares a report to be submitted to the National Council or, if it acts on behalf of the State Parliament, the report is submitted to the State Parliament, and is subsequently published.

#### 2.4.3.2. Ombudsman Board

The Ombudsman Board generally investigates maladministration stemming from an individual complaint but can also investigate suspected maladministration ex officio. Similar to the Court of Auditors, the Ombudsman Board reports to the National Council or individual State Parliaments. The Ombudsman Board is particularly characterised by the fact that complaints can be submitted without financial barriers, informally and relatively smoothly, making this institution very close to citizens.[78]

The Vienna-based authority consists of three members, all of whom are elected by the National Council for a six-year term. Anyone can consult the Ombudsman Board for alleged maladministration by the Federal Government, if they are affected and have no legal remedies available to them. This right can be exercised because of

74 Federal Council [Online]. Available at: https://www.parlament.gv.at/aktuelles/pk/jahr_2019/pk0589 (Accessed: 25 November 2024).
75 Berka, 2021, p. 293.
76 Berka, 2021, pp. 294–299.
77 Article 126b, paragraph 5 B-VG.
78 Berka, 2021, p. 299.

alleged human rights violations. The competence of the Ombudsman Board refers equally to the sphere of activity of the sovereign and private sector administrations.[79]

In the case of alleged human rights violations, the Ombudsman Board and its commissions are also entitled to visit and inspect places of imprisonment, observe and monitor the conduct of bodies authorised to exercise direct administrative command and coercive power, and inspect and visit institutions and programmes for persons with disabilities.[80]

Based on this review, the Ombudsman Board can make a recommendation to the competent supreme body of the administration. The body must either comply with this recommendation or justify any deviating action in writing to the Ombudsman Board. Furthermore, the Ombudsmans Board must submit an annual report to the National Council.[81]

#### *2.4.4. Liability of Public Bodies (Amtshaftung)*

In Austria, in addition to the aforementioned control, administrative bodies or the legal entity (*Rechtsträger*) are also confronted with liability for damages. For this purpose, the Liability of Public Bodies Act (AHG – Amtshaftungsgesetz BGBl 1949/20), based on Article 23, B-VG, provides for a sophisticated liability regime.[82] According to this law, Federal, State and Municipal legal entities are liable for damages unlawfully and culpably caused to a third party by their bodies during sovereign acts. This applies equally to the administration and jurisdiction.[83]

The Public Liability Act is not applicable in the context of private sector administration. Liability is governed by the norms of civil law, which primarily means application of the General Civil Code (*Allgemeines Bürgerliches Gesetzbuch*).[84]

### *2.5. Selected Fundamental Rights in connection with the administration*

#### *2.5.1. Equal protection clause (allgemeiner Gleichheitssatz), requirement of objectivity (Verhältnismäßigkeitsprinzip) and prohibition of arbitrariness (Willkürverbot)*

The equal protection clause is enshrined in Article 7, B-VG. It provides many guidelines for the actions of the administration and is considered a central provision of fundamental rights in Austria. All forms of administrative action are affected, including private sector administration.[85]

79 Article 148a, paragraph 1 B-VG.
80 Article 148a, paragraph 3 B-VG.
81 Berka, 2021, p. 302.
82 In addition, the Organ Liability Act (OrgHG – Organhaftpflichtgesetz BGBl 1967/181) provides for those provisions that regulate liability in the event of damage to the legal entity.
83 Legislative liability is not established, Article 57, 58, 96 B-VG. Only the so-called 'state responsibility' resulting from the case law of the ECJ may become relevant; cf. EuGH 19. 11. 1991, C-6/90 and C-9/90 *Francovich* and EuGH 5. 3. 1996, C-46/93 and C-48/93 *Brasserie du pêcheur*.
84 Ziehensack, 2023, p. 146.
85 Holoubek, 2014, p. 451.

For example, ordinances (such as zoning or development plans) must be measured against equal protection clauses. In addition, the provision essentially binds Administrative Courts, whose decisions can be reviewed based on this.[86]

It prohibits legislation from making arbitrary distinctions: meaning any legal differentiation, that is not based on factual differences, must be objectively justified.[87] Specifically, the administration must observe the prohibition of arbitrariness and an administration's actions may not be arbitrary. This also includes serious violations of fundamental procedural rights.[88]

#### *2.5.2. Lawful judge (Gesetzlicher Richter)*

The Federal Constitution contains special procedural and judicial guarantees. Particularly noteworthy is Article 83, paragraph 2 B-VG, where the 'right to the lawful judge' is standardised, which originally had the primary purpose of separating the judiciary from the administration and independent jurisdiction.[89]

At present, Article 83, B-VG is understood more broadly and includes legal protection that encompasses statutory authority jurisdiction in administrative law.[90] Accordingly, the legislature is obliged to provide detailed regulations of the authority's competence, the applicability of concrete procedural law and the right of appeal.[91] The decision of the Administrative Court violates the right of the lawful judge if the authority claims a competence to which it is not entitled or if the authority unlawfully rejects a competence.[92]

### *2.6. Conclusion*

The principle of the rule of law is an essential starting point for an administration's actions. Values, such as the separation of powers or the protection of fundamental rights, as well as the principle of legality, shape the core of administrative action and determine the relationship between legislation, jurisdiction and administration.

A much-discussed topic in Austria is the public administration's duty to provide information, as elucidated in the previous chapter. The current (constitutional) provisions on access to information in public administration in Austria are found in various provisions, the central one being the general duty to inform, under Article 20, paragraph 4 B-VG. To ensure efficient administration, the instrument of administrative assistance was anchored in constitutional law.[93]

86 Grabenwarter and Holoubek, 2022, pp. 262–263.
87 Öhlinger and Eberhard, 2022, pp. 349–350.
88 Öhlinger and Eberhard, 2022, pp. 370–374.
89 Grabenwarter and Holoubek, 2022, p. 269.
90 Leeb, 2021, pp. 13–14.
91 Öhlinger and Eberhard, 2022, pp. 461–465.
92 Öhlinger and Eberhard, 2022, pp. 461–465.
93 Holoubek, 2014, p. 449.

The core idea of Austria's administrative law is to protect individuals against erroneous administrative actions.[94] In Austria, administrative control takes different forms. In contrast to the Anglo-Saxon area, for example, specialised administrative jurisdiction is typical.[95]

The Austrian Constitution has a dedicated section on administrative jurisdiction and provides for different types of lawsuits. In contrast, detailed regulations on constitutional status are a special feature.[96] The Ombudsman Board and Court of Auditors also play a special role in the Federal Constitution of Austria.[97] The Committee of Inquiry is an important instrument of political control. It strengthened minority rights and offered opportunities for media coverage.

## 3. Organizational principles and structure of public administration

### *3.1. Federal administration*

#### *3.1.1. Federal President (Bundespräsident)*

The Federal President is elected by the citizens based on an equal, direct, personal, free and secret vote for a six-year term. After the term of office expires, the Federal President may be re-elected once. He/she must be at least 35 years old on election day.[98]

If the Federal President is unable to attend to his/her duties, the Federal Chancellor must represent him/her. If the President is unable to attend to his/her duties for more than 20 days, the three Presidents of the National Council (*Nationalratspräsidenten*) shall take his/her place as a collegium. This also applies if the Federal President is permanently vacated.[99]

The Federal President is responsible for representing the republic externally, certifying envoys and concluding international treaties. The Federal President appoints officials and confers professional titles. Before an act is promulgated, it must be signed by the Federal President.[100] Furthermore, the Federal President appoints the Federal Chancellor and, based on the latter's proposal, the Federal Government as well. The Federal President can also dismiss the Federal Government, although the Federal Chancellor's proposal is required for the dismissal of individual ministers.[101] The Federal President can also dissolve the National Council based on the Federal Government's proposal.[102] The Federal President requires a proposal for all acts by

94 Leitl-Staudinger, 2011, p. 207.
95 Wieser, 2024a, p. 377.
96 Wieser, 2024a, pp. 378–379.
97 Wieser, 2024a, pp. 382–384, 388–390.
98 Article 60 B-VG.
99 Article 64 B-VG.
100 Article 65 B-VG.
101 Article 70 B-VG.
102 Article 29 B-VG.

the Federal Government or Federal ministers and the countersignature of the Federal Chancellor, unless otherwise stipulated in the Constitution.[103]

During a state of emergency, the Federal President has the right of emergency ordinance (*Notverordnungsrecht*). Therefore, if the immediate enactment of measures, which would otherwise be subject to the decision of the National Council, is necessary to avert obvious irreparable damage to the general public at a time when the National Council cannot convene, the Federal President may enact such measures through an ordinance on the proposal of the Federal Government. Such an ordinance may not amend the Constitution and may not impose a permanent financial burden on a territorial authority, a financial obligation on citizens or the disposal of Federal property.[104]

The term of office of the Federal President expires after six years (with the option of one re-election), by death or removal by referendum on the proposal of the Federal Assembly (*Bundesversammlung*).[105]

#### *3.1.2. Federal Government (Bundesregierung)*

The Federal Government comprises individual Federal ministers as well as the Federal Chancellor and Vice-Chancellor.[106] Federal ministers are assigned individual portfolios that are distributed by law for each term of office.[107] The Federal Government is not elected by the people directly but is appointed and sworn in by the Federal President. The Federal President first appoints a Federal Chancellor, who must submit a proposal on the composition of the Federal Government. Accordingly, the Federal President appoints individual ministers.[108] By contrast, the Federal President does not need a proposal for the appointment of the Federal Chancellor.

The Federal Government or individual members may—as already mentioned—be dismissed by the National Council at any time by the so-called 'vote of no confidence' (*Misstrauensvotum*), leading to the democratic legitimacy of the Federal Government.

Members of the Federal Government may be assisted by a State Secretary, appointed in the same manner as the minister. The State Secretary shall support the Federal Minister in the management of the ministry, may represent the Federal Minister in Parliament and may be entrusted with ministry tasks on an independent basis.[109]

### *3.2. Direct and indirect Federal administration (Unmittelbare und mittelbare Bundesverwaltung)*

The Austrian Federal Constitution provides for the division of competences in Articles 10–15. Article 10 of the Federal Constitution lists matters that the Federal Council is responsible for in the legislation and Federal bodies in execution. In

103 Article 67 B-VG.
104 Article 18, paragraphs 3 and 4 B-VG.
105 Article 60, paragraphs 5, 6 B-VG.
106 Article 69, paragraph 1 B-VG.
107 Cf. the Federal Ministries Act 1986.
108 Article 70, paragraph 1 B-VG.
109 Berka, 2021, p. 239.

matters listed in Articles 11, 12 and 15 of B-VG, the responsibility for enforcement lies with the states.[110]

Although Article 10, B-VG provides for enforcement at the Federal level in the above-mentioned matters, this does not mean that the matter is necessarily enforced by Federal bodies. In Austria, a distinction is made between indirect and direct Federal administration. Matters for which Article 10, B-VG provides for the Federal Government's competence to enforce the law can also be enforced by bodies of the State within the framework of an indirect Federal administration. Federal authorities can be established for enforcement only if the matter is listed in Article 102, paragraph 2 B-VG.[111]

Within the framework of direct Federal administration, a matter is executed by the Federal Government, and Federal bodies are subordinate to them. Meanwhile, in indirect Federal administration, a matter is carried out by the organs of the State, which are bound by the instructions of the supreme organs of the Federation and are responsible to them.

### *3.3. State administration (Landesverwaltung)*

#### *3.3.1. State Government (Landesregierung)*

At the State level, there is a hierarchically-structured administration headed by nine State governments—one for each State. Other bodies of the State administration are subordinate to it.[112]

The State government is elected by State Parliaments. It comprises the State Governor (*Landeshauptmann*) and other members (*Landesräte*).[113] The specific number of members of the State Government is regulated by individual State Constitutions.[114]

The State Government is the supreme body of State administration, which has the authority to govern and is also the highest authority in each State. It conducts its business as a collegial body through collegial decision-making, whereby, depending on the formulation of State law, the majority or unanimity principle applies. Deviating from this, the Federal Constitution also provides for the possibility of establishing the State Government as a departmental system. Accordingly, individual members of the State Government, such as monocratic bodies, are responsible for individual matters.[115]

110 Article 11 B-VG contains a legislative competence of the Federation, Article 12 B-VG contains a legislative competence of the Federation with regard to principles and of the provinces with regard to detailed provisions. Article 15 B-VG contains a general competence in favour of the provinces.
111 Berka, 2021, p. 241.
112 Berka, 2021, p. 249; Steiner, 2012a, p. 305.
113 Article 103, paragraphs 1 and 3 B-VG.
114 Berka, 2021, pp. 249–250.
115 Berka, 2021, p. 250.

The head of State Government is the State Governor. The Governor represents the State externally and is the head of the Office of the State Government (*Amt der Landesregierung*) and District Governors (*Bezirkshauptleute*).[116] As an expression of democratic legitimacy, members of the State Government are politically and legally responsible to the State Parliament.[117]

#### *3.3.2. Office of the State Government*

The Office of the State Government is secured by its own constitutional law. It is the central service at the State level and not an independent authority, but serves as an official auxiliary apparatus for the State Government as a collegial body and for individual members of the State Government.[118] According to Berka, it can be understood as a unified 'ministry' for the respective State.[119]

#### *3.3.3. District administrative authorities (Bezirksverwaltungsbehörden)*

District administrative authorities are central officials at the next lower territorial level, that is, the level of political districts. The district administrative authorities are understood to be the district head offices (*Bezirkshautpmannschaften*) as well as the cities with their own statute (*Städte mit eigenem Statut*).[120]

### *3.4. Territorial self-governments (Territoriale Selbstverwaltung) – Municipalities (Gemeinden)*

The lowest territorial level of administration is the Municipal level. The municipalities do not have legislative powers vis-à-vis Federal and State territorial authorities, but only have administrative agendas.[121] Municipalities act as self-governing bodies and even have a subjective constitutionally-guaranteed right to do so, which they can also assert before the Constitutional Court, for example, in the event of a restriction on their sphere of action.[122]

A special feature at the Municipal level include the so-called 'cities with their own statute'. This status can be granted to a Municipality on application by a State law if the Municipality has at least 20,000 inhabitants and the interests of the State are not endangered. Accordingly, it is responsible not only for administration at the municipal level but also at the district level (see above).[123] Currently, there are 15 such cities in Austria, including Vienna, Graz and Salzburg.[124]

116 Steiner, 2012b, pp. 388–391.
117 Berka, 2021, p. 251.
118 Bauer, 2012, p. 430.
119 Berka, 2021, pp. 251–252.
120 Pürgy, 2012, pp. 445–446.
121 Berka, 2021, p. 262.
122 Article 116 B-VG; Berka, 2021, pp. 262–263.
123 Article 116, paragraph 3 B-VG.
124 Berka, 2021, p. 264.

### *3.4.1. Spheres of action*

At the Municipal level, a distinction is made between two spheres of action: own sphere of action and assigned sphere of action. The former is conducted autonomously by Municipalities and is free of instruction. The second step is carried out on behalf of and according to the instructions of other authorities.

#### 3.4.1.1. Own sphere of action

The Municipality autonomously performs tasks in its own sphere of action and is not required to follow any command. However, in any case, the Municipality must comply with Federal and State laws.[125]

The tasks to which the Municipality is entitled in its own sphere of action are derived from a general clause and demonstrative list in the Constitution itself. Accordingly, all matters are to be dealt with in the Municipality's own sphere of action—apart from its activity as an economic unit—which 'are exclusively or predominantly matters of the local community in the person of the Municipality and are suitable for fulfillment by the municipality within its local boundaries'.[126] These matters are to be designated as such in the act.[127] Based on this general clause, the Constitution provides a demonstrative list of those agendas that are in any case to be managed within the Municipality's own sphere of action. These include the appointment of Municipal bodies and staff (with exceptions), local public security administrations, local sanitary police, public decency and local construction police.[128]

Within this framework, there is also special authorisation to issue ordinances. The Municipality has the right to issue local police ordinances (*Ortspolizeiliche Verordnungen*) for 'the prevention of imminently to be expected or existent nuisances interfering with local communal life'.[129] Local police ordinances may not violate Federal or State laws.

#### 3.4.1.2. Assigned sphere of action

Within the scope of the assigned sphere of action, the Municipality executes matters transferred to it by the federal or state acts. The Municipality is bound by the instructions of higher-ranking administrative bodies. The mayor is the central body in the administration of the transferred sphere of action.[130]

### *3.4.2. Bodies of the municipality*

#### 3.4.2.1. The Municipal council (Gemeinderat)

The Municipal Council is a general representative body of the population residing within a municipality at the municipal level. It is elected based on direct, personal,

125 Article 118, paragraph 4 B-VG.
126 Article 118, paragraph 2 B-VG.
127 Article 118, paragraph 2 B-VG.
128 Article 118, paragraph 3 B-VG.
129 Article 118, paragraph 6 B-VG.
130 Berka, 2021, pp. 264–265.

free and equal right to vote for male and female citizens residing in the Municipality. In this—and only in this—national election, EU citizens are also entitled to vote and contest in elections.[131] The term of office is not the same in all Federal States, and varies from five to six years.[132]

The Municipal Council makes decisions based on a simple majority and is the central body of its own sphere of action. It oversees all matters within its own sphere of action insofar as they are not assigned to other bodies.[133]

#### 3.4.2.2. The Mayor (Bürgermeister)

The mayor is the central body of the assigned sphere of action and the chairperson of the Municipal executive board. Various tasks are assigned to him/her.[134] The exact allocation of tasks cannot be described conclusively here considering that this is based on the Municipal acts of individual States.[135]

The election of the mayor is not harmonised in Austria. In most Federal States, the mayor, similar to the Municipal Council, is elected directly by citizens who have their main residences in the Municipality. In Lower Austria and Styria, the Municipal council elects the mayor.[136] In the Federal Capital of Vienna, direct election of the mayor is constitutionally impossible as Vienna is also a state and the mayor is the governor of the state.[137]

#### 3.4.2.3. The municipal executive board (Gemeindevorstand)

The Municipal executive board is a type of 'Municipal government'.[138] In cities with their own statute, it is called the 'city senate'. Members are elected according to the proportional representation principle of the Municipal council.[139]

Parties represented in the Municipal council are also represented in the Municipal executive board according to their proportion. Its composition depends on respective

131 Article 117, paragraph 2 B-VG.
132 Trauner, 2016, pp. 33–34.
133 Cf. e. g. § 43 Abs 1 Stmk GemO.
134 Berka, 2021, pp. 264–265.
135 For example, in Styria, he/she is responsible for representing the Municipality externally. He/she manages and supervises the entire administration of the Municipality and is the head of the Municipal office and supervisor of the Municipal employees and is authorised to issue instructions to them. Furthermore, he/she is responsible for the execution of the decisions of the Municipal council, Municipal board and administrative committees, the decision and disposal in all Municipal affairs of the own sphere of action, unless another Municipal body is responsible for this by law. In addition, he/she is responsible for the day-to-day administration of Municipal property, the handling of local police and the management of matters of delegated authority in accordance with the law (§ 42 GemO) cf. § 45 Steiermärkische Gemeindeordnung 1967 LGBl 1967/115.
136 § 23 stmk GemO; § 21 Statut der Stadt Graz LGBl 1967/130; § 26 NÖ GO 1973 LGBl 1000-0.
137 Berka, 2021, pp. 271–273.
138 Berka, 2021, pp. 264–265.
139 Cf. Article 117, paragraph 5 B-VG; Weilguni, 2017, p. 17.

State laws. For example, in Styria, the body consists of three–seven members.[140] Under these laws, several Municipal administrative tasks were assigned to the body.

### *3.5. Other self-government*

In Article 120a-c, B-VG, the Constitution regulates other self-governing bodies.[141] People can be grouped by law into self-governing bodies, which can be entrusted with the performance of public duties, if they are in the exclusive or predominant common interest and can be performed jointly by them.[142] These bodies have the right to perform tasks on their own, particularly when free of instructions.[143] However, the Federation or State retains the right to supervision. Federal administrative tasks can also be transferred to self-governing bodies.[144]

Self-governing bodies are formed among members in accordance with democratic principles. Within the framework of the law, as independent economic entities, they may acquire, hold and dispose of assets of all types to fulfil their tasks.[145] In Article 120a, paragraph 2, the Austrian Federal Constitution explicitly recognises social partners. They are therefore constitutionally guaranteed to be self-governing bodies.[146]

### *3.6. Public administration carried out by private institutions*

Under certain circumstances, non-governmental entities may also perform authoritative administrative acts (*Hoheitsakte*). This form is called lending (*Beleihung*). In these cases, authoritative acts can be performed by private subjects via 'outsourced legal entities' (*ausgegliederte Rechtsträger*).[147] Outsourced legal entities are specifically created to perform administrative functions, and are established and controlled by the Federal State and can also assume non-authoritative tasks.[148]

If non-governmental legal entities are allowed to take authoritative acts, it must be ensured that the requirements of the Federal Constitution for administration are also met in these areas. The Constitutional Court has therefore, developed criteria, which must be observed in these cases and which derive, in particular, from Article 20 B-VG.[149] Primarily, the right to issue instructions must be observed.[150] Therefore, principles of objectivity and efficiency must be applied. Furthermore, only specific activities that do not affect the core area may be used.[151] The principle of legality (Article 18, B-VG) must also be applied in this case. One of the important elements is

140 Cf. § 18, paragraph 1 Stmk GemO.
141 Berka, 2021, p. 256.
142 Article 120a, paragraph 1 B-VG.
143 Article 120b, paragraph 1 B-VG.
144 Article 120b, paragraph 2 B-VG.
145 Article 120c B-VG.
146 Berka, 2021, p. 257.
147 Grabenwarter and Holoubek, 2022, pp. 372–374.
148 Grabenwarter and Holoubek, 2022, p. 380.
149 VfSlg 14.473/1996 – Austro Control GmbH.
150 Holoubek, 2014, p. 446.
151 VfSlg .14.473/1996, VfSlg. 3685/1960; cf. Raschauer, 2000, pp. 25–26.

the possibility of controlling these legal entities. The Federal Minister has the right to provide instructions to entrusted entities. Nevertheless, Article 20, paragraph 2 B-VG also applies to the case of lending.[152] Accordingly, legislators may exempt bodies from instruction under certain conditions.[153]

### *3.7. Private sector administration (Privatwirtschaftsverwaltung) and sovereign administration (Hoheitsverwaltung)*

Pursuant to Article 17, B-VG, regional and local authorities may act within the framework of the private sector administration and in areas that are not assigned to them under Articles 10–15 of the Federal Constitution.[154]

The distinction between sovereign and private sector administrations primarily concerns administrative action.[155] This distinction refers to the legal means by which an action is performed. Sovereign administrative action must be based on law and manifest itself in the form of rulings, ordinances and the charge of public administrative bodies.[156]

Private sector administration is understood as the action of administrative bodies, particularly in the area of civil law. In this area, authorities act primarily through contracts and other instruments available to individuals. However, so as not to disadvantage private parties, various obligations also apply to this area, particularly the equal protection clause and other fundamental rights. This is called the 'fiscal validity of fundamental rights' (*Fiskalgeltung der Grundrechte*).[157] The distinction between sovereign and private sector administration is central and has implications for numerous administrative areas.[158]

### *3.8. Conclusion*

A special feature of the Austrian constitutional law is that the organization of the administration is precisely regulated by the Constitution. The Federal, State and Municipal administrations are regulated exhaustively.[159] In Austria, the Federal President has no real political influence on day-to-day affairs, although he/she is vested with numerous powers under the Constitution.

The Federal Chancellor and Federal Government are the pillars of politics. Considering the expedient 'reduction of complexity', the Austrian Federal Constitution also includes the government as the supreme administrative body in the administration and does not make any distinction here.[160]

152 Grabenwarter and Holoubek, 2022, p. 377–379.
153 Grabenwarter and Holoubek, 2022, p. 372.
154 Nonetheless, the Federal requirement for consideration must be observed; cf. Grabenwarter and Holoubek, 2022, pp. 456–457.
155 Raschauer, 2021, p. 271.
156 Raschauer, 2021, p. 274.
157 Grabenwarter and Holoubek, 2022, p. 454.
158 Grabenwarter and Holoubek, 2022, p. 456.
159 Holoubek, 2014, pp. 455–458.
160 Holoubek, 2014, p. 438.

The most distinctive feature of the Municipal administration is its establishment as a self-governing body that can act autonomously within its own sphere of action. While the administration at the Federal and State levels is strictly hierarchical, self-administration of the Municipality is its counterpart; it is not bound by instructions (but is subject to supervision).[161]

Since certain organizational matters also lie within the competence of States, there are sometimes inconsistent regulations. For example, in some States, the mayor is elected directly by the people, whereas other State Constitutions provide for election by the Municipal council.

In administrative law scholarship in Austria, there has never been any question of whether non-sovereign administration is also counted as part of the Federal administration. The handling and special nature of the public law binding of private sector administrations are central topics of scholarly debate.[162]

This distinction is important because, for example, the principle of legality cannot be applied to the private administration of the economy; rather, in these cases, the Federal State, as a private entity, is subject to the principle of legality.[163]

Legal protection is the most important principle in administrative activity and is the reason why the 'privatisation' of the Federal State by means of lending and outsourcing is increasingly being considered in administrative law. Nevertheless, the Constitutional Court has determined that certain areas are not amenable to lending.[164]

## 4. Current challenges in public administration

The Austrian People's Party (*ÖVP*) and Green Party (*Grünen*), which existed in Austria at the time, dedicated the first point of its government programme to the topics of 'constitution, administration and transparency'.[165] Upon closer examination, this aspect contains major and important efforts to deal with current challenges in public administration. Two recurring points stand out: freedom of information and transparency.

### *4.1. Freedom of information*

As described above, the Austrian Constitution includes an interplay between the duty to provide information and official confidentiality. According to this, anybody entrusted with tasks of the Federal, State and Municipal administration, as well as bodies of other corporations under public law, must provide information on matters

161 Holoubek, 2014, pp. 457 and 458.
162 Leitl-Staudinger, 2011, p. 208.
163 Lukan, 2018, p. 102.
164 Leitl-Staudinger, 2011, p. 208.
165 Government programme 2020–2024, pp. 10–12 [Online]. Available at: https://www.bundeskanzleramt.gv.at/dam/jcr:7b9e6755-2115-440c-b2ec-cbf64a931aa8/RegProgramm-lang.pdf (Accessed: 13 December 2022).

within their sphere of activity.[166] However, these bodies are obliged to maintain confidentiality regarding facts that have become known to them exclusively in the course of their official activities, if their secrecy is required to maintain public peace, order and security, comprehensive national defence, foreign relations, in the economic interest of a public body, for the preparation of a decision, or in the overriding interest of the parties.[167]

The Federal Act on the Duty to Provide Information (*Auskunftspflichtgesetz*[168]) provides detailed information at the Federal level. The original purpose of this act was to extend the norm of the Federal Ministries Act 1986 (*BMG – Bundesministeriengesetz* 1986 BGBl 1986/76) regarding the provision of information by Federal ministries to all bodies of the Federal Government and self-governing bodies regulated by Federal law.[169] Regarding the bodies of State and Municipalities, individual States enact state information acts.[170]

The Federal Act on the Duty to Provide Information stipulates that the aforementioned bodies must provide information, which does not conflict with any duty of confidentiality. A written oral or telephone request for information requires compliance within eight weeks, but a request does not have to be complied with if it is wilful.[171] If information is not provided, the person requesting the information shall be issued with a ruling upon request, which shall provide possibility of legal recourse to the person requesting the information.[172]

At this point, a paradigm shift has been attempted for years by replacing the legal situation with comprehensive freedom of information. This idea originates from the programmes of the current and[173] previous governments,[174] and various motions by opposition parties.[175]

An obligation to provide information cannot currently be derived from Article 20, B-VG, but from the case law of ECHR, which derives—under certain conditions—from Article 10 of ECHR.[176] Wieser recognises two information regimes in Austria: 'general'

166 Article 20 Abs 4 B-VG.
167 Article 20 Abs 3 B-VG.
168 Auskunftspflichtgesetz BGBl 1987/287.
169 RV 41 BlgNR 17. GP, 3.
170 For example in Styria: Steiermärkisches Auskunftspflichtgesetz LGBl 1990/73.
171 An applicant wilfully acts 'if he or she uses the resources of the Freedom of Information Act solely to pursue purposes that the Freedom of Information Act does not serve to protect'. VwSlg 8155 F/2006.
172 §§ 1–5 Auskunftspflichtgesetz.
173 Government programme 2020–2024, pp. 17–20 [Online]. Available at: https://www.bundeskanzleramt.gv.at/dam/jcr:7b9e6755-2115-440c-b2ec-cbf64a931aa8/RegProgramm-lang.pdf (Accessed: 13 December 2022).
174 Government programme 2013–2018, p. 91 [Online]. Available at: https://www.politik-lernen.at/dl/OkopJKJKonmKNJqx4KJK/131216_Regierungsprogramm_Barrierefrei_pdf (Accessed: 14 December 2022).
175 Cf. IA 61/A BlgNR 27. GP.
176 EGMR 8.11.2016, 18030/11, Magyar Helsinki Bizottság v. Hungary; referring to the national level VwGH 29.05.2018, Ra 2017/03/0083.

obligation to provide information according to Article 20, paragraph 4 B-VG, which applies to ordinary citizens and the duty to provide information according to Article 10, ECHR, which applies to 'watch dogs' such as journalists or NGOs.[177]

The right to information can be understood as a democratic necessity, since information is 'the basis of meaningful political participation'.[178] It is often remarked that in international comparison, Austria lags behind in this respect because no other European Constitution provides for official secrecy.[179] However, the significance of international rankings should not be overestimated.[180] According to Bertel, Austria is not the only country with a constitutional restrictive transparency obligation. The decisive factor for Bertel is the formulation of a simple law.[181]

In February 2024, an amendment to the Federal Constitution was adopted, which will come into effect in September 2025. As a result, Article 20, paragraph 3 to 5 B-VG, i.e. official confidentiality and the duty to provide information, will be repealed, and a new Article 22a will be enacted.

The new Article 22a B-VG introduces two significant changes. Firstly, per paragraph 1 it establishes active information obligations, and secondly, in paragraph 2 it grants the right to information as stipulated.

According to paragraph 1, organs entrusted with federal or state administration, organs of ordinary jurisdiction, administrative courts, the Supreme Administrative Court, and the Constitutional Court are required to publish information of general interest in a manner accessible to everyone. This excludes information subject to confidentiality under paragraph 2. Only Municipalities with fewer than 5,000 inhabitants are exempt from this provision. This amendment marks a systemic change, as previously information was only provided upon request, whereas now it must be actively made available—constituting an active information obligation.

Paragraph 2 of Article 22a B-VG provides a norm comparable to the previous duty to provide information. It stipulates that everyone has the right to access information from organs entrusted with federal or state administration. Again, information subject to confidentiality is exempt. The distinctive feature of this norm compared to the previous legal situation is that it represents a constitutionally guaranteed subjective right, thus establishing a fundamental right to access information. According to paragraph 3, this right to access information also extends to certain enterprises.

177 Wieser, Auskunftspflicht – neue Dynamik im Sog grundrechtlicher Entwicklungen, (unpublished paper).
178 Barth and Ennöckl, 2019, p. 177.
179 Barth and Ennöckl, 2019, p. 178.
180 Austria, for example, is ranked second to last in the RTI (right to information) ranking, while Afghanistan, Mexico and Serbia occupy the first three places. The Global Right to Information Ranking has placed Austria in penultimate (134/135) position [Online]. Available at: https://www.rti-rating.org/country-data/ (Accessed: 14 December 2022).
181 Bertel, Informationsfreiheit im europäischen und internationalen Vergleich, (unpublished paper).

As with the previous legal framework, the legal details regarding the new Article 22a B-VG will be laid through simple legislation—the Freedom of Information Act (IFG – Informationsfreiheitsgesetz BGBl I 2024/5).

### *4.2. Transparency*

Concurrently, the demand for freedom of information—not least due to past and acute scandals—a higher degree of transparency is demanded, which is also reflected in the current government programme in several ways.[182]

For example, there is a plan to reform electoral law, strengthen the audit rights of the Court of Auditors and ensure transparency in the appointment of staff to companies with public participation.[183]

With the introduction of Article 20, paragraph 5 B-VG, a concrete amendment to the Constitution has already been introduced to promote transparency.[184] The amendment stems from the idea of preventing hidden financing of studies and surveys by ministries, thus ensuring a higher degree of transparency.[185] The regulation stipulates that all bodies entrusted with Federal, State and Municipal Government tasks must publish studies, expert opinions and surveys commissioned by them, including their costs, in a manner accessible to everyone as long as it is not covered by official secrecy pursuant to Article 20, paragraph 3 B-VG, which is still in force.[186] It should be noted that the relatively new Article 20, paragraph 5 B-VG will also be abolished with the aforementioned constitutional amendment, which introduces freedom of information. Information falling under this provision will subsequently be covered by the new Article 22a B-VG.

Ultimately, it remains to be seen what will be left of the abovementioned plans upon completion of the term of office of the current government. These proposed approaches have also been addressed by previous governments and have not produced any major results to date. It should also be considered that the government programme was drafted at a time when no one could foresee the problems the government would face. The government programme, which was finalised at the turn of 2019 and 2020, could not foresee the global pandemic, the Ukraine war or the economic crisis fuelled by both aspects. It is therefore a matter of waiting and being considerate.

182 Government programme 2020–2024, pp. 10–20 [Online]. Available at: https://www.bundeskanzleramt.gv.at/dam/jcr:7b9e6755-2115-440c-b2ec-cbf64a931aa8/RegProgramm-lang.pdf (Accessed: 13 December 2022).
183 Government programme 2020–2024, pp. 16, 18, 20 [Online]. Available at: https://www.bundeskanzleramt.gv.at/dam/jcr:7b9e6755-2115-440c-b2ec-cbf64a931aa8/RegProgramm-lang.pdf (Accessed: 13 December 2022).
184 IA 2509/A BlgNR 27. GP.
185 IA 2509/A BlgNR 27. GP, p. 4.
186 BGBl I 2022/141.

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# General Principles and Challenges of Public Administration Organization in Croatia

Frane STANIČIĆ

**ABSTRACT**

Public administration in Croatia has been fraught with organizational, political and personal challenges, which are gradually being addressed, particularly through accession to the European Union. Additionally, new reforms have been included in the current (2022–2027) National Plan for Public Administration Development, while the novel concept of wages was introduced in public services. The Constitution distinguishes between State and local authorities by limiting State authority to the right to self-governance. It also establishes mutual relations between the Parliament, government and State administration, as well as local and regional self-governments. Public administration in Croatia can be categorised into State administration, local and regional self-governments, and numerous entities with public authority. A majority of public services can be considered a part of public administration, although employees are not 'real' civil servants; they are 'ordinary' employees with a rather unique status. The State administration comprises two types of organizational units: ministries and State administrative organizations. Local and regional self-governments comprise municipalities and towns (local) and counties (regional), with local self-governments being particularly fragmented. An important aspect of public administration is the presence of legal entities with public authority, such as public institutions and regulatory agencies, which are *sui generis* legal forms.

**KEYWORDS**

public administration, organization, reforms, State administration, local and regional self-governments

## 1. Basic social, geographical and economic overview

The Republic of Croatia, an independent parliamentary republic since 1991 (internationally recognised in January 1992), is a Mediterranean and Central European country bordering Slovenia to the west, Hungary to the north, Serbia, Bosnia, Herzegovina and Montenegro to the east, and Italy to the south. Its territory spans 56,594 km2 (ranked 19$^{th}$ in size among European Union (EU) countries) and its capital is Zagreb. According to its internal setup and Constitution, Croatia is a unitary state; however, its power is limited by its right to local self-governance. In the Republic of Croatia, laws (legislative acts) must conform to the Constitution, while other rules and

Staničić, F. (2024) 'General Principles and Challenges of Public Administration Organization in Croatia' in Hulkó, G. (ed.) *General Principles and Challenges of Public Administration Organization in Central Europe.* Miskolc-Budapest: Central European Academic Publishing. pp. 81–108; https://doi.org/10.54171/2024.gh.gpacopaoce_4

regulations must adhere to the Constitution and law. Citizens are required to abide by the Constitution and law, and respect the legal order of the Republic of Croatia.

Croatia has two levels of local power, with the local self-government organized as a two-tier system; the first level includes municipalities and towns and the second represents counties. Overall, there are 20 counties (*županije*), 428 municipalities (*općine*) and 127 cities (*gradovi*), representing 576 units of local and regional self-governments. The law provides for the possibility of transfer of functions and competences between levels (upward and downward), thus offering flexible governance. Municipalities may acquire competences of the county but can also transfer their competences in the opposite direction.[1]

The Republic of Croatia is established as a nation–State, representing the Croatian nation and the State comprising members of national minorities: Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians, Rusyns, Bosniaks, Slovenians, Montenegrins, Macedonians, Russians, Bulgarians, Poles, Roma, Romanians, Turks, Vlachs, Albanians, among others, who are its citizens; it has a total of 6,757 settlements. These minorities are guaranteed equal rights with citizens of Croatian nationality, including the exercise of national rights in compliance with the democratic norms of the United Nations and countries of the free world (Part I of the Croatian Constitution – Historical Foundation).

Croatia has 3,871,833 inhabitants, of which 1,865,129 are males (48.17%) and 2,006,704 are females (51.83%), according to the last census (2021).[2] In the last 150 years, several factors have influenced population development, with the most important being continual, occasionally intensive, emigration to European and more distant destinations, the two world wars and the Homeland War.[3] Another demographic characteristic is the unequal distribution of the population, with almost two-thirds living in slightly more than one-third of Croatia's territory. The population is significantly concentrated in the capital city of Zagreb, where 19% of the country's population lived in 2021, and has exhibited increasing population density for several decades. The smallest concentration is in the county of Ličko-senjska, where only 1.1% of the population lives, and population density has been declining in the last 30 years.[4] Croatia has one of the most marked and longest traditions of emigration among European countries, representing more than two-and-a-half million diaspora worldwide, including original émigrés and their descendants.[5]

According to the 2021 census, the share of Croats in the national population structure is 91.69%, Serbs 3.20%, Bosniaks 0.62%, Roma 0.46%, Italians 0.36% and Albanians 0.36%, while the remaining minorities comprise less than 0.3% of the population. Regarding religious affiliation, there are 78.97% Catholics, 3.32% Orthodox

1 Škarica, 2020, p. 217.
2 Državni zavod za statistiku, 2022.
3 The Miroslav Krleža Institute of Lexicography, 2024, p. 14.
4 The Miroslav Krleža Institute of Lexicography, 2024, p. 15.
5 The Miroslav Krleža Institute of Lexicography, 2024, pp. 85–87.

Christians, 1.32% Muslims, 4.71% non-believers and atheists, while 1.72% opted not to disclose their religious affiliation.[6]

After overcoming the immediate challenges surrounding the Homeland War, Croatia transitioned into a phase of augmenting its Gross Domestic Product (GDP). In 2003, GDP reached pre-war levels (USD 24.8 billion, 1990), and continued rising until 2008, before it fell and stagnated. In March 2018, Croatia was identified as having excessive macroeconomic imbalances linked to high levels of public, private and external debt, all largely denominated in foreign currency, in a context of low potential growth. In 2018, Croatia's GDP per capita relative to the EU average remained at levels present ten years earlier.[7] However, in 2022, GDP growth was 6.2%, inflation 10.7%, unemployment 7.0%, general government balance (% of GDP) 0.4, gross public debt (% of GDP) 68.4 and current account balance (% of GDP) -0.2.[8] Croatia has significant regional disparities, with GDP levels varying significantly across counties, particularly between the capital city and rest of the country. Zagreb accounted for 34% of national GDP in 2018, although it accounted for only 19.4% of the country's population, according to latest census data. GDP per capita data demonstrated that a majority of the country's population (67%) lives in areas with a GDP per capita below 60% of the EU average. In 2020, Zagreb's GDP per capita was 118% of the EU average, compared to 36% for counties in eastern Croatia.[9]

## 2. Public administration and constitutional order

The Croatian Constitution includes numerous norms that refer to and establish constitutional position of public administration, which will be analysed infra. However, there are other constitutional norms that determine the functioning of the State and public administration, and establish certain principles for public administration in the broader sense: principle of legality (Article 5[10]), principle of equality in front of the

6 Državni zavod za statistiku, 2022.

7 Ofak, 2020, p. 23.

8 European Commission, 2024. According to data from Eurostat and the Croatian Bureau of Statistics, Croatia recorded a government debt of 85.1% of the country's GDP in 2014. Government debt to GDP in Croatia averaged 51.72% from 2002 until 2014, reaching an all-time high of 85.1% in 2014 and a record low of 36.3% in 2002. Until the COVID-19 pandemic, the debt had been on a decline, driven by both strong GDP growth and reduction in headline deficit. The government debt ratio was estimated to have dropped to 71.3% in 2019. Ofak, 2020, p. 24.
According to current data from the Croatian Bureau for Statistics, the rate of unemployment stands at 5.8%, inflation at 7.3%, average gross salary at 1,590 euros and GDP growth at 2.7%. (Godina Hrvatske Statistike, 2024).

9 European Commission, 2022.

10 'In the Republic of Croatia, laws shall comply with the Constitution. Other regulations shall comply with the Constitution and law.
All persons shall be obliged to abide by the Constitution and law and respect the legal order of the Republic of Croatia'.

law (Article 14, paragraph 2[11]), right to protect personal data (Article 37[12]), freedom of expression (Article 38, paragraphs 1 & 2[13]), right to access information (Article 38, paragraph 4[14]), right to participate in public affairs made to be granted access to public services (Article 44[15]), right to send petitions and complaints and suggestions to State bodies (Article 46[16]), right to referendum (Article 87[17]) and right to submit a complaint to the Ombudsman (Article 93, paragraph 2[18]).[19]

The Constitution also prescribes that the organization, responsibilities and operation of the State administration shall be regulated by law. Certain responsibilities of the State administration may be entrusted by law to bodies of the local and regional self-government, and legal persons vested with public authority. The status of civil servants and labour laws concerning government employees shall be regulated by law and other regulations (Article 114).

It is also worth noting that Article 3 includes the highest constitutional values of constitutional order of the Republic of Croatia: freedom, equal rights, national and

11 'All persons shall be equal before the law'.

12 'The safety and secrecy of personal data shall be guaranteed for everyone. Without consent from the person concerned, personal data may be collected, processed and used only under the conditions specified by law. Protection of data and monitoring of the operations of information systems in the State shall be regulated by law.
The use of personal data contrary to the express purpose of their collection shall be prohibited'.

13 'Freedom of thought and expression shall be guaranteed.
Freedom of expression shall particularly encompass freedom of the press and other media, freedom of speech and public opinion, and free establishment of all institutions of public communication'.

14 'The right of access to information held by any public authority shall be guaranteed. Restrictions on the right of access to information must be proportionate to the nature of the need for such restriction in each individual case and necessary in a free and democratic society, as stipulated by law'.

15 'Every citizen of the Republic of Croatia shall have the right, under equal conditions, to participate in the conduct of public affairs and access to public services'.

16 'Everyone shall be entitled to file petitions and complaints and submit proposals to State and other public bodies, and to receive responses thereto'.

17 'The Croatian Parliament may call a referendum on proposals to amend the Constitution, a bill or any such issue as may fall within its remit'.
The President of the Republic may, at the proposal of the Government and with the countersignature of the Prime Minister, call a referendum on a proposal to amend the Constitution or any such issue as he/she may deem to be of importance to the independence, integrity and existence of the Republic of Croatia.
The Croatian Parliament shall call referenda on issues specified in paragraphs (1) and (2) of this Article in accordance with law, when so requested by 10% of the total electorate of the Republic of Croatia.
At referenda, decisions shall be made by a majority of voters taking part therein.
Decisions made at referenda shall be binding.
A law shall be adopted on referenda. Such law may also stipulate conditions for holding consultative referenda.

18 'Everyone may lodge a complaint to the Ombudsman if he/she deems that his/her constitutional or legal rights have been threatened or violated as a result of any illegal or irregular act by State bodies, local and regional self-government bodies and bodies vested with public authority'.

19 See Koprić et al., 2021, p. 182.

gender equality, peacemaking, social justice, respect for human rights, inviolability of ownership, conservation of nature and environment, rule of law and democratic multiparty system, forming the basis for interpreting the Constitution. The rule of law should be particularly highlighted as it is also achieved by the basic provision of Article 5 (principle of legality). This suggests that all are required to abide by the law—citizens are allowed to act when not prohibited, but the State is allowed to do only what is explicitly allowed under law.[20]

In the Croatian constitutional order, the State is organized on the principle of the separation of power to legislative, executive and judicial branches, and is limited by the constitutionally-guaranteed right to local and regional self-governments (Article 4, paragraph 1). However, constitutional principle of separation of powers encompasses forms of mutual cooperation and reciprocal checks and balances, under which there is no 'supreme' power among the three State bodies and all are equal, within the frame of its limited powers and bound by the Constitution.[21] It is worth noting that the Constitutional Court, which is called an 'inter power', 'oversight power', 'guardian of the Constitution', controls all State powers, with its jurisdiction established by the Constitution and constitutional law of equal legal force.[22] The Court manages all public bodies in Croatia, as everyone is entitled to claim that their constitutional rights have been violated by an individual act and lodge a constitutional complaint. Therefore, every individual act of a public body can be challenged before the Constitutional Court after exhaustion of available regular legal remedies. It is safe to say that the Constitutional Court's influence on public administration has been significant in the last 30 years.

According to the Constitution, the key influence on public administration, especially the State administration, lies with the Croatian Parliament (Parliament) as legislative power, the President of the Republic (President) and the government of the Republic of Croatia (Government) as the executive branch of power. The Parliament has between 100 and 160 members (151 currently) elected on the basis of direct, universal and equal suffrage by secret ballot (Article 70), with its jurisdiction prescribed by Article 80 of the Constitution.[23]

20 Smerdel, 2013, p. 183.
21 Smerdel, 2010, p. 19.
22 Smerdel, 2013, p. 283.
23 'The Croatian Parliament shall:
– decide on the adoption of and amendments to the Constitution;
– adopt laws;
– adopt the State budget;
– decide on war and peace;
– adopt documents expressing the policy of the Croatian Parliament;
– adopt the National Security Strategy and Defence Strategy of the Republic of Croatia;
– exercise civilian oversight of the armed forces and security services of the Republic of Croatia;
– decide on alterations of the borders of the Republic of Croatia;
– call referenda;
– conduct elections, appointments and dismissals in conformity with the Constitution and law;

The Parliament provides certain powers to the State administration: normative, organizational, personal, economic and supervisory.[24] The normative instruments include the Constitution, laws and other acts of Parliament (e.g. strategies). Organizational instruments represent the power of Parliament to establish and abolish bodies of State administration and determine their jurisdiction, as the Constitution prescribes that organization, responsibilities and the operation of State administration shall be regulated by law (Article 114, paragraph 1). Personal instrument relates to authority to appoint and dismiss officials and foremost ministers as members of the government, who are also heads of ministries as bodies of State administration. Economic instruments are primarily related to the State budget, which finances all State administrations, while supervisory instruments concern the *ex-post* political control of the Parliament of State administration.[25]

The President is a prominent political and constitutional figure in the Croatian constitutional system, elected directly by a secret ballot on the basis of universal and equal suffrage for a term of five years, so he has immense political legitimacy prescribed under Article 98.[26] Although Croatia abandoned the 1990–2001 semi-presidential position of the President and adopted the parliamentary republic model, it nevertheless has, according to the Constitution, certain important powers with regard to public administration. Essentially, the Constitution prescribes that the President 'shall ensure the regular and balanced functioning and stability of State authority'. (Article 94, paragraph 2) and that he/she is 'responsible for the defence of the independence and territorial integrity of the Republic of Croatia' (Article 94, paragraph 3.) The President plays an important role in foreign affairs and defence, and can also entrust the mandate to form the government to an individual who, based on the distribution of seats in the Croatian Parliament and completed consultations, enjoys the confidence of the majority of all Members of Parliament (Article 98). He/she (shared authority with the government) decides on the establishment of diplomatic missions and consular offices of the Republic of Croatia abroad, and makes decisions on the appointment and recall of the heads of diplomatic missions of the Republic of

– supervise the work of the Government of the Republic of Croatia and other holders of public office reporting to the Croatian Parliament, in conformity with the Constitution and law;
– grant amnesty for criminal offences; and
– perform any such other tasks as may be specified by the Constitution'.

24 Smerdel, 2013, p. 183.

25 Smerdel, 2013, p. 183.

26 'The President of the Republic shall:
– call elections for the Croatian Parliament and convene its first session;
– call referenda in conformity with the Constitution;
– entrust the mandate to form the Government to a person who, based on the distribution of seats in the Croatian Parliament and completed consultations, enjoys the confidence of the majority of Members of Parliament;
– grant pardons;
– confer decorations and awards specified by law; and
– perform any such other duties as may be specified by the Constitution'.

Croatia abroad (Article 99[27]). He/she is also Commander-in-Chief of the Armed Forces of the Republic of Croatia (Article 100). The President (also shares authority with the government) has the authority to appoint the heads of security services (Article 103).

The 'Prime Minister-Designate', with the mandate provided by the President to form the government, is obliged to present its policies to the Parliament and seek a vote of confidence immediately upon forming the government, or within 30 days of the mandate. The government shall assume office when a vote of confidence is passed by a majority of members of the Croatian Parliament.[28] Although constitutionally it is not the case, the Croatian government is the most important branch of power, as it comprises the parliamentary majority. It can be said that Croatia now has, not *de iure*, but *de facto*, a chancellor system.[29] However, it is unrealistic to believe that the majority in Parliament will provide good foresight to the government.

Smerdel argued that it is important to further develop, and not change the relatively efficient system of checks and balances, where the competition between the President and Prime Minister in certain especially sensitive areas of competence in a certain measure serves as a supplement for an almost complete absence of parliamentary oversight.[30]

It is important to highlight the government and its relationship with public administration, especially towards State administration, given that the government represents the political and administrative leadership of State administration.[31] Essentially, the government exercises its executive power in accordance with the Constitution and law, determining, directing and coordinating enforcement of policies and programmes. To enable this, it also proposes and enacts strategies, provides directions, introduces acts and enforces other measures required to determine relations in the area of its jurisdiction.[32] The government is accountable to the Parlia-

27 'The President of the Republic and the Government of the Republic of Croatia shall cooperate in the formulation and implementation of foreign policy.
The President of the Republic shall, at the proposal of the Government and with the countersignature of the Prime Minister, decide on the establishment of diplomatic missions and consular offices of the Republic of Croatia abroad.
The President of the Republic shall, at the proposal of the Government and subject to the opinion of the relevant committee of the Croatian Parliament and prior countersignature of the Prime Minister of the Republic of Croatia, make decisions on the appointment and recall of the heads of diplomatic missions of the Republic of Croatia abroad.
The President of the Republic shall receive letters of credence and letters of recall from heads of foreign diplomatic missions'.

28 If the Prime Minister-Designate fails to form a Government within 30 days of accepting the mandate, the President of the Republic may extend the mandate for an additional 30 days. If the Prime Minister-Designate fails to form a Government in such an extended period or if the proposed Government fails to secure a vote of confidence from the Croatian Parliament, the President of the Republic shall confer the mandate to form a Government to another person (Article 109a).

29 See Smerdel, 2010, p. 28.

30 Smerdel, 2010, p. 41.

31 Koprić et al., 2021, p. 186.

32 Koprić et al., 2021, p. 186.

ment as it supervises its work, as well as other holders of public office reporting to the Parliament (see Article 80).[33]

As mentioned earlier, the government has different jurisdictions and instruments of influence towards the State administration.[34] It enacts normative acts through which laws are complemented, administration is specifically directed or other purposes are achieved; the most important among this is regulation, although it also includes decisions, conclusions, and so on.[35] Personal jurisdiction is related to the appointments and dismissals of officials and leading civil servants,[36] while organizational instruments determine principles for internal organizations as well as office operations of all State administration bodies that are regulated by the government. Economic instruments relate to the control of administrative financing, as the government proposes the distribution of budgetary funds. As a supervisory authority, the government coordinates and supervises the performance of the State administration. The government's actions relate to the direction of work and actions of the administration (determining principles binding the administration, allocating concrete assignments to bodies of State administration, and so on).[37] It is also worth noting that the administrative apparatus is directly subordinate to the government, as it represents an important aspect of public administration. First, the Prime Minister's Office is established in accordance with the Government of the Republic of Croatia Act. It performs professional and administrative functions for the Prime Minister as per his/her request (Article 18). Second, there is the General Secretariat of the Government, established by the same act, which performs professional, analytical, administrative–legal, administrative, general, technical functions for the government and its members (Article 20). One of the most important offices established by the government is the legislative office, with a mission to ensure compliance with regulations and other acts from the scope of the government with the Constitution and legal order of the Republic of Croatia, while respecting the legal system of the EU. It also ensures an efficient and independent system for assessing the effects of regulations and ensuring an effective system of consultation with the public in the procedures for passing laws and other regulations, and cooperating with the Office of the Prime Minister and State administration body responsible for the development of the digital society.[38]

As mentioned previously, State power is limited by the right to local self-government. Central–local relations are determined by a set of standards: principle of subsidiarity, constitutionalisation of the right to self-government, and principles

33 Ombudsman, commissioner for the right to access information etc.
34 Koprić et al., 2021, p. 188.
35 Koprić et al., 2021, p. 189.
36 The Government appoints different leading civil servants: the directors of the administrative organization in the ministry and chief inspector in the ministry, chief secretary of the ministry, deputy State secretary of the central state office, deputy chief director of the State administration, State institutes and the State directorate, deputy chief state inspector, chief secretary of the State administrative organization. Koprić et al., 2021, p. 189.
37 Koprić et al., 2021, p. 190.
38 Ured za zakonodavstvo, 2023.

of autonomy, legality, proportionality, efficacy and economics, aid and solidarity and European multi-level governance.[39] From this perspective, the central power has ways of influencing local self-governance; for example, by legally regulating it, determining which tasks fall under its jurisdiction, aiding local units, the system of control, and so on.[40] The Central State has supervisory powers that differ with regard to the type of affairs being controlled. Self-governing affairs fall under the control of constitutionality and legality moderately, while transferred affairs are more tightly controlled. If drastic illegalities in the functioning of local bodies are determined, the State has the power to invoke drastic measures—to dissolve local representative bodies or dismiss[41] executive officials.[42]

Croatia's two-tier local organization: – the first tier is comprisesd of municipalities and towns, and the second tier is comprisesd of 20 counties. They employed employs approximately 42,500 local civil servants,[43] with the current territorial structure introduced during the war at the beginning of 1993, with almost one-third of the State territory under occupation. The first elections under the new system were held in February 1993. The reform introduced 487 units at the lowest level of government, with a distinction between (418) rural municipalities (*općine*) and (69) urban towns (*gradovi*). At the mid-level, 20 counties (*županije*) were established, while the capital city of Zagreb continues to enjoy the dual status of a county and town.[44] Zagreb, which also has the dual status of a municipality and county, performs competences of both, as well as a bulk of State administrative tasks.[45] Practically (some new municipalities and towns[46] were established), the system remains the same to this day, notwithstanding severe criticism[47] as being extremely centralised and politicised.[48] Between 1993 and 2001, counties served as the backbone of the entire territorial system and played a dual role: simultaneously performing State administrative tasks and self-government functions. The latter is relatively limited and restrictively regulated; the narrow scope of local

39 Koprić et al., 2021, p. 329.
40 Koprić et al., 2021, pp. 330–331.
41 This can be done in limited number of cases, for example, if it does not suggest the budget for next year. See more *infra* on the executive body.
42 Koprić et al., 2021, pp. 331–333.
43 Koprić, Musa and Đulabić, 2016, p. 202.
44 Menger, 2019, p. 113.
45 Škarica, 2020, p. 215.
46 Of the 128 towns, 55 acquired their status in view of a very flexible interpretation of the legislation, Koprić, 2016, p. 45. Specifically, Croatia has only one small metropolis (Zagreb), three more polis (more than 84,000 inhabitants), greater number of small polis (more than 12.000 inhabitants), while a major part of local units that have the status of a town should in reality be villages (between 1,715 and 12,005 inhabitants). Koprić et al., 2021, p. 293.
47 Klarić, 2017, p. 817. For example, although the average number of inhabitants of a county is 174,887 and the average size of a county is 2.789 square kilometres, there are significant disparities. For example, the county of Ličko-senjska has only 51,000 inhabitants, while the largest—Splitsko-dalmatinska—has 455,000 inhabitants. The smallest is Međimurska county—spanning only 729 square kilometres—and the largest is Ličko-senjska—5.353 square kilometres. Koprić et al., 2021, p. 296.
48 Menger, 2019, p. 114.

affairs combined with the excessive supervision of local government policies secured hierarchical, top-down and central–local relations. The primary purpose of these counties is integrative.[49] Local democratic processes and institutions were also troublesome, because executive committee members received remuneration for their performance; this financially drained the already weak municipalities, towns and counties.[50] In September 1997, Croatia ratified the European Charter of Local Self-Government, binding itself to introduce legislation on local self-government in accordance with European standards.[51] Croatia fully ratified the charter in 2008,[52] but even before its full ratification, the constitutional amendments of 2000/2001 introduced a modern European concept of local self-government based on subsidiarity and the general nature of local competences and provided guarantees for a wide scope of local government affairs.[53]

The second stage of local government development was introduced in 2000 through constitutional amendments;[54] a new Law on Local and Regional Self-Government was adopted in 2001, and bicameralism was abolished the same year. Similarly, starting in 2001, the President no longer needed to confirm county governors, while in 2005, a new category of local units was introduced: large towns (*veliki gradovi*). This status was granted to 17 towns with populations of 35,000 or more. Their scope of affairs was moderately broadened[55] compared to other towns.[56]

Local units have representative bodies: municipal councils, town councils and county assemblies (with the exception of Zagreb, which has a Town Assembly considering its dual role). The number of members of the representative bodies is always uneven and depends on the number of inhabitants. They were elected only through proportional electoral system, with a legal threshold for entry set at 5% of voters for a renewable term of four years. The representative body has various regulatory,[57] financial,[58] personal,[59] organizational[60] and controlling[61] powers.[62]

49 Škarica, 2020, p. 215.
50 Menger, 2019, p. 114.
51 Ivanišević et al., 2001, p. 184.
52 Škarica, 2020, p. 215.
53 Škarica, 2020, p. 215.
54 Klarić, 2017, p. 816.
55 Menger, 2019, p. 115. These included maintenance of public roads, issuing building permits and implementation of zoning plans. Škarica, 2020, p. 216.
56 Smaller towns and municipalities turned out to be severely under-capacitated in terms of financial, human and organizational resources to provide even elementary services; therefore, the counties took over their role by providing services to citizens in health, education, social welfare and other areas. Menger, 2019, p. 115.
57 It enacts the statute and other decisions of the local unit etc.
58 It enacts the budget and yearly settlement, it enacts local taxes etc.
59 This power is rather limited because of the position of executive power.
60 It establishes its own working bodies, determines the functioning of administrative bodies of the local unit, establishes public institutions, companies and other legal persons for performing tasks from the self-governing scope.
61 It controls the local executive power through councilmen questions, semi-annual report and ad hoc reports on certain issues.
62 Koprić et al., 2021, p. 322.

Executive power lies with directly elected mayors (of municipalities and towns—*općinski načelnik, gradonačelnik*) and governors (*župan*). Local political bodies tend to strengthen the positions of local mayors and governors. In 2009, executive committees were abolished, and direct elections[63] for mayors and governors were organized. Their position was further strengthened in 2017 during the budgeting process at the expense of a representative body. Current legislation enables mayors and governors to manipulate the budgeting process in a manner so as to provoke the dissolution of the assembly while remaining in power. Finally, local executives that are virtually untouchable.[64] They have strong power,[65] enabling them to act as the main local political figure.[66] Despite decentralisation efforts, Croatia has remained a centralised country with functionally-differentiated municipalities, where the share of local government budgets in general government expenditure has remained around 15%, and their share in GDP has stagnated at 6–7%.[67]

The civil service system is regulated by three main laws: State Servants Law[68] (2005; previously the Law on State Servants and Employees of 1994 and 2001), Law on Servants and Employees in Local and Regional Self-Government[69] (2008) and Law on Salaries in Public Services (2001; it regulates only the pay system in public services financed by the State Budget). In the public sector, there are four categories of civil servants and other professionals whose status is regulated separately by special legislation.[70] There are approximately 59,500 civil servants and employees in the State administration, excluding military and intelligence personnel and police officers. In all local governments and counties, there are approximately 14,500 executive functionaries with professional status civil servants and employees. Centrally-financed public services employ more than 180,000 individuals (including those in agencies, funds and other bodies), while locally-financed public services employ an additional 26,500. The fifth category in the public sector comprises employees of public companies whose status is regulated by the Labour Act, for example in utility services, State oil companies, postal services, electric power industries, etc. (about 88,500).[71]

63 Mayors are elected in a majority two-round system. The candidate receiving more than 50% of total votes is elected. If none of the candidates receives more than 50% of votes in the first round, a second round is organized two weeks after the first involving the two most successful candidates from the first round, in which case the candidate who obtains more votes wins. Mayoral candidates are not obliged to present a candidacy list for the council or to a liate with any of the competing lists, but this rarely happens and usually with non-partisan candidates. Škarica and Vukojičić Tomić, 2022, p. 399.

64 Menger, 2019, p. 116.

65 They represent the local unit, prepare the suggestions of local general acts, suggest the budget, directs the functioning of administrative bodies and controls their work etc.

66 Koprić et al., 2021, p. 327.

67 Škarica and Vukojičić Tomić, 2022, p. 396.

68 OG nos. 92/05, 140/05, 142/06, 77/07, 107/07, 27/08, 34/11, 49/11, 150/11, 34/12, 49/12, 37/13, 38/13, 01/15, 138/15, 61/17, 70/19, 98/19, 141/22.

69 OG nos. 86/08, 61/11, 04/18, 112/19.

70 Koprić, 2019, p. 12.

71 Koprić, 2019, p. 12.

## 3. Organizational principles and structure of public administration

The State administration in Croatia developed in three main phases: establishment (1990–1993), consolidation (1993–2001) and Europeanisation (after 2001).[72] The first systematic law to regulate Croatian State administration was the Act on the System of State Administration of 1993. Reforms at the local level were carried out in 1993 through the Law on Local Self-Government and Administration and certain other regulations. For the first time, the Law on State Civil Servants and Employees of 1994 regulated their status, with the Law on the Salaries of the Civil Servants and Employees in Public Services being passed simultaneously.[73] The reforms continued with the enactment of the Law on State Civil Servants in 2005, the same law concerning local civil servants in 2008, and the Law on the Salaries of Civil Servants and Employees in Public Services in 2010.[74] After 2000, the Constitution transferred the responsibility for a significant part of public affairs to local and regional units.[75] In the public sector, there are four categories of civil servants: in State administration, local and regional self-government, centrally-financed public services (health, education, etc.) and locally-financed public services (e.g. kindergartens). The last two categories are not formally considered civil servants, but rather 'ordinary' employees to whom general labour legislation applies and whose employment is based on a contractual relationship with their organizations as employers. In sum, Croatia's public administration comprises the State administration (ministries and State administrative organizations), local self-government (municipalities, towns, counties and the city of Zagreb) and legal persons with public authority (agencies, funds, institutes, etc.).

As previously mentioned, Croatian public administration is divided into three levels: State administration, local and regional self-government, and legal persons with public authority. They are involved in public administration and perform different sets of tasks. Some authors have stated that contemporary public administration consists of State administration, local and regional self-governments, and public services (services of general interest).[76]

### *3.1. State administration*

The Constitution prescribes that the organization, responsibilities and operation of State administration shall be regulated by law (Article 114, paragraph 1). However, it also prescribes that certain responsibilities of State administration may be entrusted by law to the bodies of local and regional self-government and legal persons vested with public authority (Article 114, paragraph 2). Therefore, the tasks of the State administration can be transferred to other units of public administration, which

72 See Koprić, 2008.
73 Koprić, 2008, p. 553.
74 Koprić, 2014, p. 25.
75 Koprić, 2008, p. 554.
76 Giljević, Lalić Novak and Lopižić, 2021, p. 221.

perform such tasks as transferred jurisdiction, for the State. The responsibilities and operations (tasks) of the State administration are set up by the System of State Administration Act (SSAA),[77] and its organization is set up by the Organization and Scope of State Administration Bodies Act.[78] Currently, there are only two types of State administration bodies: ministries and administrative organizations. The main difference between these organizations is that ministries have greater political significance because their heads are members of the government, which is not the case for the heads of State administrative organizations.[79] Therefore, State administration exists only at the State level, and there are no State administration bodies at the regional or municipal levels. Prior to the enactment of SSAA, every county had a State administration office with vast jurisdiction; however, after the enactment of SSAA, the tasks were transferred to county administrative bodies.

Ministries are multifunctional administrative organizations established to perform State administration tasks in more administrative areas.[80] Prior to 2000, there were two types of ministries: State ministries and ministries. State ministries were involved in interior, defence and foreign affairs, with the later addition of finance, development and reconstruction.[81] The number of ministries varied between 13 and 21; State ministries were abolished in 2000.[82] Currently, there are 16 ministries: foreign and European affairs; interior; defence; finances; economy and sustainable development; justice and administration; science and education; culture and media; tourism and sports; regional development and EU funds; labour, pension system, family and social policy; agriculture; sea, traffic and infrastructure; spatial development, construction and State property; Croatian defenders; and health. Every ministry has its own interior organizational structure and division of organizational units by layer, from lower to higher hierarchical levels. For every State administrative body, the interior organization is set up by a special government regulation in accordance with the type, complementarity connectivity, and scope of tasks, all of which are set by the Regulation on General Rules for Internal Setup of State Administration Bodies.[83,84] Ministries are set up through internal administrative organizations such as departments, institutes or inspectorates run by high-ranking civil servants, which are further organized into sectors, services and sections.

77 OG no. 66/2019.
78 OG nos. 85/20, 21/23.
79 Giljević, Lalić Novak and Lopižić, 2021, p. 221.
80 Koprić et al., 2021, p. 191.
81 See Organization and Scope of Ministries and Other Bodies of State Administration Act (OG no. 55/92), Act on amendments of the Organization and Scope of Ministries and Other Bodies of State Administration Act (OG no. 44/93), Organization and Scope of Ministries and Other Bodies of State Administration Act (OG no. 72/94), Act on amendments on Organization and Scope of Ministries and Other Bodies of State Administration Act (OG no. 92/96).
82 See Act on amendments of the Organization and Scope of Ministries and Other Bodies of State Administration Act, OG no. 15/00.
83 OG no. 70/19.
84 Koprić et al., 2021, p. 191.

When discussing the executive aspect of ministries, they are all run by ministers who are members of the government through whom a link between the executive and State administration is formed. Ministers can have one or more State secretaries, who are State officials named and dismissed by the government upon the suggestion of the Prime Minister, to whom, together with the minister, they are obligated.[85]

In addition to these ministries, the other State administration body is the State administrative organization (12 in total). They are established by law where their tasks demand special autonomy or the application of special conditions and manners of performing set tasks, or they are necessary to enact legally binding acts of the EU. Such tasks are therefore performed outside ministries and with relatively lower influence of daily politics.[86] They have been established as central State offices[87], departments[88] or institutes.[89] Central State offices are operated by their State secretaries and other State administrative organizations by their directors, except for the State Inspectorate, which is managed by its Chief State Inspector. There is no clear distinction between the different types of organizations at the central level, neither in systemic legal regulation nor in practice. Both types of organizations—ministries and State administrative organizations—have similar competences, including public policies, drafting legislation and administrative supervision. Practically, making decisions about the number of types, number of organizations and their classification with regard to the types is predominantly a political matter.[90]

All State bodies have certain obligatory internal organizational units, such as chief secretary, minister's cabinet and independent internal revisions. Within ministries and State administrative organizations, for the purpose of performing State administration tasks, regional units can be organized as: regional offices (*područni uredi*), for areas covering one or more regional self-government units and branches (*ispostave*) and for areas covering one or more local self-government units (Article 50, paragraph 2 SSAA). Koprić stated that there were 1,279 branch offices of various ministries and other State administration bodies.[91] The territorial organization of branch offices is complex, as only 30% follow the country's division into counties, which further fragments the State administration system within the territory. The new SSASA provides this branch of knowledge. Offices should be established in one or

85 Koprić et al., 2021, p. 192.
86 Koprić et al., 2021, p. 193.
87 Central State Office for Demography and Youth, Central State Office for the Development of the Digital Society, Central State Office for Central Public Procurement, Central State Office for Reconstruction and Housing, Central state office for Croats outside the Republic of Croatia. Two additional Central State offices were established by special laws: Croatian Fire Brigade Association and State Inspectorate.
88 State Geodetic Administration.
89 State Hydrometeorological Institute, State Institute for Intellectual Property, State Institute for Metrology State Institute of Statistics.
90 Koprić, 2018, p. 110.
91 Koprić, 2018, p. 106.

several counties (Article 50), which may lead to the standardisation of their territorial organization.[92]

The State administration performs tasks established by law as State administrative affairs, with Article 3 of SSAA dividing them into the following types: 1) implementation of State policy, 2) direct law implementation, 3) inspection and administrative supervision and 4) other administrative and professional affairs. The implementation of State policy includes the following tasks of State administration: drafting of laws, draft regulations and proposals for other acts of the government; drafting of strategic and planning documents; monitoring the effectiveness of the implementation of laws, regulations and other acts of the government; representation of the Republic of Croatia in bodies of the EU and international organizations; European affairs; and realisation of international cooperation in accordance with a special law (Article 17). Direct law enforcement includes the following tasks: deciding on administrative matters, maintaining prescribed registers and other official records, issuing certificates and other public documents on the facts where prescribed eyewitness accounts and other official records are maintained (Article 19). Inspection supervision includes supervisory procedures that provide direct insight into general and individual acts, conditions and working methods of supervised legal and physical persons to establish facts and take prescribed measures and actions to bring the determined situation and operations into compliance with the law and other regulations (Article 21, paragraph 1). Administrative supervision includes supervisory procedures, measures and actions that ensure the legality and regularity of State administrative tasks. It monitors the legality of general acts, legality and regularity of work and treatment towards citizens and other parties, and qualification of officials for the direct performance of State administration duties (Article 28). The last category, other administrative and professional affairs, includes a series of crucial tasks of the State administration, which enable and support all other State administration affairs. However, they also perform independent and purposeful civil servant tasks to improve enforcement of public policies and implementation of regulations.[93] Such tasks include gathering data and drafting professional analysis and reports; enforcing measures to improve the determined status of affairs in a specific administrative area; providing legal and professional aid; providing opinions to legal and physical persons on the application of laws and other regulations; and ensuring professional cooperation (Article 31).

It is important to mention that regulative powers of State administration, as heads of State administration bodies, have the authority to enact bylaws for the enforcement of laws. This authority was specifically characterised as State administration task in the former SSAA, but has been omitted from the current SSAA because, in reality, normative power is not a State administration task but a normative clearance by the legislator.[94] The heads of State administration bodies have the authority to enact

92 Giljević, Lalić Novak and Lopižić, 2021, p. 222.
93 Koprić et al., 2021, p. 196.
94 Koprić et al., 2021, p. 197.

bylaws—ordinances and instructions (*pravilnici i naputci*)—when directly authorised by law and in the boundaries set by law (Article 38, paragraph 1).[95] According to SSASA, only ministers, ministerial State secretaries, heads of State administrative organizations and their deputies are political appointees, while heads of administrative organizations within ministries are senior civil servants (Article 45). While this legislative change aimed to promote the professionalisation of State administration, since these senior civil servants are still appointed by the government, this normative solution has not constituted a significant step towards the depoliticisation of State administration, as there is no guarantee that professional standards would be respected in their appointment.[96]

The State administration is not the only performer of State administrative tasks, as these tasks can be entrusted to the bodies of local and regional self-government and to legal persons with public authority. These are delegated State administration tasks,[97] and can be performed with regard to local self-government if entrustment is justified based on the nature of entrusted tasks and the special interests of the people. With regard to legal persons with public authority, entrustment can be done if needed to implement legally-binding acts of the EU, to ensure effective and less costly performance of such tasks, and when the tasks demand special technical and professional conditions that cannot be met within the State administration (Articles 33 and 34).

### *3.2. Local and regional self-government*

As mentioned above, the Croatian Constitution set certain principles of local self-government—principles of subsidiarity,[98] effectiveness and economics, and solidarity.[99] It also established principles of independence in the self-governing scope of affairs, free disposal of one's own income, proportionality of revenues and powers, and independence of the internal structure.[100] The type, competences, manner of performing tasks and supervision of the units of local and regional self-government were prescribed by the Local and Regional Self-Government Act (LRSA)[101] in 2001 (with numerous amendments). The right to local self-government is, in reality, such that local units must wait for the State to regulate certain activities in order to be able to perform them, they do not have a say in their regulation (of their activities), minimum self-government

95 There is also the authority to enact Orders (*naredbe*) as temporary interventional measures in extreme circumstances when such measures are necessary to protect the legal order, life, security, health of the population or property in a greater extent in a certain administrative area (see Articles 39 and 40 SSAA).

96 Giljević, Lalić Novak and Lopižić, 2021, p. 222.

97 Koprić et al., 2021, p. 198.

98 Local tasks should be given so that bodies closest to the citizens have priority in their handling.

99 The State is obliged to aid financially weaker local units (see Article 131, paragraph 3 of the Constitution).

100 Koprić, 2014b, p. 136.

101 OG nos. 33/01, 60/01, 129/05, 109/07, 125/08, 36/09, 36/09, 150/11, 144/12, 19/13, 137/15, 123/17, 98/19, 144/20.

scope is determined by law, by the State, and supervision is always in the grey area (to see whether the local units ensured conditions to perform their tasks in reality).[102]

As mentioned above, there are two tiers of local self-government—regional that comprises counties (*županije*) and local, that is comprised of municipalities (*općine*) and towns (*gradovi*) (with the special category of large town). Municipalities are legally defined as units of mostly rural characteristics that are established (as a rule) for more inhabited settlements according to the interest homogeneity principle (the common interests of the inhabitants make for an integrative factor).[103] Towns are mostly urban units with more than 10.000 inhabitants, but this category has been expanded (mostly for political reasons) to administrative (every settlement that is a county seat is legally a town), gravitational (all adjacent settlements can be attributed to the central settlement to make it a town), historical, economical, and so on.[104] Counties had very different setups prior to 2001, when they were units of local administration and self-government; after 2001, they became regional self-governing units.

Public tasks performed by local self-governing units in countries where local self-government developed predominantly under the influence of the Germanic tradition, including Croatia, can be classified into tasks from their own, self-governing original scope and tasks of State administration that have been transferred to them.[105] Both municipalities and towns have constitutionally-guaranteed functions related to settlements and housing, spatial and urban planning, communal activities, childcare, social care, primary health care, upbringing and basic education, culture, physical culture and sports, consumer protection, protection and improvement of the natural environment, fire protection and civil protection. Counties also have constitutionally-guaranteed functions related to education, health, spatial and urban planning, economic development, transport and transport infrastructure, as well as the planning and development of a network of educational, health, social and cultural institutions.[106] The law has provided for the possibility of the transfer of functions and competences between levels (upward and downward), thus creating flexibility in the local government system. Municipalities may acquire competences of the county but can also transfer their competences in the opposite direction.[107] There is no official

102 Koprić, 2014b, p. 137.
103 Koprić et al., 2021, p. 295.
104 Koprić et al., 2021, p. 296.
105 Koprić, 2005, p. 44.
106 Koprić, 2005, p. 58. With the introduction of large towns in 2005 such units of local self-government received powers of the counties. Those are cities with over 35,000 citizens and are economic, financial, cultural, health, transportation and scientific centres of the extended area. Apart from the works of municipalities and cities, large cities and capitals of counties also have the authority to perform works related to issuing of construction and location permits and other construction related documents and implementation of physical planning documentation, as well as maintenance of public roads. However, large cities and capitals of counties can, in their area, also perform works from the scope of the county (Article 19a, 21 of the LRSA).
107 Škarica, 2020, p. 217.

data on the frequency and characteristics of such functional transfers, although it seems that they rarely occur.[108]

The Constitution specifically stipulated that the county's powers can be entrusted by law to larger towns for certain tasks, which the law slightly specified, such as those related to introducing as a condition 'ensuring conditions', i.e. for units with less than 35,000 inhabitants 'ensuring sufficient income', the decision of the county assembly and consent of the Central State body administration responsible for local and regional self-government affairs.[109] The city of Zagreb deserves special mention, as it should have a wider scope than other units, as well as a greater degree of independence in decision-making. In addition to the fact that it has already received the status of both the city and the county, it should have a greater degree of autonomy, while respecting the normal interests of the central government to ensure equality for all citizens and maintain legal order in the State.[110]

Local units perform local tasks or tasks of the self-government scope that are legally prescribed by municipalities, towns and counties. Local tasks expanded when, in 2020, State administration offices in counties were completely abolished, contrary to existing strategic documents that proclaimed their strengthening, and counties assumed their powers.[111] A major portion of their competence was delegated to counties that also took over their employees. Although announced as a reform aimed at racionalising public administration organization and decentralisation, a recent *ex-ante* evaluation determined that these objectives are unattainable by this reform.[112] Practically, counties re-acquired their role and competences in 1993–2001 and consolidated their position in the Croatian territorial governance system, although this time it was done without explicit superiority over municipalities.[113]

Administrative departments and services (administrative bodies) were founded to perform tasks from the self-government scope of local and regional self-government, as well as the tasks of State administration transferred to those units. Prior to 2020, a single administrative department was founded in municipalities and cities with up to 3,000 people. In municipalities and cities with a population of more than 3,000, there could have been more than one administrative department. After 2020, this restriction is no longer in place; all municipalities can establish as many administrative departments as they determine adequate. Administrative departments are managed by heads who are, on the basis of a public tender, appointed by the municipal mayor, city mayor or county governor (Articles 53 and 53a).[114]

Local and regional self-government units have assets comprising movable and immovable property (Article 67). They have revenues within their scope that they

108 Škarica, 2020, p. 218.
109 Koprić, 2005, p. 58.
110 Koprić, 2005, p. 60.
111 Škarica, 2020, p. 217.
112 Škarica, 2020, p. 217.
113 Škarica, 2020, p. 217.
114 See also in Ljubanović, 2018, p. 133.

autonomously dispose of, as determined in Article 68 of the Act governing local self-government (such as municipality, city, or county tax, surtax, fees, contributions and duties, revenues from assets of units, property rights and others). Their budget is proposed by the only authorised proposal maker, the municipality mayor, city mayor or county prefect (Articles 67–69). The material and financial operations of the municipality, city and county are monitored by the representative body, and the legality of their operations is controlled by the Ministry of Finance or other institutions as determined by law (Articles 71 and 72).[115] Against the individual acts of municipal and town administrative bodies that resolve administrative matters, there can be a complaint to the administrative body of the county or an administrative dispute could be initiated. Against some individual acts in administrative affairs that are decided in the first instance by the administrative bodies of the council and large cities, a complaint can be filed with the competent ministry if the special law does not prescribe otherwise, or an administrative dispute can be initiated (Article 76). However, against the individual acts of the representative body or the municipality mayor, city mayor or county prefect that resolve administrative matters, a complaint cannot be filed; there can only be an administrative dispute (Article 77a).[116]

The legality of the operations of the representative body of the local and regional self-government unit is monitored by the Central State administration entity competent for local and regional self-government. It has the right to, in case of determined irregularity, by their own decision, declare a session of the representative body or a part of it illegal and to make acts from such a session void. In cases determined by law, the government shall, at the proposal of the aforementioned Central State administration entity, dissolve the representative entity. If the budget is not brought within the legal time frame, or there is no decision on temporary financing, the government shall, simultaneously, dissolve the representative entity and suspend the municipality mayor, city mayor or the county prefect and their deputy who was elected with them and the government shall appoint a commissioner to perform the works of the representative and executive body and call an early election. Against the aforementioned decisions of the Central State authority entity or government, an administrative dispute can be initiated (Articles 78a, 85a–85c).[117]

### *3.3. Legal persons with public authority*

Public authority can only be vested by law—sectoral or other,[118] and is carried out by non-State subjects such as institutions, corporations, agencies and others. They usually take the form of three legal affairs: regulating certain legal relations, resolving individual matters or carrying out other public authorities, such as administrative actions.[119] In addition to State administrative bodies, many legal entities with public

115 Ljubanović, 2018, p. 134.
116 Ljubanović, 2018, p. 134.
117 Ljubanović, 2018, p. 134.
118 See also in Rajko, 2016, p. 1.
119 Rajko, 2016, p. 1.

authorities also operate at the central level under different names (agencies, public funds, public institutions and centres), all of which could be labelled as State agencies. Despite continuing efforts to reduce their numbers, there have been approximately 74 State public agencies and other public authorities in the last 10 years, many of which were established as a precondition for EU membership.[120]

With regard to public administration, legal persons with public authority also deserve mention; in Croatia, there are a number of legal persons with public authority, which are not part of the State administration. However, these bodies also play an important role in Croatia's public administration, performing functions that were originally ministerial, but over time, such functions were separated from the ministries into independent organizational units. Some of them are institutions that originated in 1993 following the enactment of the Institution Act like the Croatian Health Insurance Fund and Croatian Pension Insurance Institute. However, after 2000, a new form of legal persons with public authority was established—(independent) regulatory agencies. These agencies perform vital functions regarding consumer protection, market competition and financial services. However, none of their employees were civil servants, although they perform public work.

Legal entities with public authority constitute an important segment of public administration. These are organizations with different names that, owing to their significant characteristics, can mostly be referred to as agencies or agency-type organizations, disregarding their official names. As a model of administrative organization, the agency is an integral part of contemporary public administration and management. Agencies exist in all areas of public activity from national security to railways, scientific research funding, regional development and territorial levels of governance.[121]

Agencies[122] can be defined as entities that are structurally independent from the State administration system to perform public works at the national level, employ

120 Giljević, Lalić Novak and Lopižić, 2021, p. 222.

121 Musa, 2013, p. 355.
It is possible to determine the following features of agencies in Croatia: agencies are legal entities of public law—legally independent (with legal personality), structurally disaggregated from the core government (ministry); are established by special or sectoral laws adopted by the Parliament, or through government regulation; function in a specific policy area or have a specific purpose; perform tasks at the national level; their functions include regulation of a specific sector, executing or monitoring execution of public policies, or conducting (executing) a specific programme; their tasks include issuing regulations or general rules, establishing standards, monitoring public policies, collecting data, issuing decisions and other types of administrative acts (licensing, certificates, etc.), exercising oversight and sanctioning authority, executing and financing programmes; they have a certain degree of managerial autonomy with regard to organization, personnel and financing, and a certain level of decision-making (legal or policy autonomy); they are subject to control of the central government, the courts and the Parliament in legal, financial and political terms. See Musa, 2013, pp. 372–373.

122 In the Croatian context, there are two types of agencies—executive and regulatory. See Musa, 2017, p. 36.

government officials, are financed primarily by the State budget and are subordinate to the procedure of public control of legal nature.

Establishing them is related to the liberalisation and privatisation of public services and entrepreneurial and market freedom.[123] They are based on the idea of a regulatory state which, as such, holds the norms of market behaviour or in certain sectors of public services. They often have the authority to resolve individual cases (so-called adjudication), monitor, implement sanctions, and so on. Their advantages include a lower possibility of political and other influences, protection of general interests and better legal protection of beneficiaries (consumers), prevention of the formation of a monopoly, specialisation and expertise.[124] The deficiencies of Croatian legal entities with public authorities are irrational systems, the non-existence of a unique legal structure that results in the non-harmonisation of regulations, non-justification of founding and costs, insufficient cooperation with competent ministries and deficiencies in employment and public procurement systems.[125]

There are also public institutions, founded according to the Law on Institutions,[126] which defines the functions and structure of the organization as well as the control mechanisms (appeal, oversight, abolition, etc.). Their employees are public servants; they are designed as organizational models for the provision of so-called non-economic public services, such as health, education, sports or culture. It is possible to differentiate between two types of organizations legally defined as public institutions: those that implement public policies and those providing public services (universities, institutes, health institutions, national television).[127]

There are also some associations vested with public authority, such as the Croatian Auto Club, which has the authority to conduct driving licence tests, other public authorities[128] or the Croatian Red Cross.[129]

Public enterprises are worthy of mention—enterprises with partial or total State ownership involved in commercial activities—regulated by the Law on Corporations. Currently, there are more than 20 public enterprises (in the traffic, telecommunications, natural resources and finance sectors) and approximately 65 other enterprises still have partial State ownership.[130] Some have public authorities, such as Croatian Forests (*Hrvatske šume*), Croatian Waters (*Hrvatske vode*), Croatian Roads (*Hrvatske ceste*) and so on.

123 The process of agencification in Croatia coincided with the intensive institutional adjustments for EU membership. The years of EU negotiations (2005–2009) witnessed the proliferation of agencies, since 32 of 75 agencies were established during that period. Musa, 2013, p. 388.
124 Ljubanović, 2018, p. 138.
125 Ljubanović, 2018, p. 139.
126 OG nos. 76/93, 29/97, 47/99, 35/08, 127/19, 151/22.
127 Musa, 2013, p. 374.
128 See Article 6 of the Croatian Auto club Act, OG nos. 2/94.
129 See Article 8 of the Croatian Red Cross Act, OG nos. 71/10, 136/20.
130 Musa, 2013, p. 374.

### *3.4. Ombudsman*

As a special body linked with, inter alia, public administration, the Ombudsman is a special institution established by the Constitution (see Article 93) as a commissioner of the Croatian Parliament responsible for the promotion and protection of human rights and freedom enshrined in the Constitution, laws and international legal instruments on human rights and freedom ratified by the Republic of Croatia. Anyone is entitled to lodge a complaint with the Ombudsman if he/she deems that constitutional or legal rights have been threatened or violated as a consequence of any illegal or irregular acts by State bodies, local and regional self-government bodies, and bodies vested with public authority. The powers of the Ombudsman are further prescribed by the Ombudsman Act,[131] according to which it is entitled to issue recommendations, opinions, suggestions and warnings to various actors, including public administration. In principle, they are obliged to adhere to these acts of the Ombudsman, which files an annual report to the Parliament, describing the level of adherence to his/her acts. The Ombudsman is also entitled to recommend amendments to laws and bylaws; Croatia introduced a special Ombudsman for ensuring equality of sexes, for children and the disabled.

## 4. Current challenges in public administration

Croatian public administration reforms were implemented in a fragmentary manner, and attempts to initiate a more systematic reform through the Strategy of State Administration Reform of 2008 resulted in modest success, as only some of the measures have been fully or partially implemented. Administrative reform is incremental, even in the most positive examples, but stagnates across a wide range of areas.[132] Some authors have argued that public administration in Croatia is characterised by its high cost and relatively low effectiveness, mostly attributed to inefficient government bureaucracy and policy instability.[133] There are only a few cases where dominant political actors have instigated well-programmed, comprehensive reforms and continuously and persistently supported their realisation. Only three proposals enjoyed strong political support: a) decentralisation at the beginning of the new millennium, b) implementation of e-government and digitalisation policies (continuously) and c) harmonisation with the *acquis communautaire* and EU administrative standards during the EU accession process.[134] However, not only does political unwillingness hinder administrative modernisation, but there is also a lack of administrative capacities for managing reforms, bureaucratic resistance, social rebuff,[135] etc. Accordingly, Koprić[136] proposed the following reforms in 2019:

131 OG no. 76/12.
132 Koprić, 2019, p. 17.
133 Giljević, Lalić Novak and Lopižić, 2021, p. 228.
134 Koprić, 2019, p. 18.
135 Koprić, 2019, p. 18.
136 Koprić, 2019, p. 24.

- Preparation of comprehensive local government reform consolidated at both local (basic and county) levels and possible decentralisation to a fewer number of regional governments,
- Reorganization of deconcentrated administration with the design of one-stop shops for more effective delivery of public services throughout the State territory,
- Accelerated development of electronic public services delivery to citizens and companies,
- Legal changes aimed at substantive administrative simplification,
- Robust implementation of anti-corruption policies at all governance levels,
- Significant improvements in human resource management and development of high-quality administrative education,
- Creating a strong institutional solution for programming, managing and evaluating administrative reforms or much stronger support for the Ministry of Public Administration,
- Review and revision of strategic planning, policymaking and legislative processes at all governmental levels.

Some authors view the politicisation of civil services as a major problem, considering that depoliticisation in the State administration was an important goal during EU accession. Strong centralistic governance, necessary during the war, continued in the post-war period, mainly driven by political interests. It included the widespread recruitment of civil servants based on their affiliation with the ruling party. Despite the legal provisions, which created preconditions for the depoliticisation and rationalisation of the number of politically-appointed officials in the administration, no significant changes occurred in practice. Subsequent legislative changes made it possible for politically-appointed officials to remain in key management positions as top civil servants under more favourable conditions than those applicable to other civil servants. The politicisation of the senior civil service is one of the sources of clientelism, political corruption and lack of accountability towards citizens.[137] Despite these efforts, the Central State administration nevertheless faces several challenges, such as a fragmented public administration, politicisation and patronage in the civil service, and the lack of influence of civil society and citizens in policymaking.[138]

The scientific literature indicates the necessity of decentralisation, where the law awards local and regional self-government bodies with certain affairs from the State administration that they can independently decide on, with the liability of adhering to regulations and with the right of being monitored by the Central State bodies that are, as a rule, limited to monitoring the legality of local bodies' actions, and not the regularity of their decisions.[139] Decentralisation and new administrative–territorial

137 Giljević, Lalić Novak and Lopižić, 2021, p. 230.
138 Giljević, Lalić Novak and Lopižić, 2021, p. 232.
139 Ljubanović, 2018, p. 136.

organizations have not been accomplished until today because key political figures and their political parties prefer retaining the current State.[140] Recently, there has been increasing debate on the economic and developmental functions of local self-government, but this has not been reflected in the development of general legislation on local self-government. Only counties have received new authority since 2001—that is, the care for economic development—but in general, legal regulation of local affairs is vague, invasive, often unnecessary and elaborate.[141]

Decentralisation is not achieved in reality because the State maintains the general legal regulation of all decentralised functions but transfers the financial and organizational burdens to local units. The State still has firm supervision, especially financial, over local units which means there is no real decentralisation.[142] As Koprić stated in 2005, the pace of entrusting State administrative tasks to local self-governing units should carefully follow the process of decentralisation and strengthening of local units, both in terms of their degree of autonomy and increasing economic—financial, professional and other capacities.[143] He further stated that if a territorial structure similar to the existing one is maintained, it can be proposed to entrust the work of the State administration only to larger and stronger units, mainly counties and towns.[144] As their capacities did not increase in reality, only counties were eligible for more power as in 2020, with the exception of large towns in 2005. There are organizational problems, as there is an overlapping[145] and interfering[146] of competences between tiers. There are also several functional areas that have been constitutionally entrusted to municipalities, but sectoral legislation has conferred these competences only to counties and, in some cases, large towns.[147]

Cases of overlapping and interfering competencies in different sectors as well as those in which counties substitute for the municipal government indicate blurry relations and almost chaotic lines of responsibility.[148] Furthermore, there is the problem of extremely powerful and nearly unchangeable local executive bodies stemming from the way they are elected. The direct election of mayors and governors has hardly delivered on its promises to boost voter participation and improve legitimacy in the local government arena,[149] but has created many practical (in the relation of the representative and executive body) and political problems. Local elections and their associated problems are inseparable from the generally weak position of local governments in the multilevel system of governance. Therefore, any reform aimed

140 Ljubanović, 2018, p. 137.
141 Koprić et al., 2021, p. 309.
142 Koprić et al., 2021, p. 309.
143 Koprić, 2005, p. 60.
144 Koprić, 2005, p. 60.
145 Škarica, 2020, p. 218.
146 Škarica, 2020, p. 219.
147 These are the sectors of primary healthcare, elementary education, social care and protection and environment protection. Škarica, 2020, p. 219.
148 Škarica, 2020, p. 221.
149 Škarica and Vukojičić Tomić, 2022, p. 405.

at decentralisation, territorial consolidation and/or local capacity building should indirectly lead to more vibrant, plural and important electoral processes and future outcomes. However, the initial steps towards the full emancipation of local elections could be taken through restrictive regulation of *cumul des mandats*, which would clearly demarcate the domains of national and local political competition.[150]

Most scholars who have analysed Croatian local self-government believe that the current organization is extremely fragmented.[151] For example, Đulabić and Čepo state that counties need to be reformed in order to transform them into a real regional tier of government with a smaller number of larger units that would be able to provide services to citizens and serve as anchors of wider regional identities that exist in Croatia.[152] There are many local units that are unable to perform any of their designated functions and that should be attached to other, more potent local units.[153]

The influence of civil society is relatively weak owing to the lack of cooperation between NGOs and the public sector. Furthermore, many NGOs were found to be under foreign influence and working against national interests during the war and in the post-war period. For many years, NGOs and citizens have been absent from policymaking and legislative processes.[154]

Accordingly, the main problems surrounding Croatia's public administration are organizational fragmentation, lack of adequate coordination mechanisms (both horizontal and vertical) in public administration, lack of a strategic approach and policy evaluation, formalisation and bureaucratisation, and organizational stability. Sporadic attempts have been made to resolve some of the aforementioned problems, but with limited or no success. At present, the main line of public administration reform is the new (in draft) Salary in State and Public Service Act. As mentioned by the Ministry of Justice and Administration,[155] it should mark a turning point in the management of human resources and the creation of efficient and professional public administration. The law seeks to implement the principle of equal pay for equal work, introduce a system for rewarding officials, and evaluate their work in connection with their salaries. In addition, the government announced its goals for enhancing public administration in the National Plan for Public Administration Development (2022–2027).[156] In this plan, five main goals were announced: achieving user-friendly public administration, which provides public services effectively; digital transformation of public administration; development of human resources in public administration; strengthening the capacity of public administration for the development and implementation of public policies; and furthering the functionality and sustainability of local and regional self-governments.

150 Škarica and Vukojičić Tomić, 2022, p. 405.
151 See Koprić, 2010; Klarić, 2017, p. 819.
152 Đulabić and Čepo, 2017, p. 541.
153 However, one must always bear in mind the special position of some types of local units, for example on islands and/or in hill rural areas. In this regard, see Đulabić and Škarica, 2012.
154 Giljević, Lalić Novak and Lopižić, 2021, p. 230.
155 Vlada Republike Hrvatske, 2023.
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# General Principles and Challenges of Public Administration Organization in the Czech Republic

Tomáš SVOBODA – Lukáš POTĚŠIL

**ABSTRACT**

This chapter provides an overview of the organization of public administration in the Czech Republic. It can be traced back to more than four decades of communist totalitarian rule, which prohibited self-governance and established a State based on central management. A territorial and interest-based self-government was re-established after 1989, with substantial changes introduced in the organization of public administration. At the outset, this paper presents the general theoretical and legal background of the organization of public administration and its principles. The key aspect here is that the organization of public administration in the Czech Republic is based on the co-existence of local self-government and State administration. Therefore, a mixed public administration model is applied, under which authorities of territorial self-government units, in addition to exercising their independent competence (self-government), are entrusted with performing State administration as part of their delegated competence. Possible considerations regarding the future organizational structure of public administration in the Czech Republic have also been included.

**KEYWORDS**

administrative authority, delegated competence, municipalities, public administration, regions, self-government, State administration

## 1. Basic social, geographical and economic overview

The Czech Republic (also known as Czechia) is located in Central Europe and is considered the 'Heart of Europe'. It is a landlocked country bordered by four States—Poland, Germany, Austria and Slovakia. The Czech Republic became an independent country on 1 January 1993, before which it existed as one of the two republics of the Czechoslovak Federation since 1969 (and even earlier as the former Czechoslovakia established in 1918). The Czech Republic also represents the continuation of more than 1,000 years of Czech statehood and culture; however, from 1526 to 1918, it was part of the Austrian Empire.

The territory of the Czech Republic is relatively diverse, and includes both lowlands, especially the valleys of the Elbe and Morava rivers, as well as hills and mountains. It is typical of the geography of the Czech Republic that mountains form

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natural borders in the north and west of the country, with Poland (Jeseníky and Krkonoše) and Germany (Krušné Hory and Šumava). The highest mountain peak is Sněžka (1,602 metre), which is located in the Krkonoše mountain range. A number of rivers originate in the Czech Republic and flow into larger rivers or are tributaries of some seas. The rivers flow into the Baltic Sea (Odra), North Sea (Elbe and its tributary Vltava) and Black Sea (Morava and Dyje, as tributaries of the Danube); the rivers also form a natural border between the Czech Republic, Austria and Slovakia. The territory of the Czech Republic and its borders have remained fundamentally unchanged for over 1,000 years. There are four areas in the Czech Republic with the highest level of environmental protection: the national parks of Krkonoše (1963), Šumava (1991), Podyjí (1991) and Czech Switzerland (2000).

The Czech Republic has a population of approximately 11 million (2023), with the number steadily increasing mainly because of immigration. As of 2024, there are approximately 200,000 refugees from Ukraine living in the Czech Republic in the wake of the war. The majority of the population comprises Czechs, Moravians and Silesians. In addition to the Czech nationality, which is dominant, there are Slovaks, Poles, Ukrainians, Vietnamese and Roma. The official language is Czech, although Slovak is also accepted officially. The Czech Republic is an atheist country, with approximately 10% declaring themselves as members of the Roman Catholic Church (according to the 2021 census). The population density is 136 inhabitants per square kilometre, with the population distributed evenly between towns and villages.

Although the Czech Republic has been historically divided into Bohemia, Moravia and Silesia, the current administrative division completely ignores this aspect because it is based on the existence of 14 regions that were created mostly artificially in 1949 (and later in 1997) and are not comparable to each other in their size.

The territory of the Czech Republic comprises municipalities, towns, cities, statutory cities and the capital city of Prague. Prague and statutory cities may be further internally subdivided into urban districts. The number of municipalities in the Czech Republic totals over 6.200, which will be mentioned comprehensively later in the text. The largest cities are Prague (1.2 million inhabitants), Brno (400,000) and Ostrava (300,000). Most towns and villages have elaborate traditions, considering that they have been founded several hundreds of years ago.

The Czech Republic has transitioned from a centrally-planned economy to a market-based system. The country has implemented several reforms to attract foreign investment, enhance competitiveness and stimulate economic growth. Manufacturing plays a vital role, particularly in the automotive (Škoda, Hyundai, Toyota and Tatra) and weapons industries. Other important manufacturing sectors include machinery and electronics. The Czech Republic is known for its beer (e.g. Pilsner Urquell, Budvar) and glass production.

The country has a market economy that, according to economic, social and political indicators, reinforces its status as a highly developed country. Economically, it is one of the richest countries in the world, maintaining a relatively high income with

low levels of income inequality (but, at the same time, high wealth inequality). Compared to other countries, it has a very small proportion of its population living below the poverty line. Unemployment rates have long been low and below the average of developed countries. The economically weaker areas are those in the north near the border with Poland or Germany, which were mainly inhabited by the German minority until 1945; the original population was replaced by new inhabitants from different areas after expulsion.

The current problems of the Czech Republic can be identified, in particular, as excessive dependence on industry, shortcomings in investment (e.g. in education or scientific research) or an uncertain energy policy. Growing public debt, although not rapidly, is also a significant issue. However, it is important to distinguish between the State's indebtedness and that of local self-government units (municipalities and regions) because it is the former that is growing faster. This is mainly due to the Covid-19 pandemic, monetary inflation, subsequent energy crisis and the war in Ukraine. In principle, local self-government units do not have high levels of debt, although they are primarily dependent on tax revenues and transfers from the State budget. The Czech Republic is a member of the European Union (EU) (2004) and the North Atlantic Alliance (1999).

## 2. Public administration and constitutional order

Several laws regulate the organization of public administration in the Czech Republic. However, the legal basis for the organization of public administration lies primarily in its Constitution. Understandably, the Constitution not only regulates issues of the organization of public administration, but also deals with the general position of public administration in the system of public authority (public power), as well as the position and rights of the individual vis-à-vis public authority.

According to the Constitution, the Czech Republic is a democratic State governed by the rule of law based on respect for human rights and freedom. People are the source of all power in the State and exercise it through legislative, executive and judicial branches. State power may be exercised only within limits, in certain cases, and in the manner prescribed by law. Although the Czech Republic is a unitary State, it is based on the recognition of territorial self-government (and the Constitution contains its detailed foundations).

The Constitution of the Czech Republic neither includes the definition of public administration, nor provides detailed regulations in terms of organization or functionality. Public administration is, therefore, generally subject to provisions dealing with the executive branch of government, of which public administration is traditionally a part. In terms of executive power, the Constitution focuses primarily on the Government. From the perspective of the level of constitutional law, where public administration is part of executive power, the relationship between public administration and legislative and judicial power is worth mentioning.

In connection with public administration, it is important to mention the rules that affect its functioning; particularly, the principles of the rule of law, the right to access information and right to judicial protection, among others. These are included in the Charter of Fundamental Rights and Freedoms. There are also some constitutional provisions on the special tasks of public administration, in particular emergency governance.[1]

### *2.1. Public administration in terms of executive power*

The Constitution of the Czech Republic provides a framework and normative foundation for the organizational system of public administration, which is divided into two subsystems: State administration and local governments.

The head of State is the President, elected by direct election for a five-year term, and by virtue of the so-called Parliamentary form of government, has certain powers although he/she does not have a direct relationship with public administration. The President appoints the Prime Minister and individual members of the cabinet of ministers (referred to in Czech constitutional law as the Government) as well as certain leaders of other central government bodies; is the Commander-in-Chief of the Armed Forces; appoints judges and promotes generals and university professors; and has the right to attend government meetings and discuss particular issues with the Government. The role of the President is specific in this respect and is linked to the fact that he/she is the head of the State and its representative externally and internally. Therefore, the exercise of powers is specific and, to a certain extent, independent of the public administration. In terms of the President's powers, it may be mentioned that the Constitution recognises those acts that require the counter-signature of the Prime Minister or a designated member of the Government, where the Government is subsequently responsible for these decisions.

The Government is considered the supreme executive authority and politically controls public administration; it is appointed by the President of the Republic, but is accountable to the Chamber of Deputies; the ministries, currently totalling 14, are headed by ministers. The Government is empowered to issue regulations to implement laws within its limits, and also directs and coordinates the activities of ministries and their subordinate bodies. By their design, the ministries possess national competence, and are superior to other administrative bodies of the State that exercise their powers either on the territory of the entire State or only in its territorial and administrative districts. In addition to the 14 ministries with broad and more general remit, there are 17 central government bodies operating at the central level, alongside the ministries; they may also have subordinate administrative bodies. Both the ministries and these central government bodies may issue regulations, known as decrees, to implement the law within the limits prescribed and based on express authorisation.

1 See Constitutional Act No. 110/1998 Coll., on the Security of the Czech Republic.

Under the Constitution, ministries and other administrative authorities may be established, and their powers prescribed only by law. The legal relations between civil servants in ministries and other administrative authorities are regulated by law.

With regard to executive power, the role of the Supreme Audit Office enshrined in Article 97 of the Constitution is worth noting. It is an independent body that exercises control over the management of State property and oversees the State budget spending. The executive branch also includes the Public Prosecutor's Office, whose key role is to represent public prosecution in criminal proceedings. Only the Supreme State Prosecutor is endowed with specific competences vis-à-vis the public administration, and can bring an action against a decision of an administrative authority before an administrative court in the public interest.

Although under Article 11 of the Constitution, the Czech Republic is a unitary State, Article 8 of the Constitution guarantees the self-government of local self-government units. Territorial self-government is addressed in a separate part of the Constitution under Articles 99–105. The European Charter of Local Self-Government is also an important source for local self-government.

According to Article 99 of the Constitution, the Czech Republic is divided into municipalities, which are basic territorial self-government units, and regions, representing higher territorial self-government units. Regions were established in 1997 on the basis of Constitutional Act No. 347/1997 Coll., on the creation of higher territorial self-government units, of which 14 have been functional since 2000. Their establishment or abolition is possible only through constitutional laws.

According to the Constitution, territorial self-government units are communities of citizens who have the right to self-government on the territorial basis. A municipality is always a part of a higher territorial self-government unit; according to Article 101 of the Constitution, the municipality and region are independently administered by a council that is elected for a four-year term. Municipal and regional councils may, within the limits of their competence, issue their own legislation, referred to as generally-binding decrees, for the territory of the municipality or region. Article 105 of the Constitution states that local authorities may be entrusted by law with the exercise of the State administration.

### *2.2. Parliament and public administration*

In a parliamentary democratic form of government, the focus is on the Parliament and its relationship with public administration (the executive power). In the case of the Parliament of the Czech Republic, it can be assumed that its relationship with public administration is based on the fact that 1) it approves laws as key regulations for the performance of public administration, 2) is closely connected with the Government and 3) represents a specific form of public administration control.

The Parliament adopts laws, including constitutional, and thus creates, among other, rules for public administration organization. Here, the Parliament is sovereign in terms of the content of statutory legislation, and its general role is to adopt legislation, which is then implemented by public administration. Therefore, it sets

the basic parameters for public administration. Simultaneously, the law represents what is the existence of both the public administration organization and its activities based on. Public administration is therefore carried out *secundum et intra legem* and not *contra legem*.

The Government is accountable to the Chamber of Deputies and is required to earn its trust. The Chamber of Deputies, together with the Senate, has a significant role in the organization of public administration because new authorities (ministries, other central authorities or national authorities, etc.) can only be established and their scope determined by the law they issue. Higher territorial self-governing units can be established only through constitutional law.

From a control perspective, it can be noted that the Chamber of Deputies approves the annual State budget, which serves as the basic and binding financial framework for managing the State and performing administrative activities. The Chamber of Deputies provides the Government and its members with the possibility of so-called interpellation, that is, asking specific questions to individual members of the Government, who are obliged to answer either in writing or orally. The Parliament can also establish various control bodies or commissions. The Chamber of Deputies or the Senate also participates in the appointment of some leading representatives of Central State administrative bodies. It is also worth mentioning the Public Defender of Rights (the ombudsman institution), who serves as a unique controller of public administration and is elected by the Chamber of Deputies.

### *2.3. The judiciary and public administration*

According to Article 90 of the Constitution, the basic task of courts is the protection of rights. The Czech Republic has a civil, criminal, administrative and constitutional judiciary, and based on the nature of the matter, administrative and constitutional justice is closest to public administration. The Constitution provides for the explicit existence of the Constitutional Court and Supreme Administrative Court.

From the standpoint of public administration and the judiciary, it is worth mentioning that from 2021, the organization of the judicial system no longer fully corresponded to the organization of public administration. Therefore, the districts of administrative bodies are not identical to the districts of courts. While considering the differences between the two powers, there seems to be no problem, although it may cause certain ambiguities in the area of administrative justice. It can also be mentioned that although the exercise of the judiciary has been isolated from the exercise of administrative activities since the 19$^{th}$ century, public administration is nevertheless partially connected with the judiciary. In addition to the traditional perception of the mission of courts in terms of judicial control of public administration and protection of rights of natural and legal persons, the role of public administration can be mentioned within the so-called State administration of courts. Public administration acts to support the implementation of judicial power, administration of court buildings and appointment of court officials, including judges (outside the Constitutional Court). According to Article 95(2) of the Constitution, judges are only

bound by the law and an international treaty in their decisions. Therefore, they are not bound by legal regulations issued by the public administration and are not obliged to apply them in each case.

Administrative justice is important for the relationship between the judiciary and public administration. The current administrative justice model dates back to 2003, and is based on the independent existence of the Supreme Administrative Court and eight regional courts, which, however, are not independent courts but part of regional courts for the execution of civil and criminal justice. However, the specialisation of individual judges for the agenda of administrative justice has been established. The purpose of administrative justice is to provide protection to the public individual (subjective) rights of natural and legal persons. This is key, considering that administrative courts are not called upon to take public interest into account when reviewing outputs from public administration. Therefore, the protection of objective rights is not the primary purpose but a consequence of the protection of subjective rights; and administrative justice is based on a review in relation to public administration.

The primary task of the Constitutional Court is the protection of constitutionality and the public's constitutionally-guaranteed rights. Constitutional judges, totalling 15, are appointed by the President of the Republic after prior approval of the Senate for a 10-year term. A major part of the Constitutional Court's work consists of deciding on constitutional complaints, which can be filed by anyone if their constitutionally-guaranteed rights have been adversely affected and they have exhausted the remedies in vain. The Constitutional Court is also tasked with protecting objective law, (on the basis of so-called abstract scrutiny of norms, which is typically initiated by members of Parliament), and generally annuls laws and other legal regulations if they are found to unconstitutional. In relation to public administration, the Constitutional Court is empowered to decide on the so-called municipal constitutional complaints by which territorial self-governing units seek the protection of their constitutionally-guaranteed right to self-government. In addition, the Constitutional Court is authorised to cancel legal regulations of territorial self-governing units (municipalities and regions).

## 3. General theoretical and legal basis

### *3.1. Public administration and administrative law*

Public administration is an important development that has traditionally been a subject of interest in various disciplines, including law. Administrative law should first be discussed in terms of the legal regulation of public administration. This is a branch whose subject matter is, essentially, public administration; the science of administrative law is concerned with the study of the legal regulations of public administration. Administrative law is a traditional aspect of the legal order and its origins can be traced back to the turn of the 18th and 19th centuries.

Generally, Czech administrative law was Austrian administrative law until late 1918, since up to that point the Czech territory formed one of the western parts of the Austrian Empire (and later a part of Austria within the Austro–Hungarian Empire). Therefore, the history of Czech administrative law largely overlaps with that of Austrian administrative law. The origins of administrative law in the territory of the present Czech Republic could therefore be associated with the revolutionary year of 1848, which led to gradual democratic processes in the former Austrian Empire and establishment of the foundations of modern administrative law. In that year and the years that followed, serfdom was completely abolished and the former patrimonial administration was replaced by a professional State administration and self-government in some areas.

These developments were based on several constitutional documents (the so-called April Constitution of 1848, March Constitution of 1849, February Constitution of 1861 and December Constitution of 1867), which established the structure of a modern State (mainly in terms of distinguishing between legislative, executive and judicial powers) and guaranteed citizens certain fundamental rights (such as religious freedom, right to education, freedom of expression, right to petition, right of assembly, personal freedom and others). Nevertheless, the system seemed imperfect and far from democratic (in particular, the universal suffrage for men was introduced in 1907 and women's suffrage was not adopted until the declaration of independence of Czechoslovakia in 1918). Furthermore, this development was not consistent (especially there was a significant 'backward movement' in the 1850s during the so-called neo-absolutism period).

At the statutory level, Act No. 18/1960 of the Reich Code needs particular mention, since it laid down the basic rules according to which municipal affairs were to be organized (the so-called Reich Municipal Framework Act), on the basis of which laws were issued implementing the Municipal Establishments of Bohemia, Moravia and Silesia (based on the same foundations with minor differences), which were applicable until the Second World War, and later served as the basis for the current legal regulation of Czech territorial self-government. Another important law from this period is Act No. 36/1876 of the Reich Code on the Establishment of the Administrative Court, which effectively founded the Administrative Court in Vienna, the highest administrative court of the Austrian part of the Austro–Hungarian Empire.

The need for a new legal system arose after Czechoslovakia declared independence from the former Austro–Hungarian Empire in October 1918. This led to the establishment of a new unitary State (constitutional republic) comprising Czechia and two former parts of the Hungarian Kingdom: Slovakia and Subcarpathian Ruthenia. Initially, the new legal order was based on the adoption of all former provincial and imperial laws and regulations (via Act No. 11/1918 Coll., on the Establishment of the Independent Czechoslovak State), some of which remained in force throughout the existence of the newly-created State. This resulted in a dualism of the adopted Austrian law and the newly-created law by the Czechoslovak State, which lasted until the 1950s (when the existing legal system was gradually replaced by communist legal doctrine).

As mentioned earlier, some aspects of the public administration have been newly regulated. The new Supreme Administrative Authorities (Act No. 2/1918 Coll.) and Supreme Administrative Court (Act No. 3/1918 Coll.) were created. There have also been attempts to reform the territorial organization of the State based on the transition from a provincial organization (consisting of four provinces—Bohemia, Moravia, Slovakia and Subcarpathian Ruthenia) to a county organization (based on Act No. 126/1920 Coll., on the Establishment of County and District Authorities in the Czechoslovak Republic), which, however, was not successful. Later developments reaffirmed the provincial and district systems (Act No. 125/1927 Coll., on the Organization of Political Administration). However, it is worth noting that during this period, Czechoslovakia was a rather centralised State, with a weaker role of territorial self-government (e.g. the Government appointed one-third of the provincial assemblies with its representatives and could also dissolve these bodies). In terms of administrative procedural law, the first (Czech) Administrative Procedure Code[2] particularly reflected the influence of the Austrian Administrative Procedure Code of 1925.[3]

In the period after 1938 (referred to as the Second Republic, whereas the preceding period is commonly known as the First Republic), Slovakia and Subcarpathian Ruthenia acquired autonomy, and Czecho–Slovakia was federalised. As a result of the Munich Agreement and related territorial losses, the State's previous democratic character was lost. During the period of occupation by Nazi Germany between 1939 and 1945, there was a dualism of the Reich and State authorities (the former unsurprisingly had a decisive influence). After the end of the Second World War (in the period of the so-called Third Republic), the decrees of the former President of the Republic (Edvard Beneš) played an important role in the legal regulation of the reconstituted State. The administration of the State was performed by national committees, but with the growing influence of the Communist Party, it culminated in the Communist coup d'état in February 1948.

The following period of so-called communist law[4] is characterised by a de facto one-party political system, with the Communist Party of Czechoslovakia playing a leading role in society and the State, which was later constitutionally anchored.[5] According to Austrian legal scholar Adolf Merkel, the triad of legal–political requirements of

2 Issued not as a law but as Government Decree No. 8/1928 Coll., on the Proceedings in Matters Falling Within the Competence of Political Authorities (Administrative Procedure).

3 For more details on the significance of the Austrian Administrative Procedure Code, see the comparative research initiative 'Common Core of European Administrative Laws' (CoCEAL) [Online]. Available at: http://www.coceal.it/index.php (Accessed: 1 October 2024) or della Cananea, Ferrari Zumbini and Pfersmann, 2023, p. 352.

4 It can be pointed out that the economic and political system of this period is rather being described as 'real socialism', because communism in its theoretical (ideal) sense was far from being achieved. Nevertheless, the term 'communist law' as a legal system shaped by communist elites is also being used; for details see an extensive study: Bobek, Molek and Šimíček, 2009, p. 1005.

5 See Article 4 of the Constitution of the Czechoslovak Socialist Republic of 1960 with its apparent revolutionary ethos, available in Czech: https://www.psp.cz/docs/texts/constitution_1960.html (Accessed: 1 October 2024).

liberalism can be recognised by various means, including the existence of administrative justice and legality of public administration and self-government.[6] All these requirements were deconstructed during the communist period. With minor exceptions, the administrative justice system was practically abandoned shortly after 1948 and formally in 1953. Self-government was completely 'nationalised' and replaced by national committees hierarchically subordinated to Central State authorities and the Communist Party. Finally, the legality of public administration was replaced by so-called socialist legality, which was, however, not legality in the true sense;[7] accordingly, the democratic rule of law was effectively abolished.

Territorially, the State was divided into regions and districts, and State administration was provided by a system of national committees (local, district and regional). Even civic utilities were provided by the State through the legal institute of 'socialist organizations'; the private sector was, with minor exceptions, legally non-existent. In 1969, Czecho–Slovakia became a federation of two formal sovereign States (Czech Socialist Republic and Slovak Socialist Republic). During the last stages of the communist regime, efforts were made to modernise the State administration, although its totalitarian character fundamentally remained unchanged. Administrative law in this period did not follow the legal tradition of the First Republic, but rather became a purpose-built system for upholding the political regime that, as expected, did not contemplate effective guarantees of individual rights and freedom.

After the so-called Velvet Revolution of November 1989, the democratic rule of law was restored, which included the renewal of self-government. Administrative law continued to use some of the amended laws from the earlier period (in particular, Act No. 71/1967 Coll., the Administrative Procedure Code, which was in force until the end of 2005), while also drawing from the period of the First Republic (especially in the context of the revitalisation of territorial self-government). Shortly thereafter, the federation disintegrated and the independent Czech Republic came into existence in 1993, which resulted in the adoption of the current Constitution of the Czech Republic[8] and its own system of administrative law. From an international perspective, the Czech Republic joined the Council of Europe in 1993 and subsequently, on 1 May 2004, the EU as well.

Since the issue of public administration and its legal regulation, which is part of administrative law, is relatively broad, it is possible to encounter a distinction between organizational, substantive, procedural and criminal administrative law (and corresponding norms of administrative law).

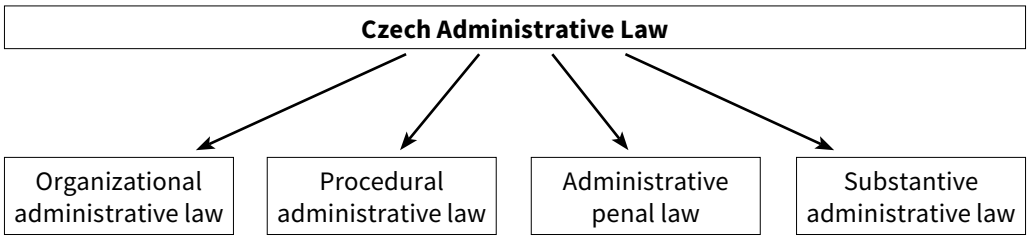
Organizational administrative law can be defined as establishing the basic principles of the organization of public administration and specifying the position,

6 Merkel, 1931, p. 215.

7 Later, the concept of 'socialist legality' was criticised even by the prominent legal scholar of the communist period Viktor Knapp (Knapp, 1995, p. 212).

8 Constitutional Act No. 1/1993 Coll., Constitution of the Czech Republic, available in English: https://www.psp.cz/en/docs/laws/constitution.html (Accessed: 1 October 2024).

organization, authority and scope of the subjects of public administration.[9] Organizational norms are present in the most general form in the Constitution or other constitutional laws, as well as in a large number of ordinary laws focusing specifically on self-government. However, some laws mainly consist of organizational norms, in particular Act No. 2/1969 Coll., on the Establishment of Ministries and Other Central Bodies of State Administration (the so-called Competence Act, which, in its extensively amended version, continues to be applied).




Substantive administrative law represents the substantial regulation of particular areas of public administration, defining (in relation to the legal status of public administration subjects) the conditions and prerequisites for the realisation of rights and obligations of public administration addressees.[10] This category includes areas of special administrative law mentioned earlier.

Procedural administrative law regulates the procedural status of the subjects of the administrative procedure, as well as the actual procedural rules for deciding on the rights, legally-protected interests and obligations of participants in administrative procedures (or other types of proceedings carried out by public authorities established to perform duties and tasks of public administration).[11] The primary procedural regulation governing this area is Act No. 500/2004 Coll., the Administrative Procedure Code. The administrative judiciary is regulated procedurally mainly by Act No. 150/2002 Coll., which is the Code of Administrative Justice. However, several procedural rules are also contained in special laws.

Administrative penal law, in some respects, intersects with the above categories, as it is applied on the basis of violations of organizational, substantive and procedural norms. Its content is the regulation of the so-called administrative law liability, which, in Czech theory, is usually divided into the liability for a triad of offences–misdemeanour, disciplinary and order offences. The main legal regulation is represented by Act. No. 250/2016 Coll.

In the three[12] basic textbooks on general administrative law currently, the interpretation of the organization of public administration has traditionally received

9 Průcha, 2012, p. 43.
10 Průcha, 2012, p. 43.
11 Průcha, 2012, p. 43.
12 Průcha, 2012, p. 427; Sládeček, 2019, p. 512; Kopecký, 2023, p. 549.

significant attention.[13] In terms of specific publications focusing on the issue of the organization of public administration, monographs dealing with territorial (municipal) self-government[14] or its selected specifics, such as their legislation[15] or property,[16] clearly dominate. This literature is also supplemented by commentaries on basic legislation, in particular, the Municipalities Act[17] and Regions Act.[18]

### *3.2. Public administration as State administration and self-government*

(Not only) in the conditions of the Czech Republic, the term 'public administration' is a dual concept, and can be understood as a deliberate activity. It takes place in the forms prescribed by law, through which it interferes with individual rights; it can also be understood as a coherent organizational grouping. It was built precisely to ensure the performance of administrative activities, and its organization itself would be meaningless without its functional content. Public administration, as an organizational concept in the Czech Republic, includes both State administration and local (and special interest) self-government.

State administration is a crucial part of the public administration conducted by the State and its bodies. It encompasses different tasks of the State performed by these entities ('direct State administration'). In the Czech Republic, the State administration can also be carried out 'indirectly' by other bodies that are not part of the State administration ('indirect/transferred State administration'). This is a task for the bodies of territorial units. They are entitled (and also obliged) to perform State administration instead of the State and its bodies ('mixed model' of public administration). They perform State administration but are not part of the State administration in the organizational sense. The supreme authority in the State administration is the Government, to which ministries and other central government bodies report. Administrative bodies with national competence and specialised territorial bodies of the State administration are considered their subordinates.

Self-government includes local, regional and also 'university/interest and professional' self-government. The essence of self-government is the exercise of public administration by entities other than the State. It is the administration of the part of public affairs by those directly concerned, independent of the State. In this respect, the State leaves the administration of part of the affairs to public law corporations, to administer their affairs themselves and on their own behalf.

Two key subjects of public administration emerged in the Czech Republic. They are the State and various (other) public law corporations as representatives of local

13 From the viewpoint of administrative science, see Hendrych, 2014, pp. 103–178 or Skulová et al., 2023, pp. 60–75.
14 Kopecký, 2017, p. 364; Malast, 2016, p. 340.
15 Kadečka, 2003, p. 408; Furková et al., 2022, p. 436.
16 Havlan and Janeček, 2014, p. 398.
17 Vedral, 2008, p. 861; Kopecký et al., 2022, p. 351; Potěšil et al., 2019, p. 838.
18 Pospíšil et al., 2022, p. 510; Cogan, 2018, p. 488.

self-government. They subsequently exercise public administration through various bodies at different levels and in different areas of public affairs.

### *3.3. Organization of public administration and its principles*

The key question concerns the perspective from which the organization of public administration should be conceived and built. It is suggested that it should be the State in the first place, in order to be able to manage and administer it effectively. However, the perspectives and interests of the people in relation to whom public administration is exercised should also be taken into account. Accordingly, from this perspective, ensuring access to public administration is a key requirement, and the final design of the organization of public administration should consider both these requirements. First, it should be designed to enable the effective performance of public administration and second, people should have easy access to it; public administration should be 'close' and generally accessible to them. In the wake of digitalisation, public administration has brought people closer, thus fulfilling the requirement of closer access to public administration.

Traditionally, Czech literature presents pairs of so-called organizational and technical principles, the application degree of which may vary.[19] These organizational and technical principles are reflected in the organization of public administration. These principles are:

a) Centralisation × decentralisation
b) Concentration × deconcentration
c) Territoriality × substance
d) Monocratic × collegial
e) Official × lay
f) Electoral × Appointive

While the principles of centralisation, monocracy, officials and appointments are typically applied to State administration, the principles of decentralisation, territorial, collegial, lay and electoral determine local self-government. However, since there are several exceptions, it is usual that both opposite principles are applied simultaneously, but to different degrees.

### *3.4. Legal basis for the organization of public administration*

The legal provisions governing the organization of public administration in the Czech Republic are as follows:

- Constitutional Act No. 347/1997 Coll., on the creation of higher territorial self-government units
- Act No. 2/1969 Coll., on the establishment of ministries and other Central State administration bodies
- Act No. 128/2000 Coll., on Municipalities

19 Hendrych, 2014, p. 117.

- Act No. 129/2000 Coll., on Regions
- Act No. 131/2000 Coll., on the capital city of Prague
- Act No. 51/2020 Coll., on the territorial administrative division of the State

From the list of these basic legal regulations, it can be deduced that the organization of public administration in the Czech Republic is based on the existence of municipalities and regions as basic and higher territorial self-government units. The latter exercise self-government in the territories of municipalities and regions; concurrently, they carry out a delegated part of State administration in their territory. In terms of the exercise of State administration in the territory of the State, the territory is divided into regions and administrative districts of municipalities with extended competence and districts and administrative districts of municipalities with extended competence.

## 4. Public administration organization in the Czech Republic

### *4.1. System of administrative bodies*

With the exception of State-level public administration, the Constitution of the Czech Republic recognises only territorial self-government. However, at theoretical and legal levels, non-territorial self-government entities are also perceived as part of public administration. From an organizational point of view, public administration in the Czech Republic could be divided into State administration and self-government. Self-government can generally be classified into territorial (including municipal and regional administration) and, to a lesser extent, non-territorial. Public administration is exercised by authorities at the aforementioned levels, but exceptionally, even natural or legal persons can be delegated (authorised) to exercise public administration by law.

| **Administrative Bodies in the Czech Public Administration** | |
|---|---|
| **State Administration** | Ministries and other Central State administration bodies (including some independent administrative bodies) |
| | Specialised territorially-decentralised bodies |
| | Bodies of territorial self-government (in case of 'delegated competence') |
| | Natural or legal persons (in case of delegation or authorisation) |
| **Self-government** | Territorial self-government (municipal and regional administration bodies) |
| | Non-territorial self-government (bodies of 'profession and interests self-government' entities) |

### *4.2. State level of public administrative bodies*

State administration can generally be divided into central and territorial levels; the Central State administration bodies are specialised, have competences over the entire territory of the State, and are hierarchically superior to territorial State administration bodies. The territorial bodies are constructed as specialised bodies of State administration (e.g. tax offices, social security and regional police directorates), or certain tasks of State administration are performed by territorial self-government on the basis of statutory mandates.

At the central level, according to the Constitution (Article 67), the highest body of executive power is the Government, which consists of the prime minister, deputy prime minister and ministers, and is accountable to the Chamber of Deputies (and more generally to the Parliament of the Czech Republic as the legislative power, including the Senate as the second chamber). The Government's role (with some rare exceptions, where it exercises public authority) is the political and conceptual management of State administration. Therefore, the Government is generally empowered to manage State administration internally through its decrees.

The Czech legal order distinguishes between two types of Central State administration bodies, the ministries and other Central State administration bodies, established by the Competence Act. The first group includes central authorities headed by ministers, and currently, there are 14 ministries. The second group comprises 17 central bodies not headed by a minister, and includes bodies that are fully subordinate to the Government (effectively specialised government agencies) and bodies that have a specific degree of independence.

The Czech legal order does not explicitly identify the status of an independent administrative body. However, some administrative authorities are considered (with varying levels of independence from the Government). In particular, the Council for Radio and Television Broadcasting, Office for Personal Data Protection, Office for the Protection of Competition, Czech Statistical Office, Energy Regulatory Office and Czech Telecommunication Office.[20] The Czech National Bank, which is enshrined in the Constitution, also has a similarly independent position, particularly in the context of the administrative supervision of the banking market.

Significant for the execution of State administration in the Czech Republic at the territorial level is the previously-mentioned performance of State administration duties through bodies of territorial self-government, especially through municipalities (municipal offices). For this purpose, a three-tier categorisation of municipalities was established. It divides municipalities into 'municipalities with basic competence', 'municipalities with delegated municipal authority' and 'municipalities with extended competence' (with decreasing numbers of municipalities).

Municipalities that are higher in this categorisation are legally delegated a broader range of State administration, and in the exercise of State administration, municipal authorities are generally subordinate to higher-ranking authorities exercising State

20 Pouperová, 2014, pp. 216–217.

administration. 'Municipalities with a registry office' and 'municipalities with a construction authority' also form similar categories. In this manner, which is legally referred to as delegated competence of municipalities, general State administration in the territory is performed. Apart from the agenda of construction authorities and civic registers (births, deaths, marriages, etc.), this is also the case with the agenda of issuing ID cards, hearing misdemeanour and environmental protection among others. The figure below illustrates municipalities with extended competence.

Map of administrative districts of municipalities with extended competences[21]

However, in the case of construction authorities, the legislature was considering moving the agenda under some of the specialised State administration bodies (e.g. similar to the aforementioned tax offices), citing possible conflicts of interest of municipalities when assessing their own construction proposals and the possibility of better methodical influence of the competent ministry over the construction agenda.[22] The Czech approach to the exercise of State administration in the territory

21 Map of administrative districts of municipalities with extended competences. Hustoles, Public Domain. Source of picture: https://en.wikipedia.org/wiki/Districts_of_the_Czech_Republic#/media/File:ORP.PNG.

22 In particular, the transfer of the construction office agenda from selected municipal authorities to specialised state administration bodies was considered. Despite this intent, the final version of the recodification of Czech construction law through Act No. 283/2021 Coll., the Construction Act, does not contain this change (although earlier versions of this recodification did). However, it may be added that the division of the exercise of state administration between the State authorities and territorial self-government bodies is not only a legal issue, but also a political one.

is, therefore, generally based on the Austro–German tradition in the form of the so-called mixed model of territorial State administration, although it also includes cases of separate exercises of State administration from territorial self-government (historically typical for the French approach).

When it comes to exercising public administration not by an authority (e.g. in the form of the provision of public utilities), the State is referred to in the Czech legal system as a legal person (of public law).[23] Therefore, it is legally subjective and can interact with other legal entities in private law relations. It acts in this manner through its organizational units (usually individual ministries), although it may also establish other legal entities to fulfil its duties. However, the legal regulations for these entities are not comprehensive under Czech law, and is rather a thorough modernisation of the legal forms applied before 1989. Specifically, under certain conditions, the State may establish State enterprises (legal entities of public law intended for doing business in the public interest[24]), State contributory organizations (non-profit public legal entities[25]) or State funds.[26] The State may also establish and be a shareholder of legal persons in private law (such as State-owned enterprises[27]).

However, in the Czech Republic, public property management is not traditionally regulated by administrative law. Instead, it is an area of the application of private (contract) law and certain public law restrictions on the State in the management of so-called public property (and, similarly, for other public entities owning such property). These restrictions are generally aimed at ensuring due diligence in the management of public property or limiting certain high-risk transactions and, in the case of State property, are regulated in particular in Act No. 219/2000 Coll., on the Property of the Czech Republic and its Representation in Legal Relations.[28] Therefore, neither State-owned entities are understood in Czech administrative law theory as a body of State administration in the traditional (narrower) sense.

23 Under Section 21 of Act No. 89/2012 Coll., the Civil Code, the State is considered a legal person in the area of private law. Another legal regulation determines how the State acts legally (which is the Act on the Property of the Czech Republic and its Representation in Legal Relations mentioned below).

24 These are in particular State enterprises providing strategic services (e.g. the Czech Post or the Czech Air Traffic Control), the management and use of natural resources (e.g. the Forests of the Czech Republic or State enterprises managing the basins of the most important rivers) and finally some State enterprises providing research or testing services.

25 They are most inspired by the previous legal regulation; for more details, see Havlan and Janeček, 2016, pp. 105–121. Examples of State contributory organizations are university hospitals (operated by the State but closely integrated with the activities of a public university).

26 These are the funds investing in various matters of public interest, e.g. the State Environmental Fund of the Czech Republic which co-finances (via subsidies or soft loans) projects to improve quality of environment.

27 E.g. the majority State-owned but still formally private energy conglomerate ČEZ, a. s.

28 Analogous regulation of financial management is laid down in Act No. 218/2000 Coll., the Budgetary Rules. Following the law of the European Union the area of public procurement is also legislated (in Act No. 134/2016 Coll., on Public Procurement).

### *4.3. Regional level of public administrative bodies*

Territorial self-government in the Czech Republic consists of regions as 'higher territorial self-government units' and municipalities as 'elementary territorial self-government units'. Both levels are established in the Constitution and are associated with the constitutional right of these entities to self-government.[29] However, despite the constitutional assumption, the regions (of which there are 14, including the capital city of Prague, with a similar status) were created later by the Constitutional Act No. 347/1997 Coll., on the Creation of Higher Territorial Self-government Units, with effect from 1 January 2000, and they acquired all their competences as part of the completion of the territorial administration reform as of 1 January 2003. The 14 regions are illustrated below:


Map of Czech administrative regions[30]

The regions and their functions are regulated comprehensively by Act No. 129/2000 Coll., on Regions (Regional Establishment). As in the case of municipalities, regional competences are divided at the statutory level into autonomous and delegated competences. The essence of autonomous competence is the administration of the region's

29 Based on Article 8 of the Constitution, the right of autonomous territorial units to self-government is guaranteed. However, the Constitution does not guarantee the right to non-territorial self-government, although it is recognised in the Czech legal system.

30 Mapka českých samosprávných krajů, Fext, CC0. Source of picture: https://upload.wikimedia.org/wikipedia/commons/archive/2/20/20160102205217%21Samospr%C3%A1vn%C3%A9_kraje.png.

own affairs, or essentially, its own self-government. As stated in Section 1(1) of the Act on Regions: 'A region shall take care of the all-round development of its territory and the needs of its citizens'. In this context, regions organize certain areas of education, public health, public transport and management of transport infrastructure or other assets dedicated to public use. Regions may also exercise their public authority within the scope of their autonomous competence.

As far as the exercise of delegated competence is concerned, its essence has already been explained above, which is the exercise of State administration by the region, precisely, by its bodies, based on statutory authorisation. In this context, the bodies of regions are usually superordinated to bodies of municipalities in the area of delegated competences. However, in autonomous competence, regions and municipalities (regardless of their de facto status, especially in terms of size or importance) are legally equal public entities with an individually guaranteed right to self-government. Therefore, the legal interrelations between regions and municipalities depend on the form of competence being exercised.

The bodies of regions are defined (in the Act on Regions), similar to the bodies of municipalities, with modest differences in terminology, but generally not in the substance and functioning of these bodies. The main difference is the designation of the person representing the region externally (towards subjects standing outside the region's organization) as the governor instead of the mayor. The highest body of a region is the regional assembly, which is directly elected based on democratic principles similar to the municipal assembly.

Related to regions, but different in nature, are cohesion regions that have been established in relation to the needs of regional policy (in particular, in connection with the implementation of the EU Cohesion Policy and related NUTS classification of regions[31]). These units are formed by one or more regions (because not all regions are sufficiently populous for purposes of the NUTS 2 category), but unlike regions, they are not self-governing entities or exercise-delegated competences (and their practical importance is therefore minor).[32]

Similarly, districts are distinguished in the Czech territorial–administrative organization, but there is no longer any organizational level of State administration at this level (until the end of 2002, district offices functioned as the general State administration bodies in the territory, but were later replaced mostly by municipalities exercising delegated competences), or any territorial self-government at this level. There are currently 76 districts in the Czech Republic,[33] as described below:

31 'Nomenclature of territorial units for statistics' defined by Eurostat, for more detail see: https://ec.europa.eu/eurostat/web/nuts/background (Accessed 2 October 2024).
32 See Act No. 248/2000 Coll., on the Support of Regional Development.
33 See Act No. 51/2020 Coll., on the Territorial Administrative Division of the State.


Czech districts in autonomous regions[34]

Additionally, worthy of mention is the part of the State territory designated as military areas, which, according to the legislation, are defined as parts of the State territory intended for the purposes of State defence and for the training of armed forces, and form a territorial administrative unit established by law (currently there are four such areas[35]) with limited access to its territory. Military areas do not have a self-governing dimension, and their administration is carried out by area authorities subordinated to the Ministry of Defence.[36]

### *4.4. Municipal level of public administrative bodies*

The basis of legal status of municipalities in the Czech territory dates back to the Provisional Municipal Act (also known as 'Stadion's Provisional Municipal Establishment'), promulgated as Imperial Patent No. 170/1849, according to which 'The foundation of a free state is a free municipality'. As mentioned above, in the context of regions, the Constitution (from 1993) is based on this assumption. However, the 'revitalisation' of municipalities began earlier, shortly after restoring the democratic rule of law in 1989, as the municipalities in their true meaning did not exist under

34 Czech districts in autonomous regions. Mapového náložník, Public Domain. Source of picture: https://en.wikipedia.org/wiki/Districts_of_the_Czech_Republic#/media/File:Okresy_%C4%8CR_2007.PNG

35 See Act No. 15/2015 Coll., on the Borders of Military Areas.

36 On the basis of the regulation contained in Act No. 222/1999 Coll., on Securing the Defence of the Czech Republic.

the previous period of communist law. Precisely, the previous system of national committees did not represent independent legal entities functioning on democratic self-governing principles.

Regarding the current legal status of municipalities, according to Article 101(3) of the Constitution, 'territorial self-government units', which include municipalities and regions, are public corporations that may have their own property and manage their budgets. Article 101(4) of the Constitution further limits State interference in the exercise of local self-government by providing that the State may interfere in the activities of territorial self-governments only if the protection of the law requires it and only in the manner prescribed by the law.

As provided for in Article 101(1) of the Constitution, the municipality is governed by a municipal assembly. Other municipal bodies (and other aspects of the municipal government) are regulated in Act No. 128/2000 Coll. on Municipalities (Municipal Establishment).[37] These bodies are the municipal council, mayor, municipal office and in some cases, special bodies of the municipality (e.g. misdemeanour commission). The municipal police also carries the status of a municipal body, but the establishment of the municipal police is optional. The Constitution also provides for the requirement of direct election of members of the municipal assembly on the basis of universal, equal and direct suffrage, including a four-year term of office (Article 102). However, the mayor is elected indirectly from among members of the municipal assembly.

The competences of municipalities can be autonomous or delegated. The tasks and instruments of the municipalities in terms of their autonomous competence are similar to those of the regions. Specifically, as provided for in Section 35(1) of the Act on Municipalities, the autonomous competence of a municipality includes matters that are assigned to the autonomous competence of a municipality by law or matters that are in the interest of the municipality and its citizens, unless they are vested by law to regions, delegated competences of the municipal authorities, or competences that are given by a special law to administrative authorities as the exercise of State administration.

According to Section 35(2) of the Act on Municipalities, a municipality shall, in accordance with local conditions and customs, create conditions for the development of social care and meet citizens' needs. These include housing, health protection, transport and communications, information, education, general cultural development and protection of public order.

Various property law operations related to the management of municipal property can be considered as a dominant dimension in the exercise of municipal autonomy. However, this area (except for the financial management of municipalities[38]) is not codified by a separate law as in the case of State property; the same applies to regional

37 Available in English: https://www.mvcr.cz/soubor/act-no-128-2000-coll-on-municipalities-establishment-of-municipalities.aspx (Accessed: 2 October 2024).
38 Regulated by Act No. 250/2000 Coll., on Budgetary Rules of Territorial Budgets.

property management regulations. Nevertheless, some similarities can be pointed out; for example, municipalities and regions can establish contributory organizations, which are similar in nature to State contributory organizations, or they can also establish or become shareholders of private law companies (typically so-called municipal enterprises providing public utilities on a private law basis).

Similarly to regions, municipalities also exercise public authority within their autonomous competences. They can issue general, binding decrees, which have the nature of administrative sub-statutory (secondary or by-law) regulations by which municipalities can impose rights and obligations on persons within their territory.[39] Legislation does not require statutory authorisation to establish rights or impose obligations on them. Instead, it is sufficient that a generally binding decree does not conflict with the law and regulates one of the areas listed in the Act on Municipalities (Section 10).

(a) to safeguard local matters of public order; in particular, it may determine activities that may disrupt public order in the municipality or contradict good morals, safety and protection of health and property may be carried out only in places and at times designated by a generally-binding decree, or determine that such activities are prohibited in certain public areas in the municipality;

(b) the organization, conduct and closing of sports and cultural events open to the public, including dance performances and discotheques, by establishing binding conditions to the extent necessary to ensure public order;

(c) to ensure that streets and other public spaces are clean, protection of the environment, greenery in built-up areas and other public green spaces, and the use of municipal assets serving the needs of the public.

(d) where a special law so provides.

Other important examples of the exercise of public authority within the scope of municipal autonomy include the issuance of zoning plans by municipal assemblies, which are then legally binding for the use of the municipal territory, while issuance of these acts is not a delegated competence.

Regarding the distinction between autonomous and delegated competence, the generally applied rules (in the Act on Municipalities and the Act on Regions) are that autonomous competence can only be limited by law; if the law does not stipulate that it is a delegated competence, then it is an autonomous competence. The practical significance of the distinction between these levels of competence lies mainly in the form of supervision over the exercise of municipal competence regulated by the Act on Municipalities (where the control of autonomous competence is, to a greater extent, attributed to the judiciary for the purpose of protecting the right to self-government against possible intervention by the State) or the regime of liability for damage caused by the exercise of public authority, where the State is directly liable for damage caused

39 Regions can also issue general binding decrees, but these are (unlike in the case of municipalities) not very common in practice.

by a municipality (but also a region) in the exercise of delegated competence, not the municipality (region) itself.[40]

It can be added that the Czech municipal self-government is characterised by a very large number of municipalities in general (according to the current data of the Czech Statistical Office there are 6,258 municipalities in the Czech Republic[41]) and perhaps an excessive number of smaller municipalities (nearly 5,000 municipalities have fewer than 1,000 and around 3,500 have fewer than 500 citizens[42]).[43] However, the size of a municipality does not have a legal impact on its self-governing status, because all municipalities are considered equal. Larger municipalities may bear the designation of town or city, although it does not grant them any different legal status. The only exceptions are statutory cities, which are divided by a statute[44] into city municipal districts with their own self-governing bodies and other differences resulting from this arrangement. These cities are established by the Act on Municipalities and not necessarily based on their population sizes. The capital city of Prague is also specific, combining the status of a municipality and a region, and is regulated by a special law (Act No. 131/2000 Coll., on the Capital City of Prague).

In the context of territorial self-government, it can be mentioned that the Czech Republic has also joined the European Charter of Local Self-Government, which entered into force on 1 September 1999 (however, the Czech Republic has also exercised the option to exclude the application of certain provisions of the Charter[45]).

### *4.5. Other public administrative bodies*

While the Constitution guarantees only territorial self-government, Czech administrative law theory also recognizes a dimension known as non-territorial self-government, sometimes referred to as 'profession and interests self-government'. This self-government includes chambers of commerce with compulsory membership (e.g. Czech Bar Association, Notary Chamber of the Czech Republic, Czech Medical Chamber, Czech Chamber of Architects and Chamber of Auditors of the Czech Republic) or public universities.

40 See Act No. 82/1998 Coll., on Liability for Damage Caused in the Exercise of Public Authority by Decision or Maladministration.

41 For these statistics in English see: https://www.czso.cz/csu/czso/home (Accessed: 2 October 2024).

42 For these statistics in English see: https://www.czso.cz/csu/czso/home (Accessed: 2 October 2024).

43 For comparison with Organization for Economic Co-operation and Development countries, the Czech Republic has one of the highest levels of 'territorial fragmentation' (local governments per 100,000 inhabitants), see: https://stats.oecd.org/Index.aspx?DataSetCode=CITIES (Accessed: 2 October 2024).

44 Which is generally a legal regulation governing the basic aspects of a self-governing entity and in case of statutory cities is issued in the form of generally binding decree.

45 For these exceptions, see Communication of the Ministry of Foreign Affairs No. 181/1999 Coll., on the adoption of the European Charter of Local Self-Government.

These entities are, under certain circumstances, considered administrative bodies because they are established by law, and the law also grants them certain powers which they exercise over their members, while also protecting public interest. These powers are not considered 'private' (i.e. exercised on the basis of a contractual consensus), but as public powers affecting certain public rights and obligations. The procedure for exercising public authority (particularly decision-making) in this context is similar to that of a State administration.

For example, according to Act No.111/1998 Coll., on Universities, (public) universities decide on the rights and obligations of their students in the matter of expulsion from studies (and similarly in some other matters, such as provision of scholarships or deciding on disciplinary offences, etc.), which directly affects the constitutionally-guaranteed right to education (Article 33 of the Charter of Fundamental Rights and Freedoms), which is of a distinct nature of public law. Procedurally, this decision is governed by the provisions of Administrative Procedure Code. However, non-territorial self-governments, as 'exercisers' of public authority, are not always reflected by the legislator. In particular, the liability for damage caused by the performance of public authorities is not developed in relation to this level of self-government.

The Administrative Procedure Code also states that bodies other than State administration and self-government bodies may act as administrative authorities. It states, in the provisions of Section 1(1), that it regulates the procedure of executive authorities, bodies of territorial self-government units (i.e. municipalities or regions) and other bodies, legal persons and natural persons when they exercise competence in the field of public administration (which are hereinafter collectively referred to by the term 'administrative authority'). Therefore, an administrative authority may also be 'other authorities' and in some cases legal or natural persons, if they have been granted the corresponding status (directly) by law or (indirectly) by an appropriate authorisation; one of the examples is the aforementioned (public) universities. However, natural persons exercising State administration may also have the status of an administrative body (e.g. game wardens).

## 5. Current challenges in the Czech context

The organization of public administration in the Czech Republic is relatively complicated, since it is based on the previously mentioned mixed model, the foundations of which were established in the 19th century. Under this model, the functioning of municipal and regional authorities is essential for the proper functioning of the State administration (as they ensure not only the exercise of self-government but also the exercise of State administration in so-called delegated competence). The State administration cannot perform various essential agendas without the municipal and regional levels.

The extremely high number of municipalities has led to the purposeful creation of three types of municipalities with different levels of competence in the field of State

administration in order to ensure the proper performance of the delegated competence in the field of State administration. This has led to a relatively high number of officials and exorbitance of the entire system, which was intended to bring public administration closer to citizens. This also raises problems in that it is not always easy to distinguish whether a given area belongs to self-government or State administration. From the citizens' point of view, the mayor of a municipality is responsible not only for the performance of local governments, but also the State administration. Therefore, citizens may not perceive the difference between what the municipality's own competence is and what is entrusted to the municipality by the State to perform within its competence. However, this is not always correctly perceived by self-government officials, and they (sometimes) tend to influence the performance of the State administration.

Another persistent problem with the Czech public administration is the high, if not excessive, number of municipalities, which leads to an exorbitant and sometimes cumbersome local self-government system;[46] however, there seems to be no solution in sight. Reducing the number of municipalities was one of the recommendations of the government's advisory body (the National Economic Council of the Government) with regard to reducing public costs.[47] An eventual solution, however, is not simple, as it can encounter political constraints as well as the already granted right to self-government of local self-government units (which include all municipalities, even the smallest ones). For this reason, it does not seem realistic that the number of municipalities in the Czech Republic will be reduced through legislative reforms in the coming years. Nevertheless, some progress has been made on the basis of creation of new legal institutes facilitating (voluntary) cooperation between municipalities.[48] However, it is unclear whether this solution will sufficiently reduce the associated inefficiency.

46 Svoboda and Skulová, 2023, pp. 155–166.

47 See: https://vlada.gov.cz/assets/media-centrum/aktualne/Navrhy-NERV-na-snizeni-vydaju-a-zvyseni-prijmu.pdf (Accessed: 2 October 2024).

48 A recent amendment to the Municipalities Act (effective from 1 January 2024) introduced the 'Community of Municipalities', which is a special association of municipalities whose purpose is to ensure the coordination of public services in the territory of the member municipalities and the strategic development of this territory.

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# General Principles and Challenges of Public Administration Organization in Germany

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**ABSTRACT**

Germany has a federal system. Most legislation is enacted at the federal level, whereas federal units, the Länder (singular: Land), are responsible for the execution of federal and Länder laws. Consequently, most public administration organizations are operated by the Länder. Most Länder organize their administration at three levels: the local level, where both state organs and autonomous local governments operate; the mid-level, with a concentration of state tasks in a centralised mid-level authority (the so-called province); and the state level, where ministries exercise political leadership and supreme Land authorities perform administrative tasks. Local governments do not only perform the tasks related to local autonomy, as defined in German as the 'affairs of the local community', but are also the recipients of delegated first-instance state tasks. Owing to local governments' autonomy, the Länder authorities are limited to overseeing the legality and must refrain from assessing the expediency of such measures in the field of the affairs of the local community. Länder play a more significant role in supervising the performance of delegated state tasks because, in this field, they may control local authorities in terms of legality as well as expediency. Balancing the correct level of oversight without infringing on local autonomy is often a delicate process. Apart from the territory-bound autonomy of local governments, Germany is rich in other forms of autonomous administrative units, such as chambers and universities. Administrative infrastructure at the federal level is limited to ministries and supreme federal authorities. The Federation operates a full administrative apparatus in very few cases, such as for the armed forces, diplomatic service, or federal police. In all other fields of public administration, administrative functions are performed by Länder organs. When they execute federal law, the supreme federal authorities exercise supervision over legality and, in rare cases, when statutes authorise them to do so, supervision over expediency.

We describe and analyse the structure of the German Länder administration using the Land of Baden-Württemberg as an example.

**KEYWORDS**

Germany, public administration, administrative federalism, local government, Länder

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## 1. Overview[1]

On a global scale, the Federal Republic of Germany (Bundesrepublik Deutschland), with its 358,000 km$^2$ and 84.3 million inhabitants, is a medium-size country. It is one of the six founding members of the European Economic Community and has long held the position of the largest economy in the EU. One of the most striking features of Germany is its federal structure, which is deeply rooted in history. The most significant event in recent decades has been German Reunification. In 1990, the federal units (Land, plural: Länder) on the territory of the German Democratic Republic joined the Federal Republic of Germany, adopting its political, administrative, legal, economic, and social system. Even after 30 years, a certain emotional and factual gap between the East and West remains, though it appears to be narrowing among younger generations.

Germany defines its economy as a 'social market economy', a concept of significant political and psychological importance. Germany has a typical post-industrial economy; however, while developing into a service-based economy, Germany did not neglect its industrial sector, which still accounts for 24.4 per cent of its Gross National Product (GNP)—with 2.1 per cent in the primary sector and 73.5 per cent in various service industries. Mechanical engineering, green technology, chemicals, and automobile are among the most important industries. Foreign trade is crucial, as reflected in the popular German self-definition as an 'export champion'. Over recent decades, China has become Germany's largest foreign trading partner, raising growing concerns. German capital is the largest source of foreign direct investment (FDI) in most EU member states.

The average gross income was 49,200 euros in 2021. Income distribution is unequal: men earn more than women, and West Germans earn more than East Germans. Although overall income inequality[2] is close to the OECD average, growing disparities are a political concern as they are perceived as a threat to social cohesion. Aside from the gender pay gap, all indicators show an increase in inequality over recent years. Low-income groups are usually supported by direct transfers, whereas tax measures tend to favour middle- and upper-class incomes.

Being a 'social market economy', Germany maintains a widespread system of social security. Some parts of this system include compulsory social insurance (health, old age, or unemployment), while others are tax-financed. Until the 1970s, the social system had expanded. In the 1980s, a neoliberal restructuring began. Since then, initiatives to adapt social security to the requirements of the post-industrial economy have been ongoing. Today, the most important challenges are demographic and workplace changes in an ageing society. An increasing amount of employment

1 All statistical data are taken from the Federal Statistical Office (Statistisches Bundesamt) [Online]. Available at: www.destatis.de (Accessed: 12 October 2024).
2 The Gini coefficient for 2019 was 29,7.

occurs outside traditional labour contracts. This is problematic because social insurance is strongly linked to formal employment relationships. Consequently, a growing proportion of low-income job holders remain outside the protection of social insurance, which is facing a revenue shortfall.

Without immigration, Germany's population would have declined over the past several decades. Although birth rates have risen recently, they continue to be lower than death rates. The population density is quite high (232/km$^2$), decreasing from West to East. Approximately 77 per cent of the population lives in cities. Germany does not have a primate city. The largest metropolitan region is the Rhine-Ruhr area (Ruhr, Cologne, and Düsseldorf) with 11 million inhabitants. Fifteen cities with more than 500,000 inhabitants are evenly distributed throughout the country. Among these, Berlin is the largest with 3.7 million inhabitants. Berlin draws its importance from being the federal capital and seat of a considerable cultural industry. Underdeveloped rural areas face a grave decline in population; therefore, they are continually depleted of infrastructure. The same is true for some deindustrialised urban areas and large socialist housing estates in East German cities.

Germans are not homogeneous but have strong regional identities. Local dialects are often unintelligible to speakers of other German dialects. The present 16 Länder were shaped after 1945 and do not necessarily reflect regional identity. Germany has been a target of immigration since 1945. After 1945, millions of Germans from the former Eastern provinces, ethnic Germans from Eastern Europe, and Eastern Europeans who did not desire to return to their socialist countries came to Germany. Labour immigration began in the 1960s in the West and in the 1980s in East Germany. Currently, asylum is one of the primary channels of immigration. Consequently, the population is diverse. In 2017, 23 per cent of residents were born outside Germany. Nationality law has followed the factual change towards an immigration country slowly and continued to be a mixture of deterrent and welcoming elements. The same can be said of Germany's immigration policies. Most immigrants integrate well into society and the economy, but a certain percentage live in 'parallel structures'. Religion is considered a private issue with little relevance to public life. In 2021, the percentage of followers of the two major Christian churches (Catholic and Protestant) dropped below 50 per cent for the first time in German history. Individuals without a religious affiliation accounted for 42 per cent, and various Muslim denominations made up 6.5 per cent. The number of Jews is estimated to range from 100,000–200,000.

The central feature of state organizations is federalism. Germany consists of 16 Länder, 13 of which are territorial Länder and 3 are city states; that is, federal states comprise one city only.[3] The 16 Länder vary in size and population; the largest (Bavaria) covers 70,542 km$^2$ and the smallest (Bremen) spans 419 km$^2$; the most populous (North Rhine-Westphalia) has 18 million inhabitants, while the least populous (again Bremen) has 676,000. Generally, the East German Länder are smaller, less populous, and less

3 Strictly speaking, only Berlin and Hamburg are city states. The third Land, Bremen, comprises two municipalities. Nevertheless, the Land of Bremen is traditionally considered a city state.

densely populated than the West German ones. Although each Land may determine its internal organization, German administrative structures are consistent across all territorial Länder[4]. Their three-tier administration consists of the local, mid-level, and state levels. Locally, there are 10,787 governments. The smaller units are called 'municipality' or 'commune' (Gemeinde), the larger ones bear the title 'town' (Stadt). There were 201 municipalities with fewer than 100 inhabitants and four with more than one million. In sparsely populated areas as well as in the suburban areas of large cities, several Länder have experimented with various forms of intercommunal institutions. The middle level is more diverse than the local level. A feature common to all territorial Länder is the 'Kreis' or, in some Länder, 'Landkreis' (district), which usually comprises between 10 and 20 municipalities. These districts are autonomous bodies. Larger cities exercise the powers of a Kreis as well; they are called 'kreisfreie Stadt' (town with district powers) in most Länder. In the 13 territorial Länder, there were 294 districts and 106 towns with district powers. Both districts and towns with district power vary significantly in size and population according to their respective Land. Other administrative formations at the mid-level vary from Land to Land and are, therefore, too heterogeneous to describe in full. The state level is the Land, and local and mid-level authorities are, in the system of German federalism, (autonomous or state) authorities of the Land and not of the Federation. The Federation does not have any direct administrative, financial, or legal access to local or mid-level authorities (Article 84(1)7 Grundgesetz[5]).

According to the German Federal Bank, all public debt (i.e. that of the Federation, the Länder, the local authorities, social insurances institutions, and other public bodies) amounted to 2,000 billion euros in 2021, which is 70 per cent of the gross domestic product of approximately 3,600 billion euros.[6] International capital markets rate German public debt as AAA.

Germany's public administration at the federal, Land and communal levels is well-integrated into the relevant EU and CoE structures. Despite the federation's relative monopoly on foreign relations, the Länder have their own political representation and channels of influence within the EU. German public administration is well-represented in European networks such as the European Committee of the Regions, which from a German perspective serves as a representation of the Länder executives, the Council of European Municipalities and Regions, and the Congress of Local and Regional Authorities. These provide strong political forums for local administrations.

German public administration has faced several challenges. First, it must Europeanise and, above all, modernise. Digitalisation favours centralised solutions, which

4 We do not address the city states and their administrative structures. Their main feature is the identity of the state and the municipal level: the city is both a federal state and a local government.

5 Basic Law for the Federal Republic of Germany of 23rd May 1949.

6 Deutsche Bundesbank (2023) [Online]. Available at: https://www.bundesbank.de/de/statistiken/oeffentliche-finanzen (Accessed: 6 November 2023).

conflict with the traditions of German executive federalism. Second, it must adapt to changing economic and social environments. Decarbonising the economy and society requires active involvement of the state and its executive branch; the population is ageing, becoming more individualist and diverse, and therefore has changing demands regarding public administration. Decades of neglected public infrastructure now necessitate extensive investment in repairs, and public administration is the primary channel for these investments. Third, since the neoliberal era of the 1980s, public expenditure has been viewed more critically, which has placed public administration under financial restraints and created a need to demonstrate the efficiency of its work and its outcomes.

## 2. Public administration and constitutional order

Germany has a federal system, indicating that both the Federation and Länder are states with separate legislative and executive organs. Consequently, Germany has 17 constitutions: one federal constitution, the Grundgesetz (GG), and one constitution for each of the 16 Länder.

In German federalism, all public powers rest with the Länder unless the Grundgesetz confers a specific power to the federal level (Article 30 GG). In broad terms, most legislation is enacted by the Federation, whereas the Länder are the principal executive (administrative) organization. This implies that most laws are enacted at the federal level, but the Länder may principally legislate in various fields of general and special administrative law. Education, for instance, is a stronghold of Länder legislation. However, the federal level is rarely involved with administration, as the Federation may only exercise its authority if the Grundgesetz expressly permits it. Cases of express federal administrative powers are limited. The situation of the federal level being the principal legislator and the Länder being the principal administrative organ leads to a distinctive feature of German federalism: federal statutes are executed by the Länder. In many fields, the Länder possess considerable discretion when executing federal law and may decide on competent authorities, procedures, and the interpretation of federal law. The federal government is limited to controlling the legality; it must not supervise the expediency with which a Land executes federal law. Under certain circumstances, federal statutes may grant a higher degree of control at the federal level. Federal laws that specifically impact the Länder's executive power require the assent of the Länder in the 'upper chamber' of the federal parliament, the Bundesrat (Articles 84-85 GG). The Federation and Länder bear the costs of their administrative apparatus separately (Article 104a(5) GG). Accordingly, Länder spend a considerable portion of their budget on Germany's administrative infrastructure.

In exercising their duties, the Federation and all Länder must cooperate (Article 35 GG).

One consequence of federalism and the separate statehoods of the Federation and Länder is the principle of separate organs. Each state organ belongs to either the

Federation or a Land. In some cases, the Grundgesetz permits joint activities. Federal and Länder authorities maintain joint employment agencies (Article 91e GG) and can operate joint tax authorities (Article 108(4) GG) and shared computer systems (Article 91c GG).

### *2.1. The federal constitution*

#### *2.1.1. Principles for both the Federation and the Länder*

The Grundgesetz established the basic structures of the German state: democracy, republic, rule of law, social state, and respect for local autonomy. Some Länder constitutions repeat these basic principles, while others do not. Regardless of whether a Land constitution includes these structures, this is inconsequential because the homogeneity clause in Article 28 GG stipulates that all German Länder must arrange their constitutional order according to those principles, with some flexibility. In both court practice and legal scholarship, the basic principles are interpreted and applied based on the Grundgesetz rather than on any parallel provisions in the Länder constitutions. Therefore, we will discuss them under the headings of the Federal Constitution.

The rule of law or, literally, the 'law-based state' (Rechtsstaat), has been a central feature of German-speaking state theory and political practice since the 19th century. This principle requires that the State must not act arbitrarily but follow rules that bind everyone, including the State and its organs. Although Rechtsstaat is not mentioned among the basic State principles in Article 20(1) GG, its various aspects are embedded in several provisions.[7] The rule of law is a constituent feature of German statehood. From an organizational perspective, the separation of powers in Article 20(2)2, (3) of the GG is of relevance.

German theory differentiates between formal and material Rechtsstaat. The former means that rules are to be obeyed, whereas the material Rechtsstaat, developed after the end of Nazi rule, holds that the law must embody a minimum of natural justice and may be disobeyed if it does not[8]. In administrative practice, the formal Rechtsstaat is more significant and demands that any public authority adhere to the valid law.

The 'reservation of the law' and the 'priority of the law' principles bind the administration to empowerments in formal statutes: authorities may interfere with subjective rights only if they are authorised by statute, and when doing so, they must not violate this statutory authority. Accordingly, statutes must be sufficiently explicit to guide administrative actions. In this way, the will of the parliament prevails over the will of the administration.

7 One example: Article 20(3) GG subjects the executive power and the judiciary to 'Gesetz und Recht', that is, to formal law and a basic idea of justice. This reflects the Rechtsstaat in its formal and material sense.

8 Radbruch, 1946, p. 105.

The most important feature of the Rechtsstaat in public administration is its principle of proportionality. This means that every exercise of public power must bear a reasonable balance between the purpose and means to achieve it, as well as the rights of those affected by the public act in question. Proportionality plays a central role in the judicial control of the administration.

The social state is an objective rule that does not confer special rights or duties on individuals or state organs. However, this principle leads to extensive legislation (mostly at the federal level), which is executed by the authorities of the Länder.

Article 28 GG sets minimum standards for local autonomy that each Land must uphold. Article 28(1) of the GG guarantees the existence of municipalities and districts, as well as freely elected representative bodies within these entities. Article 28(2) GG grants municipalities a minimum of powers (the supposed 'affairs of the local community') and provides municipalities and districts with a basic level of financial autonomy. Both guarantees are binding on the Länder, which cannot establish an internal organization without autonomous and democratically elected local and district levels. In city states, this question does not arise, as the city (local autonomy) is simultaneously a Land, that is, a state: the local autonomy and the federal autonomy of the Land converge.

The fundamental rights in Grundgesetz bind the Federation, the Länder, and local governments. From the perspective of public administration, the most important fundamental rights are equality enshrined in Article 3 GG and the right to judicial protection in Article 19(4) GG. The Grundgesetz does not expressly recognise a right to good administration, but some parts of this right are covered by the Rechtsstaat principle. This constitutional framework is deemed satisfactory, and there is no relevant constitutional debate on enshrining good administration into constitutions. The right to equal treatment guarantees that public organs 'handle equal cases equally', as both doctrine and courts put it. This right, in combination with the rule of law and especially the principle of proportionality, is an effective tool for courts to review acts of public administration. Access to judicial protection against all exercises of public power is guaranteed under Article 19(4). The Grundgesetz does not prescribe expressis verbis the existence of separate administrative courts, but Article 95(1) enumerates the supreme federal courts and mentions, among others, the Federal Administrative Court. This guarantee, together with the federal laws on the organization of the judiciary and administrative courts,[9] makes the existence of separate administrative courts compulsory for Länder.[10] Consequently, Länder cannot reassign the legal control of the administration, for instance, to civil courts or bodies within the administration.

Article 33 of the GG establishes fundamental rules for public employment. All Germans have equal access to public offices, determined solely by their ability and

9 Judicial Organization Act of 12th September 1950; Administrative Courts Act of 21st January 1960.

10 For more detail see 2.2.1.

independent of religious or political affiliations. Executive powers may be exercised by individuals with special public employment status (civil servants), whose rules are to be regulated and developed according to the traditions of a professional civil service. For employment in the federal public service, Article 36(1) GG differentiates between supreme federal authorities, which must employ civil servants from all Länder in appropriate proportions, and other federal authorities which, as a rule, are expected to employ civil servants from the Land where they are seated. In practice, the Land background of a candidate is of little relevance in federal public employment. However, some Länder tend to reserve the higher echelons of their public service for candidates from that Land, which constitutes a violation of the right of equal access to all public offices (Article 33). Nevertheless, in practice, it is difficult to prove.

The Grundgesetz does not enumerate the sources of the law. However, Article 80(1) of the GG authorises federal statutes to empower the federal government, federal minister, or Land government to enact ordinances necessary for implementing those statutes. From a broader perspective, Article 80(1) of the GG can be interpreted as the constitutional acceptance of subordinate law created by the executive.

All these principles are widely accepted and rarely questioned. Legal debates have concentrated on the exact interpretations of these principles and their adaptations to new challenges.

### *2.1.2. Federal administration*

The federal government is at the top of federal executive authority. It consists of the Federal Chancellor and federal ministers (Article 62(1) GG), which means that secretaries of state and similar officeholders are not members of the federal government.[11] The chancellor is elected by the Bundestag (the 'lower chamber' of the federal parliament) with an absolute majority. Federal ministers are appointed and dismissed by the Federal President at the request of the Federal Chancellor. The Federal President is a representative organ with little political power and even fewer administrative functions; therefore, it is not a part of the executive.

The federal government may act corporately. In addition, the ministers bear responsibility for their respective portfolios. The Federal Chancellor has a certain right to instruct federal ministers, but rarely utilises it because federal governments are usually coalitions that must solve their internal disputes in different ways. The federal government owes information and responsibility to the federal parliament. That parliament has the usual control rights, such as interpellation and questions, but may use these only to the extent of the federal government and the federation authority. Therefore, the federal parliament may not question the federal minister on issues under the competence of the Länder. Parliament may hold the government politically accountable by electing another Federal Chancellor into office. Given the distribution of power between the federal and Länder levels, the federal government's role is governing rather than administrative. Therefore, the political responsibility of

11 On the different concept in some Länder see 2.2.2.

the federal government to parliament usually is typically invoked for political reasons rather than for shortcomings in public administration.

The highest administrative layer at the federal level is the ministry. A ministry may be created or dissolved by a mere organizational act of the government; no laws or other normative acts are required. In the early days of the Federal Republic, many federal ministries were both political and administrative. Since the 1980s, federal ministries have increasingly been limited to political conceptual work, such as drafting bills and political programs. Their administrative functions were subsequently transferred to various supreme federal authorities. Most federal ministries have one or more subordinate supreme authorities. The main tasks of these supreme federal authorities are the (comparatively few) administrative procedures in the immediate competence of the federation and control of legality over the execution of federal law by the Länder.

Articles 87-90 GG enumerate the fields of administration in which the Federation may operate a full hierarchy of federal authorities, that is, more than merely ministries and supreme federal authorities: diplomatic service, federal finance, armed forces[12], border police, certain social insurance, air traffic, railways and telecommunication regulations, waterways, and national roads. These federal authorities execute federal laws and conduct a full range of administrative procedures in their fields. Their internal organization and procedures are regulated by federal statutes and ordinances of the federal government or a federal minister. The staff members are federal civil servants and employees.

Most executive and administrative work is vested in 16 Länder. They differ considerably in their setups and the way they work. Since we cannot shed equal light on all of these, we highlight the common features and take one Land, Baden-Württemberg (BW), as an example. Baden-Württemberg is an average territorial Land without any peculiarities in its administrative structure. Therefore, it reflects all-German structures well. Owing to limited space, we will not address the numerous features that are unique to only one or two Länder.

### *2.2. The Länder constitutions*

All German Länder have constitutions, none of which are older than 1945. However, approximately half of them were established before the Grundgesetz. The Constitution of Baden-Württemberg dates back to November 1953. Thus, it is a few years younger than almost all other Land constitutions in the old western part of Germany.[13] This is due to the unique history of that Land. The three Länder that currently

12 In connection with the armed forces, we can identify an anomaly in federalism. Generally, the Länder have the territorial jurisdiction over their entire territory. However, the military training areas situated all over Germany are completely outside the Land's administration and are administered by the German army under the command of the Ministry of Defence. Two such areas are under the command of the US and British Army, respectively.

13 Although the Constitution of the Saarland dates from 1947, it had to be thoroughly revised for joining Germany as a result of a plebiscite on 1st January 1957.

form Baden-Württemberg[14] were united as late as April 1952, after a lengthy debate and a (narrow) popular vote in December 1951.[15] As a result of its comparatively late enactment, the authors of the Baden-Württemberg Constitution could take the other German Länder constitutions as well as the Grundgesetz into account. However, their function as role models was limited to mere texts because constitutional judicial practice had just begun to evolve in 1953.[16] More recent Länder constitutions can be found in the East: the Länder in the territory of the former GDR enacted their constitutions after the reunification in the 1990s, which gave them the chance to incorporate the standards of the four decades of judicial practice of the Federal Constitutional Court.

All Länder constitutions contain provisions for a monocameral parliament,[17] a government answerable to the Land parliament,[18] and independent courts.

#### *2.2.1. Courts, especially administrative courts*

In the German judicial system, which has five court hierarchies (ordinary, administrative, labour, social, and financial courts), only the top layer of each hierarchy is a federal court. All the lower layers are courts of Länder. For instance, administrative courts have three levels: administrative courts, administrative appeal courts, and the Federal Administrative Court. Administrative courts and administrative appeals courts are Länder courts.

Administrative cases end in an administrative appeals court if the law of that Land only is relevant to the decision. If a case involves federal law, the Federal Administrative Court may hear it in the final instance.

Judicial protection is awarded against the decisions of public authorities, as the case may be, by administrative, social, financial, or, in some cases, ordinary courts.

#### *2.2.2. Legislative*

Legislation is vested in the legislative bodies of the German Länder. All Länder parliaments are elected by democratic votes in universal, free, equal, and secret ballots, with some differences between them regarding election procedures. Irrespective of

14 Partly following the borders of the various occupation zones, these three Länder between 1946 and 1952 were Baden, Württemberg-Hohenzollern (both French zone) and Württemberg-Baden (American zone).

15 This process was challenged before the Federal Constitutional Court which in 1956 gave the people in the former Land of Baden the right to a new referendum. The referendum took place as late as 1970. Its result confirmed the existence of the united Baden-Württemberg. Due to this history, the constitution of BW contains some rules referring to the unification process. Most of them are without relevance today.

16 The German Federal Constitutional Court commenced working in September 1951, and the constitutional courts of the Länder are accessible to private individuals and companies only after a judgment of last instance of the highest regular courts in the case.

17 The only second chamber in a German Land, the Bavarian Senate, was abolished by referendum in 1998.

18 In some Länder such as Berlin, Bremen or Rhineland-Palatinate, not only the government as a whole, but single ministers as well are answerable to parliament, that is, a parliamentary majority can oust an individual minister without voting down the government as a whole.

the system applied, the increasing fragmentation of the party system has led to the necessity of forming coalition governments. The old strongholds that some Länder were for Christian Democrat or Social Democrat parties withered. Consequently, the grip on public administration exercised by the dominant party in these Länder weakened and sometimes vanished.

BW applies a unique combination of proportionality and majoritarian principles. Resident citizens elect a new parliament every five years. Every voter has one vote, which they may cast for one of the candidates in their constituency. There are 70 constituencies but 120 seats in the Landtag. The other 50 seats are filled by candidates who came second in their constituency and received a larger share of votes than the other party runners in their province.[19] This system is criticised for being unfair because the results in different provinces may lead to counterintuitive overall results, that is, fewer votes may lead to more seats.

### *2.2.3. Government*

The Land parliament elects a prime minister[20], who in turn sets up a government, which is called 'Senate' in the city states. Länder governments consist of ministers (senators in city states), and some Länder include the secretaries of state.[21] In BW, secretaries of state can be members of the government, as can be 'Staatsräte' (Councillors of State), who have roughly the same position as secretaries of state but work without a salary. All members of the Land government must be confirmed by the BW Landtag. Two differences exist between ministers and secretaries of state (and 'Staatsräte'): only the ministers lead a ministry,[22] and usually only they have a vote within the government. However, the parliament can confer voting rights to some secretaries of state and some 'Staatsräte'.

Land government is a collective body. Its head is the prime minister, who is also the head of state of the respective Land. Although Länder possess statehood, they do not have a separate head of state. Länder's governments make decisions based on their own rules of procedure. The number[23] and exact portfolios of ministries vary from Land to Land; however, in general, there are eight or more specialised ministries in a Land (interior, justice, finance, economy, culture, agriculture, social affairs, and environment), as none of these subjects are positioned together in one ministry with another subject on this list. Larger Länder tend to have more ministries. City-states have ministries for traffic/mobility or city planning instead of agriculture.

19 On provinces see 3.1.2.

20 In the city states, the head of government bears the title of 'First Mayor' (Bremen, Hamburg) resp. 'Governing Mayor' (Berlin).

21 According to Article 43(2) of the Bavarian constitution of 1946, secretaries of state are members of the Bavarian government. Article 59(2)2 of the Saxonian constitution of 1992 permits the membership of state secretaries in the Land government.

22 In some of the larger Länder such as Bavaria or North Rhine-Westphalia, the chief of the prime minister's office enjoys the position of a minister.

23 Article 43(2) of the Bavarian constitution sets a numerical upper limit: the Bavarian government may consist of a maximum of 17 ministers and secretaries of state.

Overall, the Land government has the right to introduce a bill in parliament, and it is the duty of ministries to administer the laws in their portfolio. As mentioned above, the majority of the legislation that Land governments execute is federal law; only a comparatively small proportion is Land law. The ministries under a minister have the highest administrative level for each Land. All these are guided by the minister's decisions, and the minister is responsible towards the Land parliament. Ministers do not decide all cases in person; instead, they discharge their duties by way of deputies (usually the secretary of the state of this ministry) and authorised executives (usually the heads of the ministry's sections). In addition, the minister does not organize the ministry's work; this is done by a Chief of Affairs, usually a secretary of the state, who acts as a professional leader. Nevertheless, the minister can overrule officials' decisions, although this is rare.

The ministries are organized into sections and subsections and are further divided into departments. These subdivisions form a strict hierarchy. Outside the hierarchy, state ministers and secretaries have their own personal offices, comprising a relatively small number of staff responsible only towards the respective ministers or secretaries. They are the closest advisors to their minister or secretary of state, who place special trust in them. Because of the nature of this relationship, the loss of trust by the minister or secretary is sufficient to remove the staff of the personal office from their posts. They appear as 'political civil servants' who may be placed into temporary retirement without further justifications. Other civil servants working in different parts of public administration, including ministries, are usually appointed for an unlimited time and cannot be dismissed from service until they reach retirement age. These government structures are widely considered appropriate and are rarely debated.

### *2.2.4. Public administration*

In addition to the government, there are no other administrative bodies at the highest level in the Länder.

Their respective central banks ('Landeszentralbank') are not part of the Land administration, but belong to the federal level, that is, to the German Central Bank; this bank operates within the European Central Bank System. Most Länder have a 'Rechnungshof' (court of auditors). This is an independent body working for the respective Land parliament; its members are as independent as the judges, and the court of auditors as a whole is not part of the administration. In addition, most Länder parliaments operate auxiliary organs that are responsible for, for example, equal treatment ('Gleichstellungsbeauftragte'), persons with disabilities, migration, data security ('Datenschutzbeauftragte'), combating antisemitism, or for citizens' rights in general.[24] They are usually independent bodies without executive power resembling

24 In some cases, these organs do not answer to the Land parliament but are subject to a Land ministry. In Thuringia, e.g., the 'Migrationsbeauftrage' (commissioner for migration) is part of the ministry of justice, but without executive powers.

somewhat specialised ombudspersons and channel information to the parliament and its standing committees.

The division between gubernatorial and executive powers in the Länder differs considerably, primarily based on their size. In the larger Länder, ministries perform large gubernatorial tasks such as (1) preparing legislation, (2) enacting subordinate legislation to guide the execution of federal and Land legislation by way of either ordinances (addressed to everybody) or general instructions (addressed to the lower levels of the Land's administration within its portfolio), (3) evaluating existing legal rules, and (4) cooperating with other ministries, parliament, and federal and European institutions to gauge the necessity or expediency of new legislation. In addition, they must provide the means to carry out administrative tasks (money, infrastructure, staff, etc.), and thus participate in executive work. They exercise leadership and control over a considerable number of civil servants, such as the police. Accordingly, they participate in preparing the annual budget and evaluating existing administrative structures. They also supervise the public bodies within their jurisdictions. In smaller Länder, more executive tasks may be vested in ministries because of the lack of staff at lower levels. Nevertheless, all Länder ministries try to avoid too many administrative tasks, which they tend to delegate to the subordinate bureaucracy.

All ministries administer themselves according to the laws of the given Land, the general rules set out by the government, and within the limits of the budget. They choose their own staff, manage their internal organization, organize the necessary equipment, and, at least in part, train their own personnel (e.g. in IT). Hence, political and professional leadership in ministries is de facto different, but de lege the same. Ministers are in control of the administration and responsible to their respective parliaments; however, they are usually quite detached from the control of the administration on a daily basis.

## 3. Organizational principles and structure of the public administration

### *3.1. Land authorities*

#### *3.1.1. The supreme layer of Land authorities*

The government has the highest administrative authority. The gubernatorial and administrative functions of Land governments and their immediate auxiliary bodies are discussed in Sections 2.2.3. and 2.2.4.

#### *3.1.2. The province as the mid-layer of Land administration*

When the Federal Republic was founded in 1949, most of its Länder had a three-level hierarchy of administration, with the mid-level called 'Regierungspräsident' (head of province) or 'Regierungsbezirk' (province). Bavaria has seven provinces, five in North Rhine-Westphalia, four in Baden-Württemberg, and three in Hesse. In contrast, city-states and the smaller territorial Länder, such as Saarland or Schleswig-Holstein,

never had any use for provinces. After reunification in 1990, the new Länder of Brandenburg, Mecklenburg-Vorpommern, and Thuringia deliberately abstained from creating provinces in their territories, whereas Saxony and Saxony-Anhalt introduced them. More recently, Rhineland-Palatinate (1999), Saxony-Anhalt (2003), Lower Saxony (2004) and, to an extent, Saxony (in two steps 2008 and 2012) abandoned their provincial executive system.[25] Consequently, four of the five largest Länder today have provinces, but none of the smaller ones. The principal motives for the introduction, preservation, and abolition of provinces are traditional and economic reasons, but they do not belong to West or East Germany.

The smaller Länder, which abolished their provinces, claimed that the lack of this administrative level made their administrative system more effective. Most of the duties of the former provinces are now discharged by either a centralised Land authority ('Landesoberbehörde' or 'Landesverwaltungsamt'), or in a decentralised way, by the local authorities. Both are supervised by and responsible to the pertinent ministries depending on the subject matter at hand. It is not expected that any of the remaining Länder will abandon their three-level system.

Provinces cover the entire territory.[26] These are administrative bodies of general jurisdiction in their respective parts of the state.

The major function of the provinces is to concentrate the executive power of different ministries into one mid-level authority. In a way, their organization mirrors the government's organization: the head of a province bears some similarity to a prefecture in France. The internal departments ('Abteilungen') of the provincial executive administer the jurisdiction of one or two Land ministries each. Provincial executives and Land governments have cooperated closely. The existence of the administrative level of the province relieves ministries of day-to-day routines and problems and allows them to concentrate on gubernatorial tasks.

In some Länder, such as Bavaria, the provinces are both mid-level organs of state administration and layers of provincial self-government. The names and territories of the state and self-governed provinces are identical, but the powers and organs are separate. This double nature of the province demonstrates parallels to the '(vár) megye' in Hungary and the 'województwo' in Poland.

#### *3.1.3. Mid-level Land authorities outside the provincial executive*

Although the province's function is to concentrate as much administration as possible in one authority, there are other mid-level state bodies outside the provincial executives. One example is the public prosecutors' office ('Generalstaatsanwaltschaft'). Its jurisdiction does not coincide with the provinces but with the territorial jurisdiction of the Superior Land Courts ('Oberlandesgericht'), of which there are several in the

25 Saxony now has one 'Landesdirektion' (directorate for the state) with three seats located in the former seats of the provinces, as well as directorate-generals (Generaldirektionen). Its administrative structure, therefore, still resembles the old provinces, albeit under one leadership. This can be interpreted as a mixture of the two options: with and without provinces.

26 For the exception of military grounds see fn. 11.

larger Länder and one in each of the smaller ones. Prosecutorial offices are under the supervision of the Minister of Justice of the Land regarding personnel matters, legality, and expediency of actions. However, on a daily basis, supervision of expediency is performed only in general terms, and only exceptional cases draw the attention of the ministry.

Other state bodies outside the provincial government are, for example, the (higher) forest directorates, which have different names even within one Land, such as Baden-Württemberg,[27] the administration of national parks, and the audit offices of the state.

### *3.1.4. Distribution of first instance administrative competences*

Depending on the subject matter, the competent authority in the first instance is either the local authority, acting under the supervision of the provincial executive or the provincial executive itself. Subject matters in the first-instance jurisdiction of the provinces are typically of a supralocal nature, such as cooperation with foreign administrative bodies, immigration and refugees, public schools and cultural heritage sites, the administration of numerous subsidies for businesses and NGOs, surveillance of medical products and drugs, epidemics, most aspects of regional water management, Natura 2000, the protection of species and the administration of natural heritage sites, urban planning (roads, noise protection, bicycle paths etc.), trans-communal public transport planning, air traffic, waterways, the fight against illegal labour, the protection of workers against social and technical risks, consumer protection, animal protection, crop protection, biodiversity and agriculture, viticulture and oenology, supervision of hunting, fire protection and firefighting, civil protection, money laundering, or the disposal of explosives and munitions.

When a provincial executive supervises the administrative performance (including inactivity) of local authorities, they usually control both legality and expediency. In practically all matters, the provincial executive is similarly supervised by various Land ministries. Accordingly, discretion can only be exercised within the limits of the laws, and the frequently narrow ordinances and general instructions of the supervising bodies.

### *3.1.5. The local level*

The third (or lowest) level within Land administration can be called local. For historical reasons, the local level has the widest variety of administrative structures between and even within Länder, although these differences have diminished over the last two generations. To provide a more coherent overview, it is necessary to exclude city-states. In all territorial Länder, it is important to distinguish state matters from matters of local self-government in accordance with Article 28(2) GG (see below 3.2.1., 3.2.3.).

27 § 23(2) BW Land Administration Act (LVG BW).

The local level of state (Land) administration consists of districts ('Kreis') and towns with district powers ('kreisfreie Stadt'—these are towns that do not belong to any district). Within a district, there may be municipalities of different sizes, some of which bear the title of a 'town' ('Stadt'). Towns are granted more administrative power and duties than smaller municipalities. Länder apply different terms to distinguish between different types of towns. Therefore, one needs to consult each Land's laws to ascertain their differentiation and the duties that may or may not go with them.

Just as provinces, districts and towns with district powers cover the entire territory of the Land. The same cannot be said at the municipal level. In some Länder, such as Bavaria, certain uninhabited areas do not belong to any municipality, or large water surfaces are not part of a municipality's territory. In other Länder, the entire territory is attributed to municipalities.

The Land may impose the tasks and powers of the lowest level of state administration on districts and towns with district powers, as well as on municipalities belonging to a district, although to a lesser extent. Municipalities belonging to a district usually carry out those tasks of the lowest level that require immediate contact with the citizens but are routine for the administration, such as passport renewals, registrations, the land register, or the public order enforcement office ('Ordnungsamt'). The larger the town, the broader the duties of the state administration tend to become. State administration duties which tend to require more legal knowledge and less social contact with citizens are delegated to the district.[28] Many districts tend to organize their administration in a deconcentrated and decentralised manner, distributing their offices among various towns in their territory.

Most Länder have also tried to use smaller municipalities for state administration. Since these municipalities are often too small to carry out these tasks alone, Länder such as Baden-Württemberg allow them to form administrative cooperatives ('Verwaltungsgemeinschaften'), which carry out some or all of the administrative tasks of their member municipalities for an unlimited time.[29] Usually, an agreement to form such cooperatives requires the approval of the Land government.[30]

For a certain period and for defined affairs, municipalities and towns can collaborate with the district to carry out these duties jointly. Some procedural obstacles must be overcome before reaching a binding agreement.[31] Frequently, it is necessary to establish a common office for joint tasks. These common offices may later become a source of debate among the parties to the agreement, as highlighted by the experiences in many Länder.

The administration in the districts and towns with district powers, as well as in the municipalities belonging to a district, is organized to fulfil the tasks of both the lowest level of state administration and local self-government. Especially in smaller

28 For an example, see the (long) list of duties that are compulsorily settled on the districts in § 19 LVG BW.
29 §§ 15,17, 19 LVG BW.
30 § 17 LVG BW.
31 For BW see § 16 LVG.

municipalities, both can be done, and often they are performed in the same room and by the same person with different functions. Officials who hand out new passports (thus exercising the task of state administration) might issue municipal tickets for reduced entry to public baths or local zoos (thus acting in the realm of autonomous local self-government), register new cars, or receive fines. Consequently, it is often not recognisable to the private party what capacity the official is acting on in the concrete case. However, for example, in legal protection, it matters in which function officials exercise their powers.

*3.1.6. Private entities with administrative powers*

Federal and Land statutes may delegate certain administrative powers to private individuals and companies ('Beliehene'). Furthermore, the law empowers districts and towns with district powers to delegate duties to private parties. The law in question must stipulate which office is to administer the delegation under which guidelines, which office controls the private entities and the results of their administrative activities, the manner in which this control is exercised, what possibilities there are for rectifying mistakes, and how to bring a case before a particular court. Examples of private entities fulfilling public tasks include chimney sweepers or the TÜV, a private company specialised in testing the safety of technical installations, machines, and vehicles.

Furthermore, private and public interests are intertwined in specialised administrative fields. In these fields, stakeholders are organized by law in chambers with compulsory membership: enterprises in the chambers of commerce, the various crafts in chambers of crafts, and the various liberal professions in separate chambers, such as the chambers of advocates, physicians, or architects. Some chambers have a three-level hierarchy, starting at the local or district level, followed by the Land level, and finally, the federal level. Most chambers are public authorities and have a legal personality rooted in public law, but their will is formed not by civil servants but by the members of the community in question. Thus, they may qualify as public law organizations for civil society.

In addition, there is a significant number of tasks, most of them in social welfare, which are carried out by state or municipal entities, as well as by private parties. Examples include firefighting, healthcare, nursing, education, and caring for socially disadvantaged groups. Private parties in this field, such as private hospitals, nursing homes, infant schools, and schools, must conform to minimum legal requirements and operate under the (permanent) supervision of the state (usually the second or third level of administration), depending on the tasks at hand, for example, regarding hygiene, building requirements, employment requirements, etc. In some fields, private operators require a licence, and the licencing procedure helps public authorities organize their control over these private parties.

In addition, state administration organs cooperate with private experts in different fields, such as with environmental protection organizations, with interest representation organizations in the business sphere or the liberal professions (which

further the private interests of those groups, for public interest see above, 'chambers'), or with private initiatives in the cultural sector. Some are granted special rights by law; for example, the right to initiate or be heard in administrative procedures. Similarly, certain stakeholder associations can or should be heard or consulted in some procedural settings, from prisoners to victims of accidents, from parents of schoolchildren to self-organizations of the elderly, from organized neighbours to sports organizations, and many more.

Finally, public entities may also own private companies. For example, the Federal Republic owns the Deutsche Bahn and the Länder; provinces, districts, and municipalities own shares in companies providing electricity or water. Other business interests differ among the Länder; for instance, BW owns a brewery and holds a majority stake at Stuttgart Airport.[32] Districts and municipalities must comply with certain limitations to avoid financial losses. They must approve the risks of the business and must not be overruled by private co-owners.[33]

### *3.2. Local self-government*

#### *3.2.1. Constitutional functions and framework*

Within the organization of public power, one of the main functions[34] of local self-government is administrative decentralisation. As a legal concept, the principle of local self-governance can be described as the autonomous task fulfilment of public entities through their own organs, under the purely legal supervision of the state. Another function of local self-government can be described as encouraging citizens to participate in public affairs, which is connected to the political term self-government in the sense of democratic participation in local public administration.[35] In this regard, local self-government facilitates the bottom-up construction of democracy.[36]

Grundgesetz establishes local self-government as an institutional guarantee rather than a collective fundamental right.[37]

Regarding the contents of local self-government, the wording of the Article 28(2) GG enshrines the entitlement of municipalities to regulate and administer the 'public affairs of the local community' independently and within the framework provided by law. Thus, the federal constitution itself differentiates between local issues (for which local governments enjoy universal autonomous jurisdiction) and public issues beyond the local level (which fall within the competence of the state, usually the Land, and in

32 For a complete list of BW Land property in business enterprises see the website of the BW Ministry of Finance. Beteiligungen und Landesbetriebe im Überblick, Baden-Württemberg Ministry of Finance, 2023.

33 For the conditions of such business and the different legal possibilities for cities see, e.g., §§ 102, 103 Local Self-Government Act BW.

34 Sachs, 2018, pp. 1059–1060.

35 Article 28(2) GG provides for a decentralized public administration on the basis of civic participation: Decisions of the Federal Constitutional Court (BVerfGE) 107, 1 (11).

36 BVerfGE 11, 266 (275).

37 BVerfGE 48, 64 (79).

rare cases the federation). Thus, the 'public affairs of the local community' define the constitutionally protected scope of local government autonomy. The 'public affairs of the local community' can be described as covering all issues deriving from the local community or being closely connected to it and, therefore, having an impact on local citizens as a community and the way they live together.[38] In contrast, the Land legislator must be granted a certain degree of discretion while defining the legal framework, as the circumstances of local communities continuously change due to technological progress (e.g. public transport or infrastructure), but also economically or in terms of demography. It is important to note that many public issues are simultaneously connected at both the local and regional or even supra-regional levels. Therefore, the legislature's aforementioned discretion is subject to limited judicial review. The legislator is entitled to define standardised tasks and is not obliged to consider each municipality or group of municipalities.[39] However, the legislature must treat municipalities equally when distributing money or goods.[40] The principles described above are enshrined in the Land constitutions. Article 71 of the Constitution of BW contains wording similar to Article 28 of the GG, entitling municipalities to govern their (local) affairs independently within the framework provided by law.

Therefore, the legal supervision of decisions by the local government is limited, as provided by the relevant laws in each Land in accordance with the constitutional guarantees related to local self-governance. In the constitutionally protected 'public affairs of the local community', Land authorities may supervise local governments only for legality but are barred from controlling the expediency of local decisions and measures.

### *3.2.2. Structure of local self-government and terminology*

In the Land of Baden-Württemberg, the all-German structure of the local, mid-, and state (Land) levels bears the following features, related to a total of 11.1 million inhabitants. There are 35 districts, nine towns with district powers ('Stadtkreis'—this is the term used in BW for a town with district powers; in most other Länder, the term is 'kreisfreie Stadt'), and 1,101 municipalities ('Gemeinde').

Among the latter, 315 are titled town (Stadt) as they have an urban character. The title of a town is conferred by the Land government.[41] The criteria for the term 'urban character' are met if the municipality has at least 10,000 inhabitants and possesses public infrastructure of the relevant size. Towns with more than 20,000 inhabitants can apply for the title of a Large District Town (Große Kreisstadt), conferred by the Land government. Ninety-five towns qualify as Große Kreisstadt.

The district reform ('Kreisreform') of 1973 integrated 65 districts into 35 new, larger districts. Currently, they represent more than 80 percent of the total population. The remaining 20 percent live in one of the nine towns with district powers.

38 BVerfGE 79, 127, 151.
39 GG/Hellermann, 54. Ed. 15.2.2023, GG Article 28 Rn. 41.
40 BVerfGE 137, 108.
41 § 5 BW Local Government Act.

### *3.2.3. Tasks of the local government*

Among the 'affairs of the local community', i.e. in the original jurisdiction of the local government, German doctrine and legislation differentiate between three main types of tasks. The first category consists of the optional tasks, which the local government may or may not assume on the basis of a free choice ('freiwillige Aufgaben'). Typically, these tasks relate to cultural issues, such as municipal libraries, museums, community halls, theatres, and adult education facilities. Many of these optional tasks are regulated by Land legislation. If the local government elects to assume such a task, it has to fulfil them within the framework of the relevant Land laws, e.g. on libraries or theatres.

Obligatory tasks ('Pflichtaufgaben') are prescribed by law.[42] Unconditional tasks ('unbedingte Aufgaben') must be fulfilled by any local government. Examples include local elections and the organization of a local fire brigade. Conditional tasks are compulsory only under certain circumstances, such as the adoption of a land-use plan. In obligatory tasks, the local government's margin of discretion can differ depending on the following conditions: The 'Pflichtaufgaben ohne Weisung' (obligatory tasks without instruction) must be fulfilled, but the local authority is free to decide about the 'how'. However, the exact extent of discretion can be limited by the instructions of the Land or binding criteria linked to financial contributions. In cases of obligatory tasks with instructions (Pflichtaufgaben nach Weisung), the Land—usually through legislation, and in rarer cases by administrative means—also prescribes how a task has to be fulfilled. A typical example in this regard is the organization of local elections.

### *3.2.4. Organs of local authorities*

#### 3.2.4.1. Municipal council

The 'Gemeinderat' (municipal council) is the democratic representation of citizens and, therefore, the most important organ of the municipality. It consists of representatives elected by resident German and EU citizens over a five-year period. The number of members varies according to the municipality size. A small municipality with less than 1,000 inhabitants operates with a council of no more than eight members, and this number increases in several steps for larger municipalities, with the largest cities, comprising more than 400,000 inhabitants, having 60 representatives on their municipal council.[43]

Although the press tends to address councils as 'municipal parliaments', the municipal council is not legally a parliament; it is an administrative body that is

42 It must be noted that the fact that the Land legislation makes a certain task compulsory for local governments does not address the nature of that task as belonging to the 'affairs of the local community'. These tasks still form part of the constitutionally protected autonomy of municipalities, towns and, to a certain extent, districts.

43 § 25 (2) BW Local Government Act. The only municipality in BW with more than 400.000 inhabitants is the Land's capital, Stuttgart.

entitled to instruct the local administration by way of rule-making (byelaws) or individual decisions.

In the Land of Baden-Württemberg, as well as in other South German Länder, the legal framework for local governments provides for a mix of monocratic and collegial elements. The mayor, council, and municipal administration are all local self-governing institutions. The decisions are made by the municipal council and the mayor. The council adopts normative provisions as municipal byelaws ('Gemeindesatzung'), controls the municipal administration and the mayor, and makes decisions regarding municipal employees, unless the latter task is delegated to the mayor, for example, under a certain salary threshold. Finally, the council establishes a municipal budget.

#### 3.2.4.2. Mayor

The 'Bürgermeister' (mayor), who is styled 'Oberbürgermeister' (head mayor) in towns with district powers or in large district towns, has three main types of functions and corresponding powers. The mayor is the chairman of the municipal council and is entitled to vote in both the council and its committees. The second function of a mayor is to manage municipal administration. Third, a mayor represents a town or municipality.[44] The term of office lasts for eight years, and re-election is possible.

Although the council functions as the central political organ of the municipality, the practical aspects of policymaking at the local level require a strong mayor with the ability to integrate. The concept of a powerful mayor, characteristic of the South German 'communal constitution' (the German expression for systems of local government), provides that the mayor is the sole member of the municipal council involved in all three phases of local decision-making: (1) the preparation (drafting) of decisions, (2) the adoption of legally binding decisions in the council, and (3) their enforcement. In addition, the mayor is entitled to make decisions instead of the municipal council in urgent cases. Such decisions cannot be suspended before an urgently (without deadline)[45] convened meeting of the municipal council.[46] In practice, the municipal council often defines a certain amount of money as the threshold below which a mayor may adopt measures of the above type. The fact that the term of office of the mayor differs from that of the municipal council underlines the powerful position of the mayor, as well as the control functions of the municipal council over the mayor.

### *3.2.5. Structure of Municipal Administration*

The administration of a municipality is organized into offices with specific tasks and powers. This legal framework was enshrined under the Local Government Act. The mayor is the head of the municipal administration. A typical structure in BW is the division of the municipal administration into four larger units with numerous subunits, depending on the size of the municipality and the scope of the optional

44 §§ 42–44 BW Local Government Act.
45 The regular deadline for the mayor to convene a council meeting is at least seven days.
46 § 43 (4) BW Local Government Act.

tasks the municipality decides to assume. The four units typically are the main office ('Hauptamt'), where different types of tasks are concentrated, such as public communication, contact with the municipal council, human resources of the municipal administration, culture, education, sports, etc. More specific tasks are organized within the remaining units, among which one, the treasury ('Stadtkämmerei'), is responsible for public finances. A third unit called Office for Public Service and Social Affairs ('Amt für Bürgerservice und Soziales') deals with individual cases in all relevant specific fields. This unit conducts administrative procedures for citizens and residents. Environmental, building and construction issues, town development and planning and public buildings are often organized in a unit called Office for Construction and Environment ('Bau- und Umweltamt').

### *3.2.6. District, District Council and District Administrator*

The 35 districts in BW are public entities that unite the municipalities within their territory. Their main aim is to enable smaller municipalities to fulfil public tasks for which their capacities are insufficient or which transcend municipal boundaries[47]. An example is public transport between municipalities. Typical examples of the capacity size-related shared tasks of small municipalities within a district are waste management, social and youth welfare services, hospitals, as well as vocational and special schools. Districts safeguard uniform and standardised public services for all citizens in their territories by deciding on the nature and extent of optional tasks and financing them. Relevant examples include sports facilities, cultural services, and nurseries.[48]

Similar to the municipal council, each district has a district council ('Kreistag') with elected representatives serving for a period of five years.

The district administration is headed by the district administrator ('Landrat'), who chairs the district council and its committees, but does not have the right to vote. The district administrator also manages the District Administrative Office ('Landratsamt') and represents the district. The district administrator is elected by the district council for eight years and has a dual nature: (s)he is the head of the autonomous district administration and a civil servant of the district; simultaneously, (s)he is also the head of the lowest administrative level of the Land ('untere Verwaltungsbehörde'). This position is analogous to that of mayors in towns with district power.[49]

### *3.2.7. Decentralisation on the local level*

As municipalities are increasingly burdened with a growing number of optional and obligatory tasks, their financial situation has become a permanent topic in each Land in recent years. Studies have shown that municipalities with a population above 50,000 develop a growing tendency to outsource the fulfilment of their tasks. Outsourcing

47 § 1(1), (2) District Administration Act BW (Landkreisordnung für Baden-Württemberg).
48 For a detailed lists of all types of tasks (optional tasks as well as obligatory tasks with and without instructions) in BW see Landkreistag Baden-Württemberg, 2023.
49 § 15 Land Administration Act BW.

varies according to the legal form. The mildest type is a (decentralised) public law entity that fulfils the task. Formal privatisation transfers the task to a legal entity in private law owned entirely or partially by the municipality. Material privatisation is the strictest form of privatisation and means that a certain task is fulfilled by a private enterprise on the basis of a contract with the municipality. The tendency to outsource and privatise is driven by the liberalisation of certain economic sectors through EU legislation. Typical fields include public transport, waste management, water management, and the local and regional energy sectors. The economic pressure on local authorities to outsource tasks is often criticised because of the social and long-term financial risks for the municipality itself as it withdraws from the local economy. Citizens actively use the possibilities of legally and politically challenging outsourcing decisions.[50] It is important to note that the broad field of local self-government, as described above, allows municipalities to choose outsourcing as a type of task fulfilment. Therefore, outsourcing triggers not so much questions of legality as of financial and political expediency, for which there is no outside control in the realm of local self-administration. There is ongoing discussion in Germany in this regard, as numerous municipalities have realised that outsourcing often leads to weakened control over relevant tasks. Therefore, many municipalities are considering re-communalisation, and some have already entered this path.[51]

## 4. Current challenges in public administration

### *4.1. General challenges*[52]

The question of outsourcing, as mentioned above, is one of the current challenges to public administration. This relates to the wider question of who bears the costs of administration in a federal system of two-level statehood with an additional local self-government. Most modifications to the Grundgesetz occurred in the field of revenue distribution and financial allocation to various public actors.

In addition, the German Constitutional Court occasionally declared norms to be inconsistent with the Grundgesetz, and thereby triggered additional administrative tasks such as the recalculation of all land and building taxes. The Länder differ and will continue to differ in this regard, but they are all currently concerned with installing a new system to charge this tax in the future.

### *4.2. Digitalisation*

The tax case highlighted a generally pressing challenge for public administration: Germany lags behind in terms of digitalisation. This is true for federal and Länder administrations, and for local governments. One reason for this is that many people

50 Klus, 2013, pp. 107–203.
51 Bogumil and Holtkamp, 2013, pp. 90–105.
52 A general overview, including present problems and overviews, is presented in part 1.

(specifically among older adults) are not accustomed to using computers when dealing with administration. Digitalisation is also progressing slowly within the administration.

Furthermore, federalism is averse to centralised and uniform solutions. Consequently, each Land experiments with its own solutions, and often, the solutions chosen by the various Länder are not compatible. Local autonomy has the same effect on the digitalisation of local governments: there are as many systems as there are local entities.

For example, the introduction of the electronic land register started in December 1993, but until today, the Länder differ in the software they use and the ways in which they make use of it. Until today, it was necessary in the Land of Schleswig-Holstein to write a letter or visit the respective office in person to obtain a legally valid extract from the land register.[53] Legally, non-binding perusal of the same material can be obtained digitally by way of commercial providers, sometimes at considerably higher costs. The project for a unified electronic land register for all German Länder remains in its early stages, although its advantages are clear.[54]

### *4.3. Personal infrastructure: employment*

Another challenge for public administration is demography, with respect to the lack of a skilled workforce. A shortage of skilled labour is noticeable in the entire labour market. In public employment, the situation has worsened. Owing to the age structure, a large proportion of public employees and civil servants will retire in the next 10–15 years. The significant demand for employment in public services competes with the substantial demand in the private sector. Salaries in the private sector tend to be higher than those in the public service sector. However, public services offer a higher degree of job security.

Public employment faces a second problem, in addition to replacing large proportions of the workforce. The public sector must become more diverse to reflect the diversity of society. Upgrading public employment diversity may also help recruit suitable employees because it will make public employers more attractive to the labour market.

One way to recruit more applicants for public administration may be to extend the number of civil servants with a special status ('Beamte'). However, this is contrary to Länder's efforts to augment the number of employees and concurrently reduce the number of civil servants. Generally, it is more expensive to fill a position with a civil servant than with an employee. During the last three decades, the Länder have attempted to recruit teachers in public schools or the local and district workforce (except for leaders) as employees, rather than civil servants. If this tendency

53 Elektronisches Grundbuch [Online]. Available at: https://www.schleswig-holstein.de/DE/landesregierung/themen/digitalisierung/elektronisches-grundbuch/elektronisches-grundbuch_node.html (Accessed: 24 May 2023).
54 Einführung [Online]. Available at: https://www.grundbuch.eu/einfuehrung/ (Accessed: 24 May 2023).

is reversed in the interest of filling positions, then older and more experienced employees will be superior to younger and less experienced civil servants. Owing to a more mobile workforce, the Länder may also have to compete with each other for the best candidates, a phenomenon previously known merely from the fringes of public service, for example, from leading university professors. Poorer Länder may have to push themselves to the limit to fill open positions. This is even more true for towns and districts, where salaries are somewhat lower than those of the Federation or a Land.

### *4.4. Material infrastructure: public buildings*

The need for more resources arises when many public office buildings, schools, etc., need thorough modernisation. Many public edifices were built after the WWII. Planning new buildings must consider the wider use of remote work. During the COVID-19 pandemic, remote work has also expanded public services. Many public employees and civil servants want to continue using this system. Furthermore, reducing commuting between homes and workplaces is a means of fighting climate change. Therefore, many investments in public buildings now require a vision of the evolving German public service.

Often, tearing down buildings and constructing new ones may be the most effective solution. This is not an easy task: buildings have to bring together hitherto separated offices, fulfil the conditions for easy public access and sustainability, and fit within the limited spaces available in the inner cities. A split between an inner-city front office and a big office building with back-offices on the outskirts may be an option, although this also requires an adjustment of administrative procedures.

### *4.5. Financial infrastructure: distribution of public revenue*

Another challenge is the sufficient financing of tasks and duties within the federal structure of state administration. Traditionally, the number of tasks fulfilled at the lower levels of public administration is not commensurate with the taxes and other revenues generated at those levels. In the case of local self-governments, the demand for compensation paid by the Federation or the Land for burdening local self-governments with the execution of state and other tasks is a regular topic of political debate.

The abovementioned challenges can only be faced properly if all levels of public administration are financially well-equipped. Local self-governments incurred a total financial deficit of 5.8 billion euros for the year 2022. The financial projections for 2023 are also negative. Germany does have the financial capacity to properly equip the entire public sphere. Nevertheless, the allocation of financial resources to several levels of public administration is under constant pressure. One stress factor is the public debt clause, which was introduced in Article 109(3) of the GG in 2009. This public debt clause strictly limits new loans to the entire public sphere (Federation, Länder, local authorities, and public social insurance bodies). Consequently, the expenditure necessary to finance the modernisation and reform of public administration must be paid more or less completely from the current state revenue and cannot be financed

through credit. This limits the capacities, especially of the Länder and local levels, to react in time and proactively to challenges such as digitalisation, workforce, demography, or climate change.

### *4.6. Climate change*

Finally, climate change poses a challenge for public administration. There are several aspects of this challenge: (1) Fighting climate change and its consequences requires local action but a global perspective. German public administration is traditionally organized according to the principle of subsidiarity, which assigns many administrative tasks at low levels. These levels may be adequate for local action, but because of the smallness of their geographical jurisdiction, they are not well-equipped for a global perspective. The fragmentation due to federalism makes it even more difficult to implement Germany-wide strategies against climate change, because this implementation requires constant close cooperation among the many agents of political will-forming and public administration. (2) Public administration contributes to climate change. Public authorities must become aware of the necessity to reduce the ecological impact of, for example, their buildings, as mentioned before, or their behaviour and routines, such as official trips or avoiding the use of paper when a completely electronic procedure is possible. (3) Fighting climate change is a task that affects practically all fields of life and most fields of public administration. Public authorities need to get used to including climate interests in their daily work even if they are not active in open climate-related fields. For instance, it is evident that local governments will have to consider the danger of increasing inundations when planning areas near riverbeds. However, climate awareness is also desirable and even necessary when awarding social aid. Authorities may prioritise aid for climate-neutral behaviour over other expenditures, such as by helping low-income households with free public transport tickets rather than contributing to the petrol consumption of a car.

### *4.7. 'Good practice' in German public administration?*

There may be no single area of public administration where one of the German Länder or the Federation has developed what could be called a 'best practice'. This is partly due to the German system of federalism: laws are enacted by the Federation but executed by the Länder, which combines an input legitimization with output achievements or the urge for 'best practice', being of lesser importance. However, the greatest achievement of the majority of German administration is that it runs smoothly, is up to the tasks, and is rather 'bürgerfreundlich' (this German word literally means 'friendly to the citizen' and describes an attitude of the public administration which is polite, friendly, helpful, accessible, and most of all, open to the needs and wishes of the individual citizen). This overall positive state of public administration permits further development to be implemented in rather small steps, without much public attention or even public outcry, and with high professional standards.

The setback of this setting for relatively slow but constant development is the inability, or at least the problematic attitude, towards significant changes and challenges, which we have mentioned a few times. Still, it was quite an achievement to integrate most of the more than one million people who came into Germany in 2015/16 into German society, and to do so in a legal, professional, and humane manner.

The sudden influx of many refugees in 2015/16, as well as the severe inundations in the Ahr and Erft valleys in 2021, yielded another lesson regarding 'good practice'. Although public authorities are, traditionally, slow and fragmented over a larger number of entities (Federation, Land, local government, autonomous bodies, etc.), they managed to react rather quickly and adequately with the help of long-standing close ties of cooperation between the public sphere and civil society. Associations, churches, trade unions, local units of political parties, and many similar agents rushed to assist the public organs because of the long traditions of cooperation; public and private activities could be coordinated quite smoothly, albeit after an initial phase of turmoil.

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# General Principles and Challenges of Public Administration Organization in Hungary

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**ABSTRACT**

The organization of administrative bodies in Hungary has undergone significant changes over the past decades. After the change of regime, the basic democratic rules of the state were introduced, which also fundamentally determined the system of public administration. These influences led to the development of the constitutional basis for the system of public administration, which has evolved steadily since the change of regime. An important milestone in the regulation of the organization of public administration was the new Fundamental Law of 2011, which laid the foundations for several conceptual changes. The present chapter provides a textbook overview of the basic geographical characteristics of Hungary, the basic constitutional rules governing the public administration system, and the public administration system, specially focusing on state administration and local governments. The focus is on public administration bodies and their organization, with the chapter outlining also the current challenges faced by the organization of public administration in Hungary and predicaments for its future development.

**KEYWORDS**

Hungary, public administration, public administration bodies, constitutional principles, principles of public administration, local self-governments

## 1. Basic social, geographical, and economic overview

Hungary is a landlocked country located in Central-Eastern Europe that covers an area of approximately 93,030 square kilometres, making it a relatively small country in terms of landmass. It is bordered by seven nations, namely Austria, Slovakia, Ukraine, Romania, Serbia, Croatia, and Slovenia. Regarding its topography, it is diverse and varied, with the Great Hungarian Plain, also known as the Pannonian Basin, occupying much of the eastern part of Hungary. It is a vast flat area with fertile soil, making it ideal for agricultural activities, and it is also traversed by several rivers, including the Tisza and the Danube. To the north of the plain, Hungary transitions into hilly and mountainous regions, eventually reaching the North Hungarian Mountains (also known as Northern Uplands), which stretches along the country's northern border with Slovakia. This area is characterised by rolling hills, deep valleys, and

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dense forests. The highest point in Hungary, Mount Kékes, with an elevation of 1,014 meters, is located in the Uplands. The western part of Hungary is dominated by the Transdanubian Mountains, which include the Bakony, Mecsek, and the Buda Hills. These mountains offer scenic landscapes with rugged terrain and beautiful vistas. The Danube River, one of Europe's most important waterways, flows through Hungary from north to south, playing a significant role in transportation, trade, and tourism in the country. Other notable rivers in Hungary include the aforementioned Tisza and the Drava, the latter forming part of Hungary's southern border with Croatia. Hungary is also known for its numerous lakes, with Lake Balaton, often referred to as the 'Hungarian Sea', being the largest lake in Central Europe.

Regarding population, Hungary has approximately 9,7 million people living in the country, the majority of which comprises ethnic Hungarians, known as Magyars, who have a distinct language and cultural heritage. Hungary also has ethnic minority communities, including the Roma, Germans, Slovaks, Romanians, Croats, and others. Hungarian, also known as Magyar, is the official language of Hungary. It belongs to the Uralic language family and is unique among European languages, and Hungarian culture actually places a strong emphasis on the preservation of the language. Most Hungarians practice Christianity, with Roman Catholicism being the most widely followed denomination, albeit Protestantism, particularly Calvinism and Lutheranism, also has a significant presence.

Regarding educational system, it is well-developed in the country and focuses on providing quality education. Primary and secondary education is compulsory and free for all children between the ages of 6 and 16 years. Hungary also has prestigious universities and research institutions and a strong tradition of scientific research and innovation, attracting students both domestically and internationally. In terms of cultural heritage in Hungary, it is rich and reflects its historical legacy and diverse influences; in fact, the country has made significant contributions to music, literature, visual arts, and performing arts. Hungarian folk traditions, such as folk music, dance, and handicrafts, are an integral part of the cultural fabric, and the Hungarian cuisine is renowned for its hearty and flavourful dishes, incorporating ingredients like paprika, sour cream, and various meats.

The territory of Hungary consists of the capital, counties, towns, and villages, with the capital and towns being also divided into districts. As of 2022, there were 3,155 municipalities in Hungary, which can be considered a relatively high amount. Despite the disintegrated municipality system, Hungary has a high urbanisation rate, with a significant portion of the population residing in urban areas. Budapest, the capital and largest city of Hungary with a population of 1,7 million, is a major cultural, economic, and political centre. Other major cities, such as Debrecen, Szeged, and Győr also contribute to the country's urban landscape.

Importantly, Hungary has experienced significant economic transformations since the fall of communism in 1989, currently boasting a diverse and open-market economy that plays a crucial role in the Central European region, and that warrants further attention. Hungary transitioned from a centrally planned economy to a

market-based system after 1989, embracing the principles of free market competition, private ownership, and economic liberalisation. In fact, the country has implemented various reforms to attract foreign investment, enhance its competitiveness, and stimulate economic growth. Hungary's economy is driven by several key sectors, with manufacturing playing a vital role, particularly in the automotive industry. The country has also attracted substantial foreign direct investment, leading to the establishment of production facilities by major international automotive companies. Other important manufacturing sectors include machinery, electronics, pharmaceuticals, and food processing. Hungary also has a strong agricultural sector, contributing to both domestic consumption and exports. The country is indeed known for its fertile plains, which support the cultivation of crops such as wheat, corn, sunflowers, and vegetables, as well as renowned for its wine production, with vineyards in regions like Tokaj and Eger.

The service sector is another significant contributor to Hungary's economy, with tourism playing a key role in this midst as the country attracts millions of visitors each year. Budapest, with its historical landmarks, thermal baths, and vibrant cultural scene, is a major tourist destination. Other services sectors, including finance, information technology, and business services, have also been growing in recent years. Moreover, and as described above, the country has been successful in attracting foreign direct investment, particularly in the manufacturing sector. The country's favourable business environment, skilled workforce, strategic location, and access to the European Union (EU) market make it an appealing destination for investors, something that has made foreign direct investment a keystone for job creation, technology transfer, and export growth.

Hungary has also invested in developing its infrastructure to support economic growth. Regarding its transportation network, it is well-developed, boasting modern highways, railways, and an extensive network of airports, with Budapest Ferenc Liszt International Airport serving as a major regional transportation hub. It is also worthy of note that Hungary became a member of The North Atlantic Treaty Organization in 1999 and of the EU in 2004.

## 2. Public administration and constitutional order

Public administration can be defined[1] as the management of the members and organizations of society by specialised organizations, which in turn consist of professional civil servants[2] primarily in the possession of public authority.[3] The function of public administration is the professional preparation of public

1 Tamás, 1994, p. 39; Rozsnyai, 2017, p. 19; Csörgits et al., 2020, pp. 9–14; Patyi and Rixer, 2014, pp. 287–288.
2 See: Patyi and Rixer, 2014, pp. 501–521; Brezovar and Pollák, 2023, pp. 88–91; Kálmán and Lapsánszky, 2017, pp. 201–208.
3 See: Patyi, 2017, pp. 53–65; Csörgits et al., 2020, pp. 133–134; Patyi and Varga, 2019, pp. 17–21.

decisions affecting society as a whole and the future of society, and participation in the implementation of these decisions through legislation, law enforcement, and other administrative and organizational means.[4] Constitutional determination is of fundamental importance for the functioning of public administration since it describes its place in the system of state bodies. For the purpose of brevity and emphasis on matters important to this paper, the following will focus only on the most essential elements of the relationship between public administration and other public bodies.

Under Article C of the Fundamental Law[5] (in Hungarian, *Alaptörvény*), the functioning of the Hungarian state is based on the principle of separation of powers, which in turn aims at ensuring the rule of law, democratic functioning, and the efficiency of the state organization. Concomitantly, this principle does not entail that the powers in the classical sense (i.e. legislative, executive, and judiciary) operate in isolation from each other, rather that, to ensure the state's functioning, the state bodies which benefit from each power are in a special equilibrium situation where they mutually influence and control each other's activities.

The Fundamental Law provides a framework and normative foundations for the organizational system of public administration, while the system is divided into two subsystems: a) the state administration (in Hungarian, *államigazgatás*) subsystem; b) the subsystem of local governments (in Hungarian, *helyi önkormányzatok*). Regarding the organization of public administration, the key rule is that the National Assembly (in Hungarian, *Országgyűlés*) is empowered to constitute such organization, which can be done by the Fundamental Law itself (e.g. in the case of the government or ministries) or by an act. As a complementary (secondary) rule to this principle, the government (in Hungarian, *Kormány*) may establish organs of state administration as provided for by an act,[6] meaning that the government has the right to constitute an organ of state administration. Nonetheless, this must not conflict with the right of the National Assembly, which has supreme rights in this matter. Furthermore, the National Assembly has the power of oversight of state administration.

Thus, from the point of view of public administration, the following system of constitutional relations can be established in terms of the division of powers: a) National Assembly and public administration, b) President of the Republic (in Hungarian, *Köztársasági Elnök*) and public administration, c) judiciary and public administration, and d) Constitutional Court (in Hungarian, *Alkotmánybíróság*) and public administration.

4 See: Józsa, 2019, pp. 1–14.

5 The Fundamental Law of Hungary [Online]. Available at: https://www.parlament.hu/documents/125505/138409/Fundamental+law/73811993-c377-428d-9808-ee03d6fb8178 (Accessed: 4 March 2023).

6 Article 15 Sec. (2) of the Fundamental Law.

### *2.1. The National Assembly and public administration*

In a state with a parliamentary system, such as Hungary, the National Assembly and the government are at the centre of the state organization. Their relationship is fundamentally determined by the fact that the government is dependent on the National Assembly and is accountable to it, as it receives the authority to carry out governmental activities. Based on this principle, the National Assembly has a special role in the system of government and the organization of public administration, especially considering its role of drafting and amending the Fundamental Law and enacting acts. In this way, it also decides on the exercise of power, (i.e. the order and many of the basic details of governance), rendering the National Assembly a central actor of governance and, as the constitutional power, a provisioner of the Fundamental Law for the organization of the government.

The National Assembly has shared the freedom to define, in accordance with the principle of the separation of powers, the organization of the state administration between itself and the government. Importantly, in the case of local self-governments, the National Assembly has reserved for itself the full right to regulation to ensure the autonomy of local governments. The National Assembly retained the power to decide on the number of ministries and their names, the right to decide on the composition of the government, and a number of other powers affecting the administration of the state (e.g. the creation of independent regulatory bodies). Decisions concerning the organization of the state administration that are not considered by the National Assembly to be within its competence—such as decisions on the creation, reorganization, and abolition of additional state administration bodies not regulated by the Fundamental Law, and on their management—are taken by the government in exercise of its executive powers (governmental powers). It is important to note that the organization of local governments falls exclusively within the competence of the National Assembly and does not fall within the competence of the government. Therefore, the National Assembly's powers in relation to public administration can be basically divided into three groups, which are a) legislation, b) specific government decision-making powers, and c) control over public administration.

The National Assembly creates the Fundamental Law of Hungary, in which it defines the division of powers within the state organization, including the most important rules governing the structure of public administration and the fundamental rights of members of society vis-à-vis public authorities. In today's constitutional system, the National Assembly enjoys a privileged status expressed simply by its supremacy. On the one hand, this means that in addition to the drafting and amendment of the Fundamental Law, it is within its legislative competence to determine the will of the state and the main directions of that will, while the administration is only involved in so far as the legislature has remained silent (i.e. has not regulated a subject or has not done so in sufficient detail). In this sense, the administration is part of the executive, which carries out the will of the state as laid down by law or by the decrees it has itself made within the framework of the law. On the other hand, laws have primacy, as the will of the state expressed in the form of its law is stronger than

any other expression of the will of the state. Furthermore, there are the reserved matters (or exclusive legislative subjects), meaning that the administration cannot regulate them by decree even if they are not regulated by statute. These include, for example, the determination of the central budget, the adoption of the final accounts, the number and designation of ministries, the creation of autonomous regulatory bodies, and the basic rules of local government.

In addition to making laws, the National Assembly can also take important individual decisions on public administration:

a) elect the prime minister;
b) express lack of confidence in the prime minister;
c) decide on the territorial organization of the state, including the merger, division, change of boundaries, name and seat of counties, and the creation of metropolitan districts;
d) dissolve the body of representatives of a local self-government which is operating in contravention of the Fundamental Law;
e) make other personnel decisions (e.g. elect the chairman and members of the Media Council of the National Media and Infocommunications Authority).

Finally, the exercise of the power of control over public administration is a key responsibility of the National Assembly, and can take three forms: a) before the plenary, b) in parliamentary committees, and c) by specialised audit bodies. Control before the plenary and in committees may be described as direct control by the National Assembly, based on political or constitutional responsibility, while control by specialised control bodies may be described as indirect control.

The means of parliamentary control of public administration is the political responsibility of the government and its members. Control before the plenum is characterised by taking place before the National Assembly and its members, and the two basic instruments are interpellation and question. A Member of the National Assembly may interpellate and put inquiries to the government and to a member of the government on any matter within their remit, and may also put inquiries to the Governor of the Hungarian National Bank (in Hungarian, *Magyar Nemzeti Bank*). The difference between an interpellation and a question is that the National Assembly votes on whether to accept the answer to the interpellation, and if the answer is rejected, it is examined by a committee in detail, while the National Assembly does not vote on the answer to the question.

The National Security Committee (in Hungarian, *Nemzetbiztonsági Bizottság*) of the National Assembly has a specific role in and is responsible for the control of only the national security services (i.e. one area of public administration), which are central state administration bodies with territorial branches. In the case of these bodies, parliamentary control is exercised through the National Security Committee, and if it detects that a national security service is operating in breach of the law, it may request information from the minister and from the directors-general of the national security services on a) the national security situation in the country and b)

on the functioning and activities of the national security services. If it considers it appropriate, it may conduct a fact-finding investigation, in the course of which it may inspect the documents in the records of the national security services relating to the case in question and interview the staff of the national security services.

To exercise the power of control over public administration, the instruments before the plenary and the committee are not sufficient on their own, and thus new, specialised forms of control have been created. The National Assembly's audit function is performed by, first, the State Audit Office of Hungary (in Hungarian, *Állami Számvevőszék*), which is the supreme financial and economic control body of the National Assembly and has general powers to control the use of public funds and the management of state and local government assets. Second, the Commissioner for Fundamental Rights (in Hungarian, *Alapvető Jogok Biztosa*), whose mission is to protect fundamental rights and ensure that the activities of public authorities do not infringe on people's constitutional rights. Third, the Budget Council (in Hungarian, *Költségvetési Tanács*), which has the role to provide expert assistance and oversight for responsible budget planning.

When examining the relationship between public administration and the National Assembly, it is also necessary to stress that public administration, and in particular the government and its ministries, play a key role in the preparation of the National Assembly's decisions. At the same time, the public administration system plays a key role in organizing the implementation of the National Assembly's decisions, in implementing them, and in monitoring their implementation.

### *2.2. The President of the Republic and public administration*

The relationship between the President of the Republic (hereinafter referred to only as president) and the administration is essentially determined by the form of government. In the case of the parliamentary form of government, the relationship between the president, as the head of state, and the administration can be described essentially as the first exercising autonomous, specific state activities towards the latter. These activities are partly related to the preparatory activities of the administration, and in the Hungarian constitutional system, this is expressed by the legal institution of countersignature. The decisions of the president—whether related to or affecting public administration—are submitted to him by the prime minister (in Hungarian, *Miniszterelnök*) and the minister, but the validity of the President's decision is subject to the countersignature of the prime minister and the minister.[7] Notwithstanding, it is also important to emphasise that the president may refuse to take a decision according to the proposal if the legal conditions are lacking or if he has good reason to believe that it would result in a serious disruption of the democratic functioning of the state organization. In making his decision, the president must examine whether compliance with the proposal could result in such disturbance, and whether the content of the democratic functioning of the state body and the fundamental values of the Fundamental Law could be impaired.

7 See Decision of the Constitutional Court no. 47/2007 (3 July 2007) AB.

Considering the above, the most important powers of the president concerning public administration can be grouped as follows. First, appointment powers, appointing ministers, secretaries of state, and secretaries of state for public administration; the heads of state administration bodies independent of the government; the Governor and Deputy Governors of the Hungarian National Bank; ambassadors; appoints and promotes generals; university professors; confirms the presidents of the Hungarian Academy of Sciences (in Hungarian, *Magyar Tudományos Akadémia*) and the Hungarian Academy of Arts (in Hungarian, *Magyar Művészeti Akadémia*). Second, assisting in the legal supervision of local authorities, as if the National Assembly dissolves the body of representatives of a local self-government, it shall authorise the head of the competent county government office to exercise, for the period until the election of the new body of representatives, the duties and powers which the law assigns to the mayor, and to decide in urgent cases on matters which are the delegable powers of the body of representatives. Third, territorial planning powers, as the President decides on the granting of the title of town, the formation of a municipality, the unification of a municipality, the abolition of the unification of a municipality, and the naming of a town or municipality. Fourth, other powers, as the President decides on matters relating to the acquisition and termination of citizenship, and exercises the right of individual pardon.

### *2.3. The judiciary and public administration*

Under the Fundamental Law, the judicial system includes the courts and the public prosecutor, in view of which it is necessary to review the administrative instruments of these two bodies.

#### *2.3.1. Courts and public administration*

The constitutional basis for administrative adjudication is laid down in Articles B and C of the Fundamental Law, which stipulate that Hungary is an independent, democratic state governed by the rule of law and that the functioning of the Hungarian state is based on the principle of the separation of powers. The essence of the rule of law is to ensure the effective enforcement of the law within a state, for which it is necessary to establish mechanisms to ensure that the behaviour of members of society is genuinely in conformity with the law by ensuring that adverse legal consequences are applied in the event of a breach of the law. This requires the objective (substantive) enforcement of the law (objective legal protection). The rule of law also includes the principle of the subordination or legality of public administration, which means limiting the exercise of power and the possibilities for intervention by public administration through binding the action of public administration, protecting it against unjustified, arbitrary administrative intervention and abuse of (public) power, and making its decisions predictable. Meanwhile, mechanisms are also needed to enable those affected by the application of the law to challenge the justification and necessity of the legal consequences. In this context, according to Article XXVIII (7) of the Fundamental Law, everyone has the right to seek legal remedy against any

court, authority, or other administrative decision which violates his or her rights or legitimate interests (subjective legal protection).

Nevertheless, the fundamental organizational and jurisdictional guarantee of the legality of public administration, which also derives from the rule of law and the separation of powers, is that the court, as far as possible, is the guardian of the legality of public administration.[8] In view of this, Article 25(2) of the Fundamental Law stipulates that the court shall decide on the legality of administrative decisions.[9] This provision is the constitutional basis of administrative adjudication and means that, at the request of the person entitled to it, the court shall examine the legality of an administrative act (decision) and, in the event of a breach of the law (violation of the law), shall take measures to remedy the breach or shall order the administration to act.

The function of administrative adjudication is the protection of rights, of which two types can be distinguished, being a) subjective and b) objective legal protection. Subjective legal protection, which is based on the fundamental constitutional right to legal remedy, is aimed at protecting the rights of the subject (i.e. the right of the court to examine the legality of the administrative decision at the request of the aggrieved party). Objective legal protection is based on the rule of law and aimed at protecting substantive law and legal order, playing a complementary role to that of the subjective legal protection function. In some cases, the restoration of the substantive legal order is necessary even in the absence of an individual claim for legal protection, in accordance with the rule of law and the principle of separation of powers. The objective legal protection function is only partially fulfilled by the court of its own volition (e.g. decision to proceed with a case, and narrow cases of ex officio evidence), and is primarily achieved by ensuring the right to bring an action without prejudice to individual rights; that is, administrative procedural law provides for the possibility of bringing an action to various organizations in the public interest or in certain segments of the public interest (e.g. non-governmental organizations, public prosecutor, and government office responsible for the supervision of the legality of local authorities).

At present, administrative justice in Hungary is provided by a two-tier court system that is not separate from the ordinary courts. The courts of first instance are the regional courts (in Hungarian, *törvényszék*) with an administrative college (in Hungarian, *közigazgatási kollégium*), totalling eight in the country.[10] These courts,

8 Rozsnyai, 2017, p. 53.

9 Article 25(2) of the Fundamental Law: Courts shall decide on criminal matters, civil disputes, the lawfulness of administrative decisions, the conflict of local government decrees with any other law and their annulment, the establishment of omission by a local government of its obligation based on an Act to legislate, and on other matters specified in an Act.

10 There are also administrative colleges at the Budapest Metropolitan Court, the Budapest District Court, the Debrecen Court, the Győr Court, the Miskolc Court, the Pécs Court, the Szeged Court, and the Veszprém Court. See Article 21 (4) of Act CLXI of 2011 on the Organization and Administration of Courts (2011. évi CLXI. törvény a bíróságok szervezetéről és igazgatásáról) [Online]. Available at: https://net.jogtar.hu/jogszabaly?docid=a1100161.tv (Accessed: 3 March 2023).

owing to the existence of the administrative colleges, are specialised in the administrative justice system. In the second instance, the court of appeal is the court of justice with an administrative division, the Metropolitan Regional Court of Appeal (in Hungarian, *Fővárosi Ítélőtábla*). The last instance is the Curia (in Hungarian, *Kúria*) as the supreme court, which is also the court of first instance in cases of review of the law (e.g. proceedings to examine whether a local government decree conflicts with another law, and proceedings for failure by a local government to fulfil its legislative obligations) or in proceedings to designate the administrative body responsible.

*2.3.2. Prosecutor and public administration*

Pursuant to Article 29 (1) of the Fundamental Law, the prosecutor general (in Hungarian, *legfőbb ügyész)* and the prosecution service (in Hungarian, *ügyészség*) are independent, and as public prosecutors, they are the exclusive enforcers of the criminal claims of the state. The prosecution investigates criminal offences, acts against other unlawful acts and omissions, and promotes unlawful act promotion. The prosecution service, as a protector of the public interest, shall exercise additional functions and powers as defined by the Fundamental Law or by act. The Fundamental Law defines the prosecution's primary functions as those of criminal law, but does not explicitly mention its administrative functions, given that it essentially refers their definition to the legislative level. Taking all this into account, the functions of the prosecution service can be divided into essentially criminal and non-criminal functions.

The framework of the legal regulation, and thus the scope and limits of the duties and competences, of the prosecution service is defined by the Fundamental Law, which stipulates in Article 25 (3) that administrative disputes shall be decided by administrative courts. Based on the concept of administrative litigation, it can be established that the public prosecutor's office cannot have the right to directly influence administrative decisions, but has the power to initiate proceedings in addition to its powers of control.

The administrative tasks of the prosecution service outside criminal law are set out in Act CLXIII of 2011 on the Public Prosecution Service.[11] According to this Act, the public prosecutor's service shall contribute to ensuring that everyone obeys the law to protect the public interest. It acts to ensure the rule of law in cases and in the manner provided for by law in the event of violations of the law. The prosecution service is obliged to act if the body responsible for the cessation of the violation of the law fails to take the necessary measures, or if immediate action by the prosecutor is necessary to prevent the violation of the law. In addition, the prosecutor's office shall facilitate compliance with the provisions of the law by the bodies exercising official authority, and by the bodies adjudicating disputes, with the exception of courts and arbitration tribunals. All these tasks are generally described as the public interest protection tasks of the prosecution service. The public prosecutor exercises his

11 2011. évi CLXIII. törvény az ügyészségről [Online]. Available at: https://net.jogtar.hu/jogszabaly?docid=a1100163.tv (Accessed: 4 March 2023).

powers of public interest protection to remedy violations of the law, primarily by initiating judicial and non-judicial proceedings (right of action), as well as by initiating official proceedings and bringing legal remedies. These instruments are collectively referred to as 'action'.

The general system of the public prosecutor's powers to protect the public interest is based on the fact that, as a first step, he/she conducts an investigation ex officio to substantiate his/her actions, unless otherwise provided by law, if the information or other circumstances brought to his/her knowledge indicate a serious violation of the law, omission, or a situation in violation of the law. As a second step, if the administrative body can remedy the offence, omission, or unlawful situation on its own, the public prosecutor may issue a voluntary request for compliance, setting a time limit. The addressee of the summons shall inform the public prosecutor within the specified time limit by sending the documents that he/she has remedied the violation of the law, that he/she has arranged for the convening of a panel (in cases requiring a panel decision), or that he/she disagrees with the provisions of the summons, stating his/her reasons. In the third step, if the addressee of the summons does not comply with the summons within the time limit set by the prosecutor, does not reply, or does not agree with the summons, the prosecutor shall act or notify the addressee of the termination of the proceedings. The prosecutor shall draw the attention of the head of the competent body by means of an indication of deficiencies which do not constitute an infringement of the law and to minor infringements of the law which do not justify action.

### *2.4. The Constitutional Court and public administration*

The Constitutional Court (in Hungarian, *Alkotmánybíróság*) is the supreme body for the protection of the Fundamental Law.[12] It follows from the Constitutional Court's function of protecting the Constitution that its relationship with the public administration is essentially aimed at monitoring the constitutionality of administrative actions. Given that the Constitutional Court's primary function is the control of norms, it is essentially the legislative activity of the public administration that is concerned. The decisions of the Constitutional Court have erga omnes effect,[13] that is, their content and the interpretation of the law contained in them are binding on all, meaning that in addition to the legislative activity of the public administration, it also has a major impact on the application of the law by the public administration. Regarding the subject matter of the Constitutional Court's review proceedings, it relates to the case of local self-government ordinances. The power of review is shared between the Constitutional Court, the Curia, and the administrative courts, whereby the Constitutional Court examines the conformity of a municipal ordinance with

12 Article 24 of the Fundamental Law.

13 Article 39, paragraph (1) of Act CLI of 2011 on the Constitutional Court (2011. évi CLI. törvény az Alkotmánybíróságról) [Online]. Available at: https://net.jogtar.hu/jogszabaly?docid=a1100151.tv (Accessed: 3 March 2023).

the Fundamental Law if the subject of the examination is limited exclusively to such conformity, without examining whether it is contrary to the law. If the municipal ordinance is no longer to be examined solely regarding its conformity with the Fundamental Law, but to other acts as well, the Curia has the power to conduct a review procedure.[14]

## 3. Organizational principles and structure of the public administration

### *3.1. Basics of public administrative organization and bodies*

The organization of the public administration in any country, including Hungary, is a huge budgetary burden, is fundamentally linked to the competitiveness of the country, and directly affects its population, including public policy issues. The one thing that is certain is that the functions of the public administration must be performed in some way and within some administrative organizational framework. The system of public administration is determined by the domestic legal—mainly the constitutional—system and is also fundamentally regulated by domestic law. Even the EU has a relatively limited way to influence this matter, restricting the freedom of individual EU Member States to organize themselves (e.g. the EU sets certain limits through legal sources for organizations requiring administrative autonomy or other independence).

The most important aspects of the design of the public administration system are, first, that it must be able to implement the will and program of the government efficiently and to a high professional standard. Second, to be as cost-effective as possible from a budgetary point of view ('cheap'). Third, to be close enough to the population to guarantee that public tasks are still performed adequately for the population. Fourth, to ensure that all public tasks are performed and to promote the country's competitiveness. Of course, not all countries and governments have the same proportion of the above principles, but each country and government strives to develop the most efficient public administration according to its principles.

However, since each government has a different view and principles on the most efficient way of organizing public administration, the organizational structure of public administration varies. This variability is not the same in all countries, of course, being most constant in the Anglo-Saxon legal order countries, but it is also more constant in Western European countries than in post-soviet Central and Eastern European countries or developing countries. In the above context, the Hungarian administrative organization system can be divided into two main parts based on the logic of the organizational principles and with due regard to the provisions of the Fundamental Law:

a) In the subsystem of state administration bodies, the government has the—hierarchic—power of control over the de-concentrated bodies exercising the

14 See Decision of the Constitutional Court no. 18/2013 (3 July 2013) AB.

executive power of the state. There are two types of de-concentration in the Hungarian administrative system: the horizontal and the vertical de-concentration. Horizontal de-concentration means the sector-based distribution of administrative power under the power of the government. Vertical de-concentration means the territorial-based distribution of administrative power under the power of the government. Furthermore, there is another part of the subsystem of state administration bodies which are independent from the government and are not part of the hierarchic system of state administration.

b) The other subsystem of the Hungarian administrative organization is the local self-government subsystem, over which neither the government nor any other central state administration body has full power of control. This subsystem includes county self-governments and municipal self-governments, which provide the organizational framework for the self-government of local electorates.

The broader organizational structure of public administration also includes the para-administration bodies, encompassing public institutions, foundations, and utilities. These organizations usually provide various public services and institutions of public law. Their legal personality under public law links them to public administration, but they are also institutions, companies, and foundations that exist under the rules of private law.[15]

### *3.2. System of state administration*

#### *3.2.1. Central State Administration*

The fundamental characteristics and contents of the central state administration organizational system—in particular, its structure, types, the basis of its legal status, the requirements for its establishment, and the system of relations between state administration bodies—have not been regulated for a long time after the change of regime in 1989. Nonetheless, this is not a requirement in the rule of law, since the freedom of the National Assembly and the government to form organizations means that the regulation of general organizational rules of state administration bodies is not a 'mandatory' legislative (regulatory) subject.[16]

Public administration scholars[17] initially classified the main types of central public administration bodies. Still, the Hungarian organization of public administration has become so complex, multifaceted, and sprawling that it has required reform and legislation in budgetary and other areas (e.g. transparency of organization). In other words, the lack of regulation of the exercise of organizational powers, along with the complexity and opacity of the state administration's organizational system

15 Lapsánszky, Patyi, and Takács, 2017, pp. 28–34.
16 Vadál, 2006, pp. 121–123.
17 For more details see Torma et al., 2022, pp. 56–61.

and its proliferation, which also caused problems from a budgetary point of view, became unsustainable, and this was resolved by a legislative reorganization in 2006. In Act LVII of 2006 on Central State Administration Bodies[18] and the Status of Members of the Government and State Secretaries, the National Assembly regulated the scope of central state administration bodies, establishing their new system, requirements, and main operational rules. In 2010, this 2006 Act was replaced by Act XLIII of 2010 on Central State Administration Bodies and the Status of Members of the Government and State Secretaries[19] (hereinafter the Act), which remains in force and regulates—along with the Fundamental Law—the legal status of central state administration bodies, their types, and certain issues of their operation. Based on this legislation, the basic types of central state administration bodies in Hungary are:

a) the central government administrative bodies (in Hungarian, *központi kormányzati igazgatási szervek*);
b) the autonomous bodies (in Hungarian, *autonóm államigazgatási szervek*);
c) the independent regulatory organs (in Hungarian, *önálló szabályozó szervek*);
d) the law enforcement bodies (in Hungarian, *rendvédelmi szervek*).

The central government administrative bodies comprise the government and the types of central government administrative bodies hierarchically subordinate to the government. Autonomous public administration bodies and independent regulatory organs are types of body not under the hierarchical authority of the government and, thus, are independent of the government. Law enforcement bodies, although subject to the hierarchical authority of the government, are a separate type of public administration because of their specific characteristics linked to the state's monopoly on legitimate physical violence. In addition to the law enforcement body as a type of central state administration, the Act also highlights the Military National Security Service, which is not a type of central state administration but can be considered as a separate central state administration body that cannot be included in the other types. The sub-types of central government administrative bodies are defined in Act CXXV of 2018 on Government Administration,[20] which defines a type of central government administrative body:

a) the government (in Hungarian, *Kormány*);
b) the ministry (in Hungarian, *minisztérium*);
c) the government offices (in Hungarian, *kormányzati főhivatal*); and
d) the central offices (in Hungarian, *központi hivatal*).

18 2006. évi LVII. törvény a központi államigazgatási szervekről, valamint a Kormány tagjai és az államtitkárok jogállásáról [Online]. Available at: https://njt.hu/jogszabaly/2006-57-00-00 (Accessed: 3 March 2023).
19 2010. évi XLIII. törvény a központi államigazgatási szervekről, valamint a Kormány tagjai és az államtitkárok jogállásáról [Online]. Available at: https://net.jogtar.hu/jogszabaly?docid=a1000043.tv (Accessed: 3 March 2023).
20 2018. évi CXXV. törvény a kormányzati igazgatásról [Online]. Available at: https://net.jogtar.hu/jogszabaly?docid=a1800125.tv (Accessed: 3 March 2023).

The Fundamental Law directly creates the government, namely it is a 'necessary' constitutional institution, being the distinguished actor of the division of powers, the central institution of the executive power, and, with the primacy of the National Assembly, the determining institution of governmental activity.[21] The government is 'the principal organ of public administration' according to the Fundamental Law, meaning in a broad sense that the government has an essential influence on public administration, including local governments, but in a narrow sense that the government directs only state administrative bodies (e.g. Ministries). The government exercises only the legal supervision of local governments, which grants it a much lesser power to intervene than the direction.[22] The government is responsible for the National Assembly, which in turn is a very important element of the definition of the government because the powers of the government are mainly delegated by the Assembly. Specifically, the National Assembly does the following actions: authorises the government to implement its program and policies; plays a key role in the creation of the government (e.g. electing the prime minister); the Assembly's acts regulate the basis of the government's and the state administration's functioning; supervises the activity of the government, as the National Assembly Members can ask questions to the ministers or the prime minister; the committees of the National Assembly hold hearings on various matters. Meanwhile, the government is a collegial body comprising the prime minister and the ministers,[23] has law-making (government decree) and organizational powers, supervises the legality of local governments,[24] and has other competences.

The Fundamental Law directly creates the ministry, as a type of body and a necessary constitutional institution, and similarly designates its minister. Ministries, which operate concurrently, are provided for by an act enacted based on the authorisation of the Fundamental Law—that is, individual ministries are not created by the government but by an act of the National Assembly. The ministry is both the minister's working body and a specialised public administration body under the direction of the government and headed by the minister.[25] The ministries are under the authority of a single head, meaning that the powers necessary for exercising the ministries' functions are vested in the head of the body, the minister, who is a political element in the organizational structure. The government lays down each minister's detailed duties and powers in a government decree issued under its original legislative powers. Consequently, the right to define the content of the ministerial 'portfolios' is exercised by the government, which is indeed necessary because it allows the government to define the framework within which the individual ministries perform their public functions in line with its program. The minister prepares governmental decisions, makes the law (decree), governs the budgetary matters of subordinate

21 Stumpf, 2015, pp. 8–10.
22 Franczel, 2013, pp. 17–44.
23 Fazekas in Patyi and Rixer, 2014, p. 290.
24 Hoffman, 2021, pp. 30–39.
25 Petrétei, 2014, p. 162.

bodies, manages state-owned property, directs subordinate bodies, performs legal supervision over non-subordinate bodies (e.g. public corporations), manages sectoral information systems, and holds contact with non-governmental organizations and citizens.

Several tasks in the central government should not be performed by ministers or their ministries (e.g. administrative proceedings in concrete cases), and instead should be conducted by different types of organs, including governmental offices, central offices, autonomous bodies, and independent regulatory organs. The governmental offices are central state administration bodies established by an Act of the National Assembly, operating under the direction of the government and under the supervision of the minister appointed by the prime minister. These offices hold special powers which cannot be instructed in the performance of their duties as defined by law, and the main elements of the legal status of government offices are as follows: a) National Assembly may establish them by an act; b) they have considerable budgetary independence; c) the organization structure does not consist of a political element; d) its tasks and powers are defined by an act; e) they have national jurisdiction to perform specific public administrative tasks, but do not have the status of a ministry; f) report to the government on their activities but inform the concerned committee of the National Assembly at once. These offices also exercise administrative authority powers.[26]

The central office is a main government administration body with special powers, established by an Act or a Government decree, under the direction and supervision of a minister (or the prime minister) as part of the administration. The legal status of a central office is primarily based on a government decree, so this is the main type of non-ministerial central bodies founded by the government. A central office may be created by law if it is to perform armed law enforcement functions,[27] and it usually carries out duties like administrative proceedings (e.g. issuing licenses and imposing fines) and makes decisions of the second instance in cases managed by territorial bodies. Regulatory inspection and supervision are also major parts of their powers, as they check if clients comply with the provisions of legal regulations and decisions. Central offices also maintain official recordings and organize and finance public services.[28]

Autonomous bodies are central public administration bodies with special powers, established by an Act of the National Assembly and not controlled or supervised by the government. Their tasks originally were related to governmental tasks, but for some reason, these tasks had to be decoupled from the government, for reasons such as to defend some constitutional rights or an obligation from union law. These autonomous

26 The government offices are the Hungarian Central Statistical Office and the Hungarian Intellectual Property Office.

27 The only example of the latter is the National Tax and Customs Administration.

28 At present, the central offices are, for instance, the National Tax and Customs Administration, the Hungarian State Treasury, the National Food Chain Safety Office, National Centre for Public Health and Pharmacy.

bodies tend to work in politically sensitive sectors like market competition and public procurement, and hence differ from all other central public administration bodies in that the government does not exercise any right of control or supervision over them. The National Assembly itself regulates their organization and operation, granting them an autonomy that affords primary independence from the government, and they also have a very high degree of budgetary and financial autonomy. Autonomous bodies carry out duties like administrative proceedings (e.g. issuing licenses and imposing fines). They also have quasi-jurisdictional and other regulatory competencies.[29]

Independent regulatory organs[30] appeared in the Hungarian public administration system upon the entry into force of the Fundamental Law of Hungary. These organs are central state administrative bodies with special powers that are independent of the direction and supervisory powers of the government, have a constitutional status, are established by the National Assembly in a cardinal act for the performance and exercise of certain functions and powers within the scope of executive power, perform regulatory authority activities, and have legislative powers.[31] The baseline of their independence is adapted to the professional content of their work and several EU and constitutional requirements of specialised administration.[32]

Law enforcement agencies are central government bodies, but they have a specific legal status based on their tasks. One of the bases of their special status is that they perform functions of constitutional importance, for which, for guaranteed reasons, power over them is shared under the principle of separation of powers in all constitutional states, including Hungary. Thus, regarding law enforcement agencies, the National Assembly, the government, and the president also exercise the functions laid down in the Fundamental Law and the laws, such that the exercise of power over law enforcement agencies is not concentrated on the hands of one branch of power. The difficulty in defining law enforcement agencies lies in their different legal status, which renders them extremely heterogeneous.[33] The police, which is a generic term, and the national security services have constitutional status (i.e. they are 'necessarily' state administrative bodies), but the other law enforcement agencies are not provided for in the Fundamental Law and their status is based on an act. The concept of law enforcement agencies has no dogmatic basis, and a law enforcement agency is what

29 At present, the following are considered autonomous bodies in the Hungarian administration: a) the Public Procurement Authority; b) the Integrity Authority; c) the Hungarian Competition Authority; d) the National Authority for Data Protection and Freedom of Information; e) the National Election Office; f) Directorate-General for Auditing European Aid, g) Sovereignity Protection Office.

30 There are four independent regulatory organs in Hungary: a) the National Media and Infocommunications Authority; b) the Hungarian Energy and Public Utility Regulatory Authority; c) the Supervisory Authority for Regulated Activities; d) the Hungarian Atomic Energy Authority.

31 Kálmán, 2021, pp. 74–85; Kálmán, 2023, pp. 105–119.

32 Fazekas, 2015, pp. 15–20; Hulkó and Kálmán, 2013, pp. 1–8.

33 The following bodies or types of bodies can be classified as law enforcement bodies in Hungary: a) the police, b) the penitentiary organization, c) the professional disaster management organization, and d) civil national security services.

the law calls it. Law enforcement agencies are typically armed or armable, but some, such as the emergency services, are not.

*3.2.2. Territorial state administration*

An essential feature of the Hungarian public administration is the coexistence of hierarchical bodies, also called de-concentrated bodies, that are subordinate to the central government, and de-concentrated bodies with relative autonomy to the central government. The central administration's operational executive functions are carried out by territorial and local administrations that are closer to the client and based on a territorial division of labour.

State administration bodies are organized vertically, from the central government to territorial and, exceptionally, local levels. Their structure is characterised by de-concentration, which can be seen in how they govern each other, where governments at higher levels in the hierarchy have, among other things, decisive influence over the government bodies under their authority. As a result of this central subordination, the scope and structure of public administration can change relatively frequently depending on the decision of the government to reorganize it. With a few exceptions, public administration organs are typically single-managed and responsible bodies that mostly perform specific public legal enforcement functions.

In Hungary, the competence of territorial state administration bodies, and thus the concept of 'territory', cannot be directly and exclusively determined by constitutional rules. However, it is a fact that, according to the Fundamental Law, the territory of Hungary (apart from the capital) is divided into counties, towns, and villages, making this division the only constitutionally based territorial organization in Hungary. Nonetheless, the Fundamental Law does not rule out the creation of other territorial levels, entailing that it is a matter for the government to decide, within the scope of its freedom of organization, which other territorial units (in addition to the general territorial division) it assigns the performance of a particular state administrative task. This has led to the creation of the district as a territorial level of state administration, or, in the case of certain specific state administration tasks, the region (e.g. immigration tasks) and interterritorial units which are not aligned with either county or district boundaries (e.g. national park directorates).[34]

The most important criteria for the organization of territorial public administration are therefore the content of the public task and the need to bring this task closer to the population. Based on these two aspects, there are regional public administration bodies aligned with the territorial organization principle of the Fundamental Law (the counties) and those that are not. There are also territorial authorities de-concentrated at one, two, or more levels. In the case of single-level de-concentration, the central government body has county or regional territorial bodies, while in the case of two-level de-concentration, additional territorial government bodies are created

34 Barta, 2012, pp. 3–10; Gyurita, 2014, pp. 8–19; Kálmán, 2018, pp. 73–91; Barta, 2021, pp. 4–15; Gyurita, 2021, pp. 54–73.

below the county or regional level (e.g. at the district level, less frequently at the town or village level, or based on other territorial organization principles), and so on.

The territorial state administration of Hungary is a well-integrated system. The so-called 'central' organizations of territorial state administration are the capital and county government offices (in Hungarian, *fővárosi és vármegyei kormányhivatal*; hereinafter referred to as county government offices). Their importance and place in the state's organization are reflected in the Fundamental Law, which states that the county government office is the territorial government administration body of the government with general powers. The Fundamental Law, therefore, stipulates that territorial government offices are subordinate to the government, implying that their area of responsibility is primarily related to the government decision implementation and that, unlike other territorial government bodies, they are not subordinate to ministries or central authorities. Moreover, they have general powers (i.e. they administer several sectors), and the Fundamental Law also stipulates that the government, through the regional government office, ensures the legal supervision of local self-governments.

The government commissioner (in Hungarian, *főispán*), the director-general, and the director represent a county government office's 'top' management. The government commissioner is a political officeholder, meaning, on the one hand, that the commissioner's mandate is linked to the prime minister's mandate and can therefore be considered a political variable. On the other hand, the government commissioner's post is not linked to any professional qualifications required by law. The government commissioner is appointed and dismissed by the prime minister on a proposal from the minister, and any person with no criminal record who is eligible for election to the National Assembly may be appointed for the position of government commissioner. The appointed government commissioner shall take an oath before the prime minister, its term of office shall be the same as that of the government, and the commissioner is politically accountable to the prime minister.

The heads of a county government office other than the government commissioner are professional managers, meaning that their mandate is not linked to the mandate of the government commissioner (i.e. they have an indefinite term of office and must have the professional qualifications required by law). The basic task of county government offices is to participate in the territorial implementation of government objectives by the law and the governments' decisions. In this context, the main tasks and competencies of these county offices can be grouped as follows:

a) First[35] and second instance legal enforcement powers.
b) Coordination over the organs of public administration in the county.

35 For example, trusteeship and social welfare, building and national heritage, administration of justice, protection of soil and plants, forestry, agriculture, food safety, land registry, health insurance, pensions, and labour (unemployment), labour safety, consumer protection, public health, measure and technical security, traffic, rehabilitation of handicapped person.

c) Control over the activity of all organs subordinated to the government in the county, with some exceptions (police and tax administration).
d) Control of legality over local self-government.
e) Organizational, functional, and information technology tasks.
f) Training and further training of civil servants in the county.
g) Operation of the front office for parties in administrative procedures in the form of integrated service for citizens.

District offices (in Hungarian, *járási hivatal*) are territorial branches of the county government office headed by the head of the district office, who in turn is appointed and dismissed by the minister on a proposal from the government commissioner. District offices essentially play the role of decision-making as an authority of the administrative procedure. In addition to the performance of official tasks, the district office also contributes to the performance of the functions of county government offices related to the territorial implementation of government objectives.[36]

According to the Hungarian regulation, a strong emphasis has been placed on county government offices since they are the 'central' bodies of territorial state administration with general powers and coordination and control powers. However, the territorial state administration is different from county government offices, as there are still several bodies that can be regarded as territorially de-concentrated state administration bodies with special powers. Some of these are related to financial management,[37] others to the maintenance of institutions and public asset management,[38] and others to law enforcement.[39]

### *3.3. System of local self-governments*

According to the Fundamental Law in Hungary, local governments are established to administer public affairs and exercise public power at a local level and the basic rules are to be defined by a cardinal Act. The Fundamental Law, unlike the provisions of the Constitution, does not refer to the content of local self-governance, independence (autonomy), or the fundamental constitutional right to local self-governance to which enfranchised local citizens are entitled. The right to local self-government is regulated by an act, which states that such right is vested in the community of voters of the municipalities (municipal self-governments) and counties (regional self-governments). Therefore, local governance is not a constitutional collective human right in the system of the Fundamental Law, but a collective right given by an act.[40]

36 Fábián, 2014, pp. 23–24.
37 For example, the National Tax and Customs Administration County Directorates and Hungarian State Treasury County Directorates.
38 For example, the Klebelsberg Centre's Educational District Centres and the national park directorates.
39 For example, the County Police Headquarters and the Town Police Headquarters.
40 Varga, 2023, pp. 85–97; Rámhápné Radics, 2023, pp. 85–98; Nagy, 2023, pp. 154–170.

The Fundamental Law, among other powers, also sets forth that in administering local public affairs, local governments can, to the extent permitted by law, do the following: adopt decrees and decisions; determine their organization and operation regime; exercise their rights as owners of local government properties; determine their budgets and perform independent financial management accordingly; use their assets and revenue available to engage in entrepreneurial activities, without jeopardising the performance of their compulsory tasks; decide on the types and rates of local taxes;[41] create local government symbols and establish local decorations and honorary titles; be free to associate with other local governments; establish alliances for the representation of interests; cooperate with the local governments of other countries within their competencies; be free to affiliate with organizations of international local governments.

The Hungarian municipal system is divided into two tiers, the first being the level of settlement municipalities (i.e. villages and towns) and the second being the counties. Budapest, as the capital of Hungary, has a special status, being both a settlement and county-level municipality and having a two-tier system. Moreover, the local self-governments of towns, villages, and counties are characterised by the supreme decision-making body being directly elected by the local electorate, which enjoys autonomy protected by law and is subject to judicial and constitutional protection. Local government bodies do not have a hierarchical relationship with the central government or its subordinate state administration bodies. The government and its subordinate state administration bodies are thus responsible for enforcing the legal framework for the exercise of the functions and powers of local government bodies—control of legality and supervision of legality—typically in conjunction with the courts.

The tasks performed by local authorities are essential to organize and provide public services for the population (e.g. drinking water, municipal management, local public transport, cultural services, and kindergarten care), and for the conduction of the administrative tasks entrusted to them. In general, the territory of Hungary is divided into the capital city, counties, towns, and villages. Regarding the tasks of the local self-governments, they can be differentiated into municipal and delegated administrative tasks, while local government tasks can be divided into the three categories of a) mandatory, b) voluntarily assumed, and c) facultative tasks. Regarding mandatory tasks, a part of these tasks must be performed by all local authorities. There are also have voluntarily assumed tasks, albeit there are limits in place (i.e. defined either through a decision by the local council or a local referendum) to the amount of voluntary tasks that local governments can undertake. Regarding these limitations, some of them are as follows: local governments may only undertake local public affairs which are not entrusted by law to the exclusive competence of another body (i.e. the prohibition of delegation of powers applies); in the case of local

41 About the taxation power, see for further details Lentner and Hegedűs, 2022, pp. 46–60; Borsa et al., 2022, pp. 22–34.

public affairs undertaken voluntarily, the local government may do anything that is not contrary to the law and that does not jeopardise the performance of the legally prescribed duties and powers of the local government; this may be financed through the local government's revenue or special funds provided for this purpose. Regarding facultative tasks, they seem to be emerging in recent years, and they can be placed on the borderline between mandatory and voluntary tasks. According to the regulation, a municipal government or its associations may assume the performance of mandatory tasks and competencies prescribed for another municipality with a more significant economic capacity and population, as long as the other party consents. It has been widely allowed by the Hungarian municipal law for local government officers to perform central government tasks entrusted originally to other local government officers. If the officers decide their delegated power, this decision cannot be considered a municipal decision, implying that the municipal bodies and organs cannot direct this officer. The reason for the transfer of power is the efficient and grassroots public administration. Specifically, there are powers and duties that must be performed at the settlement level, but it is not efficient for the central government to have agencies in every settlement.[42]

The local self-government is also a legal person. This rule clarifies the legal personality of local authorities' public and civil law, which is often disputed in public administration. The performance of local government functions is ensured by its body of representatives and organizations (i.e. it is the responsibility of these persons and organizations to fulfill the tasks laid down by law). The body of representatives (in Hungarian, *képviselő-testület*) is the local self-government's highest organization, which is primarily tasked with exercising the rights of self-government and fulfilling its obligations. Moreover, its members are elected directly for five years, it must hold at least six meetings and one public hearing (i.e. a special meeting) per year, the quorum for the meeting is reached when more than half of the elected members are present, and decisions are made by a simple (e.g. if the proposal is supported by the majority of the present councillors) or by a qualified majority (e.g. if the proposal is supported by the majority of the elected councillors). Regarding the qualified majority rule, it is needed and used when, for instance, there is the need to decide on the adoption of a local government decree, on the establishment of an inter-municipal cooperation or institution, on the exclusion of a councillor, or on the establishment of a conflict of interest or indignity. The body of representatives can create committees to help with its work.

The mayor (in Hungarian, *polgármester*) is the municipality's representative and is elected directly for five years, as well as serves as the chairman of the body of representatives, convening and chairing the meetings and representing the municipality. The body of representatives sets up a mayor's office or a common local government office to carry out the tasks connected with the preparation of matters for decisions, as well as to perform the implementation of such decisions, in affairs falling within

42 Fábián and Hoffman, 2014, p. 330.

the competence of the mayor or the notary (in Hungarian, *jegyző*). This office in turn participates in coordinating the cooperation of the local government with other local governments and with state organs. Local governments of villages that have less than 2,000 residents, are located in the same district, and are separated by the administrative area of only one settlement can establish a common local government office.[43]

The mayor, by way of tender, appoints the notary, referring to the chief executive officer and the head of the mayor's office, for an indefinite period. The notary decides state administrative matters delegated to his competence by a legal regulation, provides assistance for carrying out the responsibilities connected with the functioning of the local government, prepares the state administrative matters falling within the competence of the mayor for decision, decides official matters delegated to him by the mayor, and decides in matters concerning local administration and local administration authority.

## 4. Current challenges in public administration

Contemporary public administration is indispensable in the efficacious functioning of governance structures and the judicious delivery of public services. The Hungarian public administration system, akin to its global counterparts, grapples with an array of intricate challenges. The present exposition endeavoured to dissect and elucidate the pivotal challenges ensnaring the Hungarian public administration, encompassing facets of transparency, big data, efficiency, corruption, capacity building, and political influence.

Transparency and accountability, as quintessential constituents of a responsive administration, are conspicuously challenged within the Hungarian context. The scarcity of well-structured and accessible information about governmental policies, decisions, and fiscal appropriations constrains the citizenry's capacity to exact accountability. Mitigating this challenge necessitates the implementation of open data initiatives, the strengthening of freedom of information legislation, and the establishment of safeguards for whistleblowers to engender an atmosphere of trust and transparency between the government and its constituents.

Meanwhile, the integration of big data into public administration has catalysed a paradigm shift, transforming the way governments operate, serve citizens, and formulate policies. The wealth of information contained within big data facilitates evidence-based decision-making, precise policy formulation, optimised service delivery, and efficient resource management. While challenges exist, the potential benefits are undeniable. As public administration continues to evolve, the strategic utilisation of big data stands as a cornerstone of efforts to enhance governance, transparency, and citizen-centric services in the digital age.

43 Patyi and Rixer, 2014, p. 338.

The cardinality of streamlined service delivery, as a barometer of administrative efficacy, cannot be overstated. In Hungary, the labyrinthine bureaucracies and procedural inefficiencies undermine the prompt dispensation of services, engendering administrative bottlenecks and suboptimal service quality. Remedying this exigency mandates a strategic recalibration of administrative procedures, the integration of digitisation paradigms, and substantial investments in e-governance infrastructures to expedite service provision and augment the overall service experience for the population. The pervasive spectre of corruption constitutes a serious challenge to administrative probity and the integrity of governmental institutions in Hungary. The deleterious implications of corruption are manifest in the erosion of public trust and the dilution of governmental legitimacy. Counteracting this quagmire warrants the bolstering of anti-corruption frameworks, the institutionalisation of independent oversight mechanisms, the cultivation of an ethical administrative ethos, and the institution of mechanisms safeguarding whistleblowers.

The competence and commitment of the administrative workforce are also instrumental in determining the administrative machinery's operational acumen. The Hungarian administrative realm grapples with the predicament of attracting and retaining adept professionals, engendering concerns about skill gaps and attrition rates. Alleviating this predicament necessitates a strategic overture, incorporating comprehensive training regimens, competitive remuneration packages, and pathways for professional advancement to attract and retain a proficient and motivated workforce.

Safeguarding the integrity of the civil service from undue political influence is paramount in upholding the rule of law and ensuring equitable service delivery. The Hungarian administrative milieu confronts apprehension concerning the encroachment of political interests within its precincts, potentially compromising its autonomy. Addressing this perturbation requires the fortification of civil service regulations, the codification of statutory provisions to shield civil servants from political coercion, and the inculcation of meritocratic appointment modalities to secure the civil service's independence.

In conclusion, the text above elucidates the intricate tapestry of challenges confronting the Hungarian public administration system. The resolution of these challenges necessitates a holistic and synergistic approach predicated upon the convergence of governmental agencies, civil society actors, and international stakeholders. The anchoring tenets of transparency, efficiency, ethics, capacity enhancement, and administrative autonomy are quintessential in formulating a resilient and efficacious administrative edifice capable of accommodating citizen exigencies and propelling the nation towards sustainable development. The fruition of such administrative transformation augurs the fortification of democratic tenets, the amplification of governance efficacy, and the concretisation of citizen trust in the governmental apparatus.

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# General Principles and Challenges of Public Administration Organization in Poland

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**ABSTRACT**

This chapter aims to present the functions of public administration in Poland (central and local governments). It examines the Polish public administration system, its constitutional framework, the principles of the Constitution, and the broader constitutional order that applies to public administration. The chapter analyses the conceptual position of the executive branch within the system of governmental branches in light of the constitutional order, demonstrating how public administration is fundamentally influenced by the structure of supreme constitutional organs and their interrelationships. The chapter addresses the system of relations between public administration and other state bodies (e.g. Parliament, the President of the Republic, and the Public Prosecutor's Office). Finally, it discusses current challenges in public administration.

**KEYWORDS**

public administration in Poland, Polish constitutional order, Polish local government, conceptual position of the executive in the system in Poland, the functioning of the Polish public administration

## 1. Basic social, geographical, and economic overview

The Republic of Poland is a unitary state in Central Europe, situated between the Baltic Sea to the north and the Sudeten and Carpathian Mountains to the south, with much of its territory lying within the Vistula and Oder River Basins. Poland borders Russia (including its Kaliningrad region) and Lithuania to the north, Belarus and Ukraine to the east, Slovakia and the Czech Republic to the south, and Germany to the west. The Baltic Sea Coast delineates most of Poland's northern border.

Poland has an administrative area of 312,696 km$^2$ and a population of 37,766,327 people as of 2022. Warsaw is the largest city and capital, with other metropolitan areas including Kraków, Wrocław, Łódź, Poznań, Gdańsk and Szczecin. The largest Polish polycentric agglomeration is the Upper Silesian conurbation.

On 1 January 1999, Poland introduced a new administrative division. The two-tiered administrative division, which had been in force since 1975, was replaced by a three-tiered division consisting of voivodeships (województwa), counties (powiaty),

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and municipalities (gminy). Since its introduction in 1999, the new administrative division has been slightly modified.

As of 1st January 2023, the administrative division of Poland comprised 16 voivodeships, 314 counties, 66 cities with county status, and 2477 municipalities (including 302 urban municipalities, 677 urban-rural municipalities, and 1498 rural municipalities).

Administrative reforms that came into effect on 1st January 1999 established the current 16 voivodeships. These reforms aimed to create larger regions capable of completing with other regions after Poland's accession to the European Union (NUTS). The previous voivodeships were considered too small to effective utilise of financial resources.

The current administrative structure of Poland into voivodeships is as follows:

- Dolnośląskie Voivodeship: administrative seat in Wrocław
- Kujawsko-Pomorskie Voivodeship: administrative seat in Bydgoszcz and Toruń
- Lubelskie Voivodeship: administrative seat in Lublin
- Lubuskie Voivodeship: administrative seat in Gorzów Wielkopolski and Zielona Góra
- Łódzkie Voivodeship: administrative seat in Łódź
- Małopolskie Voivodeship: administrative seat in Kraków
- Mazowieckie Voivodeship: administrative seat in Warsaw
- Opolskie Voivodeship: administrative seat in Opole
- Podkarpackie Voivodeship: administrative seat in Rzeszów
- Podlaskie Voivodeship: administrative seat in Białystok
- Pomorskie Voivodeship: administrative seat in Gdańsk
- Śląskie Voivodeship: administrative seat in Katowice
- Świętokrzyskie Voivodeship: administrative seat in Kielce
- Warmińsko-Mazurskie Voivodeship: administrative seat in Olsztyn
- Wielkopolskie Voivodeship: administrative seat in Poznań
- Zachodniopomorskie voivodeship: administrative seat in Szczecin.

Special features can be identified when characterising voivodeships.
Lower Silesian Voivodeship: This voivodeship spans an area of 19,948 km$^2$, with a population of approximately 3 million and an average population density of 152 people per km$^2$. Wrocław serves as the capital. The following cities hold county (powiat) status: Legnica, Wrocław, Jelenia Góra, and Wałbrzych; the voivodeship includes 26 additional counties. Geographically, the voivodeship covers the Silesian Lowlands and Sudety Mountains, resulting in a diverse landscape. The region is abundant in mineral resources, such as hard coal, lignite, copper, nickel ores, and rock. Alongside these natural resources, which support the development of industries (mining, metallurgy, ceramics, energy, machinery, and food), agriculture is also developing.

Kujawsko-Pomorskie Voivodeship: It covers an area of 17,970 km$^2$, with a population of approximately 2.2 million and an average population density of 119 people per km$^2$. The capital city is Bydgoszcz. Cities with county (powiat) status include

Toruń, Bydgoszcz, Grudziądz, and Włocławek; there are 19 additional counties and 144 municipalities. Geographically, it covers the Pojezierze Wielkopolskie (Greater Poland Lake District), parts of the Pojezierze Pomorskie (Pomeranian Lake District), and Kujawy. Although the voivodeship has limited mineral resources, with rock salt deposits near Inowrocław, it is rich in woodland areas such as the Bory Tucholskie (Tuchola Forest) and agricultural lands. Key industries include food processing, agricultural, chemical, and engineering.

Lublin Voivodeship: It covers an area of 25,114 km$^2$, with a population of 2.2 million and an average population density of 90 people per km$^2$. Lublin serves as the capital city. Cities with county (powiat) status include Zamość, Lublin, Chełm, and Biała Podlaska; the voivodeship also comprises 20 additional counties. Geographically, it includes: Polesie Lubelskie, Wyżyna Lubelska (Lublin Highland), and Roztocze. The region's high-quality soils enable the development of agriculture (key crops include wheat, hops, sugar, and beets) and industry sectors (food, tobacco, brewing, fruit and vegetables, meat, and electrical machinery).

Lubuskie Voivodeship: It covers an area of 13,989 km$^2$, with a population of 1 million and an average population density of 74 people per km$^2$. Gorzów Wielkopolski serves as the capital city. Cities with county status include Zielona Góra and Gorzów Wielkopolski; the voivodeship includes 11 additional counties. Geographically, it includes the western regions of Poland, including the Oder and Warta valleys. This voivodeship is characterised by high forest cover and post-glacial areas. Key industries include textiles, metals, furniture, and food.

Łódzkie Voivodeship: It covers an area of 18,216 km$^2$, with a population of 2.6 million and average population density of 149 people per km$^2$. Łódź serves as the capital city. Cities with county (powiat) status include Łódź, Skierniewice, and Piotrków Trybunalski: the voivodeship includes 20 additional counties. Geographically, it occupies Nizina Środkowopolska (the Central Polish Lowlands belt). The region has few mineral resources, such as lignite and iron ore.

Małopolska (Lesser Poland) Voivodeship: It covers an area of 15,190 km$^2$, with a population of 3.3 million and an average population density of 201 people per km$^2$. Kraków serves as the capital. Cities with county status include Tarnów, Nowy Sącz, and Kraków; the voivodeship includes 19 additional counties. Geographically, it covers the Vistula River basin (dorzecze Wisły), Podhale, Karpaty (the Carpathian Mountains). The regions primary industries include leather, food, paper, fruit and vegetables, and agriculture.

Mazowieckie Voivodeship: As the largest voivodeship in Poland, Mazowieckie covers an area of 35,579 km$^2$, with a population of 5.2 million and an average population density of 142 people per km$^2$. Warsaw serves as the capital city. Cities with county status include Radom, Siedlce, Płock, and Ostrołęka; the voivodeship includes 38 additional counties. Geographically, it covers Nizina Mazowiecka (the Mazovian Lowlands). Key industries include food, electrical, electronic, machinery, armaments, and petrochemicals, and the voivodeship's fertile soils support the development of agriculture.

Opole Voivodeship: It covers an area of 9,412 km$^2$, with a population of 1 million and an average population density of 119 people per km$^2$. Opole serves as the capital. Cities with county (powiat) status include Opole; 11 additional counties are also listed. Geographically, it includes parts of Sudety and Nizina i Wyżyna Śląska (the Silesian Lowland and Highland). Key industries include machinery, meat, textiles, chemicals, confectionery, automobiles, and glass.

Podkarpackie Voivodeship: With Rzeszów as its capital city, Podkarpackie covers an area of 17,844 km$^2$, has a population of 2.1 million, and an average population density of 120 people per km$^2$. Cities with county (powiat) status include Krosno, Tarnobrzeg, Przemyśl, and Rzeszów; 20 additional counties are also listed. Geographically, it includes the Beskid Niski, Kotlina Sandomierska (Sandomierska Basin), Karpaty (Carpathian Mountains), and forested areas. The main mineral resources in this area are crude oil and sulfur. Key industries include Armament, mechanical, food, fruit and vegetables, glass, and wood.

Podlaskie Voivodeship: It covers an area of 20,180 km$^2$, with a population of 1.2 million and an average population density of 62 people per km$^2$. Białystok serves as the capital. Cities with county (powiat) status include Suwałki, Łomża, and Białystok; 14 additional counties are also listed. Geographically, it includes the Pojezierze Suwalskie (Suwałki Lake District) and Nizina Podlaska (Podlaska Lowland). The region is characterised by extensive forest cover, including the Białowieski, Augustowski, and Knyszyński Primeval Forests. Poor soil quality and unfavourable climatic conditions limit the agricultural development.

Pomorskie (Pomeranian) Voivodeship: It covers an area of 18,293 km$^2$, with a population of 2.2 million and an average population density of 76 people per km$^2$. Gdańsk serves as the capital. Cities with county (powiat) status include Gdańsk, Gdynia, Sopot, and Słupsk; 15 additional counties are also listed. Geographically, it includes Żuławy Wiślane, a coastal strip. Key industries include marine, shipbuilding, food, refining, electrical engineering, and footwear.

Śląskie (Silesian) Voivodeship: It covers an area of 12,331 km$^2$, with a population of 4.8 million and an average population density of 405 people per km$^2$. Katowice serves as the capital. Cities with county (powiat) status include Katowice, Bielsko-Biała, Bytom, Chorzów, Częstochowa, Dąbrowa Górnicza, Gliwice, Jastrzębie, Jaworzno, Mysłowice, Ruda Śląska, Piekary Śląskie, Rybnik, Siemianowice Śląskie, Sosnowiec, Świętochłowice, Tychy, Zabrze, and Żory; 17 additional counties are also listed. Geographically, it covers Wyżyna Śląska (the Silesian Upland), Jura Krakowsko-Częstochowska (the Kraków-Częstochowa Jurassic Highland), and Beskid Śląski i Żywiecki (the Silesian Beskid and the Żywiec Beskid). The region is rich in mineral resources, such as hard coal, zinc and lead, building materials, and iron. Key industries include mining, metallurgy, textiles, energy, and construction.

Świętokrzyskie Voivodeship: It spans an area of 11,691 km$^2$, with a population of 1.3 million and an average population density of 117 people per km$^2$. Kielce serves as the capital and holds county (powiat) status, with an additional 13 counties in the region. Geographically, it includes Wyżyna Kielecko-Sandomierska (Kielce-Sandomierz

Upland), Góry Świętokrzyskie (Świętokrzyskie Mountains), and Niecka Nidy (Nida Basin). Key industries include automotive, metal, glass, food, and metals and has favourable conditions for agricultural development owing to high-quality soil.

Warmia-Mazury Voivodeship: It spans an area of 24,202 km$^2$, with a population of 1.5 million and an average population density of 61 people per km$^2$. Olsztyn serves as the capital. Cities with county (powiat) status include Elbląg and Olsztyn; 17 additional counties are also listed. Geographically, it includes Pojezierze Mazurskie (the Masurian Lake District), Pojezierze Chełmińsko-Dobrzyńskie (the Chełmińsko-Dobrzyńskie Lake District) and extends to Żuławy. Known as the land of a thousand lakes, it is characterised by high forest cover. Key industries include food, meat, brewing, metal, electrical machinery, chemicals, wood, clothing.

Wielkopolskie (Greater Poland) Voivodeship: It spans 29,826 km$^2$, with a population of approximately 3.4 million and an average population density of 113 people per km$^2$. Poznań serves as the capital, with county (powiat) status extended Konin, Poznań, Leszno, and Kalisz; 31 additional counties are also listed. Geographically, it covers the western part of Niż Polski (the Polish Lowlands). Fertile soils and advanced agriculture support intensive agricultural production and breeding. Key industries include sugar, milling, energy, metal, furniture, and mining (brown coal and rock salt deposits).

Western Pomeranian Voivodeship: It spans an area of 22,896 km$^2$, with a population of 1.7 million and an average population density of 76 people per km$^2$. Szczecin serves as the capital. Geographically, it covers the coast and southern part of the Pomeranian Lakeland. The cities with county (powiat) status include Koszalin, Szczecin and Świnoujście; 17 additional counties are also listed.

## 2. Public administration and constitutional order

The Polish Constitution of 2nd April 1997 establishes the basic structure of public administration; defines the goals, positions, and principles of its operation; addresses citizens' rights and freedoms (although not comprehensively and without a proper protection mechanism, limiting itself only to the safeguards defined by statute); sets the conditions and limits of the administration's permitted interference; creates a new, closed system of legal sources; outlines the basis for controlling public administration; and introduces the direct application of its provisions.[1]

The Constitution's basis for organizational structures is formed by the provisions of Article 10. Paragraph (1) establishes that the organizational structure of the Republic of Poland is founded on the separation and balance of legislative, executive, and judicial powers. According to paragraph 2, legislative power is exercised by the Sejm (the lower house of Parliament) and the Senate, executive power by the President of the Republic of Poland and the Council of Ministers, and judicial power by the courts

1 Boć, 2011, p. 66.

and tribunals. While the organs of legislative power and the bodies of judicial power are comprehensively enumerated, the executive power is limited to the President of the Republic of Poland and the Council of Ministers. Nevertheless, Chapter VI, devoted to the Council of Ministers, is also expanded in its title to include government administration.[2]

Constitutional and administrative law belong to the field of public law, which concerns the system and actions of state organs in serving the public interest.[3] An example demonstrating the connection between these two branches is the institution of the Council of Ministers, which, on the one hand, is classified among the organs of the state, and thus falls under constitutional law. On the other hand, it serves as the chief administrative body overseeing government administration, aligning with the scope of administrative law.

Constitutional principles, regarded as both basic and key principles of administrative law, are of fundamental importance to this field. At the same time, it should be emphasised that the catalogue of administrative law principles is variable; that is, depending on the adopted conception, each scholar may prioritise different principles of administrative law. In the Polish legal order, administrative law is not codified (only the Code of Administrative Procedure exists), which also influences the lack of a uniform set of principles. In administrative law scholarship, constitutional principles (e.g. the principle of a democratic state of law) and extra-constitutional principles (e.g. the principle of swiftness of administration) are distinguished, as well as theoretical principles (e.g. the principle of decentralisation) and normative principles (e.g. the principle of objective law). Additionally, principles are also classified as material principles (e.g. the principle of equality before the law), procedural principles (e.g. the principle of two-tier body) and systemic principles (e.g. the principle of association).[4]

The overarching principle is that of a democratic state of law. It finds its normative grounding in Article 2 of the Constitution. However, it has yet to be normatively defined. The basic assumptions of this principle are the primacy of law and respect for citizens' rights and freedoms. For public administration bodies, this implies an obligation to act based on and within the limits of the law, which, in turn, necessitates respect the rights and freedoms of individuals. This principle is ensured by the judicial control of public administration within the state. [5]

The principles of rule of law and legality are directly derived from the principles of a democratic state governed by law. According to Article 7 of the Constitution of the Republic of Poland, 'Organs of public authority act on the basis and within the limits of the law'. The principle of the rule of law implies that every action of the organs of administration must be within the limits of the law; that is, it cannot contradict any

2 Boć, 2011, p. 68.
3 Sarnowiec-Cisłak, 2013, p. 42.
4 Zimmerman, 2012, p. 96.
5 Zimmerman, 2012, p. 62.

element of the legal order. The rule of law has an autonomous meaning under the Constitution. It applies to all state activities, indivisibly encompassing all organs of public authority—legislative, executive, and judicial— which must have a legal basis for their actions and ensure that such actions are not contrary to any norm of universally binding law.[6] The principle of legality implies that each action should have its own legal basis.[7] Indeed, these principles have practical applications; for instance, the Voivodeship Administrative Court in Kraków derives from them that in the activities of the bodies of local self-governments, the rule 'what is not prohibited, is allowed' does not apply, but the rule 'only what is expressly provided for by law is allowed'.[8]

As previously stated, the guarantor of compliance with the principles of a democratic state of law is judicial review, which connects the principle of the right to a fair trial. According to Article 45 of the Constitution of the Republic of Poland, everyone has the right to a fair and public hearing without undue delay by a competent, independent, and impartial court. The trial may be excluded from the public view for reasons of morality, state security, public order, or for the protection of the private lives of the parties or other important private interests. This judgement was publicly announced. In turn, in accordance with Article 77(2) of the Constitution, no law may close the judicial path for anyone seeking to assert violated freedoms or rights.

The right to a fair trial encompasses 'matters' concerning individuals and other subjects of that right. The Constitution does not define this concept. It cannot be defined solely by reference to statutes, as on constitutional grounds the concept is autonomous: 'The term "case' should undoubtedly refer to legal disputes between natural and legal persons; it includes, inter alia, disputes arising from civil law, administrative law relations.[9] This dispute is of a special nature under administrative law'.

The mechanism of the cited 'dispute' consists in the fact that the subject, who is the addressee of a public administration act (action), accuses the public administration body of the illegality of its act (action). In defending itself against such allegations, the public administration body attempts to demonstrate that its act (action) was lawful.[10]

It should be noted, first, that in accordance with Article 184 of the Constitution, the Supreme Administrative Court and other administrative courts exercise, to the extent specified by law, control over the activity of public administration. This control also includes adjudicating compliance with the laws and resolutions of local self-government bodies and the normative acts of local government administration bodies. This article explicitly refers to the fact that court-administrative proceedings in the Polish legal system are conducted in two instances, and the task of the courts is to control public administration.

6 Król, 2014, pp. 14–20.
7 Zimmerman, 2012, p. 63.
8 Judgement of the Voivodeship Administrative Court in Poznań of 30 March 2022, ref. III SA/Po 1608/21.
9 Tuleja, 2021, Article 45.
10 Zimmerman, 2006, p. 316.

The two-tier structure of administrative court proceedings adopted in the Polish legal system has been criticised by administrative law scholars. It should be noted that Provincial Administrative Courts rule in the first tier, while the Supreme Administrative Court functions solely as a court of cassation. It is emphasised that the introduction of a cassation-based legal remedy, further limited by formal procedures (entry, obligatory assistance of an advocate, grounds of appeal) while simultaneously covering an excessively wide range of first-tier court decisions, significantly restricts the right to trial.[11]

Under Polish law, the principle of a democratic state governed by law can be derived from the principle of good administration, which corresponds to other constitutional norms.[12] This principle originates directly from the European Code of Good Administrative Behavior.[13]A.I. Jackiewicz asserts that the right to good administration derives from the rule of law. This author links administrative requirements to the need for fair, law-based action (formal dimension), as well as to a substantive dimension grounded in values and ideas (dignity, freedom, equality, and justice).[14]

Nevertheless, the Constitution of the Republic of Poland has no explicit provisions expressing the right to good administration. However, according to T. Gellert, 'such a right can be (...) derived in an obvious manner from a number of its provisions being a consequence and development of the supreme constitutional principle of a democratic state of law (Article 2)'.[15] This assumption rests on the premise that some norms within the system may be derived from others. In particular, this assumption highlights provisions, such as acting on the basis of the law (Article 7), respect for human dignity (Article 30), the duty of equal treatment (Article 32), the right to a trial (Article 45), the protection of personal data (Article 51), the right of equal access to the public service (Article 60), the right to information (Article 61), the right to compensation for damage caused by unlawful action of a public authority (Article 77), the right to challenge judgements and decisions at first tier (Article 78), the right to lodge a constitutional complaint (Article 79), the right to refer to the Ombudsman (Article 80), the closed nature of the legal sources system—including the principle that internal normative acts cannot be the basis of decisions affecting citizens, legal persons, and other entities not subordinated to the body issuing such act (Article 87-94), the obligation to create a professional, reliable, impartial and politically impartial execution of public tasks (Article 153), the system of control exercised over the public administration by the Ombudsman (Article 208), the existence of an administrative judiciary (Article 184) or the functioning of the Supreme Audit Office (Article 203). The provisions of the Code of Administrative Procedures and Substantive Administrative Law correspond to the aforementioned provisions.[16]

11 Woś, 2003, p. 751.
12 Princ, 2017, p. 20.
13 Batalli and Fejzullahu, 2008, pp. 26–35.
14 Jackiewicz, 2008, pp. 32–33.
15 Gellert, p. 117.
16 Princ, 2017, p. 120.

### *2.1. The executive in the system of branches of power*

Poland's current government is a rationalised parliamentary system. It is defined this way because it belongs neither to the presidential nor classical parliamentary system. Within this system's framework, the position of the Prime Minister resembles that in a chancellor system, which, for instance, is a variation of the parliamentary-cabinet system and found in Germany.[17] This similarity results from the Prime's self-determined powers and position within the government structure. He or she plays a special role in various normative arrangements, such as a key role in the creative process of the Council of Ministers or the necessity of personal support to uphold the entire cabinet.[18]

The doctrine emphasises that the element of subordination of the Council of Ministers to Parliament's political control is evident in the annual obligation to present a report on the Budget Act's implementation and Parliament's decision to grant discharge to the government. Moreover, the activities of individual government administrative departments and members of the government may be evaluated by parliamentary committees. Specific matters fall under the jurisdiction of the parliamentary investigative committees. Members of Parliament exercise control over the government through interpellation and parliamentary questions. Simultaneously, the government remained under the leadership of the Prime Minister.[19]

In light of Article 10(2) of the 1997 Constitution, the Council of Ministers exercises executive power alongside the President of the Republic of Poland. It is, therefore, an integral component of the executive power, embedded in accordance with Article 10(1), which enshrines the principle of the division and balance of legislative power, executive power, and judicial powers. This principle constitutes one of the fundamental cornerstones of the Republic of Poland's political system. In accordance with Article 147 of the Constitution, the Council of Ministers comprises the Prime Minister and the ministers. It may also include the deputy chairpersons of the Council of Ministers (who may at the same time perform the functions of ministers simultaneously) and the chairpersons of committees specified in laws.[20]

According to Article 147 of the Constitution, the Council of Ministers consists of the Prime Minister and ministers, with its members potentially including the chairpersons of the committees specified in the acts. The Council of Ministers also feature deputy chairpersons, who, like the Prime Minister, may also serve as ministers. The Constitution does not set the size of the Council of Ministers. Thus, its size may vary depending on the governing concept adopted by the ruling majority, and occasionally, on coalition agreements between parties.

The Constitution identifies specific ministers who must be in the Council of Ministers, namely the Minister of National Defence (Article 134(2)) and the Minister

17 Juchiewicz, Rady and Ministrow, 2012, p. 31.
18 Sokolowski, 2016, p. 211.
19 Grzybowski, 2017, pp. 62–63.
20 Jamróz, Ministrow and Rady, 2020, pp. 279–299.

of Justice (Article 187(1)(1)). This also applies to the 'minister responsible for foreign policy' (Article 133(3)) and thus, as Article 149(1) states, the minister in charge of this branch of government administration. Moreover, terminological differences are irrelevant. Detailed issues concerning the divisions within government administration, including their classification and the scope of responsibilities assigned to specific divisions, are defined in the Act of 4 September 1997 on divisions of government administration (Journal of Laws No. 141, item 943).

The number of deputy prime ministers can vary. Political practice demonstrates that the position of the deputy prime ministers is often 'given' to the weaker party in the government coalition. This practice also shows that the Minister of Finance often combines this position with that of the Deputy Prime Minister. A Deputy Prime Minister does not possess ministerial authority unless he or she does also holds a ministerial position. [21]

In general, it can be said that the Council of Ministers consists of mandatory members, such as the Prime Minister and ministers, and optimal members, such as deputy prime ministers and the chairpersons of committees specified by law.

The Prime Minister holds a distinct position in the government structure and is crucial for its functioning. This influence is particularly significant if the head of government is also the leader of the winning coalition party; his or her party position strengthens them as head of government. However, such mechanism may also work in reverse during a crisis within the party.

The Prime Minister directs the work of the Council of Ministers (pt 2), coordinates and controls the work of the members of the Council of Ministers (pt 5), and serves as the official head of government administration employees (pt 7). The fact that the Prime Minister represents the Council of Ministers (p. 1) is also significant, as it strengthens the Prime Minister's constitutional position in a particular way.

The Prime Minister also supervises local self-government within the limits and forms set by the Constitution and laws (p. 6). These supervisory powers of the Prime are derived from Articles 171(2) and (3) of the Constitution. The Prime Minister is the supervisory authority (in addition to voivodes). Upon the Prime Minister's, the Sejm (the lower house of Parliament) may dissolve the constituent body of a local government if it significantly violates the Constitution or the laws. In addition, the Prime Minister is entitled to other supervisory measures over local government bodies.

These laws grant the Prime Minister's to appoint and dismiss the heads of certain central offices (e.g. the head of the Intelligence Agency, the head of the Internal Security Agency, the head of the Civil Service Office, and the head of the Office of Competition and Consumer Protection). The Prime Minister also supervises numerous central offices, such as the Central Statistical Office, the aforementioned Internal Security Agency, and the Office for the Protection of Competition and Consumers, in addition to ministers responsible for a specific branch of government administration (e.g. internal affairs, foreign affairs, public finance, and the environment).

21 Jamróz, Ministrow and Rady, 2020, pp. 279–299.

Members of the Council of Ministers may also be ministers who do not lead a separate government department but are assigned specific tasks by the Prime Minister (task ministers). The Prime Minister makes decisions regarding the appointment of the task minister. However, these decisions were not always based on substantive reasons and may sometimes reflect political considerations. Unlike departmental ministers, task ministers are unable to issue regulations.

The closest collaborators of ministers are secretaries and under-secretaries of the state, known as deputy ministers, appointed by the Prime Minister upon the recommendation of a minister.

Various subsidiary bodies exist within the Council of Ministers in the form of committees, advisory or consultative councils, and teams. The most important of these is the Standing Committee of the Council of Ministers, which comprises the Chairman (appointed and dismissed by the Prime Minister from among the members of the Council of Ministers), secretaries of state from individual ministries as members, and no more than two representatives of the Prime Minister: the Head of the Prime Minister's Chancellery and the secretaries of state or under-secretaries of state in the Prime Minister's Chancellery, appointed by him. The Standing Committee prepares and presents opinions and recommendations to the Council of Ministers or the Prime Minister, as well as making recommendations to draft documents which will subsequently be considered by the Council of Ministers or decided upon by the Prime Minister; in particular, the Standing Committee offers opinions on draft laws.[22]

The Council of Ministers also appoints codification commissions through decrees. Codification committees, consisting of eminent representatives of science and practitioners in a given branch of law, prepare major legal codifications, especially those of a codified nature (e.g. the Criminal Code).

The provisions of Article 146 of the Constitution provide authorisation for the Council of Ministers to take action. Analogous authorisations for the actions of the President of the Council of Ministers are included in Article 148. The provisions of Articles 146(1) and (3) of the Constitution define the general functions of the Council of Ministers, typical of a government in a parliamentary system: it conducts domestic and foreign policy (1) and manages government administration (3).

This also applies to defence policy; however, this issue must be considered together with the provisions of Articles 134(1) and (2), which state that the President is the supreme commander of the Armed Forces of the Republic of Poland (1). The President exercises supreme authority over the Armed Forces through the Minister of National Defence (2).

The provision of Article 146(2) establishes a presumption in favour of the Council of Ministers in matters of state policy that is not reserved for other state and local government bodies.

The functions set out in Article 146(1) are directly referred to by certain provisions in paragraph 4 of that article, namely, the Council of Ministers shall ensure the

22 Jamróz, Ministrow and Rady, 2020, pp. 279–299.

internal security of the state and public order (pt 7), and the external security of the state (pt 8). When considering the aforementioned provisions of Articles 146(1) and (2), it can be concluded that points 7 and 8 define the tasks (objectives) of the Council of Ministers' policy.

Pt. 3 (paragraph 4) of Article 146 stipulates that the Council of Ministers coordinates and controls the work of government administration bodies and is a refinement of the function set out in Article 146(3), namely that the Council of Ministers directs government administration. Pt. 4 (paragraph 4) of Article 146 states that the Council of Ministers protects the interest of the State Treasury.

The provisions of Articles 146(4), (6), (9), and (11) express the functions of the Council of Ministers in a manner that details those generally expressed in paragraphs 1 to 3 of this article. According to pt. 6, the Council of Ministers directs the execution of the state budget; that is, it takes all measures to achieve this aim. Specifically, the Council of Ministers 'enacts the closure of the state accounts' and enacts the 'report on the execution of the budget'. Pts 9 and 11 (paragraph 4) of Article 146 express functions that fall within the general function of implementing the state's foreign policy (Article 146(1)). Pt. 9 states that the Council of Ministers should exercise general leadership in the field of relations with other states and international organizations. However, the attribution of 'general leadership' to the Council of Ministers in the field of relations with other states brings new meaning in relation to the provision of Article 146(1). While the government conducts the foreign policy of the state, the formation of relations with other states and international organizations is an area that is much broader than that which arises directly from the conduct of state policy.

The general leadership of the Council of Ministers in the field of relations with other states also concerns the coordination of the policies of individual ministers in the area of relations with other states, as well as the coordination, and sometimes even supervision, of local (e.g. border) relations with other states. This ensures that these relations do not violate the general line of foreign policy and do not contravene applicable law. Similar reflections apply to the exercise by the Council of Ministers of the function of general leadership in the field of national defence, concerning both the domestic and foreign policy of the state (p. 11). The second part of Article 146(4), p. 11, defines the Council of Ministers' competence to determine annually the number of citizens called up for active military service.[23]

The Council of Ministers should do all it can to ensure the implementation of the laws. The provisions of Article 146(4), points 1-10 express norms of a non-uniform nature. Examples of specific powers include the provisions in Articles 146(4), (2), (5), and (10). According to pt. 2, the Council of Ministers issued regulations. Pursuant to the wording of Article 92, these normative acts, which are sources of universally binding law, are issued on the basis of a specific authorisation contained in the Act and for the purpose of its implementation. It should be recalled that the minister in charge of a government administrative department may issue regulations as an

23 Jamróz, Ministrow and Rady, 2020, pp. 279–299.

executive acting on laws. However, the Council of Ministers has special powers under Article 146(2), as it may repeal ministerial regulations (Article 149(2)).

In accordance with pt. 5, paragraph 4 of Article 146 of the Constitution, the Council of Ministers enacts the draft state budget, which then becomes the subject of a specific parliamentary procedure. The provisions of Article 146(4), p. 10 of the Constitution contain the specific competence of the Council of Ministers. It states that the Council of Ministers may conclude international agreements requiring ratification and approve and terminate other international agreements. This provision, sufficiently clear, distinguishes between the two different competences of the Council of Ministers concerning two different situations. Such agreements must be concluded if international agreements require ratification.

Pursuant to Article 89(2), the Prime Minister shall notify the Sejm (the Lower House of Parliament) of his or her intention to submit an international agreement to the President of the Republic, the ratification of which does not require the consent of the Sejm expressed by statute. However, these are also agreements 'requiring ratification' within the meaning of pt. 10 (paragraph 4) of Article 146 and should be concluded by the Council of Ministers; it should also decide whether these agreements require ratification by the President. The provision of pt 12 (paragraph 4) of Article 146 of the Constitution, which states that the Council of Ministers 'shall determine the organization and procedure of its work', is of a special nature. This is neither 'tasks' nor 'means of action', but, by analogy with Article 112 of the Constitution, which refers to the passing of rules of procedure by the Sejm, it pertains to the competence of the Council of Ministers to pass its own rules of procedure. The inclusion of this issue in the Constitution implies that the government's 'natural', in a sense, power to enact its rules of procedure derives from the independence and autonomy of individual authorities (the principle of separation of powers) and has thus become a constitutional obligation of the Council of Ministers. Simultaneously, this implies that matters constitutionally delegated to the Rules of Procedure of the Council of Ministers cannot be regulated by law (the narrowing of the statutory matter).

Article 148 of the Constitution sets out the powers of the President in relation to the Council of Ministers, local government, and government administration. The powers of the Prime Minister vis-à-vis the Council of Ministers are specifically notable. Most of these powers are of framework constitutional nature, providing the possibility for 'targeted actions'. Thus, they are essentially the functions (directions of activity) of the Prime Minister, which he or she performs based on the Constitution, laws, regulations of the Council of Ministers, his or her own regulations (pursuant to Article 148 pt 3), and the Rules of Procedure of the Council of Ministers. Meanwhile, points 1-2 and 4-5 of Article 148 define the functions of the Prime Minister within the Council of Ministers and determine, to a significant extent, the special position of the Prime Minister in the government. According to pt 1 of the article in question, the Prime Minister 'represents the Council of Ministers' and, according to pt 2, directs its work. Representing the government, which is otherwise a matter of course, creates a number of specific situations that strengthen the Prime Minister, who, on

this occasion, formulates positions, issues opinions, and decides on the manner of representation at home and abroad. Similarly, directing the work of the Council of Ministers gives the Prime Minister a special position within the Council of Ministers. In practice, he or she decides on the agenda, allows ministers to speak, and determines the course of proceedings.

The case regarding the powers of the Prime Minister, as established in point 4 of Article 148, indicates that the Prime Minister ensures the implementation of the Council of Ministers' policy and determines the means of its implementation. The function of ensuring the execution of the Council of Ministers' policy is conducted in accordance with other legal acts; however, the authorisation for the Prime Minister arises directly from the aforementioned constitutional provisions. The Prime Minister, therefore, acts based on point 4 in question (respecting the principle of legalism) in a manner that is not inconsistent with laws and regulations, having the ability to issue regulations and orders himself/herself.

The Prime Minister's special powers in the Council of Ministers are derived from the authority to coordinate and control the work of its members. In particular, the power to oversee the activities of the members of the Council of Ministers ensures the Prime Minister's dominance and de facto official supremacy over ministers, although the Constitution proclaims in point 7 of Article 148 that such formal official supremacy applies (only) over government administration employees. This provision was intended to ensure the structural and functional unity of the entire government.

It should further be recalled that the Prime Minister, in accordance with pt 6 of Article 148, exercises supervision over local self-government. This implies that he or she is vested with sovereign powers over local self-government, as defined in the Constitution and laws.

Pursuant to Articles 96 and 97 of the Act of 8 March 1990 on Municipal Self-Government (Journal of Laws of 2023, item 40, consolidated text), in the event of repeated violations of the Constitution or laws by the municipal council, the Sejm (the Lower House of Parliament), at the request of the Prime Minister, may dissolve the municipal council by resolution. If the municipal council is dissolved, the Prime Minister, at the recommendation of the minister responsible for public administration, shall appoint a person to perform the function of the municipal council until the municipal council is elected. If repeated violations of the Constitution or laws are committed by the head of the municipal council, the provincial governor shall summon the head of the municipal council to cease the violations. If the summons are unsuccessful, the provincial governor shall apply to the Prime Minister for the dismissal of the municipal council's head. In the case of the dismissal of the head of the municipal council, the Prime Minister, upon the recommendation of the minister in charge of public administration, appoints a person to perform the functions of the municipal council head until the head of the municipal council is elected.

If there is no hope of rapid improvement and prolonged ineffectiveness in the performance of public tasks by municipal bodies, the Prime Minister, at the request of the minister in charge of public administration, may suspend the municipal bodies

and establish a board of commissioners for a period of up to two years, but not until after the election of the council and head of the municipality for the next office term. The establishment of a Government Commissioner may occur only after the municipal bodies have been charged and called upon to submit a programme to improve the situation of the municipality without delay. The Government Commissioner is appointed by the Prime Minister at the recommendation of the voivode, submitted through the minister responsible for public administration.

The Government Commissioner shall take over the tasks and competencies of the municipal bodies from the date of appointment.

Analogous solutions can be found in laws regarding county and provincial self-governance (voivodeship).

### *2.2. Relationships between the organs of the state*

From the perspective of the relationship between the organs of the state (organs of public administration, local and central government, and legislative bodies) and the courts, the principle of the tri-partite division of powers is of key importance.

This principle, from the perspective of the standards of a democratic state under the rule of law, is one of the key principles of the political system. However, understanding it requires certain modifications to previously accepted views on the matter. Institutions, formations, structures, and organs emerge that are difficult to classify unequivocally into one of the authorities. The division into legislative, executive, and judiciary powers remains justifiable, but not so much in organizational and systemic terms as in terms of competences and functions. In this context, executive power, or more narrowly, administrative power, will be exercised by all bodies, institutions, services, inspections, and so on, which are competent in exercising executive-administrative power. Therefore, probably not without reason, instead of the term 'public administration body' we increasingly use the term 'administrating subject'. The basic subjects of executive power are the public administrative bodies (central and local governments). However, other administrative entities also play important roles in the exercise of executive power and administrative decision-making. These entities, in the exercise of administrative authority, should be treated as if they were public administration bodies In the proceedings before them concerning administrative matters, the Code of Administrative Procedure is, as a rule, applicable.[24]

The disposition of Article 10(2) of the Constitution of the Republic of Poland indicates a dualistic concept of executive power, which is exercised by the President of the Republic of Poland on the one hand and by the Council of Ministers on the other hand. Such a model is appropriate for both the presidential-parliamentary and parliamentary-cabinet systems of government.[25]

In the doctrine of administrative law, several classifications of authority are based on various criteria. Thus, authorities can be distinguished between central and

24 Zdyb, 2017, p. 44.
25 Zacharko, 2013, p. 53.

territorial (due to the range of influence); supreme and central (due to the manner of regulation; the former are mentioned in the Constitution of the Republic of Poland, while the latter are usually created by law); governmental and self-governing; collegial and monocratic (one-person); social and professional; by appointment, by election, by appointment, created ex lege (due to the manner of their creation); decisive and auxiliary (because of the degree of autonomy); permanent and periodic (because of the way they operate); primary and secondary (depending on whether collaboration of bodies is required for their creation); bodies with general or special competence; bodies with tenure and without tenure. The classifications indicate a crossover, implying that each body could be assigned to several groups.

It is assumed that the scope of competence of the supreme authorities is constitutionally regulated and that the central authorities are established in accordance with ordinary legislation. Furthermore, central authorities have the following characteristics:

- Their area of operation covers the entire country;
- They are usually monocratic in nature;
- They report to the Council of Ministers, Prime Minister of the Council of Ministers, or relevant minister.
- The characteristics of the government's chief administrative bodies are as follows.
- They are directly appointed by the President or by the President after being elected by the Sejm (the lower house of Parliament);
- They are superior to other bodies in the governmental administration structure;
- Their territorial jurisdiction covers the entire country.

Given the findings cited above, it should be emphasised that there is no uniformity of opinion in the doctrine of administrative law regarding the inclusion of the President, either in the category of central or chief administrative authority. It is also often stressed that due to its role, determined primarily by constitutional norms, the characterisation of the President as an administrative authority is debatable.[26] Indubitably, he or she cannot be categorised as a government administrative organ.

The Constitution classifies the President of the Republic of Poland as an executive authority; however, it does not mean that he or she is a public administration body. It should be noted that the President's administrative powers are limited, and it is questionable whether they can be classified as those exercised as part of public administration. This can be attributed to the reason that they do not literally constitute the application of the law or the exercise of the function of the administration; they cannot be challenged before an administrative court or in the administrative course of proceedings.[27]

Several competency groups can be distinguished.

26 Wierzbowski, 2011, p. 154.
27 Zimmermann, 2012, p. 155.

1) Issuing normative acts, that is, ordinances and regulations with the force of law introducing states of emergency.
2) Appointment and dismissal of certain public officials, such as ministers and presidents of central offices. The President also has the power to appoint judges of the Supreme Court and the Supreme Administrative Court.
3) Legislative initiative: The President can propose bills for consideration by the Sejm (Lower House of Parliament) or the Senate (Upper House of Parliament).
4) Signing of laws: Once laws have been passed by Parliament, the President can sign them, which is necessary for them to enter into force. The President also has the power to refer laws to the Constitutional Court to assess their constitutionality.
5) Representing Poland internationally: The President acts as the Head of State and represents Poland in diplomatic contacts, international negotiations, and state visits.

### *2.2.1. The Council of Ministers*

The normative basis for the Council of Ministers' activities is formed by three groups of legal provisions: 1) the 1997 Constitution, especially Article 146, and several others (118(1), 119(2), 123(1), 149(2), 154(2) and (3), 155(1), 221, 222, 226); 2) the 1996 Law on the Council of Ministers, which has the character of constitutional law; and 3) multiple additional laws.

The functions and competences of the Council of Ministers are, in turn, the result of the adoption of a specific legal and organizational concept established in the Constitution. This concept recognises the Council as one of the two entities—alongside the President—who, pursuant to Article 10(2), exercise executive power. It is precisely the constitutional principle of the separation and balance of powers that constitutes the basic determinant of the functions and competences of the Council of Ministers.[28] This principle implies that the sphere of activity of the Council of Ministers, which may be subject to parliamentary scrutiny and for which it bears parliamentary responsibility before the Sejm, includes all matters comprising the functional aspect of the principle of the separation of powers, unless they have been reserved for other executive bodies (except for the case of the Council of Ministers responsible for official acts of the President, countersigned by the Prime Minister).[29]

The scope of the activities of the full Council of Ministers, which determines the subject of parliamentary scrutiny of government activities, is regulated by Article 146 of the 1997 Constitution, which is fundamental to these matters.

To characterise the general collegial activity of the Council of Ministers subject to parliamentary scrutiny, it is necessary to return to the principle set out in Article 146(2) of the Constitution regarding the presumption of competence of this body in matters of state policy. This principle must now be considered in its material aspect,

28 Sarnecki, 2002, p. 181.
29 Kuciński, 2018, p. 328.

as it highlights the general competence (in broad terms) of the Council of Ministers in matters of state policy.

### *2.2.2. The Parliament*

The relationship between the Parliament and the Council of Ministers can be described as bilateral, where both bodies have specific competences and roles. The Parliament has the power to pass laws, and the Council of Ministers is responsible for their implementation. The Council of Ministers must obtain the approval of the Parliament for its programme of action and report on the implementation of state policy. The Polish Constitution regulates institutions, such as votes of confidence or votes of no confidence. These are legal instruments by which the Sejm can directly influence the actions of the Council of Ministers, thereby exercising its powers of control.

In the Polish Parliament, a vote of confidence is a procedure whereby the Sejm (Lower House) or Senate (Upper House) expresses support for the government or specific members of the government. A vote of confidence assesses whether a government has sufficient parliamentary support to continue functioning.

The presumption of competence of the Council of Ministers in matters of state policy serves as the general division of competencies between the two executive organs listed in Article 10(2) of the Constitution: the President and the Government. The President's competencies in matters of state policy are noted as peculiar exceptions to the rule of core competences of the Council of Ministers. This necessitates that the competences of the Head of State in these matters be specified as precisely as possible in the Constitution and laws (this also applies to the competences of other organs of public authority in this area).[30]

### *2.2.3. The President*

The principle of the presumption of competence allows for a relatively precise and detailed demarcation of the spheres of action of the Council of Ministers and the President. The division of the spheres of action of these two bodies is constructed according to the rule that the Council of Ministers conducts state policy and is competent in those spheres of executive action for which it bears direct parliamentary responsibility before the Sejm. Meanwhile, the Council of Ministers must consider the possibility of certain moves being blocked by the President, who possesses powers capable of obstructing, often effectively, the actions of the Council of Ministers. Thus, the smooth functioning of the executive requires the cooperation of both bodies.[31]

The constitutional position of the President of the Republic of Poland is defined in Articles 126–145 of the Constitution of the Republic of Poland, which cover Chapter V: The President of the Republic of Poland. According to these provisions, the President of the Republic of Poland is the highest representative of the Republic and the guarantor of the continuity of state authority. The President of the Republic ensures

30 Grzybowski, 2006, p. 15.
31 Kuciński, 2018, p. 329.

that the Constitution is observed, safeguards the sovereignty and security of the state, and maintains the inviolability and indivisibility of its territory. The President of the Republic performs his or her tasks within the scope and principles set out in the Constitution and laws. However, the prevailing view is that the President of the Republic of Poland does not belong to public administration, but to state administration. It is certainly not a public administrative body. Administrative law scholars are not unanimous regarding the legal status of the President of the Republic. A more prevalent view is that the President of the Republic is not a public administration authority. Rather, the President of the Republic is an authority involved in the administration. A change in the views of administrative courts on this issue has also been observed. Initially, the Supreme Administrative Court ruled out the treatment of Poland's President as an administrative authority. This now permits for such qualifications. In this context, the decision of the Supreme Administrative Court on 11 May 2021 (III OSK 3265/21) appears particularly significant. The Court recognised the President of the Republic of Poland as an administrative authority and allowed a judicial review of his actions.[32]

The President of the Republic is elected by the people by universal suffrage, through equal, direct, and secret ballot. They are elected for a term of five years and may be re-elected only once. A Polish citizen who is at least 35 years old (on the most recent election day) and possesses full electoral rights to the Sejm (the lower house of Parliament) may be elected President of the Republic. The candidate must be endorsed by at least 100,000 citizens with the right to elect the Sejm.

The election of the President of the Republic is ordained by the Speaker of the Sejm on a day falling no earlier than 100 days and no later than 75 days before the incumbent President's term expires. In the event of the vacancy, it must occur no later than 14 day after the vacancy of the office, setting the date of the election on a holiday falling within 60 days of the date on which the election is ordained. The Supreme Court shall determine the validity of the election for the President of the Republic. Voters have the right to file a protest with the Supreme Court regarding the validity of the presidential election, in accordance with the law. If the election is declared invalid, a new election shall be held in accordance with the rules specified in Article 128, paragraph 2, to address the vacancy of the presidential office.

The President of the Republic assumes office after taking an oath of office before the National Assembly. If the President is temporarily unable to exercise their duties, they must notify the Speaker of the Sejm, who will then temporarily assume the duties of President of the Republic. If the President is unable to notify the Speaker of the Sejm of their incapacity, the determination of the President's inability to hold office shall be made by the Constitutional Tribunal at the request of the Speaker. In such a case, the Constitutional Tribunal shall entrust the Speaker of the Sejm with the temporary assumption of the duties of the President.

32 Jakubowski, 2023, pp. 3–32; Kmieciak, 2023, pp. 3–22.

The Speaker of the Sejm shall temporarily fulfil the duties of the President of the Republic until a new President of the Republic is elected. This shall occur in the event of, for instance, the death of the President, the resignation of office by the President, the annulment of the President's election, or other reasons preventing the President from taking office after the election. Additionally, the National Assembly may recognise the permanent incapacity of the President to perform duties of the office due to health issues, by a resolution adopted by a majority of at least two-thirds of the statutory number of members of the National Assembly.

The President may not hold any other office or perform any public function except for those related to the office they holds. The President of the Republic, as the representative of the State in external relations, ratifies and terminates international agreements, notifying the Sejm and the Senate thereof; appoints and recalls plenipotentiary representatives of the Republic of Poland in other states and international organizations; accepts letters of credence; and recalls diplomatic representatives of other states and international organizations accredited to them. Before ratifying an international agreement, the President may apply to the Constitutional Tribunal for its compliance with the Constitution. The President of the Republic cooperates with the Prime Minister and relevant ministers in matters pertaining to foreign policy.

The President of the Republic is the supreme head of the Armed Forces of the Republic of Poland. During peacetime, the President exercises supreme authority over the Armed Forces through the Minister of National Defence. He or she appoints the Chief of General Staff and the commanders of the types of Armed Forces for a fixed term. The duration of the term of office, procedures, and conditions for dismissal before expiry are specified by law. In the duration of the war, the President of the Republic, at the recommendation of the Prime Minister, appoints or dismisses the Commander-in-Chief of the Armed Forces. The competencies of the Commander-in-Chief of the Armed Forces and the principles of his subordination to the constitutional bodies of the Republic of Poland are determined by law. The President of the Republic, on the suggestion of the Minister of National Defence, confers military ranks specified in the Acts.

As far as competencies related to resolving individual issues are concerned, it may be mentioned, among others, that the President of the Republic grants Polish citizenship and consents to the renunciations of Polish citizenship, confers orders, and decorations.

The President of the Republic exercises the right to clemency; however, this right does not apply to persons convicted by the State Tribunal, and they may also address the Sejm, the Senate, or the National Assembly.

While exercising its legislative authority, the President of the Republic has issued regulations and orders. Additionally, he or she issues orders as part of his or her other powers.

The President of the Republic, in the exercise of his constitutional and statutory powers, issues official acts. Official acts require the signature of the Prime Minister for their validity, who, by signing the act, is accountable to the Sejm (counter-signature).

A counter-signature is not required for, among other things, to: hold elections to the Sejm and Senate, convene the first sitting of the newly elected Sejm and Senate, shorten the term of office of the Sejm in cases specified by the Constitution, initiate legislation, manage a nationwide referendum, sign or refuse to sign a law, request the Supreme Audit Office to carry out an audit, designate and appoint the Prime Minister, accept the resignation of the Council of Ministers and assign it to perform its duties temporarily, request the Sejm to hold a member of the Council of Ministers accountable before the State Tribunal, dismiss a minister whom the Sejm has expressed a vote of no confidence in, award orders and distinctions, appoint judges, exercise the right of clemency, grant Polish citizenship, and consent to the renunciation of Polish citizenship, and others.

The President of the Republic may be brought before the State Tribunal for violations of the Constitution, breaches of law, or for committing a crime. The President of the Republic may be indicted before the State Tribunal by a resolution of the National Assembly, adopted by at least two-thirds of the statutory members of the National Assembly, at the request of at least 140 of its members. Upon the adoption of the resolution regarding the indictment of the President of the Republic before the State Tribunal, the exercise of the President of the Republic's office is suspended.

Foreign policy can be cited as an example of the relationship between the President and the Council of Ministers, where the two bodies may conflict during the exercise of their competences. One notable instance is the ruling of the Constitutional Court on 20 May 2009. (ref. Kpt 2/08), in which the court resolved a competence dispute between the Council of Ministers and the President that arose against the background of differences in positions regarding the right to represent the Republic of Poland in the European Council. The Court ruled on the operative part of the following order.

(1) The President, the Council of Ministers, and its President, in the exercise of their constitutional tasks and competences, shall be guided by the constitutionally defined principle of interaction.

(2) The President, as the highest representative of the Republic, may, based on Article 126(1) of the Constitution, decide on participation in a particular meeting of the European Council insofar as he or she considers it expedient for fulfilling his or her duties, as defined in Article 126(2) of the Constitution.

(3) The Council of Ministers, pursuant to Articles 146 (1), (2), (4), and (9) of the Constitution, shall determine the Republic of Poland's position at a meeting of the European Council. The Prime Minister shall represent the RP at the meeting of the European Council and present the established position.

(4) The President's participation in a specific meeting of the European Council requires cooperation with the Prime Minister and the relevant minister according the principles set out in Article 133(3) of the Constitution. This cooperation aims to ensure the uniformity of actions taken on behalf of the Republic of Poland in its relations with the European Union and its institutions.

(5) The interaction between the President, the Prime Minister, and the relevant minister enables the Head of State—in matters related to the implementation of his

tasks outlined in Article 126(2) of the Constitution—to refer to the position of the Republic of Poland established by the Council of Ministers. This interaction also allows for specifying the scope and form of the President's intended participation in specific meetings of the European Council.

The prosecutor's office occupies a special place in the public administration system. Notably, the Minister of Justice also serves as the Prosecutor General, which inherently places the Prosecutor's Office in the system of public administration bodies. In relation to the administration, the Public Prosecutor's Office is vested with control competences, which are manifested in various ways, including the ability to appeal to the administrative court against acts of local law or the capacity to participate in administrative proceedings as a party, under the principles set out in the Code of Administrative Procedure.

## 3. Organizational principles and structure of the public administration

The principle of decentralisation of public authority originates from Article 15 of the Constitution of the Republic of Poland, which stipulates that the territorial system of the Republic of Poland ensures the decentralisation of public authority. The fundamental territorial division of the state, considering social, economic, or cultural ties, and providing territorial units with the capacity to perform public tasks, shall be determined by law.[33]

The principle of decentralisation conveys the government should be as close to its citizens as possible. The most significant aspect is the decentralisation carried out through local governments. This principle states that the basic territorial division of the state should consider the social, economic, and cultural ties between citizens and residents. In addition, it ensures that local government units can perform public tasks.

It follows from Article 15(2) of the Constitution, which implies that a fundamental territorial division should serve local government rather than government administration. Territorial divisions are not immutable and should adapt to demographic changes, state policy objectives, and economic and cultural conditions (TK–K 37/06). The Constitution requires that the criteria indicated in Article 15(2) be concretised by law. An important element in the application of these criteria—social, economic, or cultural ties—is their use in public consultations.[34] This provision determines the statutory concretisation of the criteria indicated in paragraph 2:

> ...the legislator may not create local government units arbitrarily, i.e. without taking into account the social, economic or cultural ties linking the

33 Dolnicki, 2016; Stasikowski, 2019; Stolicki, 2019; Dąbek and Zimmermann, 2005; Leoński, 2004.
34 Tuleja, 2021.

> inhabitants of the territory concerned (Article 15(2)). They are therefore also entitled to remain undisturbed in the existing territorial-political structures if they accept them because they respect the ties linking the inhabitants that have been developed, usually over a long period of time. This does not, of course, mean to exclude the competence of central public bodies and authorities to decide on the abolition of local authorities, but it does indicate the right of residents to influence the formation of a political decision in this respect. Thus, the liquidation of local government units may take place after ensuring that local social ties are not worsened, either as a result of a change or in the name of an important public interest that requires change – even at the expense of worsening those ties. The rationale for making such changes for the sake of the public interest may be, in particular, the lack of capacity to perform public tasks. The fact that self-government is a creation of law cannot, in fact, completely obscure and overlook the existence of natural historical, economic and cultural ties, which determine that a given group of territory's inhabitants feels and recognises itself as a political-territorial community to a higher degree than others. Thus, it is the existence of these ties that is decisive in assessing the degree of compactness of this community, its self-awareness and its ability to formulate its own collective tasks and public objectives. These ties undoubtedly have an impact on the local political activity of citizens. Respecting and nurturing existing ties is the duty of all authorities and public bodies in the state, as they serve the development of democracy and foster active civic attitudes (TK – K 30/02).[35]

In Poland, the structure of public administration comprises various sectors, including state administration, territorial administration, administration affected by private entities, administration conducted by a third sector, and the outsourcing of tasks to private entities.

The constitutional administration model consists of three pillars. The first is the principle of subsidisation. This principle, while alluded to in the Constitution's preamble, is not defined. Subsidiarity emphasises the need to empower citizen communities, thus, limiting state intervention to issues that self-organized citizens are unable to solve. In public administration, the principle of subsidiarity primarily prescribes the undertaking of public tasks as closely as possible to citizens, that is, in a maximally decentralised manner.

State administration: This sector of public administration includes institutions that operate at a state level. In Poland, the state administration is responsible for formulating and implementing public policies at the central level. The most important organ of the state administration is the Council of Ministers, led by the Prime Minister. State administration also includes Ministers, Heads of Central Offices, Government Agencies, and other institutions subordinate to executives.

35 TK 2003, K 30/02, OTK-A 2003, no. 2, item 16.

Territorial administration: This sector of public administration includes local government units, such as municipalities, counties, and voivodeships/provinces. Territorial administration manages and provides public services locally. Its bodies include municipal councils, county councils, and provincial assemblies.

A municipality may be classified as rural, an urban-rural municipality, or urban. In Poland, certain municipalities perform tasks within counties (cities with county status).

The municipality may establish subsidiary units, such as villages, districts, settlements, and other subdivisions. The organization of a municipality is determined by its statutes.

Municipal authorities include the municipal council, which exercises legislative and control powers and appoints permanent and interim committees (appointed by the municipal council from among the councillors). Executive authority is vested in the vogt (in rural municipalities), mayor (in urban and urban-rural municipalities), and city mayor (in urban municipalities, municipalities with county status).

Cities with county status possess safety and order committees as a distinct administrative body (not a committee of the city council with county rights) comprising local government representatives.

The municipality's jurisdiction includes all public matters of local importance not assigned to other entities by law. These tasks are divided into legally mandated duties and commissioned tasks assigned by state authorities. The municipality performs all tasks not reserved for other units of the local government (county, self-governing voivodeships).

Residents participate in municipality governance through voting in municipal elections, local referendums, and municipal bodies. The municipality performs two types of tasks: its own and delegated tasks.

Own tasks are public functions performed by a local government unit, aimed at meeting the needs of the local community. They may be obligatory—the commune may not refrain from fulfilling these tasks; it must ensure budgetary funds for their implementation. This requirement stems from the goal of providing the inhabitants with fundamental public benefits. These tasks may be optional—the commune performs them to the extent that budgetary resources and local needs allow (on its own responsibility from its own budget).

The tasks included, among others, the following matters: spatial order; real estate management; environmental and nature protection; water management; municipal roads, streets, bridges, squares, and road traffic organization; water supply; sewage management and treatment of municipal wastewater; maintenance of cleanliness and order; and sanitation.

Delegated tasks are other public tasks that arise from statutory obligations that need delegation at local government units. These are mandated by statue.

A county is formed by a local, self-governing community, and its respective territory.

The county performs public tasks of a supra-municipal nature as defined by acts in the fields of public education, health promotion and protection, social assistance, support for the family and foster care system, pro-family policies, support for persons with disabilities, public transport, and public roads.

In addition, the county's public tasks include ensuring the performance of tasks and competencies of county managers of county services, inspections, and guards as defined by laws. Laws may define additional tasks of the county and outline matters that fall within its scope of activity as government administration functions. Upon a justified request from an interested municipality, the county can transfer tasks from its scope of competence to terms established in an agreement. Counties' competencies may not infringe on the scope of municipalities' activities. Furthermore, laws may require the county to organize, prepare, and hold general elections and referendums.

County organs: Regulatory authority of the county is the county council, which consists of the county councillors. The council is headed by the elected chairman of the county council. County council committees, appointed from among the county council members, oversee the executives' activities. Obligatorily, there must be one committee—the audit committee (to control financial matters)—to which interim committees are appointed during emergencies. In cities with county rights, tasks are conducted by the city council, mayor, and permanent and interim committees.

A separate committee is the safety and order committee (which is not a county council committee), consisting of representatives of local authorities, county services, and experts appointed by the county governor. They also function in cities with county statuses.

A county's executive body is the county executive board, which consists of three to five people (according to the statutes of each county). The chairperson of the board is the county's chief administrative officer (Starosta). It is worth noting that the starosta is not a local government administration body but an employee of the local government administration. Additionally, the board consists of a deputy county chief administrative officer (always one) and other board members (between one and three). The county council elects the deputy county chief administrative officer and other members of the board based on the recommendation of the county chief administrative officer.

The chief administrative officer and deputy chief administrative officer are elected by the county authority and receive salaries for their work. Board members are divided into full-time and part-time members; full-time members are employed by the county administration on an elected basis, while part-time members receive per diem for attending board meetings. Whether the board members in a particular county are full-time members (and whether they are all or, for example, only one of them) is determined by the provisions of the county's statutes.

The chief administrative officer, deputy chief administrative officer, and members of the management board may but need not, be county council members. In accordance with Article 33b of the Act on County Self-Government, the county's combined

administration (units subordinate to the chief administrative officer) consists of the county chief administrative officer's office, the county labour office, which is an organizational unit of the county, and the organizational units that are auxiliaries to the heads of county services, inspections, and guards. In cities with county rights, the city mayor undertakes county management tasks.

Voivodeship, a unit of administrative division at the highest level in Poland, has been a unit of the basic territorial division of government administration since 1990 and has also served as a unit of local self-government since 1999.

The voivodeship has various functions, such as the management of regional affairs, the implementation of public administration tasks, and the coordination of regional development, education, health care, infrastructure, and transport. It has its own governing bodies such as the voivodeship assembly, voivodeship marshal, and voivodeship board.

The division into voivodeships/provinces is intended to decentralise power and enable the effective management of local affairs. Each voivodeship has specific competences and autonomy, but it also acts in cooperation with the central administration, especially in matters of national and international policy.

It is worth noting that, at the voivodeship level, there are also organs of central government administration (services, inspections, and guards) acting under the authority of the voivode, as well as organs of non-combined administration subordinated directly to ministers or heads of central offices.[36]

The Prime Minister appoints the voivode based on the recommendation of the minister responsible for public administration. The voivode is the representative of the Council of Ministers for the voivodeship area, particularly responsible for: adapting the objectives of the policy of the Council of Ministers to local conditions and, within the scope and under the rules laid down in separate laws, coordinating and controlling the performance of the resulting tasks; ensuring the cooperation of all governmental and self-governmental administrative bodies operating in the voivodeship area and directing their activities in the prevention of threats to life, health or property, threats to the environment, state security, and the maintenance of public order, the protection of citizens' rights, as well as the prevention of natural disasters and other such threats, and the combating and eliminating their effects under the rules laid down in separate laws; assessing the state of flood protection in the voivodeship, developing an operational plan for flood protection and declaring and cancelling flood alerts and alarms; performing and coordinating tasks in the area of state defence and security and crisis management resulting from separate acts; presenting draft government documents on matters concerning the voivodeship to the Council of Ministers through the minister responsible for public administration; representing the Council of Ministers at state ceremonies and during official visits to the voivodeship by representatives of foreign countries; cooperating with the competent authorities of other countries and international governmental and

36 Pepper, p. 35.

non-governmental organizations in accordance with the principles established by the minister responsible for foreign affairs; exercising oversight over the activities of municipality, county and voivodeship self-government bodies and their associations to the extent and in accordance with the principles set out in laws; exercising control over the implementation by governmental joint administration bodies in the voivodeship of tasks resulting from laws and other legal acts issued on the basis of authorisations contained therein, arrangements of the Council of Ministers, and guidelines and instructions of the Prime Minister; performing, in particularly justified cases, inspections of the way in which non-combined government administration bodies operating in the voivodeship carry out tasks resulting from laws and other legal acts issued on the basis of authorisations contained therein; performing inspections of how local government bodies and other entities carry out tasks in the field of government administration, conducted by them on the basis of a law or an agreement with government administration bodies; carrying out the tasks of the voivodeship governor resulting from the Act of 6 December 2006 on the principles of development policy delegated on the basis of agreements concluded between the Minister of Regional Development and the voivode; directing the work of the voivodeship combined services, inspections and guards, as well as coordinating and controlling their activities and ensuring the conditions for their effective operation; ensuring proper coordination of medical rescue services in the voivodeship; representing the State Treasury to the extent and in accordance with the principles defined in separate acts; issuing decisions in individual matters of government administration belonging to the province governor's jurisdiction, conducting matters related to appealing decisions to the Provincial Administrative Court and applying the regulations on enforcement proceedings in administration; publishing the Official Journal of the Province.

Within the framework of their authority, the voivode directs the unitary governmental administration in the voivodeship and coordinates its activities.[37] The organs of non-combined government administration are field organs of government administration subordinated to the relevant minister or central governmental administration body, as well as managers of state legal entities and managers of other state organizational units performing government administration tasks in the voivodeship:

1) Heads of military recruitment centres
2) Directors of tax administration chambers, heads of tax offices, and heads of customs and revenue offices
3) Directors of district mining office
4) Directors of district measurement offices
5) Directors of district assay offices
6) Directors of maritime offices
7) Directors of statistical offices
8) Directors of inland waterway authority
9) Border and county veterinary surgeons

37 Pacak and Zmorek, 2013.

10) Commanders of border guard divisions and posts and divisions
11) State-border sanitation inspectors
12) Regional environmental protection directors

The establishment of organs of non-combined government administration may occur only by means of law if it is justified by the nationwide nature of the tasks performed or by the territorial scope of activity exceeding the area of a single voivodeship. Consequently, the catalogue of non-combined bodies should be regarded as closed in its current legal status.

The organs affected by the combined administration were as follows:

1) Regional commander of state fire services
2) Provincial police chief
3) Superintendent of education
4) Provincial state sanitary inspectors
5) Provincial pharmaceutical inspectors
6) Provincial inspectors of plant protection and seed production
7) Provincial building control inspectors
8) Provincial inspectors of geodetic and cartographic supervision
9) Provincial environmental inspectors
10) Provincial trade inspectors
11) Provincial inspectors of agriculture and food quality
12) Regional road transportation inspectors
13) Provincial veterinarian
14) Provincial conservators of listed buildings

In Poland, private entities perform public tasks. This primarily concerns public services that can be provided by private enterprises based on agreements concluded with the state or territorial administration. Examples include running private healthcare facilities and public schools.

Literature repeatedly highlights the implementation of public tasks by private entities in social assistance, education, and healthcare.[38] It is worth noting that J. Boć, in his formulated definition of public administration, emphasises at the same time its essence, which consists of the fulfilment of collective and individual needs of citizens. These needs result from the co-existence of people in communities, as accepted by the state and performed by its dependent organs and bodies of territorial self-government. These tasks can be performed in various public administrative spheres.[39]

Therefore, privatisation can be considered a process involving a change in the manner certain tasks are performed. In this case, public law entities give way to private law entities. It should be noted that in the process of privatisation, the

38 Mielczarek-Mikołajów, 2020, p. 117.
39 Boć, 2007, p. 15.

relationship between entities also changes. The public entity remains on its public law plane on the grounds of the law determining the limits and principles of performing ownership functions; such an entity bears public law responsibility for its proper performance. However, in relation to the market environment (e.g. towards other shareholders in companies, creditors, and debtors), the actions of such an entity do not have a public-law character but only a civil-law one. It is not the state that acts here but the State Treasury (owning the local authority, not the local government).[40]

S. Biernat identified the performance of public tasks by private entities as the main feature of privatisation. In this context, any form of entrusting a task to an entity functioning based on private law is classified as privatisation. If that entity is utilising public assets, we can then refer to it as task-based privatisation. Contemporary tendencies in both European and national law appears to be heading towards, on the one hand, the creation of legal instruments that enables local authorities to choose more efficient and effective means of carrying out the tasks imposed upon them (a response to the increasing number of tasks imposed on local authorities) and, on the other hand, the clarification of formal and legal prerequisites allowing for implementing specific forms of performing public tasks. In my opinion, it is currently insufficient to assert that task privatisation merely involves a change in the entity responsible for performing specific tasks within the local self-government unit. It is necessary to specify the legal nature of this entity, process by which tasks are transferred to it, and the bond that binds this entity to public property.[41]

The third sector, also known as the non-governmental sector, includes social organizations, foundations, associations, and other entities that work for the social good. This sector's administration hinges on undertaking social initiatives and activities to meet social needs. Non-governmental organizations can cooperate with both state and territorial administrations to implement social projects and programmes.

In Poland, the public administration may outsource certain tasks to private entities. This is the case when the administration is unable to perform certain tasks on its own or decides to use the expertise and resources of the private sector. The outsourcing of tasks to private entities may involve various areas, such as providing services, conducting research, or implementing projects.

The obligation to cooperate between local government administration entities and non-governmental organizations is currently anchored in the provisions of the Act of 24 April 2003 on the Activities of Public Interest and Voluntary Work.

The 2003 regulations underpinning the activity and cooperation of the public and non-governmental sectors clearly indicate that the duty to cooperate is based on several key principles, including subsidiarity, sovereignty and partnership, efficiency, fair competition, and legality. The principle of subsidiarity is a constitutional

40 Modrzejewski, 2019, p. 131; Banasiński, 2009; Bandarzewski, 2007; Bel and Gradus, 2017; Biernat, 1994; Błaś, 2004; Knosala, Zacharko and Stasikowski, 2005.
41 Biernat, 1994, p. 73.

principle of the state, which is stated in the preamble of the Constitution of the Republic of Poland.

It should be pointed out that it constitutes the basis for defining cooperation between public authorities and independent entities, which should serve as a mutually effective complement to these entities in the implementation of public tasks. It should also be emphasised that bodies of territorial self-government units, by cooperating with non-governmental organizations, support their activities. On the other hand, non-governmental organizations become partners of self-government administrations in performing public tasks. The implementation of the principle of subsidiarity is closely related to the principle of sovereignty, which aims to respect the autonomy and distinctiveness of entities that cooperate. The practical dimension of this principle, from the perspective of non-governmental organizations, is to ensure their right to independently define and solve problems that fall within the area of public affairs. The cooperation of non-governmental organizations with entities of public authority at all levels of the territorial division of the state is based on the principle of partnership. It assumes the active participation of both public and non-governmental sectors in the implementation of tasks resulting from cooperation. This applies to identifying social problems and determining ways to solve them.

The legislators in the Act on Activities of Public Interest and Voluntary Work formulated certain forms of cooperation between local government units and non-governmental organizations. It should be emphasised that, on the one hand, they have a financial character that narrow downs to commissioning public tasks and concluding agreements on the implementation of a local initiative or concluding the so-called partnership. However, they also have a non-financial dimension in the scope of mutual information, consultation of normative acts, and the establishment of joint advisory and initiative teams.

The forms of cooperation specified in the Act are not closed. This implies that cooperation can be shaped in forms other than those listed in the Act. They are concerned about undertaking local self-government unit activities in the field of counselling, providing substantive assistance in the development of projects, and providing information on the existence of other sources of financing. Commissioning tasks to non-governmental organizations appears the basic form of cooperation analysed. It should be noted that it may comprise the so-called commissioning of public tasks and awarding a grant for this purpose or support, which is expressed as subsidising their implementation. Financial support occurs when a non-governmental organization initiates the execution of a public task. Open competition entrusts and supports the implementation of public tasks. A mode other than bidding is in force when the initiator is a non-governmental organization and after fulfilling two preconditions. One of the concerns is the amount of financing for public tasks, which cannot exceed PLN 10,000. The second relates to the task implementation period, which cannot exceed 90 days. Cooperation between local government units

and non-governmental organizations occurs based on the so-called cooperation programmes.

The political and professional management of Poland's public administration is an important aspect of the state's effective functioning. It encompasses both political aspects related to decision-making and the implementation of public policy and professional aspects concerning the administrative management of resources and processes.

In Poland, political management in public administration is the responsibility of the politicians elected by the public to perform public functions. Politicians make decisions regarding state policies, create new laws and regulations, and determine the priorities of public administration activities. Other political bodies, such as the Parliament, local governments, and Councils of Ministers, also influence governance in public administration.

Professional management in public administration refers to the management of resources and processes for effective and efficient functioning of the state. This includes the recruitment and development of administrative staff, public finance management, strategic planning, monitoring, and evaluation of administrative activities, as well as the provision of public services to citizens. In Poland, professional management in public administration is based on efficiency, transparency, accountability, and equality.

To ensure effective management in public administration, several institutions are responsible for overseeing and controlling administrative activities. The most important are the Supreme Audit Office (NIK), which monitors public expenditure and the effectiveness of administrative activities, and the Council of Ministers, which coordinates administrative activities and makes decisions at the government level.

The Polish Constitution enshrines the principle of decentralisation in the functioning of the administration.[42] The provisions of the Constitution form two fundamental segments of public administration:

- Government administration, which includes the Prime Minister, ministers, central offices, and field administration (voivodes, combined, and non-combined government administration);
- Local government administration, in which municipalities and other local government units created by law are essential links.

The system of administration is complemented by institutions of the so-called state administration, that is, central bodies that are not subordinate to the government, nor local authorities. These include the National Broadcasting Council, Supreme Audit Office, Inspector General for Personal Data Protection, State Labour Inspectorate, Institute of National Remembrance, Ombudsman for Civil Rights, the National Bank of Poland, and the Monetary Policy Council.

42 Sześciło and Jakubek-Lalik, 2014, p. 32.

## 4. Current challenges in public administration

In recent years, Poland has introduced reforms to improve its public administration. For instance, a system of electronic public services was introduced, administrative procedures were simplified, and the transparency of administration activities increased. However, challenges remain in improving the efficiency and quality of management in public administration, such as combating corruption, ensuring adequate competence among administrative staff, and increasing public trust in state institutions.

It is difficult to specify the scope of the challenges faced by contemporary public administration and the direction of change. Indubitably, the COVID 19 pandemic induced new challenges in the functioning of public administration. These multidimensional changes are not always perceived positively. The need to react quickly to fluctuating epidemic conditions (becoming a frequently used form of lawmaking) resulted in an ordinance, which is, in principle, an executive act beyond the law. On the one hand, the ordinance gave the Council of Ministers the ability to legislate quickly, including the introduction of restrictions on citizens' rights; however, on the other hand, the ordinances were often issued based on a very generally constructed statutory mandate, which cast doubt on their legitimacy to introduce such restrictions, orders, and bans (e.g. the order to wear protective masks in public spaces, the ban on catering, quarantine after returning from abroad, or, for example, the ban on visiting cemeteries on the religious holiday of the 1st of November). As a direct result, penalties were imposed on citizens under these regulations, and consequently, judgements of administrative courts overturned the decisions issued and penalties imposed due to the lack of grounds for issuing executive acts as a legal basis for the decisions in question. This demonstrates how important it is for the administration to act within the limits and on the basis of the law, and simultaneously, highlights the necessity to develop instruments within the framework of which the administrative bodies will be able to react in a fast and dynamic manner to potential threats to the life and health of citizens.

However, the pandemic has shown that direct contact between a citizen and the administration is not always necessary, and an IT channel allowing for the exchange of correspondence is often sufficient. This consequently leads to the computerisation of administration, the introduction of appropriate legal solutions that allow for the delivery of correspondence in electronic form, or even forcing citizens to direct electronic correspondence with an authority. Here, an example may be Article 61 § 1 of the Code of Administrative Procedure, according to which applications (requests, explanations, appeals, complaints) must be submitted in writing, by fax, or orally for the record. Applications recorded in electronic form must be submitted to an address for electronic delivery or via an account in the public administration body's ICT system. Unless otherwise stipulated by separate provisions, applications submitted to the e-mail address of a public administrative body should be left unprocessed. This

implies that currently, a citizen cannot address a request to an authority in the form of an ordinary e-mail, and such an action will always be ineffective. Previously, there were solutions stipulating that if an application was sent in the form of an e-mail, the applicant was requested to submit the signature; however, this is now impossible.

It also popularised remote hearings before administrative courts—a solution generally positively assessed by the participants of the proceedings. However, it also gave the courts the ability to decide in closed sessions, which, in the context of cases considered particularly by the Supreme Administrative Court, where the preparation of a cassation appeal is subject to a number of conditions—including the obligatory assistance by an advocate (i.e. the complaint must be drawn up by a legal advisor or advocate, with certain exceptions)—is considered a limitation of the citizen's right to a trial.

The efficient and effective functioning of e-services in public administration requires an increase in the role of IT and communication tools in the daily functioning of offices. This means implementation of public tasks by obliged public entities using modern ICT technologies and access to the Internet at three strategic levels.

1) Internal communication in public administration.
2) Efficient automation of communication with entities performing public tasks using e-services.
3) Offering e-services to all public administration customers.[43]

Another trend in the development of modern public administration is the increase in civic participation. Legal solutions in the form of civic budgets, in which local communities submit ideas for spending budgetary funds and then select the best idea through surveys, are becoming increasingly common. These solutions should be viewed as having the most positive effects.

Political and professional management in public administration in Poland is essential to ensure the effective functioning of the state and the implementation of public policy. This requires cooperation between politicians and professionals, appropriate oversight and control mechanisms, and continuous improvement of management and reforms to adapt to the changing needs of society.

43 Romaniuk, 2020, p. 273.

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# General Principles and Challenges of Public Administration Organization in Romania

Szilárd SZTRANYICZKI

**ABSTRACT**

This study attempted to proceed from the foundations, exhaustively treating the topic of administrative law, and following the imposed thread of country presentations. It addressed several aspects from both theoretical and practical perspectives, primarily considering the case law of the Constitutional Court. Opinions expressed in Romanian doctrine – both post-war and post 1990 – and foreign doctrine were considered and viewpoints, suggestions and *de lege ferenda* proposals were expressed. Regarding Romania, it may be stated that bringing administrative law in step with the times is the merit of the doctrine as well as an intense codification activity in this field of law. Romania's first Administrative Code was adopted in 2019, a unique legislative act in Europe where codes for administrative procedures exist. The Administrative Code establishes a comprehensive approach to Romania's administrative territorial organization and to the organization and functioning of the authorities of local public administration, seeking to clarify the roles, powers, and competences at each administrative territorial level by complying with the principles of decentralisation, subsidiarity, and local autonomy. Citing the works of Neil Armstrong, the head of the NASA Apollo 11 mission in 1969: 'one small step for a man, one giant leap for mankind', the study asserts that it is perhaps a small step for the beginning, however a giant leap towards a more qualitative form of public administration in Romania.

**KEYWORDS**

Administrative Code, constitutional order, public administration, general principles, administrative territorial unit, administrative reform

## 1. General social, geographical and economic presentation

Administration may be regarded as a universal and permanent entity, and the large variety in its effectiveness may not be solely explained by the economic or demographic importance of states. It is necessary to consider the structures, mores, and political practices of each nation. Among other things, the administration represents

Sztranyiczki, Sz. (2024) 'General Principles and Challenges of Public Administration Organization in Romania' in Hulkó, G. (ed.) *General Principles and Challenges of Public Administration Organization in Central Europe.* Miskolc-Budapest: Central European Academic Publishing. pp. 227–253; https://doi.org/10.54171/2024.gh.gpacopaoce_9

a force. This translates the immediate problems, concerns, and aspirations of often heterogeneous national communities.[1]

As a phenomenon, the organization of state administration emerged simultaneous to the state, although scientific theories on it were shaped much later, with the emergence and development of administrative law and science in the 19th century.[2]

A view in administrative doctrine holds that the evolution of the organization of administration in Romania was primarily influenced by military and geographical factors, which in time were supplemented by other factors such as economic, political, cultural, and religious.

Administrative organization is a particular manifestation of a state's specificity and identity. Most often, it represents the result of a long historical evolution marked by national particularities, which consequently appear predestined to resist European influences.[3]

A traditional problem raised by an administrative organization is whether the tasks to be performed are entrusted to a single state administration or distributed between several bodies, each with its own powers, for different portions of the territory.[4]

Research on the organization of public administration requires the study of all bodies formally constituting this system, the relationships between them, the particularities of each component, and applicable principles.[5] Thus, from an organic viewpoint, as a rule, contemporary public administration is characterised by a lack of subordination of local administration to central administration, with the Romanian Constitution and legislation establishing diverse forms of indirect control over local administration, as for example, the procedure of administrative supervision. However, from a material perspective, the acts of local administrative authorities should comply with the norms provided for in acts emanating from central administrative authorities as acts of superior legal force.

Public administration has always been of interest in administrative law and science. Western doctrine has had a different position depending on traditions, the nature of the political regime, the view on the relationship between constitutional and administrative law, and between administrative law and administrative science.[6]

After 1990, the transition from a socialist economy to an economy based on and led by free market forces was complex and relatively difficult to handle, and characterised by the strengthening and emergence of new types of structural, social, and spatial imbalances. Beginning in 1994, the context was further complicated by the

1 Bertrand, 1973, p. 372.
2 Iorgovan, 2005, p. 251.
3 Schwarze, 1996, p. 801.
4 Becet, 1992, p. 23.
5 Bălan, 2002, p. 48.
6 Iorgovan, 2005, p. 249.

emergence of negotiations for European Union (EU) accession,[7] finalised with a series of requirements and conditions which Romania had to comply with to adhere to the EU (institutional, legislative, and territorial/regional requirements). The primary condition for EU access was the establishment of development or (statistical) planning regions which represented the basis for implementing cohesion and regional development policies.

In Romania, regional policies led to the formation of eight development regions created in 1998 by the Law on Regional Development, which were included in the Eurostat system and the NUTS.[8] To receive financing through the cohesion policy, regions are evaluated using economic and social indicators (the most important being GDP per capita). Compared with the average value of the above indicator, there are important discrepancies between development regions in Romania and those in the EU, as seven of the eight regions present gross domestic product (GDP) values below the European average, except the Bucharest-Ilfov region, which has a value that exceeds the community average.[9]

Historically, regions have played a secondary role within the framework of territorial reforms, as counties represent the primary territorial administrative units. In 1925, aiming at common economic interests and to render public services more efficient, the Law on administrative unification allowed counties to associate and form 'regions' coordinated by a management council comprising delegates appointed at the level of each county. Subsequently, the Law on the Organization of Local Administration was adopted (1929), which is considered the first law aimed at the decentralisation of administrative territorial units in Romania. Consequently, seven administrative centres and local inspections were established (with headquarters in Bucharest, Cernăuţi, Chişinău, Cluj, Craiova, Iaşi and Timişoara).[10]

During 1929-1931, decentralisation of the central power was one of the objectives of regional policies. To this end, seven superior regional structures with legal personalities were established and coordinated by seven local ministerial directorates.[11]

7 The *acquis communautaire* related to Chapter 21 'Regional policies and the coordination of structural instruments' did not define how the structures specific to the actual administration of structural funds should have been created, however, left it to Romanian authorities. To access funds, Romania had to have an adequately implemented system by the date of accession (01.01.2007). On the date of EU accession, it should have complied with the following requirements: adequate legislative framework, a territorial organization compatible with that of EU member states, programming capacity, financial and budgetary administration. Romania should have provided information regarding its co-financing capacity and the level of public or equivalent spending related to structural actions.

8 EU Nomenclature of Territorial Units for Statistics (NUTS). Level NUTS 2 represents the region which forms the basis for the implementation of cohesion and regional development policies in the EU.

9 Eurostat: Regions and cities Illustrated (RCI) [Online]. https://ec.europa.eu/eurostat/cache/RCI/#?vis=nuts2.economy&lang=en (Accessed: 1 February 2023).

10 Săgeată, 2012, p. 34.

11 Although this formula could have been viable (it respected rather faithfully the historical regions, with a proportionate urban network at territorial level), it was abolished in 1931.

From 1938, the Constitution introduced a new type of political organization of the Romanian state and a new administrative law which established a new type of region, called 'province'. Thus, ten provinces were established which had the role of 'administrative territorial constituencies' with legal personality. The actions of the central authorities in the region were supervised within these provinces, and they sustained local interests. The ten provinces were: Olt, with its seat in Craiova, Bucegi (Bucureşti), Mării (Constanţa), Dunărea de Jos (Galaţi), Prut (Iaşi), Mureş (Alba Iulia), Someş (Cluj), Timiş (Timişoara), Nistru (Chişinău), şi Suceava (Cernăuţi).[12]

The 1968 Constitution abandoned the concept of provinces and established counties[13] as basic administrative territorial units in addition to municipalities and towns (subunits). At that time, it was considered that the introduction of counties in place of provinces was the primary solution for increasing the efficiency of the rational administration of the territory.

Romania's territorial policy was characterised by a high level of administrative territorial instability until 1968,[14] which was followed by a high level of centralisation secondary to a reduction in the number of villages/communes (through mergers) and an increase in the number of towns (as a result of industrialisation).

After 1968, industrialisation became the primary factor with the highest impact on territorial development in Romania, and the location of industrial capacities in the vicinity of raw material sources determined an increase in the level of urbanisation and full use of the local labour force.[15]

After the fall of communism, the new Constitution of 1991[16] and Law No. 69/1991 on local public administration maintained the county as the basic administrative territorial unit (in addition to municipalities, towns, and communes), representing the central element of economic development and territorial planning policies. The increased number of administrative territorial units in Romania (the number of municipalities had increased by approximately 2,2 times and that of towns by 1,15 times) was primarily determined by an increase in population from 19,72 million inhabitants (1968) to 20,12 million inhabitants in 2011. According to preliminary data from the Population and Housing Census from 2021 presented by the National Institute of Statistics at the beginning of 2023, the resident population

12 Antonescu, 2003, p. 53.

13 Article 15 of the Romanian Constitution from 1968: 'The territory of the Romanian Socialist Republic is organised in administrative-territorial units: counties, towns and communes. Bucharest municipality is the capital which is divided into sectors. More important towns may be organised as municipalities'.

14 With less important modifications in 1981, 1989, 1990, 1993, 1996. After 1996, the country was divided into 42 counties (41 counties and Bucharest municipality which, although holding a special administrative status, is named municipality).

15 For details see Săgeată, 2004, 2006 and 2011.

16 Article 3 (3) of the Constitution from 1991: 'Administratively, the territory is organised in communes, towns and counties. Under the terms of the law, certain towns are declared municipalities'.

of Romania has decreased to 19,05 million persons compared with the last census from 2011.[17]

After the regime change in 1990, fragmentation increased at the local level through the establishment of 173 communes, 13 towns, and 47 municipalities. Communes were established through their separation from certain existing ones; in the majority of cases, based on historical antecedents, others were declared towns, whereas some towns were declared municipalities if complying, in the majority of cases, with the minimal requirements of urban status.[18]

At present, the composition and name of administrative territorial units, municipalities that are county seats, and villages that are communal seats are established in Law No. 2/1968 on the administrative organization of Romania's territory. According to the 1991 Constitution and the specific legislation in force,[19] the territory is organized into counties, municipalities, and communes. The present constitutional provisions allow for the preservation of the administrative territorial organization from 1968 (Law No. 2/1968), as the territory of the country comprises 41 counties, in addition to the Bucharest municipality.

Counties are administrative territorial units comprising communes, towns and, as the case may be, municipalities, depending on the geographical, economic, social, ethnic conditions and the cultural and traditional bonds of the population, declared as such by law, according to Article 101 of Emergency Government Ordinance No. 57/2019 on the Administrative Code.

Localities may be urban or rural, depending on the proportion of the labour force employed in agricultural or non-agricultural activities, and the importance and socio-oeconomic influence on its neighbourhoods. The law establishes a series of indicators for urban localities differentiated by municipalities and towns, of which the number of inhabitants is the most important (at least 25.000 inhabitants for municipalities and at least 5.000 inhabitants for towns).[20] Towns and communes are basic administrative territorial units (as a rule comprising several localities). In addition to towns and communes, there are other types of units, such as metropolitan areas, which are independent, have legal personalities, and are formed by means of voluntary association of basic administrative territorial units.

Communes are basic administrative territorial units which comprise a rural population united by a community of interests and traditions constituting one or more villages, depending on their economic, social, cultural, geographical, and

17 For details regarding preliminary data of the Population and Housing Census from 2021, see Institutul Naţional de Statistică, 2022.

18 See Se schimbă legea organizării administrativ-teritoriale a României, 2016.

19 The territorial-administrative reorganization of Romania is discussed since 2010, however, the political factor has not assumed this reorganization so far, see for example Reorganizarea administrativă a României – din 42 de județe vor rămâne doar 15 [Online]. Available at: https://www.refleqtmedia.ro/reorganizarea-administrativa-a-romaniei-din-42-de-judete-vor-ramane-doar-15/ (Accessed: 3 February 2023).

20 According to Law No. 351/2001 on the approval of the National Territorial Development Plan – Section IV. The network of localities.

demographic conditions. The economic, social, cultural, and household development of rural localities is ensured through the organization of communes. Communes may comprise several rural localities, called villages, that do not have legal personalities. A village where the communal public administration authorities have seats is a village-communal seat.

Towns are basic administrative territorial units declared by law, based on fulfilling the criteria provided by legislation on national territorial development. Towns are administrative territorial units comprising at least one urban locality, and may also comprise rural localities called dependent villages.

Municipalities are administrative territorial units declared under law. Municipalities are composed of residential, industrial, and business areas, with multiple buildings having administrative, industrial, economic, political, social, cultural, and scientific functions aimed at serving the population of a geographical area which is wider than its administrative limits and situated as a rule in an area larger than that of the town. In municipalities, administrative territorial subunits may be created, which are delimited and organized according to the law. The Bucharest municipality is divided into six administrative territorial subunits, called sectors.

Counties are administrative territorial units comprising communes, towns, and, in some cases, municipalities, depending on the geographical, economic, social, and ethnic conditions and the cultural bonds and traditions of the population, as declared by the law.[21]

In addition to mayors (executive authorities), local, communal, town, and municipal councils, which are deliberative authorities, play important roles in the management of the administrative territorial units through which local autonomy is accomplished.[22]

Organization of the territory in large administrative regions has not yet been implemented in Romania. Most initiatives were annulled, protracted, or reviewed. The primary reason for this is the lack of a real sense of belonging to the idea of regions (and all that is entailed).

In conclusion, evolutions in the field of administrative territorial reform were, in particular, the consequence of political will and geopolitical evolution. Correlated and integrated with economic and social changes, administrative reforms sought to create territorial structures which would contribute to enhanced efficiency in the implementation of measures and actions designed to reduce economic, social, and other imbalances between regions, as well as better overall control over these imbalances. The impact of these reforms was reflected in a series of phenomena which entailed both quantitative (reduction or increase in the number of counties, communes, towns, and their surfaces) and qualitative (renaming certain towns, establishing new categories of administrative territorial units, etc.) adjustments.

21 According to the provisions of Articles 98-101 of the Administrative Code.

22 The powers and competences of local public deliberative and executive authorities (local council, mayor, county council, president of the county council) are presented in detail in Article 105-276 of the Administrative Code.

At present, we are witnessing new solutions aimed at a territorial-administrative reorganization which should proceed from a correct understanding of the past, of the origins of inequalities that have never been eliminated but have perpetuated and sometimes even strengthened. Thus, the reduction of territorial inequalities could be the consequence of a real, stable, gradual, predictable, and transparent decentralisation process based on objective criteria and rules, by ensuring the necessary resources for the exercise of powers transferred to the local level, on equity, participative democracy, as well as an efficient and effective spending of financial resources.

## 2. Public administration and constitutional order

Once the separation of powers was established, administrative norms acquired distinct importance. Thus, in literature it is considered that administrative law had emerged as a branch of law 'after the introduction of the principle of the separation of powers into the Constitution of the United States of America (1787) and the French Constitution (1791)'.[23]

The large majority of contemporary legal systems enshrine the separation of powers, understood as delimiting legislative, executive, and judicial functions within the activities of a state. The legislative function is fulfilled by the parliament as the sole legislative authority. This function involves the adoption of laws that comprise the impersonal and mandatory norms of social conduct. Its original character distinguishes the legislative function from other state functions, as laws are an expression of the will of the representative body established at the national level, benefiting from a superior legal force compared with other legal norms, with the legislative function emerging as a direct manifestation of the people's sovereignty.[24]

The objective of the executive function is the organization and actual implementation of laws, ensuring the proper functioning of public services established for this purpose, as well as issuing normative and individual acts or conducting material operations by which there is an intervention in the life of individuals to channel their activity or to provide them with certain services.[25] This function of the state is fulfilled by public administration (president, government, ministries, local authorities, public institutions).

The objective of the judicial function is the resolution of conflicts arising in society in relation to the application of laws and it is fulfilled by courts of law 'through decisions having the force of *res judicata* within the framework of a public and adversarial procedure'.[26]

23 Prisăcaru, 2002, p. 18.
24 Drăganu, 1993, p. 100.
25 Petrescu, 1997, p. 6.
26 Petrescu, 1997, p. 7.

### *2.1. The characteristics of Romanian administrative law*

Administrative law is a branch of public law which comprises legal norms regulating social relationships concerning the organization and functioning of public administration based on and for the enforcement of the law.[27] To complement the definition of the notion of administrative law, we shall mention a synthetic definition which specifies that 'in countries following the Roman tradition, administrative law is understood as the totality of specific rules applying to administration'.[28]

The Constitution is the fundamental law of the state, and it is a source of administrative law with supreme legal force, as all other legal acts must comply with it.[29] To underline that the Constitution is a source of law, in doctrine, it used to be emphasised that it is a 'direct or indirect source of all the prerogatives of public administration'.[30] Thus, by analysing the constitutional provisions and speciality literature, we consider that the following categories of norms are direct sources of administrative law:[31] 1) provisions on the organization and functioning of the most important public administrative authorities – president (Title III, Chapter II of the Constitution), government (Title III, Chapter III of the Constitution), speciality central public administration (Title III, Chapter V, Section 1 of the Constitution) and local public administration (Title III, Chapter V, Section 2 of the Constitution), People's Advocate, Court of Auditors; 2) norms on the fundamental rights and obligations of citizens, the recognition and exercise of which imply the intervention of public administrative authorities (e.g. the provisions on citizenship (Title I, Article 5 of the Constitution), the right to life, freedom of expression, the right to vote, to strike, to petition, to information, free movement, and the right of a person injured by a public authority (Title II, Chapter II of the Constitution); and 3) norms concerning the relationships between public administrative authorities and other authorities and the relationships between public administrative authorities and citizens.

Within the Romanian constitutional regime, the central administration comprises the president, government, speciality central bodies (ministries, other bodies under the government or ministries, and autonomous administrative authorities), and central public institutions under the ministries or autonomous administrative authorities (including autonomous economic entities and national companies).

Following the French doctrine model, the current Romanian doctrine is dominated by the argument that the Romanian constitutional system has enshrined a double executive, comprising the Romanian president and the government, headed by the prime minister.[32]

The Romanian president has a series of administrative and political powers, however, most of them are contingent either on the Parliament's (previous or

27 Petrescu, 1997, p. 18; Iorgovan, 2005, p. 130.
28 Schwarze, 1994, p. 111.
29 Petrescu, 1997, p. 20.
30 Iorgovan, 2005, p. 132.
31 Apostol Tofan, 2003, p. 50.
32 Iorgovan, 2005, p. 69.

subsequent) intervention, the government's or the prime minister's proposal, or on the proposal of the Superior Council of Magistracy. The government is a collegiate body that forms the executive power specific to any parliamentary regime in addition to the head of state or president, as the case may be. Within the executive, the balance may be inclined towards a unipersonal body represented by the head of state or towards a collegiate body represented by the government. However, irrespective of the pre-eminence of one of the above two bodies, there are constant tasks that are only incumbent on one, as competencies may only be exercised together. Thus, the task of 'mediating between state powers' belongs to the president or the constitutional monarch, the management of administrative activities to the government, while tasks such as those regarding the conclusion of international treaties or appointing ministers emerge as a result of their collaboration.[33]

### *2.2. The general principles of administrative organization*

Three solutions have been imposed on the organization of the administration: administrative centralisation, administrative deconcentration, and administrative decentralisation. These are also called the general principles of administrative organizations, and they determine the relationships between central and local administrative authorities from the perspective of their organization.

– Administrative centralisation entrusts all administrative powers to central management. In a regime in which this system of administrative organization is applied, administrative territorial units do not have a legal personality and are strictly dependent on central power, being limited to the execution of instructions. The hierarchical control exercised over the activity of inferiors is specific to centralised systems. It may take two forms: a direct form, when orders are given directly by the government or central power, and an indirect form, when the agents of the centralised power convey their orders to the government as its agents.[34] As an example of centralisation, in Romania, certain central institutions are subordinated to a ministry (e.g. the National Agency of Civil Servants functions under the authority of the Ministry of Interior Affairs).

– Administrative deconcentration is a variant of centralisation, characterised by the fact that the local representatives of the central power confer certain decision-making rights; however, in reality, it is the state that decides, not at the level of the central authority, but directly in the administrative territorial units. The central bodies continue to exercise hierarchical control over their territories. In Romania, the external services of ministries in the territory are deconcentrated into general directorates, inspectorates, and agencies.

– Administrative decentralisation comprises the transfer of some attributes of various central authorities to institutions that operate in administrative-territorial units and even local communities. Public administration has become more efficient

33 Vrabie and Bălan, 2004, p. 214.
34 Auby and Ducos-Ader, 1971, p. 83.

and operative through decentralisation, and the problems that the population is interested in are no longer solved in the institutions of the central administrative authorities, but at lower levels under conditions of opportunity and increased operability. This principle is enshrined in the Constitution. According to Article 120 (1) of the Romanian Constitution, public administration in administrative-territorial units is based on the principles of decentralisation, local autonomy, and the deconcentration of public services.

In Romania, administrative decentralisation is of two types:

– Territorial decentralisation implies the right of a local community to be integrated into a greater community, which has the right to manage itself through its own means. Decentralised bodies enjoy autonomy in managing local necessities, however, are not independent. State control is exercised through administrative tutelage. As opposed to hierarchical control, administrative supervision is exercised only in cases expressly stipulated in the law and only by bodies expressly indicated in the law, and it only concerns the legality of administrative acts and not their appropriateness. In Romania, administrative supervision is jurisdictional; that is, it is reduced to the right of the supervisory body (the prefect) to apply to the administrative court.

– Decentralisation may also be by services, when public services are removed from the authority of central bodies and organized autonomously, assigning them their own management bodies and a patrimony that is distinct from that of the authority it has been removed from. The Administrative Code introduced fundamental principles and general rules, as well as an institutional framework for conducting the administrative and financial decentralisation process in Romania.

According to the Administrative Code, decentralisation is the 'transfer of administrative and financial powers from the level of central public administration to the level of public administration in administrative territorial units, together with the financial resources necessary to their exercise'.[35]

According to the Administrative Code, the decentralisation process is conducted according to the following principles:[36]

a) The subsidiarity principle involves the exercise of powers by the local public administrative authority from the administrative level closest to the citizen, which has the necessary administrative capacity.
b) The principle of ensuring adequate sources for the powers transferred.
c) The principle of the liability of local public administrative authorities in relation to their respective powers imposes an obligation to comply with the application of quality and cost standards in the provision of public services and utilities.
d) The principle of ensuring a stable and predictable decentralisation process based on objective criteria and rules does not constrain the activities of local public administrative authorities or limit their local financial autonomy.

35 According to Article 5 (x) of the Administrative Code.
36 According to Article 76 (a-e) of the Administrative Code.

e) The principle of equity implies the provision of access to public services and utilities for all citizens.

### *2.3. Administrative litigation and rule of law*

In Romania, the institution of administrative litigation represents 'the democratic form for the remedy of breaches committed by administrative bodies and authorities, for limiting their arbitrary power, for granting the individual rights of those under their administration' or, more synthetically, 'the legal form of protecting individuals – natural persons or legal entities – from any abuse coming from public administrative authorities'.[37] Therefore, synthetically, administrative litigation represents the totality of legal rules concerning the settlement of administrative disputes in court, through legal proceedings.[38]

Romanian administrative litigation is governed by the provisions of the Constitution, general law on administrative litigation, and special laws.

Thus, Article 52 (1) of the Constitution describes the essence of this legal institution: 'persons injured in their rights or legitimate interests by a public authority by means of an administrative act or by failure to solve a petition within the statutory deadline are entitled to achieve the recognition of their alleged right or legitimate interest, the annulment of the act and remedy for the damages'. Paragraph 2 of the same constitutional text specifies that organic law should establish the conditions and limits for exercising this right.

The term 'injured person' is defined as any person holding a right or legitimate interest, injured by a public authority by means of an administrative act, or by failure to solve a petition within the statutory deadline. Groups of natural persons without legal personality, holders of certain private rights or legitimate interests, as well as social organizations that allege the infringement of either a public legitimate interest or of the rights and legitimate interests of certain determined natural persons by the contested administrative act are assimilated to injured persons.

Within the meaning of the concept of injured persons, two distinct parts can be identified.

– The injured person is, primarily, a natural person or legal entity holding a (subjective) right, with legal capacity and standing. Natural persons have standing in administrative litigation even if they do not hold Romanian citizenship, as the law makes no distinction to this end.[39] Natural persons or legal entities may also be injured in their rights as a result of administrative silence or an unjustified refusal to resolve their petitions, as these administrative deeds are assimilated into administrative acts.

37 Petrescu, 2001, p. 327.
38 Auby and Auby, 1996, p. 251.
39 See the Supreme Court of Justice, Administrative litigation section, Decision No. 2632/2000, Decision No. 1800/2000, in *Buletinul Jurisprudenței Curții Supreme de Justiție, 2000,* pp. 592, 752.

– Natural persons are also associated with the injured persons. The intention of the legislature was to create a type of collective action based on the community of injured rights and interests jointly exercised by several natural persons. In this case, we are in the presence of an objective administrative dispute which seeks the annulment of the concerned administrative act based on public interest. As for other aspects, this action is assimilated into the judicial actions of natural personnel or legal entities injured in their rights. Consequently, the timelines for submitting an application and preliminary administrative procedures are the same. However, we consider that certain elements of actions submitted by injured natural persons or legal entities are not applicable, which primarily concern the possibility of claiming damages (damages may only be claimed within subjective administrative disputes when private, personal rights, and interests are injured). Only legal expenses could be claimed. Moreover, the illegal character of the contested administrative act shall be objective, affecting its objective legality, and not subjective, based on the infringement of the subjective right of the social organization.

The notion of interested social organizations is defined in Article 2 (1) letter s) of Law No. 554/2004 on administrative litigation: non-governmental structures, trade unions, associations, foundations, and other similar organizations involved in the protection of the rights of different categories of citizens or, as the case may be, the adequate functioning of public administrative services.

However, to the benefit of natural persons, for the first time the law regulates an action submitted by the People's Advocate. Thus, upon review by the People's Advocate according to its own organic law, the illegal character of the act or the refusal of the administrative authority to fulfil its legal powers can only be eliminated in court; the People's Advocate may submit an application to the administrative court that is competent according to the applicant's domicile. The petitioner acquires *de jure* the capacity of the claimant, and he/she shall be summoned in this capacity. If the petitioner does not endorse the action submitted by the People's Advocate at the first hearing, the administrative court annuls the application.[40]

During the process of adopting the law, the People's Advocate and the government have criticised the draft law in their opinions, considering that the institution concerned may not substitute itself for citizens in the exercise of their procedural rights, it may not take over the interests of citizens as doing so would contradict the spirit of this institution originating from the institution of the Nordic and European Ombudsman, which acts in accordance with non-adversarial ethics standards when solving petitions, using the procedure of mediation to this end, without beginning a lawsuit.[41] However, in Decision No. 507/2004, the Constitutional Court deemed the text unconstitutional.[42]

40 According to Article 1 (3) of Law No. 554/2004 on administrative litigation.
41 Iorgovan, 2004, pp. 48–55.
42 Published in the Official Journal of Romania No. 1154/07.12.2004.

Similarly, the law regulates the possibility of the Public Prosecutor's Office filing an administrative litigation application on account and behalf of natural persons and legal entities. Thus, when following the exercise of its powers provided for by its organic law, the Public Prosecutor's Office considers that the violation of the persons' rights, freedoms, and interests is because of the existence of certain individual unilateral administrative acts issued by public authorities misusing their power. It resorts to the administrative litigation court from the domicile of the natural person or the seat of the legal entity injured, with their prior approval. By law, the petitioner acquires the capacity of the claimant and is summoned to this capacity.

It is similar to that available to the People's Advocate, with the difference that the People's Advocate may only act on behalf of natural persons and not on behalf of legal entities. The object of the application is an administrative act issued with the misuse of power by a public authority and not an unjustified refusal to solve a petition or administrative silence. Therefore, the contested act may be issued not only by administrative authorities, but by any public authority, that is, by 'any state body or a body of an administrative territorial unit that acts in the exercise of public power', as well as by private legal entities which have obtained public utility status according to law or are authorised to provide a public service as persons assimilated to public authorities according to law.[43]

Analysing the legal provisions, we may conclude that the Public Prosecutor's Office becomes the protector of the rights and freedoms of natural persons and legal entities from possible abuse by public administration.

Simultaneously, based on the provisions of Article 1 (8) of Law No. 554/2004 on administrative litigation,[44] public authorities will be able to act in administrative litigation as representatives of a public legal entity if a subjective right provided by law to the benefit of the public legal entity has been injured, or by themselves if a public interest has been injured.

We are in the presence of a subjective dispute if the rights of a public legal entity are injured, and in the presence of an objective dispute if the object of the application is the annulment of a normative or individual administrative act.

Only public authorities that have the power to represent a public legal entity in court will be able to file applications on behalf of that public legal entity and no other administrative bodies or institutions that manage the assets of the concerned legal entity. For example, the mayor may act on behalf of the commune, however, the local council or institution under it may not.

The institution of administrative tutelage is an established concept in administrative law, representing the control exercised by central bodies over decentralised, autonomous local bodies. Law No. 554/2004 on administrative litigation regulates the right of the prefect to challenge the acts issued by local public administrative

43 According to Article 2 (1) (b) of Law No. 554/2004 on administrative litigation.

44 'The Prefect, the National Agency of Civil Servants and any other subject of public law may submit administrative actions under the conditions of the law herein and of the special laws.'

authorities in administrative courts within the time limits provided for by law if they consider the acts concerned illegal and the possibility of the National Agency of Civil Servants challenging the acts of central and local public authorities which violate the legislation concerning public functions under the conditions of the law. In both cases, the challenged act was suspended until the case was resolved.

## 3. The organization and functioning of public administrative authorities

### *3.1. General principles applicable to public administration*

The organization and functioning of public administrative authorities are regulated primarily by the Administrative Code.[45]

The general principles applicable to public administration are as follows:[46]

a) The principle of legality: public administrative authorities and institutions as well as their personnel are obligated to act in a manner that complies with legal provisions in force and international treaties and conventions to which Romania is a party.
b) The principle of equality: the beneficiaries of the activities of public administrative authorities and institutions are entitled to be treated in an equal, non-discriminatory manner, correlative with the obligation of public administrative authorities and institutions to treat their beneficiaries equally, without discrimination, based on the criteria provided for by law.
c) The principle of transparency: in the process of elaborating normative acts, public authorities and institutions shall inform and submit to public consultation and debate draft normative acts and allow citizens access to the process of administrative decision-making as well as to data and information of public interest within the limits of the law. The beneficiaries of the activities of public administrative authorities have the right to obtain information from public administrative authorities and institutions, while the latter ones have the correlative obligation to provide information to their beneficiaries, *ex officio* or upon request, within the limits of the law.
d) The principle of proportionality: the activity of public administrative authorities shall take a form that is adequate to satisfy the public interest, and it shall be balanced from the perspective of its effect on persons. The regulations or measures of public administrative authorities are initiated, adopted, and issued only upon evaluation of public interest needs or problems, as the case may involve risks and the impact of the solutions proposed.
e) The principle of satisfying public interest: public administrative authorities and institutions, as well as their personnel, should pursue the satisfaction of

45 Emergency Government Ordinance No. 57/2019 on the Administrative Code was published in the Official Journal No. 555/05.07.2019.
46 According to Articles 6-13 of the Administrative Code.

the public interest before individual or group interests. National public interest is prioritised over local public interest.

f) The principle of impartiality: staff employed in public administration should exercise their legal powers without subjectivism, irrespective of their own beliefs or interests.
g) The principle of continuity: public administration is exercised without interruption in compliance with legal provisions.
h) The principle of adaptability: public administrative authorities and institutions should satisfy societal needs.

### *3.2. Specific principles applicable to the central public administration*

#### *3.2.1. The government*

As for the government, in state practice, it is impossible to preponderantly delimit political and administrative powers, considering that the Constitution does not comprise a list of its powers, as opposed to the president, whose powers are enshrined in the Constitution.

Thus, Article 102 (1) of the Romanian Constitution only provides for the government's role in ensuring the accomplishment of internal and external policies and exercising the general management of public administration. The fundamental reason for the government is to ensure the accomplishment of the internal and external political lines of the country, which, from a legal perspective, materialise in the initiation of draft legislation and the adoption of decisions for their implementation, whereas the aim of public administration, whose general management is conducted by the government, is exactly the attainment of these political values.

A distinct chapter in Title III of the Constitution (Public authorities) is dedicated to the relationship between the parliament and government. The government's political role is evident, and it is not expressed in the purely executive sphere but also by means of collaboration with other public authorities, particularly with the legislative authority, for example, in the case of legislative initiatives and legislative delegation.[47]

Exercising the general management of public administration represents the government's command role, by virtue of which measures approved for the achievement of its political role should be implemented. Thus, we find ourselves in the presence of a new constitutional concept concerning the delimitation of executive power and administration, and the correlation of the state's executive function with its accomplishment through the entire public administration, whether state administration or administration pertaining to the administrative authorities of local communities, is highlighted.[48]

Regarding the government's role in exercising the general management of public administration, we note that, in the present Romanian constitutional order, the

47 Iorgovan, 2005, p. 71.
48 Vida, 1994, pp. 86–89.

government has the following administrative relationships: above ministries (or other speciality bodies with the rank of ministry), collaboration with autonomous administrative authorities, and administrative supervision in relation to deliberative authorities elected at the local level. Thus, the government has a general material competence. Article 102 (2) of the republished Romanian Constitution enshrines a general principle that governs the government's activity, that is, cooperation with interested social organizations to perform their duties. Thus, the principle of government transparency is highlighted, which means that the government is neither above civil society nor severed from it.[49]

The government has to cooperate with the representatives of civil society, with public opinion, and it not only has to conduct a demanding activity in its relationship with the parliament, but also with diverse social organisms, trade unions, parties, religious denominations, working together with them and receiving the signals they emit to the executive as exponents of civil society, for the executive to debate and solve certain problems.[50]

The Romanian Constitution uses the concept of government in a restrictive sense; that is, it only refers to the part of the executive power that comprises all the ministers headed by the prime minister, excluding the head of state.[51]

Article 102 (3) of the Romanian Constitution describes the government's structure. From the formulation of the Constitution, it follows that the aim was to regulate the government without an internal hierarchy. Equal legal relationships between all its members are established, including in relation to 'those established by organic law'.[52]

In the absence of a constitutional or organic norm which would specify the number of government members, this number is explicitly set by the decision of the parliament, that is, by the decision to grant a vote of confidence to the government or the decision to approve the modification of the government's structure or political composition as a result of a government reshuffle.

With regard to the composition of the government, substantial modifications may occur at the ministerial administration level at any time, particularly for economic reasons. These aspects are strictly related to the success or failure of a government, and the assumption is that any prime minister should have the ability to mark the optimum governmental formula for achieving the proposed governmental programme.[53]

In the Romanian Constitution, the investment procedure is provided in Article 85 (1), in conjunction with Articles 103 and 104.

Initialised and finalised by the Romanian president, according to Article 85 (1), the investment procedure infers four well-defined procedural phases, however,

49 Constantinescu et al., 1992; Iorgovan, 2005, p. 226.
50 Duculescu, Călinoiu and Duculescu, 1997, pp. 299–304.
51 Petrescu, 2004, p. 90.
52 Preda and Vasilescu, 2007, p. 71.
53 Apostol Tofan, 1997, p. 39.

their weight in its effective accomplishment falls to parliament through the vote of investment. Thus, the fundamental rule of government formation is subject to the acknowledgement that a government may not be invested in and cannot function without parliamentary support.[54]

The four phases of the government's investment are as follows: designating the candidate for the function of prime minister, requesting a vote of investment, granting a vote of confidence by the parliament, appointing the government, and finalising by taking the oath. The decision of the Parliament to grant a vote of confidence shall be communicated to the Romanian president, who will issue a decree for the appointment of the new cabinet.

The appointment of the government's members by the Romanian president is not an 'investment', but a confirmation and nomination of the investment made by the parliament. The 'investment scrutiny' procedure does not affect the content and sphere of subsequent parliamentary control at all, considering that the Parliament does not 'approve' the governmental programme, but only 'accepts' it in principle, as argument of the investment.[55]

Within the complex constitutional relationship that defines the relationship between the government, Parliament and the Romanian president, the relationship with the Parliament is essential, considering that the government is invested in and disinvested with the vote of the Parliament, a trait specific to parliamentary regimes. Therefore, in a parliamentary regime, the position of the government is essentially specific to the cabinet.

Regarding solutions, Romanian political life has been imposed and experimented with according to the Constitution, and different versions concerning the government's composition, structure, and internal organization have been adopted.[56]

### *3.2.2. Ministries and autonomous administrative authorities*

In Romania, ministries form the second level of the public administrative system and are the central speciality bodies that manage and coordinate public administration in various fields and branches.

Their number is determined by the volume of public administrative tasks in different fields of activity as well as by the political ideas and interests of those in the government. Ministries fulfil their management and organizational tasks based on and under the conditions set by law.

The Romanian Constitution has a distinct section concerning the speciality of central public administration in Chapter V, dedicated to public administration.

According to Article 116 of the Constitution, ministries are organized only under the government, whereas other speciality bodies may be organized under the government, ministries, or autonomous administrative authorities. According to Article 117

54 Vida, 1994, pp. 86–89.
55 Deleanu, 2006, p. 652.
56 Preda and Vasilescu, 2007, p. 71.

(1) of the Constitution, ministries are established, organized, and function according to law. Consequently, the doctrine listed several possibilities: the adoption of an organic law[57] which would represent the sole source in the field for all ministries, the adoption of a framework law followed by special norms for each ministry, or the adoption of a special law for each ministry. However, since we are dealing with an ordinary law, as it is indicated, an ordinance[58] could also be adopted instead.[59]

Ministries and ministers are approved by the Parliament by granting a vote of confidence to the government programme and to the entire government list upon investigation, while the prime minister may request the Parliament to modify the government's structure by establishing, dissolving, or, as the case may be, dividing or merging certain ministries that are subject to parliamentary vote.

It follows from the provisions of the law that special laws are only necessary for the organization and functioning of ministries related to national defence and public order. Ordinances may be adopted if the government is empowered to this end, whereas the adoption of government decisions is sufficient for other ministries. Moreover, the law specifies the power of the government to approve, by decision, the role, functions, powers, organizational structure, and number of posts within ministries, considering their importance, volume, complexity, and specific characteristics.

57 According to Article 73 (1) of the Constitution, the Parliament adopts constitutional, organic and ordinary laws. Constitutional laws are those revising the Constitution. Organic laws regulate a limited number of aspects considered fundamental for the organization and functioning of the state. Among the areas reserved for organic laws are the electoral system, the functioning of political parties, the organization of referendums, the state of siege and the state of emergency, the legislation on labor relations, the status of national minorities. Domains not reserved for organic laws belong to ordinary laws. Thus, the Constitution stipulates that organic laws are adopted only in certain express domains, and the rest of the domains are reserved for ordinary laws. Most of the laws in Romania are adopted in the field of ordinary laws, because organic laws are reserved for some exclusive domains of major importance.

58 According to Article 115 (1) of the Constitution, the Parliament can adopt a special law empowering the government to issue ordinances in areas that are not the subject of organic laws. The enabling law will mandatorily establish the scope and date by which ordinances can be issued. If the enabling law requires it, the ordinances are subject to Parliament's approval, according to the legislative procedure, until the end of the enabling term. Failure to comply with the deadline results in the cessation of the effects of the ordinance. The government can adopt emergency ordinances only in extraordinary situations whose regulation cannot be postponed, having the obligation to justify the urgency within them. The emergency ordinance enters into force only after its submission for debate in the emergency procedure to the competent Chamber to be notified and after its publication in the Official Gazette of Romania. The chambers, if they are not in session, must be convened within 5 days of submission or, as the case may be, of sending. If, within no more than 30 days after submission, the notified Chamber does not rule on the ordinance, it is considered adopted and sent to the other Chamber, which also decides in emergency procedure. The emergency ordinance containing norms of the nature of the organic law is approved by the vote of the majority of the members of each Chamber. Emergency ordinances cannot be adopted in the field of constitutional laws, they cannot affect the regime of the fundamental institutions of the state, the rights, freedoms and obligations provided for by the Constitution, electoral rights, and they cannot target measures for the forced transfer of assets into public ownership.

59 Vida, 1994, p. 129.

Article 117 (3) of the Romanian Constitution establishes the principle that autonomous administrative authorities can be established by organic law. These structures are not directly under governmental authority. As a rule, their management is appointed by the Parliament that submits activity reports which are subject to parliamentary debate and approval.[60] The actual names of autonomous administrative authorities differ from one authority to another, such as council, service, commission, court.

The structure and management of autonomous administrative authority can be collegiate or unipersonal. For example, among the autonomous administrative authorities, we list the following: the Supreme Defence Council of the Country, the Romanian Intelligence Service, the Foreign Intelligence Service, and the Protection and Guard Service. All these autonomous administrative authorities, whether expressly mentioned in the Constitution, are organized and function based on organic laws. They have their own management bodies established by their deed of foundation, they have their own organizational structure and special duties which differentiate them from other speciality bodies of the central public administration. Autonomous administrative authorities appear as bodies in different fields which can be grouped into three categories: synthesis, coordination, and supervisory bodies.[61]

### *3.3. Specific principles applicable to the local public administration*

As opposed to central public administration, which is competent at the national level of the entire country, local public administrations are only competent within the limits of the administrative territorial units in which they function.[62]

Local organizations reflect the political regime, transposing its spirit and institutions to the local level.[63] Irrespective of the political regime, the organization of central authorities influences the organization and functioning of the local authorities.

In unitary states, there is a close relationship between central and local public administration, however, there are also dividing lines determined by the fact that the principle of local autonomy, which is enshrined in the Constitution, forms the basis of the organization and functioning of local public administration.[64]

Local autonomy is considered one of the most efficient forms of administrative self-management, granting a high level of democracy, as autonomous territorial communities become 'genuine counterpowers', a quality that allows them to prevent abuses from the central government.[65]

Decentralisation is usually presented as a way of organizing the state and administration from a legal perspective. The doctrine primarily outlined the concept of decentralisation, whereas legislation and jurisprudence played only a secondary role.

60 Bălan, 2002, p. 48.
61 Iorgovan, 2005, p. 447.
62 Prisăcaru, 2002, p. 747.
63 Alexandru et al., 1999, p. 242.
64 Prisăcaru, 2002, p. 748.
65 Manda, 2001, p. 427.

Initially, centralisation and decentralisation were not legal concepts. They expressed tendencies toward administrative policies related to history, constitutional regimes, and practical requirements.[66] Currently, the decentralisation process is common in EU member states and represents a major factor in the contemporary evolution of European institutions.[67]

Within the current Romanian constitutional system, the state administration comprises perfect and deconcentrated services under ministries or other speciality central bodies. The deconcentrated services of ministries are not regulated in a distinct article, but Article 120 (1) of the republished Constitution sets out the basic principles applicable to local public administration, that is, the principles of decentralisation, local autonomy, and the deconcentration of public services.

In Romania, the activity of prefects as territorial authorities of the state administration occurs primarily along two essential components resulting from the quality of their government representatives, as summarised in Article 123 of the Constitution and detailed in special laws. These are the management of deconcentrated public services under the ministries and under other bodies of the central public administration in administrative territorial units, and monitoring the compliance of local public administrative authorities with the law, which is materialised in the possibility of challenging their acts in administrative court if they consider them illegal.

The present doctrine refers to a double dimension of prefects: political and technical. They are the representatives of the 'power' and, they are the depositaries of the state's authority in counties.[68]

According to the provisions of special laws in the field, prefects represent the local government. The government appoints a prefect in each county and municipality of Bucharest at the proposal of the Minister for Internal Affairs. Prefects ensure compliance with law and public order at the local level. Ministers and managers of other central public administrative bodies under the authority of the government may delegate some of their management and supervision powers to the activities of deconcentrated public services under their authority.

The activities of prefects are based on the principles of legality, impartiality, objectivity, transparency, free access to information on public interest, efficiency, accountability, professionalisation, and orientation towards citizens.

According to the Constitution and laws in force, there are no subordinate relationships between prefects, and local councils, mayors, county councils, and their presidents.

Within the present Romanian constitutional system, local public administrations comprise local councils and mayors (basic local administration), as well as of county councils and county council presidents (intermediary local administration).

66 Manda, 2001, p. 307.
67 Delcamp and Loughlin, 2003, p. 11.
68 Bălan, 2002, p. 101.

In the Romanian Constitution, local public administration is regulated by four articles: Articles 120 (basic principles), 121 (communal and town authorities), 122 (county council), and 123 (prefect). As for its wording, the Romanian Constitution has opted for an intermediary legislative technique compared with other European constitutions, which are either confined to inserting a reference norm or comprising an entire title or chapter dedicated to local public administration. Thus, the Romanian Constitution was limited to specifying local public administrative authorities (communal and town councils and mayors) and local authorities at the county level (county councils) as well as the principles governing their relationships.[69]

According to Article 121 (2) of the Constitution, 'Local councils and mayors function, under the terms of the law, as autonomous administrative authorities and solve public issues in communes and towns'. Therefore, local councils have administrative and financial powers in any field unless there is an express prohibition in the law. Therefore, the powers of local councils have general material competence. Local councils have initiatives and decide, under the terms of law, on all matters of local interest, except those that fall within the competence of other local or central public authorities.

## 4. Challenges in Romanian administrative law

The first Administrative Code of Romania was adopted in 2019. This is a unique piece of legislation in Europe, where administrative procedure codes exist. Therefore, the reactions to its adoption, as expressed by several theorists, are reserved.[70] As a legal act of fundamental character in the field of public administration, the Administrative Code represents the first intensive normative intervention in the process of implementing national strategies that sets the general framework for answering general objectives related to adapting the structure and mandates of the central and local administration to citizens' needs, ensuring an optimum framework for the division of powers between central and local public administration, adapting the system of human resources to the requirements of a modern administration, reducing bureaucracy and simplification at the level of public administration, and consolidating the capacity of public administration to ensure quality and access to public services.

As for the possibility of the Government to adopt this legal act by means of an emergency ordinance, the Constitutional Court of Romania established in its case-law that 'it may be deducted that the prohibition to adopt an emergency ordinance is total and unconditional when it is mentioned that they may not be adopted in the field of constitutional laws and that they may not refer to measures of forcible transfer of assets to public property. In other domains provided for in the text, emergency ordinances may not be adopted if they produce negative consequences, but, in turn, they may be

69 Popescu, 1999, p. 127.
70 Podaru, 2020.

adopted if the provisions therein contained have positive consequences in the fields of intervention'.[71] Moreover, considering the provisions of Article 102 of the Constitution which states that 'the Government shall exercise the general management of public administration', the social and economic impact of not adopting solutions aimed at regulation would have been significant, considering that several defects have been constantly signalled in the practice of local public administrative authorities. In this case, we mention the dissolution of decision-making authorities (local/county councils), primarily determined by council members' inactivity, which affects both council meetings and the decision-making process, with negative effects on the stability of local authorities and on the proper functioning of administrative activities at the local community level, including the achievement of investment objectives.

We would also like to mention several exceptional situations registered at the level of administrative territorial units caused by blockages in the adoption and issuance of administrative acts concerning the contracting and implementation of grants for certain investment objectives.[72]

Furthermore, for the establishment of local/county councils, an impartial and objective legal framework was created for the validation of local/county councillors by eliminating the existing legal treatment (the mandates of mayors were validated by courts of law, and for the validation of the mandates of local and county councillors, a validation committee comprising councillors was established, whose members voted for the validation/invalidation of the other councillors' mandates).

Moreover, measures aimed at consolidating the role and mandate of the National Agency of Civil Servants and its administrative capacity to provide quality management of public functions have been implemented in accordance with the needs of the administration, which also include aspects related to the decentralisation of certain powers of the National Agency of Civil Servants, particularly regarding the issuance of opinions related to recruitment procedures.

Of the arguments related to the urgent character and the extraordinary situation of issues covered by the Administrative Code, which have imposed its adoption by the Government, we shall mention the reasoning of the Romanian Constitutional Court in Decision No. 681/2018 on the objection of unconstitutionality of the Law on the Romanian Administrative Code,[73] which mentions that 'complementary to existing

71 Of relevance in this respect: Decision No. 1189/06.11.2008 of the Constitutional Court, published in the Official Journal of Romania No. 787/25.11.2008.

72 For example, before the adoption of the Administrative Code contracting out public property with the vote of two-thirds of the local/county councillors in office, it was difficult to adopt such decisions, which affected the activity of local public authorities, particularly in the context of the need to implement grants of major interest for local communities. According to the provisions of the Administrative Code, the decision-making process has become more efficient with the introduction of absolute majority (50% + 1 of the number of councillors in office), including for decisions on asset management, except decisions on the transferability of ownership (when the qualified majority of two-thirds of the councillors in office is necessary).

73 Decision No. 681/2018 of the Constitutional Court, published in the Official Journal of Romania No. 190/11.03.2019.

normative codes currently in force, this law regulates an Administrative Code of Romania for the first time, bringing together a large number of legal acts directly linked or related to the field of public law and administrative law', as well as that 'the unitary approach of the Parliament to creating a Code of such complexity addresses the imperative requirement for cohesion, coherence, but also celerity, taking into consideration that this law was adopted by means of an emergency procedure'.

Thus, the Administrative Code corrected a series of substantive shortcomings[74] in existing regulations and legislative techniques[75] which are directly linked or related to the fields of public and administrative law.

As for the use of the mother tongue of national minorities in administration, Articles 194 (2)-(4) of the Administrative Code provide the following: 'in administrative territorial units where citizens belonging to a national minority make up at least 20% of the number of inhabitants, established at the last census, they shall enjoy the right to address the local public administrative authorities, their specialised personnel and the bodies under their authority in their mother tongue, orally and in writing, and they shall receive an answer both in Romanian and in their mother tongue. In order to exercise these rights, public authorities shall make available to citizens belonging to national minorities, forms and widely used administrative texts in bilingual versions, that is, in Romanian and in the language of the national minority. The list of forms and widely used administrative texts in use shall be established by government decision at the proposal of the Department for Interethnic Relations elaborated in cooperation with the Institute for Research on National Minorities, accompanied by the opinion of ministries with competencies in the field of public administration, public finances, and foreign affairs'. The list of forms and widely used administrative texts in the bilingual version (in the language of national minorities and in Romanian) has not yet been established by government decisions; therefore, four years after the adoption of the Administrative Code, there is a gap that should be promptly filled.

Simultaneously, a Code of Administrative Procedure represents a useful step for the administration (public institutions and authorities), both from the perspective of the role of the partner in the relationship with the beneficiaries/clients/those administered, as well as in the role of the beneficiary/client in the relationship with public

74 Of the substantive shortcomings of the regulations in force we shall mention: those that concern ways of collaboration and supervision between prefects and deconcentrated public services; the relationships between prefects and the Government, ministries and their deconcentrated public services; specific rules concerning public and private property of the state or administrative-territorial units; the status of civil servants, provisions applicable to contractual employees from the public administration and records of personnel paid from public funds; administrative liability and public services.

75 Of the shortcomings in legislative technique we shall mention: the lack of unitary definitions of the main concepts employed in public administration; redundant and parallel legal provisions (more frequent in the field of local public administration); the existence of contradictory legal provisions; legal vacuum (particularly regarding the framework legal regime for public services) and difficulties in the implementation of legal provisions in force generated by unclear and uncorrelated legal norms.

authorities or institutions with other similar structures. A Code of Administrative Procedure represents a working tool for simplifying and better correlating specific activities, clarifying and harmonising concepts and procedures, and establishing clearer responsibilities and attributions in relation to those administered. Through its content, a Code of Administrative Procedure could respond to the needs arising from the practice of public administrative authorities, prioritising not only the formalities that are the basis of the issuance of administrative acts or the conclusion of administrative contracts, but also above all, the legal regime applicable to them, that is, aspects related to their form, the effects they produce, their implementation, the vices they may have, and the methods of contestation. Such an approach would ultimately aim to improve administrative practice and implicitly have a beneficial effect on administrative jurisprudence in the sense of gradually reducing the number of actions in administrative courts.

In conclusion, Romania's public administration is currently facing numerous challenges that must be considered efficient. These challenges are related to both the multitude of services that need to be delivered and the growth and diversification of the categories of beneficiaries/clients, as well as challenges that go beyond the national institutional framework, including the fulfilment of Romania's obligations as an EU member state or as part of various international bodies, in terms of cooperation/interoperability, or the need to assume and adjust the tools and means used as a result of technological progress registered at the global level. In this context, the administration must be flexible and able to react promptly, including through regulations, to offer real, grounded, and functional solutions in response to these challenges. However, all these roles and challenges which modern administrations must face also assume a loaded legislative fund, which is increasingly difficult to harmonise and systematise. Therefore, it is necessary to establish rules that are as simple and clear as possible, generally applicable, and help in the proper functioning of public administration.

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# General Principles and Challenges of Public Administration Organization in Serbia

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**ABSTRACT**

This chapter provides an overview of the functioning and organization of public administration in Serbia. It begins by outlining the constitutional foundations underpinning the operations and structure of public administration, as well as its relations with other state powers, specifically the mutual checks and balances. The chapter further describes and analyses the organizational principles and structure of public administration, with an emphasis on its division into state (ministries and other administrative state authorities) and non-state administration (territorial autonomy, local self-government, public agencies, institutions, and enterprises) and their relationships. At the end, the author designates the key theoretical, practical and politically sensitive issues that the Serbian administration faces today, such as impediments to the professionalisation of public administration, challenges regarding decentralisation, the proliferation of public agencies, and the politically controversial subject of the scope of autonomy of Vojvodina, as one of Serbia's provinces.

**KEYWORDS**

public administration, state administration, local government, public services, Serbia

## 1. Basic social, geographical, and economic overview

The Republic of Serbia is a country in southeast Europe. It is located in the centre of the Balkan Peninsula, with its territory stretching from south to north. It borders (in a clockwise direction, starting from the north) Hungary, Romania, Bulgaria, North Macedonia, Albania, Montenegro, Bosnia and Herzegovina and Croatia. Its surface area is 88,499 km$^2$ and it has a population of 6.6 million.[1] Serbia is a landlocked country with access to the Danube, connecting it to the Black Sea, and (via the Rhine-Main-Danube canal) to the North Sea.

1 Statistical Yearbook, Statistical Office of the Republic of Serbia, 2022 [Online]. Available at: https://publikacije.stat.gov.rs/G2022/Pdf/G20222055.pdf (Accessed: 26 May 2023). If not otherwise indicated, this is the source of all presented statistical data.

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Serbia is a middle-income country with a GDP per capita (PPP) of 21,647 USD.[2] The total GDP (PPP) is an approximately 150 billion USD.[3] Public debt is 58.2%.[4] It is a candidate country for EU accession. Its main trade partners are EU member states (60%) and neighbouring countries (10%).[5]

Serbia's urban population is 57%.[6] The country is facing significant depopulation tendencies owing to negative natural increases and emigration. These two factors have resulted in uneven population distribution and development. The most developed and populated areas are the largest cities such as Belgrade, Novi Sad, Niš, Kragujevac, and other regional centres. In contrast, the rural regions are experiencing severe depopulation, especially in the eastern, southeastern, and southwestern parts of Serbia. This creates difficulties in providing an adequate level of public services in these areas of the country, where experts in all professions are lacking.

The Republic of Serbia is a unitary state with three levels of Government.

The first level is the central state level.

Territorial autonomy is at the second level. Serbia has asymmetric territorial autonomy, indicating that it possesses two autonomous provinces that do not encompass its entire territory. These are neither federal units nor second-level local self-government. Autonomous provinces have parliaments and executive and administrative authorities, but do not have their own courts, police, or military. Their parliaments cannot pass laws but only bylaws. These provinces have an increased level of autonomy in certain fields, particularly those related to local services. They exist chiefly due to specific historical (they cover territory that was not a part of Serbia in the 19th century, when modern-day Serbia was internationally recognised) and ethnic (their population is more ethnically diverse than the rest of Serbia) factors.

Finally, Serbia has a single layer of local self-government that forms the third level. There are three types of local self-government units—municipalities, cities, and the City of Belgrade—serving as the capital and a special local self-government unit with broader authorisations. They do not have hierarchical relationships among themselves.

2 The World Bank [Online]. Available at: https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD (Accessed: 26 May 2023).

3 The World Bank [Online]. Available at: https://data.worldbank.org/indicator/NY.GDP.MKTP.PP.CD (Accessed: 26 May 2023).

4 The World Bank [Online]. Available at: https://pubdocs.worldbank.org/en/155551492011111809/mpo-srb.pdf (Accessed: 26 May 2023).

5 EU u Srbiji [Online]. Available at: https://europa.rs/trgovina/ (Accessed: 26 May 2023).

6 The World Bank [Online]. Available at: https://data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS?locations=RS (Accessed: 26 May 2023).

## 2. Public administration and constitutional order

The Serbian Constitution,[7] in the broadest terms, lays the foundations of the functioning, structure, and relationship of public administration with other state authorities, public entities, and non-state agents.

### *2.1. Constitutional foundations of the functioning of administration*

The Constitution sets the grounds for the functioning of the administration by prescribing a legal framework for its work and control.[8]

The fundamental premise of all state powers, including public administration, is the rule of law. From the outset, the Constitution stipulates that the Republic of Serbia is a state founded on the rule of law and social justice, the principles of civil democracy, human and minority rights, and freedoms.[9] The rule of law is the basic presumption of the Constitution, it rests on inalienable human rights and it is achieved through free and direct elections, constitutional guarantees of human and minority rights, separation of powers, independent judicial authority and compliance of the authorities to the Constitution and the law.[10]

This basic principle is further concretised with respect to the functioning of public administration. Specifically, a provision entitled 'Legality of the Administration' prescribes that individual acts and actions of state authorities, organizations entrusted with public powers, authorities of autonomous provinces, and local self-government units must be based on law.[11]

Hence, the Constitution establishes the principle of the legality of the work of public administration as the cornerstone for its functioning. Public administrations are strictly bound by law and cannot undertake any (in)action without a specific legal basis for such conduct.

In addition to the principle of legality, the Constitution binds the administration with the principles of equality and non-discrimination. It guarantees equal protection of rights before courts and other state bodies, holders of public authorisations (i.e. entities to whom administrative authorisations are delegated) and the authorities of the autonomous province and local self-government units.[12]

Moreover, the power of the state, including the power of its administrative authorities, is limited by the duty of the public authorities to respect human rights. The Constitution stipulates that when restricting human and minority rights, all state authorities, especially courts, are obliged to consider the core of the restricted

7 Official Gazette of the Republic of Serbia, no. 98/2006 and 115/2021.
8 Tomić provides an overview of the constitutional provisions most significant for the administration, see Tomić, 2018, pp. 112–113.
9 Article 1 of the Constitution of the Republic of Serbia.
10 Article 3 of the Constitution of the Republic of Serbia.
11 Article 198, paragraph 1 of the Constitution of the Republic of Serbia.
12 Article 36, paragraph 1 of the Constitution of the Republic of Serbia.

right, the importance of the purpose of the restriction, the nature and extent of the restriction, the relationship between the restriction and its purpose, and whether there is a way to achieve the purpose of the restriction through a lesser infringement of rights.[13] The latter part of this constitutional provision emanates from the principle of proportionality, one of the main guiding norms for the functioning of administration.

The power of the state is limited by citizens' rights to territorial autonomy and local self-government.[14]

Finally, administrative powers have sector-specific limitations.[15] In particular, these relate to the protection of personal data,[16] the duty to provide public access to information,[17] and prohibition of conflicts of interest,[18] which are meticulously regulated by statutes and enforced by independent regulatory agencies.

In addition to setting these basic guiding principles for the performance of administrative work and establishing boundaries for state powers, the Constitution provides grounds for the control of administrative actions.

First, it does so in a general manner, guaranteeing everyone the right to appeal or use other legal remedies against a decision that determines their right, obligation, or interest based on the law.[19] This provision does not distinguish between administrative authorities on the one hand, and courts and other public authorities (e.g. provincial and local authorities and regulatory agencies). It also contains a provision specifically pertaining to the control of administrative actions. In the previously cited provision entitled 'Legality of the Administration', the Constitution additionally stipulates that the legality of final individual acts deciding on rights, duties, and legal interests is subject to review before a court in an administrative dispute, if, in a certain case, a law does not provide for alternative judicial protections.[20] The prior provision covers not only the judicial control of administrative work[21] but also internal control via hierarchical administrative appeal.

Furthermore, along with the (ordinary) courts, administrative (in)action is controlled by the Constitutional Court. The Constitutional Court's control over the work of the administration is twofold. On one hand, the Constitutional Court controls the constitutionality and legality of general legal acts (bylaws) of the administration.[22] On the other hand, it may be petitioned through a constitutional appeal of an individual

13 Article 20, paragraph 3 of the Constitution of the Republic of Serbia.
14 Article 12, paragraph 1 of the Constitution of the Republic of Serbia.
15 Article 6, paragraphs 1, 42 and 51 of the Constitution of the Republic of Serbia.
16 On the Commissioner for Access to Information of public Importance and Personal Data Protection, see Milovanović, Davinić and Cucić, 2019.
17 Ibid.
18 For the work of the Anti-Corruption Agency in Serbia, see Glušac and De Vrieze, 2020.
19 Article 36, paragraph 2 of the Constitution of the Republic of Serbia.
20 Article 198, paragraph 2 of the Constitution of the Republic of Serbia.
21 For judicial control of administration in Serbia see Cucić, 2018 and Cucić, 2019.
22 Article 167, paragraph 2 of the Constitution of the Republic of Serbia.

or legal entity claiming that their constitutionally guaranteed rights and liberties have been infringed upon by an administrative act or factual conduct.[23]

The Constitution establishes the grounds for control performed by the Citizen Protector (Ombudsman).[24]

Finally, by regulating relations among state authorities—primarily those between the administration and the National Parliament and the Government—the Constitution provides a basis for their control over administration (see infra Section 2.3.).

### *2.2. Constitutional foundations of the structure of administration*

The Constitution further outlines the basic contours of the administrative structure. In the section entitled 'State Administration', the Constitution specifies the position, manner of establishment, and organization of the state administration, as well as the delegation of its authority to other public entities and non-state organizations. Accordingly, the Constitution establishes the foundation for two main branches of public administration: state administration and non-state administration.

Regarding the state administration, the Constitution stipulates that state administration is autonomous,[25] bound by the Constitution and the law, and accountable for its work to the Government; that the state administration tasks are performed by ministries and other state administration authorities determined by law; that the duties of the state administration and the number of ministries are determined by law; and that the internal regulation of ministries, other state administration authorities, and organizations is regulated by the Government.[26] Therefore, structuring of the state administration is divided between the Parliament (the National Assembly) and the Government, with the former responsible for the establishment of the state administrative authorities and the latter authorised to prescribe their internal organization.

The Constitution provides the basis for the delegation of State administration tasks (authorisations and powers) to non-state agents. In the provision labelled 'Entrusting public authorisations and public service',[27] the Constitution permits the Parliament to entrust (delegate) certain tasks within the jurisdiction of the Republic of Serbia to autonomous provinces and local self-government units, if this promotes a more efficient and rational realisation of citizens' rights and obligations and serves their

23 Article 170, paragraph 2 of the Constitution of the Republic of Serbia.
24 Article 138, paragraph 2 of the Constitution of the Republic of Serbia.
25 Serbian Constitution and legislation distinguish between two terms – '*samostalan*' and '*nezavisan*'. Both terms could literally be translated as independent. Additionally, in everyday conversations, especially amongst laypersons, these would be considered as synonyms. However, these terms have distinct legal meaning. In the context of the state organization, '*samostalan*'—here deliberately translated as 'autonomous'—indicates authorities, such as ministries, that are directly subordinated to the Government. '*Nezavisan*', which will be translated as 'independent', designates public authorities that are not subordinated to the Government, such as the National Bank, the Ombudsman, the Data Protection Commissioner, the Competition Protection Commission, etc.
26 Article 136 of the Constitution of the Republic of Serbia.
27 Article 137 of the Constitution of the Republic of Serbia.

needs. The same provision permits the legislator to delegate certain public authorisations to companies, institutions, organizations, and individuals as well as to special sector-specific regulatory agencies.

### *2.3. Constitutional position of administration*

#### *2.3.1. Division of power between the highest state authorities*

State power in Serbia is based on the division of power into legislative, executive, and judicial branches, and the relationship between these three branches is founded on mutual checks and balances, while the judiciary is guaranteed independence.[28]

The executive power is divided into gubernatorial powers, political, and (purely) administrative branches. The political level of executive power is bicephalic.[29] The bicephalous executive encompasses the Government and the President of the Republic (the head of the state).

The Constitution creates a discrepancy between democratic legitimacy and the powers of the President of the State. The President of the State is elected directly by the citizens. As the bearer of the highest level of democratic legitimacy, the President of the State expresses unity.[30] However, their authorisation is modest and disproportionate to the manner of their election. The President of the Republic: 1) represents the Republic of Serbia in the country and abroad, 2) promulgates laws by decree in accordance with the Constitution, 3) proposes candidates for Prime Minister to the National Assembly after hearing the opinions of the representatives of the selected electoral lists, 4) recommends various officials to the National Assembly in accordance with the Constitution and law, 5) appoints and recalls by decree the ambassadors of the Republic of Serbia based on the proposal of the Government, 6) receives letters of credit and letters of recall from foreign diplomatic representatives, 7) grants, pardons, and awards, 8) performs other tasks determined by the Constitution, and 9) in accordance with the law, commands the army and appoints, promotes, and dismisses its officers.[31]

As is evident, even where the President of the Republic has more significant authorisations, such as those regarding ambassadors and the army and its officers, their power is limited by the other highest state authorities (e.g. the Government proposes ambassadors, and the National Parliament proclaims a martial state[32] and enacts the state budget,[33] including military expenses, while the Government, through the Ministry of Defence, controls other activities related to the army).

28 Article 4 of the Constitution of the Republic of Serbia.
29 Orlović, 2009, p. 173.
30 Article 111 of the Constitution of the Republic of Serbia.
31 Article 112 of the Constitution of the Republic of Serbia.
32 Article 201 of the Constitution of the Republic of Serbia.
33 Article 99 of the Constitution of the Republic of Serbia.

The Constitution designates the Government as the bearer of executive power.[34] The Government comprises the Prime Minister, one or more deputies, and ministers.[35] It is elected by the Parliament, while the candidate for Prime Minister is recommended by the President of the Republic.[36] The Government is the true focal point at the political level of executive power, despite the fact that its members could lack democratic 'weight'. Specifically, members of the Government, the Prime Minister, and ministers cannot be members of the Parliament.[37] Consequently, they could, as is often the case, be individuals who were not elected by citizens in parliamentary elections. However, the Government has considerable authority. The Government: 1) determines and performs policies; 2) executes laws and other general acts of the National Assembly; 3) passes decrees and other general acts to implement laws; 4) proposes laws and other general acts to the National Assembly and offers an opinion on draft laws submitted by other proposers; 5) directs and coordinates the work of state administrative authorities and supervises their work; and 6) performs other tasks determined by the Constitution and law.[38] The Government is responsible to the National Assembly for the national policy, enforcement of laws and other general acts of the National Assembly, and the work of the state administration.[39]

The circle of the highest state authorities also encompasses the National Assembly (national parliament). The National Assembly is the highest representative body and the bearer of constitutional and legislative powers in the Republic of Serbia.[40] Parliament members are elected through general suffrage in free, secret, and general elections. National Assembly: 1) enacts and amends the Constitution; 2) makes decisions on changing the borders of the Republic of Serbia; 3) announces a state referendum; 4) ratifies international agreements, 5) decides on war and peace, and declares war and a state of emergency; and 6) supervises the work of security services; 7) enacts laws and other general acts within the jurisdiction of the Republic of Serbia; 8) gives prior consent to the statute of the autonomous province; 9) enacts a defence strategy; 10) enacts the development plan and the spatial plan; 11) enacts the budget and final account of the Republic of Serbia at the proposal of the Government; and 12) grants amnesty for criminal acts. Within its electoral rights, the National Assembly: 1) elects the Government, supervises its work, and decides on the termination of the mandates of the Government and ministers; 2) elects and dismisses judges of the Constitutional Court; 3) elects four members of the High Council of the Judiciary and four members of the High Council of the Prosecution, elects the Supreme Public Prosecutor, and decides on the termination of his office;

34 Article 122 of the Constitution of the Republic of Serbia.
35 Article 125 of the Constitution of the Republic of Serbia.
36 Article 127 of the Constitution of the Republic of Serbia.
37 Article 126 of the Constitution of the Republic of Serbia.
38 Article 123 of the Constitution of the Republic of Serbia.
39 Article 124 of the Constitution of the Republic of Serbia.
40 Article 98 of the Constitution of the Republic of Serbia.

4) elects and dismisses the governor of the National Bank and supervises his work; 5) elects and dismisses the Protector of Citizens, and supervises his work; 6) elects and dismisses other officials determined by law[41] (this mainly pertains to independent regulatory agencies and authorities not subordinate to the Government, such as those in the field of access to public information, personal data protection, competition protection, public procurements, state audit, telecommunications, electronic media, etc.).

Relationships between the highest political state authorities are based on mutual checks and balances. As previously mentioned, the Government is elected, and its mandate can be terminated by the National Assembly.[42] The Prime Minister's candidate is proposed by the President of the Republic.[43] The National Assembly can be dissolved through the interplay between the Government and the President of the Republic. The President of the Republic dissolves the National Assembly upon the recommendation of the Government, which must be reasoned.[44] Additionally, if the National Assembly is dissolved, it will not elect the Government within the prescribed deadline.[45] Finally, the President of the Republic can be resolved of its duty due to a violation of the Constitution. The procedure for dismissal can be initiated by two-thirds of MPs, after which the Constitutional Court[46] is obliged to decide on the existence of a violation of the Constitution within 45 days.[47]

*2.3.2. Parliamentary and Governmental control of administration*

The National Assembly and the Government control public administration. The President of the Republic has no supervisory powers in relation to state administrative authorities.

The National Assembly's control over the state administration is both political and indirect. It is political in the sense that the National Assembly is not authorised to change or remove the legal acts of the administration. It is only authorised to discuss the work of the administration and provide its opinions and conclusions thereafter, as well as to hold the Government politically responsible for the (in)action of state administration. Parliamentary control is indirect, either through its relations with

41 Article 99 of the Constitution of the Republic of Serbia.
42 Articles 127, 128, 130 and 131 of the Constitution of the Republic of Serbia.
43 Article 127, paragraph 1 of the Constitution of the Republic of Serbia.
44 Article 109, paragraph 1 of the Constitution of the Republic of Serbia.
45 The deadlines vary from 30 to 90 days depending on whether the Government is elected by the particular convocation of the National Assembly for the first time, or the National Assembly previously terminated its mandate, Articles 109, 130 and 131 of the Constitution of the Republic of Serbia.
46 The Constitutional Court is also in the system of checks and balances given that five of its judges are elected by the National Assembly, five are appointed by the President of the Republic, and five by the general session of the Supreme Court, Article 172 of the Constitution of the Republic of Serbia.
47 Article 118 of the Constitution of the Republic of Serbia.

the Government or via the activity of the Ombudsman (the Citizens Protector) and specialised independent control authorities.

The Government is responsible for the work of state administrative authorities to the National Assembly. The National Assembly has well-known disposal mechanisms for this purpose. The first mechanism is the Institute of Ministerial Responsibility, which involves a vote of confidence in the Government as a whole or in a particular minister. Ministers are members of the Government and heads of ministries, which are the most important state administrative authorities.[48] The National Assembly can also exercise its control by posing parliamentary questions, interpellations, and forming enquiry committees.[49] The work of the Government and state administration can be supervised when the Government submits the National Assembly's annual report on its work. In addition, the National Assembly can request the Government as a whole or as a particular member to submit a special report on its work.[50]

The second channel of parliamentary control over the administration is the job of the Citizens' Protector (Ombudsman).[51] The Citizens' Protector is elected and responsible for its work to the National Assembly.[52] It submits a regular annual report to the National Assembly on its work and the state of human rights in the country, containing data on activities from previous year, observed shortcomings in the work of administrative authorities, recommendations for improving practices and normative regulation of individual areas, proposals for improving the position of citizens in relation to administrative authorities, and information on the implementation of recommendations and proposals from previous reports.[53]

Lastly, the National Assembly controls the administration's work through annual or special reports submitted by independent authorities specialising in the control of public administration in certain fields.[54] These include reports submitted by the Commissioner for Access to Information and Personal Data Protection,[55] the Anticorruption Agency[56] and the State Audit Institution.[57]

48 Article 130 of the Constitution of the Republic of Serbia.
49 Article 56 of the Law on the National Assembly, Official Gazette of the Republic of Serbia, no. 9/2010.
50 Article 36 of the Law on the Government, Official Gazette of the Republic of Serbia, no. 55/2005, 71/2005, 101/2007, 65/2008, 16/2011, 68/2012, 72/2012, 7/2014, 44/2014 and 30/2018.
51 On relation between the parliament and the ombudsman, see, Glušac, 2019.
52 Article 138 of the Constitution of the Republic of Serbia.
53 Article 39 of the Law on the Citizens Protector, Official Gazette of the Republic of Serbia, no. 105/2021.
54 For detailed overview of these authorities, see Davinić, 2018.
55 Article 36 of the Law on Free Access to Information of Public Importance, Official Gazette of the Republic of Serbia, no. 120/2004, 54/2007, 104/2009, 36/2010 and 105/2021.
56 Article 39 of the Law on Prevention of Corruption, Official Gazette of the Republic of Serbia, no. 35/2019, 88/2019, 11/2021, 94/2021 and 14/2022.
57 Articles 43-48 of the Law on the State Audit Institution, Official Gazette of the Republic of Serbia, no. 101/2005, 54/2007, 36/2010 and 44/2018.

The Government can exercise both political and legal control over public administration.

The Government politically controls the work of the state administration by directing, coordinating, and supervising their work in the implementation of public policies and the enforcement of laws and other regulations.[58] The most powerful mechanism of political control is the possibility of removing the highest political officials who govern state administrative authorities. The Government can request that the National Assembly dismiss ministers.[59] The Government, solely based on its political will, appoints and removes from the office state secretaries, formerly known as deputy ministers (what they still actually are).[60] The Government also appoints and removes the highest civil servants, assistant ministers, and directors of state administrative authorities other than the ministries. They cannot be removed solely on the basis of political will, but the law provides a wide margin of appreciation to the Government, prescribing that they can be removed from their office, if during their governance a serious disruption in the work of the state authority they manage occurs due to their failure to achieve determined work plans and strategic goals.[61]

In addition, the Government has legal control over the public administration. This includes not only state administrative authorities but also non-state entities entrusted with public authorisation (known as holders of public authorisation). The Government controls both the general and individual legal acts of these authorities and entities. If a state administrative authority or holder of public authorisations at the level of the Republic (such as public enterprises, public institutions, and public agencies) does not enact a regulation, the Government enacts it, provided that the failure to enact the regulation could have harmful consequences for the life or health of people, the environment, the economy, or property of greater value. The Government can also annul or cancel the regulation of the state administrative authority in conflict with a law or Government regulation and set a deadline for the adoption of a new regulation.[62] Similarly, the Government can temporarily suspend the general legal acts of local self-government units, provided it finds them to be unconstitutional or illegal, and requests that the Constitutional Court check their constitutionality and legality.[63] Hence, the Government can assume the competence of these authorities and entities to enact regulations (bylaws) and remove or suspend illegal regulations. Another type of legal control over the work

58 Article 123 of the Constitution of the Republic of Serbia, Article 8, paragraph 1 of the Law on the Government.

59 Article 130 of the Constitution of the Republic of Serbia.

60 Article 24 of the Law on State Administration, Official Gazette of the Republic of Serbia, no. 79/2005, 101/2007, 95/2010, 99/2014, 47/2018 and 30/2018.

61 Article 78, paragraph 3 of the Law on Civil Servants, Official Gazette of the Republic of Serbia, no. 79/2005, 81/2005, 83/2005, 64/2007, 67/2007, 116/2008, 104/2009, 99/2014, 94/2017, 95/2018, 157/2020 and 142/2022.

62 Article 8, paragraphs 2 and 3 of the Law on the Government.

63 Article 6 of the Law on the Government.

of the administration is a situation in which the Government appears as the second-instance (appellate) authority in administrative proceedings. If a regulation so prescribes, the Government could be the authority deciding on an administrative appeal against the individual (legal) administrative acts of state administrative authorities or holders of public authorisations.[64] In such cases it can annul or alter their administrative acts.

## 3. Organizational principles and structure of the public administration

### *3.1. Division of public administration*

Public administration in Serbia is conventionally divided into state and non-state administration.

The state administration encompasses the state administrative authorities. There are three types of state administrative authorities: ministries, authorities within ministries, and special organizations.

The non-state administration is territorially and functionally decentralised. Non-state organizations and other non-state actors become non-state administrative entities when they are entrusted with administrative public authorisation; that is, when a law delegates to them the competence to perform certain state administration tasks. The territorially decentralised non-state administration encompasses administrative authorities of the units of territorial autonomy (autonomous provinces) and local self-government units (municipalities, cities, and the City of Belgrade). The functionally decentralised non-state administration comprises public enterprises, public institutions, public agencies, and individuals to whom state administrative tasks have been delegated. Public agencies also include independent regulatory agencies. These encompass those deciding upon administrative matters and/or a having regulatory function in certain special policy domains, on the one hand, and those controlling the work of administration, on the other. The National Bank of Serbia, the central bank, as an independent and autonomous state organization, is also listed within a functionally decentralised, non-state administration. The place of the National Bank of Serbia in terms of its independence and the fact that its officials were elected by the National Assembly is akin to the position of independent regulatory agencies.

### *3.2. State administration*

When discussing state administration, four issues must be analysed: types of state administrative authorities, their internal organizations, their relations, and personnel.

64 Article 59, paragraph 3 of the Law on State Administration.

*3.2.1. Types of administrative state authorities*

Ministries are the highest state administrative authorities that are competent in one or more related fields of administrative work. These are autonomous[65] state administrative authorities; in other words, they are directly responsible to the Government.[66] They are headed by ministers. In addition to being the heads of ministries, ministers are members of the Government. They are elected and removed by the National Assembly and are responsible for their work to the National Assembly and the Government.[67] Ministers may have one or more state secretaries. State secretaries are political officials who are appointed and removed by the Government. They assist the Minister in their work in a manner determined by the Minister. The state secretary (or, if there are more than one, one of them) is designated to replace the minister when the minister is absent (state secretaries were previously called deputy ministers).[68] Additionally, Ministers can appoint up to three special advisers to provide counsel on certain matters.[69] Both state secretaries and special advisers are part of the minister's cabinet and leave the ministry with the minister. The highest professional civil servants in the ministries are assistant ministers and the secretary of the ministry. They are also appointed by the Government, not on a political basis, but on their merits. Assistant ministers head sectors which are the largest internal units within the ministries. Secretaries of the ministries assist ministers in the management of human resources, finance, information technology, and other issues, and in coordinating the work of the internal units of the ministries.[70]

65 Serbian Constitution and legislation distinguish between two terms – '*samostalan*' and '*nezavisan*'. Both terms would literally be translated as independent. Additionally, in everyday conversations, especially amongst lay persons, these would be considered as synonyms. However, these terms have different legal meaning. In the sense of the state organization, '*samostalan*'—here deliberately translated as 'autonomous'—indicates authorities, such as ministries, which are directly subordinated to the Government. '*Nezavisan*', which will be translated as 'independent', designates public authorities that are not subordinated to the Government, such as the National Bank, the Ombudsman, the Data Protection Commissioner, the Competition Protection Commission, etc.

66 '*Samostalan*', that is autonomous has another meaning. Specifically, Article 7 of the Law on State Administration prescribes that '[*s*]tate administration authorities are autonomous in the performance of their duties and work within and on the basis of the Constitution, laws, other regulations and general acts'. Autonomous in this context provides guarantees that higher authorities are not going to intervene in particular matters within the competence of subordinated state administrative authorities. Higher state administrative authorities, when so authorized by law, can enact regulatory framework for the work of subordinated authorities. Pursuant to Article 48 of the Law on State Administration, higher state administrative authorities can also use instructions to direct the organization of work and the way of working of employees in subordinated state administration authorities and the holders of public authorizations in the performance of entrusted tasks of the state administration, but an instruction cannot determine the manner of handling and resolving a particular administrative matter, that is, a particular case.

67 Article 23 of the Law on State Administration.

68 Article 24 of the Law on State Administration.

69 Article 27 of the Law on State Administration.

70 Articles 25 and 26 of the Law on State Administration.

Authorities within ministries are non-autonomous state administrative authorities. They respond to their respective ministries directly and indirectly through that ministry to the Government and the National Assembly. Before the Government and the National Assembly, they are represented by their ministers.[71] These authorities are established for certain enforcement, inspection, or expert tasks, provided that the nature or scope of such tasks requires greater independence than that of a sector in the ministry.[72] Given this, the authorities within ministries are headed only by professional civil servants and not by politically appointed officials. They are governed by directors and one or more assistants, all of whom are appointed by the Government based on their merits.[73] Hence, their position and structure mirror those of the sector as the internal unit of a ministry. There are three types of authorities within the ministries: administration, inspectorate, and directorate. Administrations are primarily formed for enforcement tasks, inspectorates for inspection supervision, and directorates for expert tasks, as per rules relating to the economy.[74] The most interesting aspect is their relationship to the minister and the ministry to which they are a part. Authorities are autonomous in their work in the sense that their ministries are not allowed to intervene in particular matters within their competence, but the minister is authorised to direct their work in a general manner and enact regulations (bylaws) within their jurisdiction.[75] Sometimes, if a law provides for it, authorities within ministries can be assigned the status of legal persons (entities).[76] However, the ministries could not gain legal status. They are always only organs of the Republic of Serbia.

Special organizations, referred to as administrative organizations, are established for expert and related executive tasks, the nature of which requires greater independence than that of authorities within ministries.[77] There are two types of special organizations: secretariats and institutes. Secretariats are formed for expert tasks that are important for all state administrative authorities (e.g. the State Secretariat for Legislation, in charge of aiding ministries with legislation drafting). Institutes are founded for expert tasks that require the application of special methods and knowledge (e.g. the State Hydrometeorological Institute, in charge of issues related to climate and weather).[78] In addition to the authorities within ministries, special organizations are headed by professional management—directors, their deputies and

71 Article 32, paragraphs 3 and 4 of the Law on State Administration.
72 Article 28, paragraph 2 of the Law on State Administration.
73 Articles 30 and 31 of the Law on State Administration.
74 Article 29 of the Law on State Administration. In practice this division is not always consistently applied. For instance, there is the Police Directorate within the Ministry of Interior, although its work does not relate to the economy.
75 Article 32, paragraphs 1 and 2 of the Law on State Administration.
76 Article 28, paragraph 3 of the Law on State Administration.
77 Article 33 of the Law on State Administration.
78 Article 34, paragraphs 1 and 2 of the Law on State Administration.

assistants, that are all civil servants appointed by the Government[79]—and they can be given the status of legal entities by law.[80]

*3.2.2. Internal organization of state administrative authorities*

The Government regulates the internal organization of ministries and other state administrative authorities.[81] It issued a decree regulating the principles of internal organization and systematisation of workplaces within state administrative authorities. Based on the principles contained in this decree, every state administrative authority issues its own rulebook on the internal organization and systematisation of workplaces.[82]

There are three types of internal units within state administrative authorities: basic, special, and narrow. The basic internal units are sectors. These are the largest internal units within state administrative authorities and are headed by assistant ministers or assistant directors of authorities within ministries or special organizations as civil servants of the highest rank. Secretariats and ministerial cabinets are special internal units, which can only be formed within ministries. The secretariat is headed by the secretary and is tasked with human resource, finance, and information technology issues, and coordinates the work of internal units and their relations with other authorities. The minister's cabinet is headed by the chief of the cabinet and is responsible for advisory, protocol, public relations, and administrative and technical matters of significance for the minister's work. When a minister leaves his/her post, the entire cabinet leaves with him or her. Narrower internal units are departments and groups formed within sectors or secretariats.[83] Finally, other internal units and bodies can be formed within state administrative authorities for various purposes, such as working groups (e.g. for legislation drafting), expert commissions, coordination bodies, and project groups.[84]

*3.2.3. Relations between state administrative authorities*

Regarding relations between state administrative authorities, ministries are authorised to conduct internal supervision over authorities within ministries and, when prescribed by law, over certain special organizations.

Internal supervision consists of the supervision of work, inspection supervision through Administrative Inspection, and other forms of supervision regulated by special law[85] (e.g. control conducted by Budgetary Inspection).

The supervision of work consists of supervision over the legality of work and the opportunity (appropriateness) for the work of lower-state administrative authorities.

79 Articles 35-37 of the Law on State Administration.
80 Article 34, paragraph 3 of the Law on State Administration.
81 Article 136, paragraph 4 of the Constitution.
82 Dimitrijević, 2022, pp. 119–120.
83 Ibid, p. 121.
84 Ibid, p. 122.
85 Article 45 of the Law on State Administration.

Supervision of the legality of work examines the enforcement of laws and other general acts, while supervision of the opportunity of work examines the effectiveness, economy, and appropriateness of the organization of work.[86]

Regarding the control of ministries over authorities within ministries, the supervision of work offers wide control. Each ministry is authorised to control its own authorities within ministries in the following manner. It is authorised to: 1) request reports and data about work (including the overview of the enforcement of laws, bylaws, and other regulations, as well as decisions of the Government, the measures taken, and their effect); 2) determine the state regarding the execution of tasks, forewarn of notified irregularities, and order the measures and deadlines for their elimination; 3) issue instructions; 4) order the execution of tasks that it deems necessary; 5) initiate the procedure for determining responsibility; 6) directly enforce the tasks of the authority within the ministry if it estimates that a law or other general act cannot be executed otherwise; and 7) propose to the Government to take the measures it is authorised to take.[87] The instruction directs the organization of work and outlines how employees in the lower state administrative authority should perform their tasks. However, they cannot determine the decision-making process in particular cases, that is, particular administrative matters.[88]

As can be seen, the control of ministries over their own authority within ministries is extensive and comprehensive. It encompasses everything from requesting information to issuing guidance, identifying irregularities, and ordering measures to assuming competence.

However, the control that ministries can exercise over special organizations has two limitations. First, a ministry is authorised to exercise supervision over certain special organizations only if this is explicitly prescribed by law[89] (e.g. the ministry in charge of construction supervises the State Geodetic Authority[90]). Second, with respect to special organizations, ministries have only some of the aforementioned control powers. The ministry is authorised to: 1) request reports and data about work; 2) determine the state regarding the execution of tasks, forewarn of notified irregularities, and order the measures and deadlines for their elimination; 3) issue instructions; and 4) propose to the Government to take the measures it is authorised to take.[91] Hence, the autonomy special organizations enjoy in relation to ministries is greater than that of authorities within ministries. Most importantly, ministries cannot take over the execution of state administrative tasks from special organizations.

Another important form of internal supervision is that exercised by the Administrative Inspection. The Administrative Inspection is an authority of the Ministry of

86 Articles 46 and 49 of the Law on State Administration.
87 Article 47 of the Law on State Administration.
88 Article 48 of the Law on State Administration.
89 Article 50, paragraph 1 of the Law on State Administration.
90 Article 33, paragraph 3 of the Law on Ministries, Official Gazette of the Republic of Serbia, no.128/2020 and 116/2022.
91 Article 50, paragraph 1 of the Law on State Administration.

Public Administration.[92] It supervises not only whether state administrative authorities adhere to particular legislation, but also whether other state and non-state authorities and organizations do so. It also controls court administration, public prosecutors' offices, public attorneys' offices, the administrations of the National Assembly, the President of the Republic, the Government, the Constitutional Court, and other authorities whose members are elected by the National Assembly (e.g. Ombudsman, Data Protection Commission), as well as authorities of territorial autonomy, local self-government units and other holders of public authorisation, in the performance of entrusted tasks of the state administration.[93] Administrative Inspection supervises the implementation of laws and other regulations regulating state administration; labour relations in state authorities and authorities of local self-government units; general administrative procedure and special administrative procedures; the appearance and use of the coat of arms, flag, and anthem of the Republic of Serbia; official use of languages and letters; seal of state and other authorities; voter lists and registers; political parties and associations; and free access to information of public importance.[94]

Finally, ministries have another control mechanism over the authorities within ministries They act as the second-instance, appellate authorities in administrative procedure with respect to the decisions made by the authorities within ministries, unless otherwise prescribed by law.[95]

*3.2.4. State administrative authorities' personnel*

State administrative authorities have three types of personnel: public officials, civil servants, and auxiliary technical staff.[96]

Public officials represent political leadership within state administration. They enter and leave office based on political opportunities. Elected and appointed public officials can be distinguished. The former are elected by the National Assembly, while the latter are appointed by the Government.[97] The elected public officials are ministers. As previously mentioned, they head ministries and are members of the Government.[98] Appointed public officials are state secretaries (previously known as deputy ministers) and heads of administrative districts (see infra 3.3.1).

Civil servants are employees of state administrative authorities, and their tasks cover the essential competencies of state administrative authorities. Employment and status are regulated by a special law, the Law on Civil Servants.[99] They are divided

92 Article 11 of the Law on Ministries; Article 9 of the Law on Administrative Inspection, Official Gazette of the Republic of Serbia, no. 87/2011.
93 Article 2 of the Law on Administrative Inspection.
94 Article 3 of the Law on Administrative Inspection.
95 Article 59, paragraph 2 of the Law on State Administration.
96 Vasiljević and Vukašinović Radojičić, 2019, p. 98.
97 Milkov, 2013, p. 171.
98 There are also ministers without portfolio. They are members of the Government and they are in charge of a particular matters, but they do not have their own ministry.
99 Official Gazette of the Republic of Serbia, no. 79/2005, 81/2005, 83/2005, 64/2007, 67/2007, 116/2008, 104/2009, 99/2014, 94/2017, 95/2018, 157/2020 and 142/2022.

into civil servants in position and administrative civil servants.[100] The former are appointed by the Government and are the highest professional civil servants, either heading the sectors as the basic and most important internal units within ministries – assistant ministers or governing other state administrative authorities – directors of authorities within ministries and directors of special organizations, as well as their deputies and assistants. Unlike public officials, they are appointed and removed based only on their merits. They represent the professional leadership level within state administration. Administrative civil servants are all the other civil servants, subordinated to those in position.[101]

Auxiliary technical staff[102] are individuals whose employment is regulated by general labour law rules and who perform technical and auxiliary work within the state administration (e.g. drivers and janitors).[103]

### *3.3. Non-state administration*

#### *3.3.1. Territorially decentralised non-state administration*

The territorially decentralised non-state administration encompasses the administrative authorities of territorial autonomy units and local self-government units.

The units of territorial autonomy are autonomous provinces. As previously mentioned, Serbia has asymmetric territorial autonomy with two autonomous provinces that do not cover its entire territory.[104] Autonomous provinces[105] are neither federal units nor a second level of local self-governance. They have the status of a legal entity, property, revenues, and symbols. They have their own parliaments and executive and administrative authorities, but do not have their own courts, police, or military. Their parliaments cannot pass laws but only bylaws. They have increased levels of autonomy in certain fields such as spatial planning and development, agriculture,

100 Literal translation of this type of civil servants is 'executive working places', but translated into English, it gives a false impression that these are leaders, while in the essence they are subordinate administrative staff.

101 Tomić, 2018, p. 174.

102 Again, in Serbian they are called 'nameštenici'. Literal translation would be 'officials' and it would be completely inadequate, given that these are technical and auxiliary staff.

103 Dimitrijević, 2022, p. 164.

104 This related to the Autonomous Province of Vojvodina, in the north of the country. The status of the other autonomous province – the Autonomous Province of Kosovo and Metohija, situated in the south of the country, should be regulated by a law that shall be passed in the procedure prescribed for the amendment of the Constitution, Article 182, paragraph 2 of the Constitution. This autonomous province is under the UN protectorate and is claiming independence. Final determination of its status is being negotiated under the auspices of the UN and the negotiations are conducted by the EU. Hence, all that is said in this section pertains to the legal regulation of the status of the Autonomous Province of Vojvodina.
Status of the Autonomous Province of Vojvodina is regulated by the Law on Determination of Competence of the Autonomous Province of Vojvodina, Official Gazette of the Republic of Serbia, no. 99/2009, 67/2012, 18/2020 and 111/2021 and its Statute, Official Gazette of the Autonomous Province of Vojvodina, no. 20/2014.

105 Articles 182–187 of the Constitution.

water management, forestry, hunting, fishing, tourism, spas and health resorts, environmental protection, industry and crafts, roads, river and railway traffic and road maintenance, organizing fairs and other economic manifestations, education, sports, culture, health and social protection, and public information at the provincial level.[106] In particular, below the level of the Provincial Government, as the bearer of gubernatorial political executive power, there are administrative provincial authorities—provincial secretariats (counterparts of ministries at the state level), provincial special administrative organizations, and other provincial administrative authorities.[107]

There are three types of local self-government units – municipalities, cities, and the City of Belgrade – as the capital and a special local self-government unit with wider authorisations. They do not have hierarchical relationships among themselves.[108] The two most important types of local self-government administrative authorities are city or municipal administrations (in cities, these can either be unique authorities or divided into several administrations competent for different fields) and city or municipal councils. The latter act as both political executive (gubernatorial) and (second-instance) administrative authorities.[109]

It is important to emphasise that autonomous provinces and local self-government units have only the competencies provided to them by the Constitution and laws of the National Assembly. In other words, all other competences not expressly given to autonomous provinces or local self-government units belong to the Republic, that is, to the central state level.

Autonomous provinces and local self-government units have two types of competences. They have their own (referred to also as proper or original) competences and delegated (entrusted) competences or authorisations.[110] This division is essential when it comes to the relations and control exercised by the (central) state administrative authorities over provincial or local self-governmental authorities (see infra 3.3.3).

There are four other types of territorial units in Serbia that should be distinguished from territorial autonomy and local self-government units. From territorially large to small, these are regions, administrative districts, city municipalities, and local communities.

Regions are statistical units established to plan and implement regional development policies.[111] There are five statistical regions in Serbia, two of which correspond

106 Article 183 of the Constitution and Articles 9-25 of the Law on Determination of Competence of the Autonomous Province of Vojvodina.

107 In the past, the Autonomous Province of Vojvodina opted to establish mainly provincial secretariats, while other types of provincial administrative authorities were rarely formed (Milkov, 2013, pp. 137–138). The Law on Determination of Competence of the Autonomous Province of Vojvodina, later adopted, established some of these other administrative authorities, e.g. Provincial Directorate for Health Insurance, Provincial Directorate for Protection of the Nature, Provincial Directorate for Sport, etc.

108 Dimitrijević, Lončar and Vučetić, 2020, pp. 184–186.

109 Milkov, 2013, pp. 152–157.

110 Dimitrijević, Lončar and Vučetić, 2020, pp. 75–77.

111 Ibid, p. 187.

to the territories of the two autonomous provinces, and one to the territory of the City of Belgrade. Nonetheless, they are not types of non-state administration; they do not have authority, and they serve for completely different purposes.

Administrative districts are a type of administrative decentralisation. These are territorial units within which central state administrative authorities can form local units. In general, their territory encompasses the territory of one or more cities and/or municipalities.[112] There are 29 of them. However, these are not units of territorial autonomy or a second (higher) level of local self-government. In addition to the local units of the central state administrative authorities, administrative districts have their own authority: the head (chief) of the administrative district, the professional service of the head of the administrative district, and the council of the administrative district. The head of the administrative district is a public official appointed by and responsible to the Government. He/she coordinates the work of the local units of the central state administrative authorities formed in the administrative district and monitors the implementation of the directives and instructions they have been given. Professional services assist the administrative district head. The councils of administrative districts consist of the head of the administrative district, the mayor of the cities, and presidents of the municipalities in the territory of that administrative district. Its purpose is to coordinate the work of the local units of the central state administrative authorities with local self-government authorities; that is, the authorities of cities and municipalities.[113]

City municipalities can be formed within cities, including the City of Belgrade. However, not all cities exhibit these characteristics. They are not units of local self-government but are formed by the statute of a city, which also determines their competence.[114]

Local communities are part of local self-government units covering the area of a village or city neighbourhood. Similar to city municipalities, they are not units of local self-Government and are formed by the statutes of cities or municipalities, which also determine their competence.[115]

### *3.3.2. Functionally decentralised non-state administration*

The functionally decentralised non-state administration consists of public enterprises, public institutions, public agencies, and individuals to whom administrative tasks have been delegated.

Public enterprises and public institutions have the status of public service providers. Public enterprises are established to provide economic services of general interest in the fields of postal and telecommunications, energy, roads, communal services, and other areas determined by law. Public institutions are formed to provide

112 Tomić, 2018, pp. 162–163.
113 Articles 38–42 of the Law on State Administration.
114 Pešović, 2019, p. 102.
115 For detailed overview, see Vujadinović, 2010.

non-economic services of general interest in the fields of education, science, culture, physical culture, pupil and student standards, healthcare, social protection, social care for children, social insurance, and animal healthcare.[116] Public enterprises and institutions can be established at all levels of Government: state, provincial, and local.[117] They are legal entities (legal persons), separate from the public entities that establish them. One of the state's administrative tasks is to enable the adequate provision of public services.[118] Another option for them is to delegate the provision of these public services to private law entities – referred to as 'concessionary public service'.[119] This is done by virtue of a public-private partnership or concession agreement.[120] The provision of public services, either via public enterprises and public institutions or through PPP and concession agreements, is guided by the principles of continuity, quality, and nondiscrimination.[121]

Public agencies are organizations established for development, expert or regulatory tasks of general interest. A public agency can be established if development, professional, and regulatory tasks do not require constant and direct political supervision and if a public agency can perform them better and more effectively than a state administration authority, especially if they can be financed entirely or mainly from the price paid by service users.[122] Public agencies are legal entities; they are autonomous in their work, and the Government can neither direct their work nor coordinate it with the state administration authorities. They can be entrusted with certain tasks of the state administration, specifically, the enactment of bylaws, deciding in the first instance administrative proceedings, issuing public documents, and keeping records.[123] Their most prominent feature is that their work is completely or predominantly financed by fees paid by users of their services.[124] This is the main reason numerous public agencies have been established under special laws.[125] Particularly important public agencies are those referred to as independent regulatory agencies. On the one hand, these include agencies that decide on administrative matters and/or have regulatory functions in certain special policy domains, such as the Competition Protection Commission, the Regulatory Authority for Electronic Communication and Post-Service (RATEL), and the Regulatory Authority for Electronic Media (REM).

116 Article 3 of the Law on Public Services, Official Gazette of the Republic of Serbia, no. 42/91, 71/94, 79/2005, 81/2005, 83/2005 and 83/2014.
117 Article 6 of the Law on Public Services.
118 Article 19 of the Law on State Administration.
119 Tomić, 2018, p. 187.
120 Articles 7 and 10 of the Law on Public Private Partnership and Concessions, Official Gazette of the Republic of Serbia, no. 88/2011, 15/2016 and 104/2016.
121 Tomić, Milovanović and Cucić, 2017, p. 64.
122 Articles 1 and 2 of the Law on Public Agencies.
123 Articles 3–5 of the Law on Public Agencies.
124 Milosavljević, 2008, p. 172.
125 For instance, Agency for Privatization, Republic Agency for Development of Small and Medium Enterprises, Agency for Tobacco, Republic Agency for Spatial Planning, Agency for Commercial Registers, Agency for Licensing Bankruptcy Trustees, Agency for Energetics, etc, Dimitrijević, 2022, p. 126.

On the other hand, there are independent authorities controlling the work of the administration, such as the Commissioner for Access to Information and Personal Data Protection and the Commission for Protection of Bidders in Public Procurement Procedure.[126]

Individuals entrusted with administrative public authorisations are public enforcers and notaries.

Lastly, the legal doctrine almost unanimously situates the National Bank of Serbia as the central bank in a functionally decentralised non-state administration,[127] although there are dissonant tones classifying it as an independent state authority.[128]

### *3.3.3. Relations between the state administrative authorities and the non-state administration*

The state administration is authorised to exercise control over both the delegated (entrusted) and original (own, proper) tasks of non-state administrative entities.

State administrative authorities exercise comprehensive control over delegated authorisations. When performing the delegated tasks of state administration, the holders of public authorisations (i.e. non-state administrative authorities and organizations) possesses the same rights and duties as the state administration bodies. The Government and state administration authorities retain responsibility for their execution, even after entrusting them the tasks of the state administration.[129] This indicates that state administrative authorities have all the powers of control that ministries possess with respect to their subordinate administrative authorities. In other words, they conduct internal supervision consisting of the supervision of work, inspection supervision through the Administrative Inspection, other forms of supervision regulated by a special law (such as the control conducted by the Budgetary Inspection), and act as second-instance authorities with respect to the decisions issued by the holders of public authorisations in the first-instance administrative proceedings (see supra 3.2.3).

In addition to these general control powers, the state administrative authorities also have special control mechanisms concerning non-state administration.[130] There are two types of special control mechanisms: takeover (substitution) of competence and control of the constitutionality and legality of bylaws enacted by non-state administration entities.

Takeover of entrusted tasks can be a one-time action or a continuous activity of the state administration, depending on the circumstances. The state administrative authority that supervises the enforcement of public authorisations entrusted to a non-state administrative authority or organization must perform an entrusted task

126 For the differentiation between the two, see Glušac, 2020; for detailed overview of the latter, see Davinić, 2018.
127 Tomić, 2018, p. 181; Milkov, 2013, p. 89; Vasiljević and Vukašinović Radojičić, 2019, p. 138.
128 Rapajić and Dimitrijević, 2018, p. 216.
129 Articles 51–55 of the Law on State Administration.
130 Articles 56–57 of the Law on State Administration.

if failure to perform that task could cause harmful consequences for the life or health of people, the environment, the economy, or property of greater value.[131] This pertains to acute failure to perform a task. Furthermore, if a holder of public authorisation, despite multiple warnings, does not start performing the entrusted work or does not start performing it correctly or in a timely manner, the supervisory state administrative authority takes over the performance of the work for a maximum of 120 days.[132] This is a sanction for the continued, chronic failure of a holder of public authorisation to exercise one or more of the tasks with which it was entrusted.

The control of the constitutionality and legality of regulations (bylaws) enacted by non-state administrative entities is pre-emptive, and depending on the circumstances, it can be conditional or unconditional. In other words, holders of public authorisations are obliged to obtain an opinion on the constitutionality and legality of the regulation they intend to enact from the competent ministry before publishing it. If it is deemed unconstitutional or illegal, the competent ministry must provide the holder of public authorisation with a reasoned proposal on how to harmonise the regulation with the pertinent legislation.[133] If the holder of public authority does not act according to the proposal of the ministry, the ministry is obliged to propose that the Government sanction this omission. The Government can either annul or cancel the regulation, provided it finds it to be at odds with another bylaw. However, if the Government deems the relevant regulation not to be in accordance with the Constitution or law, it can only suspend it from execution and initiate a proceeding before the Constitutional Court to assess its constitutionality or legality.[134] In both instances, the Government and state administration act pre-emptively to prevent the potential harm caused by illegal bylaws. In the former instance, control is unconditional and permanent, in the sense that the Government removes the illegal bylaw, whereas in the latter instance, the supervisory activities of the Government are temporary and conditional upon the final decision of the Constitutional Court.

Holders of public authorisation, primarily autonomous provinces and local self-government units, in addition to entrusted tasks of the state administration, possess their own (proper) competence. The Government and state administration have certain related control powers, but they are limited in comparison to control powers over entrusted tasks of the state administration. These range from

131 Milkov, 2013, pp. 102–103.

132 Vasiljević and Vukašinović Radojičić, 2019, p. 170.

133 Article 57, paragraph 1 of the Law on State Administration.

134 Article 57, paragraph 2 of the Law on State Administration. For instance, numerous provisions of the Statute of the Autonomous Province of Vojvodina, as the highest general legal act of an autonomous province, were declared by the Constitutional Court to be unconstitutional in 2013. Determining the scope of Vojvodina's autonomy was generally a difficult political and legal issue in the country and it led to both the Law on Determination of Competence of the Autonomous Province of Vojvodina and Vojvodina's Statute to be proclaimed as unconstitutional, see Simović, 2013.

temporary suspension and challenge of their general or individual legal acts before the Constitutional Court or the Supreme Court of Cassation to the dissolution of local self-government units' parliaments and the creation of an authority temporarily replacing the local parliament.[135] Nevertheless, they do not have authorisations derived from internal supervision (supervision of work or Administrative Inspection), nor can they act as second-instance authorities with regard to their administrative acts.

## 4. Current challenges in public administration in Serbia

Challenges faced by Serbian public administration vary from those purely theoretical, through legal challenges having significant practical implications, to those that, despite being legal, ignite fierce political debates.

An issue that can be classified as purely theoretical is the position of the National Bank of Serbia in public administration. While it is widely accepted that it forms part of non-state public administration, there are dissonant voices asking how it can be considered a non-state administrative authority if it is listed as a State (republic) authority in the Constitution. How can it be a non-state administrative authority if the public authorisation it exercises (governing the country's monetary policy, issuing and withdrawing permits for the work of banks, and controlling the work of banks and other financial institutions) represents the core of its work? This differs from public authorisations entrusted to public enterprises and institutions because they only play a role as an addendum to their main activities, providing services of general interest.[136] Similarly, the theoretical issues that one might raise are as follows. Should independent regulatory and control agencies, whose leadership is elected by the National Assembly, be classified as non-state administration? Should special organizations be regarded as state administrative authorities, given that, unlike ministries and authorities within ministries, their core activities are not administrative work (enacting administrative regulations, rendering administrative acts, issuing certificates, and undertaking other factual acts of administration) but other activities (e.g. statistics, hydrometeorology, ICT, etc.)?

There are several legal challenges of significant practical implications.

The first issue relates to challenges in the professionalisation of public administration. Specifically, the issue is whether decisions from the competence of state administrative authorities should be made by the head of authority or by a civil servant who prepared the decision. When the General Administrative Procedure Act[137] was enacted in 2016, this emerged as one of the more complex and conflicting issues. Until its adoption, the rule was that all decisions from the scope of the

135 Dimitrijević, Lončar and Vučetić, 2020, pp. 194–195; Articles 186–187 of the Constitution.
136 Rapajić and Dimitrijević, 2018, pp. 216–217.
137 Official Gazette of the Republic of Serbia, no. 18/2016, 95/2018 and 2/2023.

competence of state administrative authorities would be made by the head of the authority, unless otherwise prescribed.[138] In practice, this means that civil servants would conduct administrative proceedings and prepare decisions, while the head of the authority, usually overwhelmed with the quantity of work, would only sign the decision, thus taking responsibility for the decision that he/she, as a rule, would not have been able to analyse (especially if the head of the authority did not have the necessary legal and/or other professional knowledge). The General Administrative Procedure Act reverses this rule. It prescribed that the decisions should be rendered by the civil servants whose job it is to do so, and only if there is no such civil servant should the decision be made by the head of authority.[139] This aligns with one of the main aims of the Public Administrative Reform Strategy[140]: the professionalisation of public administration.[141] This resolves the issue of the practical inability of the heads of state administrative authorities to become fully acquainted with all the decisions they make and for which they are accountable. Accordingly, it links the civil servants' work to their responsibilities. Despite being eventually adopted, the rule was heavily criticised during the public debate about the draft law. Even the Citizens' Protector (the State Ombudsman) contested this legal solution. The main argument was that although legal norms guaranteeing civil servants' autonomy in individual cases exist, they do not eliminate the potential for abuse of power. In other words, the Ombudsman (as well as other opponents of this rule) feared that the heads of state administrative authorities could use other mechanisms to persuade (or pressure) their subordinate civil servants to render a decision they favoured, which might be inappropriate or even illegal, and thus shield themselves from legal liability.

The second legal issue with significant practical implications is decentralisation. Decentralisation, in the context of increasing the competence of local self-government units, either by entrusting them with the new tasks of the state administration or by widening their original competence, is recognised as one of the principles of public administration reform.[142] At the same time, the Public Administration Reform Strategy identified one of the key difficulties in this process. This can be expressed as follows:

> One of the systemic challenges for the reform of the local self-government system is asymmetric decentralization. Due to the monotypic (uniform) system of local self-government, there is a disproportion between the size of the LGU and the tasks assigned to it. In order to solve the problem in the way of assigning new jobs to the local self-government, MDULS [Ministry of Public

138 Articles 23 and 30 of the Law on State Administration.
139 Article 39 of the General Administrative Procedure Act.
140 Public Administrative Reform Strategy of the Republic of Serbia for the Period 2021-2030 (PAR Strategy), Official Gazette of the Republic of Serbia, no. 42/2021 and 9/2022.
141 Ibid, Section II.
142 Ibid.

> Administration] prepared and published the Unified list of jobs at the local self-government level. However, the assignment of tasks to LGUs and efficient administrative action is not accompanied by the provision of the necessary financial, personnel and other resources.[143]

Many small municipalities, especially those designated as economically devastated, cannot perform their tasks or provide adequate local public services. Even with financial resources, it is extremely difficult to find and maintain adequately trained civil servants and other staff members. This is corroborated by the legislative intervention that occurred at the beginning of the century. Legislators were forced to lower the requirements regarding the professional experience of the heads of municipal administration. They lowered the number of years of professional experience after graduation from the law faculty (they must be jurists) because in some municipalities they were not able to find any interested candidates. In general, they had to settle for beginners for these important posts.

The third concern is the proliferation of public agencies. As explained earlier, public agencies are organizations established for the development, expert, or regulatory tasks of general interest. These can be established if development, professional, and regulatory tasks do not require constant and direct political supervision and if a public agency can perform them better and more effectively than a state administration authority, especially if they can be financed entirely or mainly from the price paid by service users. Their most prominent feature is that their work is completely or predominantly financed by fees paid by users of their services (see supra 3.3.2.). Unfortunately, this has led to the proliferation of these agencies. It seems that they were established even in certain fields where the conditions for their establishment were not met; for instance, they were established where a public agency could perform certain tasks better and more effectively than a state administration authority. As evidence, we can offer the example of the Tobacco Agency, which used to be a public agency until it was replaced by the Tobacco Administration as an authority within ministry.[144]

Finally, we must mention a legal matter regarding organization of public administration, which represents a true political 'dynamite'—the issue of the territorial autonomy of Vojvodina. The issue at stake was the competency given to the Autonomous Province of Vojvodina. This issue has been a political challenge for various reasons. From 1945 to 1989, the Autonomous Province of Vojvodina was akin to a federal unit within Yugoslavia and Serbia, then to a territorial autonomy unit. It had its own constitution, constitutional court, judiciary, administration, police force, and many other elements of a federal unit. Its autonomy significantly

143 Ibid, Section VIII (1).

144 Articles 3 and 94 of the Law on Tobacco, Official Gazette of the Republic of Serbia, no. 101/2005, 101/2005, 90/2007, 95/2010, 36/2011, 6/2012, 69/2012, 93/2012, 8/2013, 64/2013, 108/2013, 4/2014, 79/2014, 5/2015, 67/2015, 5/2016, 65/2016, 8/2017, 76/2017, 18/2018, 62/2018, 95/2018, 4/2019, 91/2019, 91/2020 and 11/2021.

diminished in 1989. The other historical reason that prevents politically neutral legal reasoning about this topic is the fact that the other autonomous province within Serbia is now claiming independence. These traumatic events have hindered reasonable debate. When the political situation changed again, the Autonomous Province of Vojvodina was given wider autonomy in 2009, but this led to two proceedings before the Constitutional Court: one regarding state law that granted additional competencies to Vojvodina and the other relating to its statute. In both cases, the Constitutional Court found and abolished numerous provisions deemed unconstitutional.

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# General Principles and Challenges of Public Administration Organization in the Slovak Republic

Radomír JAKAB

**ABSTRACT**

The organization of public administration in the Slovak Republic has undergone significant changes over the last 30 years. Following the fall of the communist regime, it became necessary to adjust public administration in accordance with democratic principles and the rule of law. Various nonlegal aspects, especially social, geographical, historical, and economic determinants, have also affected its formation. The chapter therefore examines each of those influences that have both shaped and continue to shape the current form of public administration organization. Public administration is part of the exercise of state power, the limits of which are set by the Constitution. Therefore, it is necessary to examine the implications of constitutional law and its principles for public administration. Public administration depends on the political management of the state by the legislative and executive branches of state power. Simultaneously, it was controlled by the judiciary. Therefore, it is also necessary to reflect on the relationships between the bodies representing these branches of power and public administration. Public administration is conducted by several entities with different roles and responsibilities. Therefore, we focused on examining these entities. The primary focus is on public administration bodies, that is, the bodies of the state and entities derived from the state. In this context, we refer to the principles of their construction and integration into the organization of public administration. Finally, the current challenges facing the organization of public administration in the Slovak Republic are formulated, and certain trajectories of its development are outlined.

**KEYWORDS**

public administration, public administration bodies, constitutional principles, principles of public administration construction, self-government

## 1. Basic social, geographical and economic overview

Several factors influence the development of public administration systems in countries These factors have a social, political, historical, geographical, and economic basis. These interactions give rise to public administration. However, the public administration system varies not only in space, but also over time. Different factors may prevail at different times, and some may be sidelined. Similarly, different factors may operate in different states or even in different territories of the same state. This

Jakab, R. (2024) 'General Principles and Challenges of Public Administration Organization in the Slovak Republic' in Hulkó, G. (ed.) *General Principles and Challenges of Public Administration Organization in Central Europe.* Miskolc-Budapest: Central European Academic Publishing. pp. 283–318; https://doi.org/10.54171/2024.gh.gpacopaoce_11

chapter analyses the determinants that have been, are, or will influence the formation of the public administration system in the Slovak Republic.

The Slovak Republic is one such unit, characterised as a parliamentary democracy. It is headed by a President, who is elected directly by the country's citizens. The National Council of the Slovak Republic, a unicameral Parliament, is a supreme legislative and constitutional body. The Government of the Slovak Republic, consisting of the Prime Minister, Deputy Prime Ministers and Ministers, is the supreme body of executive power. The executive body guides the state's political direction. The tasks of political governance are subsequently carried out through public administration and its apparatus at the national and local levels, either through direct implementers of public authority (state authorities) or indirect implementers (local government units and public corporations). The historical development and traditions related to the organization of the state and public administration, as well as negative development tendencies and reform efforts, have also had influenced the current form of the creation of the system of public authority.

The Slovak Republic was a part of the Austro-Hungarian Empire until 1918. In 1918, it became a part of the newly formed state of Czechoslovakia, which included the Czech Republic and Podkarpatska Rus. During the Second World War, from 1939 to 1945, a totalitarian state influenced by Hitler's Germany was established in Slovakia. In 1945, the territory was reintegrated into Czechoslovakia. However, after the 1948 elections, it came under the control of the Communist Party, which was linked to the Moscow regime. Non-democratic elements were introduced into the organization and functioning of the state, while democratic principles, based on the rule of law, were eliminated. The regime collapsed in 1989, when the foundations of a democratic state were rebuilt. In 1993, the independent Slovak Republic was established, adopting international standards of human rights protection and the basic principles of the rule of law, thereby bringing public power closer to its originators—citizens—which was also related to the gradual decentralisation of public administration. All these historical milestones were manifested in the sphere of the territorial and administrative organization of Slovakia, the exercise of public authority in its territory, the organization of public administration, and its activities.

The Slovak Republic has been a member of the North Atlantic Treaty Organization since 29 March 2004 and a member of the European Union since 1 May 2004. Entry into these organizations was preceded by extensive preparations that inevitably included the field of public administration, including its activities, processes, and organization. It is also a member of other international organizations of a global (e.g. the United Nations) or regional nature (Council of Europe, Organisation for Security and Cooperation in Europe, and Organisation for Economic Cooperation and Development). Membership in these organizations implies an obligation for the Slovak Republic to uphold and protect the democratic principles of the rule of law, which certainly also applies to the organization and activities of public administration.

The Slovak Republic is a landlocked country located in Central Europe. It covers an area of 49,036 km$^2$, and has a population of approximately 5,449,265 inhabitants.[1] It is bordered by the Czech Republic in the northwest, Austria in the southwest, Poland in the north, Ukraine in the east, and Hungary in the south.[2] The Slovak Republic has an elongated shape from west to east, which has influenced the need for zoning in this direction. Additionally, there are mountain ranges in the central part of Slovakia, which, in turn, influence the need for north-south zoning.

These geographical and historical contexts have influenced the final form of the territorial and administrative divisions of the Slovak Republic. Thus, the administrative units are organized into regions that are further subdivided into districts. Currently, there are 8 regions and 79 districts. The need for territorial and administrative subdivisions also determines the territorial scope of public administration entities operating within these units.

The diverse relief divisions of the Slovak Republic, influenced mainly by distinctive mountain ranges and forests, has also impacted the defragmentation of settlement formations. There are many municipalities in the Slovak Republic; as of 31 December 2021, there were 2890 municipalities. Of these, 2,452 municipalities had fewer than 2,000 inhabitants. A total of 141 municipalities had fewer than 100 inhabitants. By contrast, the largest city in the Slovak Republic is the capital Bratislava with a population of 475,577.[3] The town is located in the western part of the state on the border between Hungary and Austria. The second-largest city, with a population of 229,040, is Košice, located in the eastern part of the state. Other major cities, with populations under 100,000 inhabitants include Prešov, Žilina, Banská Bystrica, Nitra, Trnava and Trenčín.[4] These cities are also administrative centres for wider territorial units in their vicinity.

There was a significant reduction in the number of municipalities between 1970 and 1989. However, this was not a natural trend towards municipalities mergers; rather, this was a dictated, often artificial, merger of municipalities based on the instructions of the central communist administration. After 1990, however, the opposite effect emerged: the division of municipalities into smaller units. This process was halted by a legislative change in 2003, which prohibited the division of municipality with fewer than 3,000 inhabitants. Currently, there is still an aversion in society to voluntary mergers of municipalities, even though legislative conditions for this exist.

1 Census 2020. Statistical Office of the Slovak Republic [Online]. Available at: https://www.scitanie.sk/ (Accessed: 6 March 2023).

2 Statistical data on national borders. Ministry of the Interior of the Slovak Republic [Online]. Available at: https://www.minv.sk/?statisticke-udaje-o-statnych-hraniciach (Accessed: 6 March 2023).

3 Bratislava. Wikipedia: the free encyclopedia [Online]. Available at: https://sk.wikipedia.org/wiki/Bratislava (Accessed: 6 March 2023).

4 Size groups of municipalities – SR, regions, counties, districts, city, countryside. Statistical Office of the Slovak Republic.

Another factor influencing the development of the public administration system and its activities is economic development within individual territorial districts. The changes in political conditions and transformation after 1990 have significantly affected the economic structure, performance, and competitiveness of Slovakia, and its regions. After 2000, integration efforts, EU membership, the beginning of restructuring processes, price deregulation, and changes in the tax system significantly impacted economic development. In the following period, the impact of the economic and financial crisis of 2008-2012, and the subsequent positive developments in the post-crisis period, were significant.

In western Slovakia, an almost continuous territory with high economic performance has developed, including not only districts of Bratislava but also easily accessible districts connected by infrastructure and economic links surrounding their immediate vicinity. The districts in the north of Slovakia, dominated by the agglomeration of the city of Žilina, represent the second economically strongest region. In Central Slovakia, the Banská Bystrica and Zvolen agglomeration have also achieved relatively good economic performance. In eastern Slovakia, the urban districts of Košice are leaders, whereas the other districts exhibit below-average economic performance. The marginal districts of Eastern and Southern Slovakia have long been among the least economically developed.[5]

All these factors, whether political, historical, social, economic, or geographical, have in some way influenced the activity of public administration and its organization, thus shaping its final form, which will be explored in more detail in later sections of this chapter.

## 2. Public administration and constitutional order

### *2.1. Constitutional law and its impact on public administration*

As a branch of law, constitutional law regulates only a certain portion of the social relations that form the subject matter of public law. In general, these are relations concerning the organization and functioning of state power within the state, including the regulation of relations between the state (state power) and its citizens.[6] For this reason, constitutional law is the starting point for all other branches of law that are part of public law, as well as those that belong to private law.

The regulation of the principles governing the functioning of the relationship between public authorities, on the one hand, and natural and legal persons, on the other hand, contained in constitutional law, is also fully applicable in the field of public administration. This follows from the constitutional definition of the principle

5 Comparison of the socio-economic level of Slovak regions according to selected indicators in 2001 and 2018. Department of Regional Geography, Faculty of Natural Sciences, Comenius University in Bratislava [Online]. Available at: http://regionalnageografia.sk/upload/katedra/postery/DOD/socioeko_uroven_regionov_SR-text.pdf (Accessed: 6 March 2023).

6 Paluš and Somorova, 2004, p. 14.

of legality, according to which state authorities may act solely based on the Constitution, within its limits, and to the extent provided by law (Article 2, paragraph 2 of the Constitution of the Slovak Republic). This principle also implies that the processes of public administration conducted by administrative authorities should be carried out only on the basis of the Constitution, within its limits, and to the extent and manner prescribed by law.

Constitutional laws regulate fundamental rights and freedoms. This is also true for the conditions of the Slovak Republic, where the basic regulations are contained in the second chapter of the Constitution of the Slovak Republic.[7] This section of the Constitution of the Slovak Republic includes a catalogue of fundamental rights and freedoms and their possible limitations. However, the specification of the implementation of individual fundamental rights and freedoms is already the subject of the regulation of administrative law and within the competence of public administration bodies (e.g. the right to free education is detailed in the Education Act, which belongs to administrative law[8]). Thus, administrative law concretises the fundamental rights and freedoms guaranteed by the Constitution and gives them a practical dimension.

The norms of constitutional law also establish a legal basis for the existence of certain public administrative entities. For instance, the fourth chapter of the Constitution of the Slovak Republic provides for the existence of territorial self-governing entities—municipalities and higher territorial units—while the specific regulations of their status and activities are handled by administrative law. Similarly, the legal basis for the establishment of central and local state administrative bodies is found in Article 122 of the Constitution of the Slovak Republic, while the details are specified in the statutory regulation of administrative law.

In addition, the norms of constitutional law contain authorisations for public administration entities to issue normative administrative acts as the result of the normative administrative process (e.g. in Article 68 and Article 71 of the Constitution of the Slovak Republic regulate the authority of municipalities and higher territorial units to issue generally binding regulations in the exercise of self-government competence, as well as in the exercise of delegated state administration; according to Article 123 of the Constitution of the Slovak Republic, ministries and other state administration bodies may, on the basis of laws and within their limits, issue generally binding legal regulations if they are empowered to do so by law).

From the provisions of the Constitution of the Slovak Republic, it is possible to deduce the basic principles applicable to the activities of public administrative bodies. These principles include particularly, (i) the rule of law, including the principle of legal certainty, (ii) the principle of legality, including the obligation of public authorities to act in accordance with the law and to proceed in the manner prescribed by law, (iii) the principles of due process (including the right of access to the administrative authority, the right to have the decision of the administrative

7 Constitution of the Slovak Republic No. 460/1992 Coll. as amended.
8 Act No. 245/2008 Coll. on education and on amendment and supplementation of certain acts.

authority reviewed by a court, the right to compensation for damage caused by an unlawful decision or maladministration of the administrative authority, the right to refuse to give evidence, the right to legal aid, the right to an interpreter), including the principle of equality, and iv) the principle of the administrative authority's acting without undue delay. Violation of any of the above principles in the procedure of an administrative authority (by action or inaction) results in such a procedure becoming unconstitutional.

These constitutional principles were subsequently developed and regulated in detail in the laws regulating the individual proceedings of public administrative bodies; that is, administrative proceedings. The principles of administrative procedure that have developed from the above constitutional principles include: (i) the principle of legality, (ii) the principle of cooperation, (iii) the principle of expediency, economy, and speed of proceedings, (iv) the principle of substantive truth, (v) the principle of legitimate expectations, (vi) the principle of information, and (vii) the principle of procedural equality of the parties to the proceedings, (viii) the principle of disposability and the principle of officiality, (ix) the principle of acting personally or the principle of acting in writing, (x) the principle of publicity and the principle of non-publicity, (xi) the principle of the free evaluation of evidence, (xii) the principle of two instances, and (xiii) the principle of unity of proceedings and the principle of concentration of proceedings.[9]

It is particularly crucial to respect the rule of law and constitutional principles, especially in the area of administrative liability—that is, in the case of punishing administrative offences. Certain principles typical of criminal liability apply in the case of administrative liability. Such fundamental principles which also govern administrative liability include (i) the principle of legality, (ii) the principle of subsidiarity of administrative punishment, (iii) the principle of nullum crimen sine lege, (iv) the principle of nulla poena sine lege, (v) the principle of non-retroactivity, (vi) the principle of ne bis in idem, (vii) the principle of termination of the case by decision, (viii) the principle of inquisitoriality, and (ix) the principle of reviewability.[10]

### *2.2. Constitutional bodies and their impact on public administration*

The definition of the system of supreme state bodies in the Slovak Republic, the relations between them, and their status and competence are the subjects of the Slovak Constitution.[11] The specific structure of the separation of powers and relations between the supreme state authorities under the Slovak Constitution notes certain typical features of the form of government, on the basis of which it can be stated that the Slovak Republic is a state with a parliamentary form of government.[12] The essential feature of this form of government is that it, as the supreme body of executive

9 Jakab and Molitoris, 2018, p. 52.
10 Jakab, 2020a.
11 Constitution of the Slovak Republic No. 460/1992 Coll. as amended.
12 Paluš and Somorova, 2004, p. 208.

power, is politically accountable to the Parliament. The government is formed based on the results of parliamentary elections; then, a vote of confidence must be sought, and finally, the Parliament can vote no confidence in the government at any time. Although citizens directly elect a President, his or her position is not strong enough to speak of a presidential form of government.

The system of supreme state authority in the Slovak Republic reflects the division of power into legislative, judicial, and executive powers. Legislative power is represented by the Parliament. Within judicial power are the Judicial Council of the Slovak Republic as the constitutional body of judicial legitimacy, the Constitutional Court of the Slovak Republic, the Supreme Court of the Slovak Republic, the Supreme Administrative Court of the Slovak Republic, and other courts. The executive branch includes the President of the Slovak Republic and the Government of the Slovak Republic, which is the supreme body of executive power that ensures political management of public administration. The spectrum of constitutional bodies also includes the Public Prosecutor's Office of the Slovak Republic, the Public Defender of Rights (Ombudsman), and the Supreme Audit Office of the Slovak Republic. All these bodies also influence the performance of public administration activities and public authorities. In the following, we refer to these interactions with public administration.

### *2.2.1. Legislative authorities*

Legislative power in the Slovak Republic is vested in the Parliament of the National Council of the Slovak Republic. According to the Constitution of the Slovak Republic, this is the only constitutional and legislative body in the country.[13] Thus, only this body can adopt the Constitution, its amendments, and laws. It represents the sovereignty of the people as it is created by elections through which citizens indirectly exercise public power.

The National Council of the Slovak Republic is a unicameral Parliament comprising 150 members elected for a four-year term in general, equal, and direct elections by secret ballot, according to the principles of proportional representation. It is a permanent body whose activities begin with the constituent assembly and end with the expiration of the term office, or dissolution.

The competencies of the National Council of the Slovak Republic can be broadly divided into the following categories: i) constitutional and legislative competence, ii) competence in the field of control, iii) creative competence, iv) competence in the field of foreign and internal policy of the state, and v) internal competence (the field of parliamentary autonomy).[14]

Ad i) Constitutional and legislative competence. The basic activity of the National Council is to adopt the Constitution, laws, and amendments. In this capacity, it most intensively influences the operation and organization of public administration. Based on the principle of legality, the scope and method of public administration must be

13 Article 72 of the Constitution of the Slovak Republic.
14 Palúš and Somorová, 2004, p. 211.

laid down in the legislation (law). Thus, the National Council has set limits on public administration and its directions.

Ad ii) Control competence. The controlling power of the National Council of the Slovak Republic is primarily directed towards the Government of the Slovak Republic and its members; it is a manifestation of the system of checks and balances in the structure of public power. However, this does not imply that public administration is completely exempt from parliamentary control.[15] According to Hendrych, in a democratic state, there can be no public administrative activity that is subject to the control of representative assemblies at all levels.[16] The instruments of control are, specifically, the possibility of a vote of no confidence in the government, interpellations in relation to the government, members of the government, or heads of other central government bodies, the possibility of asking questions during the so-called Question Hour, or submitting proposals, suggestions, or comments to members of the government or heads of other central government bodies. The approval of the state budget and, subsequently, the state's final accounts are also important instruments for the control of the government and state administration.

Ad iii) Creative competence. The National Council has a significant influence on the creation of other constitutional bodies (it elects and dismisses the chairman and deputy chairman of the Supreme Audit Office, the Public Defender of Rights, elects candidates for judges of the Constitutional Court of the Slovak Republic, candidates for the Public Prosecutor, from among whom the President subsequently chooses; it may decide to announce a people's vote on the dismissal of the President, etc.). In relation to public administration, the National Council established ministries and other state administrative bodies through law. This implies that the National Council decides what the organization of the state administration will be, which state administration bodies will exist, and what their competences will be.

Ad iv) Competence in the field of foreign and domestic policy of the state. The National Council is responsible for a range of tasks related to fundamental economic, social, and other state policies, which are subsequently implemented by public authorities. In addition, it also plays a role in foreign policy; for instance, in changing state borders, entering into a state union with another state, major international treaties, the declaration of war and the conclusion of peace, and the deployment of armed forces outside the territory of the state. These major foreign policy decisions were then transferred to the actions of the public authorities.

Ad v) Internal competence. Various other activities related to the administration of the body and its internal operations (e.g. the adoption of electoral rules, the decision on disciplinary proceedings against members, the referral for prosecution of members) may be included in this competence.

15 Tekeli and Hoffmann, 2013, p. 214.
16 Hendrych, 2003, pp. 154–155.

*2.2.2. Judicial authorities*

The democratic rule of law is inconceivable without an independent judiciary. Humankind has not devised effective mechanisms to protect the law. The judiciary acts as a guarantor of the rule of law. Most importantly, its actions assert the dominance of the law.[17] Ensuring the independence and impartiality of courts is essential for the protection of rights. Related to this is the requirement that the judiciary be exercised at all levels separately from the other bodies of the state. State administration may interfere in the judiciary only in terms of ensuring the conditions for its proper functioning (personnel, organizational, material, and financial conditions); however, it may not interfere with the administration of justice itself.[18]

The Constitution of the Slovak Republic recognises the following components of judicial power: i) the Judicial Council of the Slovak Republic, ii) the Constitutional Court of the Slovak Republic, and iii) the General and Administrative Courts.

Ad i) Judicial Council of the Slovak Republic. The Judicial Council is the constitutional organ of judicial legitimacy. It is a collective body comprising 18 members. Half of the members are judges from general and administrative courts, and the remaining are appointed by the President, the Government, and the National Council (three members each). The primary task of this body is to ensure public control over the judiciary's activities. It is also tasked with examining and expressing opinions on the judicial qualifications of candidates for the office of judge and subsequently submitting recommendations for the appointment of judges to the President. It also provides comments on the judiciary's draft budget when the state budget is drawn.

Ad ii) Constitutional Court of the Slovak Republic. The Constitutional Court of the Slovak Republic is an independent judicial body that protects constitutionality. The Constitutional Court comprises 13 judges appointed by the President, based on the recommendation of the National Council. Their term of office is 12 years and they are not eligible for reappointment. The Court exercises the standard powers of the constitutional judiciary. These include deciding on the compliance of legal regulations with higher legal force, deciding on constitutional complaints of natural and legal persons seeking the protection of their fundamental rights and freedoms, deciding on the so-called municipal complaints by which the subjects of territorial self-government seek protection against unconstitutional or unlawful interference in the affairs of territorial self-government, and resolving disputes of competence between central state administration bodies. It also has jurisdiction to rule over the unconstitutionality or illegality of elections, with the exception of elections to local government bodies.

Ad iii) General and administrative justice. The general judiciary consists of the Supreme Court of the Slovak Republic, regional courts, district courts, and municipal courts in the cities of Bratislava and Košice. At the regional court level, the Specialised Criminal Court has jurisdiction limited to selected criminal agendas. The system of administrative courts comprises the Supreme Administrative Court of the Slovak

17 Palúš and Somorová, 2004, p. 267.
18 See details in Bröstl et al., 2021.

Republic and three other administrative courts. General courts are responsible for deciding civil and criminal cases. However, the role of administrative courts is essential from the perspective of public administration. Administrative courts decide on a review of the legality of the decisions of public administration bodies, in the cases of their inaction, and on other factual interventions of public administration bodies. Administrative courts are also tasked with adjudicating competence disputes between public authorities or between a public authority and an entity. They also examine the conformity of regulations issued by local self-government bodies with a higher legal force. However, this did not exhaust the enumeration of all administrative court activities. The administrative judiciary is an indispensable instrument of public administration control.

### *2.2.3. Executive authorities*

In states with a parliamentary form of government, the executive branch includes both presidents and governments. These bodies have different names in different countries. Under the conditions of the Slovak Republic, executive power consists of the President, who is characterised as the head of state, and the government, which is defined by the Constitution of the Slovak Republic as the supreme body of executive power. There is no hierarchy between these bodies. Each has its own authority and competencies. However, there are interrelationships, shared competencies, and even the necessary synergies between them.[19]

#### 2.2.3.1. President of the Slovak Republic

Today, in several democratic states, the head of state has both executive and political powers, enabling them to act as an arbiter in constitutional and political disputes.[20] This is also the case in the Slovak Republic. The Constitution of the Slovak Republic defines this body as follows: 'The head of the Slovak Republic is the President. The President represents the Slovak Republic externally and internally and ensures the proper functioning of the constitutional bodies through his or her decision-making. The President shall exercise his office according to his conscience and convictions and shall not be bound by orders'.[21]

After an amendment to the Constitution of the Slovak Republic in 1999, citizens introduced the direct election of the President. The President is elected by the National Council of the Slovak Republic. The term office of the President is five years. The same person can be President for a maximum of two consecutive terms.

In principle, the scope and content of the President's powers correspond to the traditional or usual powers of the head of state in a parliamentary republic. The existence of an institution of countersignatures for some of its acts by government members corresponds to this. This deprives the President of autonomy in the exercise

19 See also Koudelka, 2011.
20 Orosz and Šimuničová, 1998, p. 21.
21 Article 101 paragraph 1 of the Constitution of the Slovak Republic.

of his decision-making powers on the one hand, but on the other hand, it holds him unaccountable for such acts. The government is responsible for this. Presidents' powers can be divided into the following groups:

a) Competence in relation to foreign countries: The President represents the Slovak Republic externally, negotiates and ratifies international treaties, and accepts, authorises, and dismisses the heads of diplomatic missions.
b) Competencies in relation to the National Council of the Slovak Republic: The President convenes the constituent assembly of the National Council, has the right to veto laws passed by the National Council—which is related to his competence to sign laws, reports to the National Council on the State of the Slovak Republic, and has the power to dissolve Parliament in defined cases.
c) Competencies in relation to the Government of the Slovak Republic: The President appoints and dismisses the Prime Minister and other members of the government, entrusts them with the management of ministries, and accepts their resignations. They have the power to dismiss the government or its members. In addition, the information necessary for the performance of tasks may be requested from the government or its members.
d) Creative competencies: The President appoints and dismisses the heads of central public administration bodies, higher state officials, and other officials in cases provided for by law. They also appoint and dismiss the rectors of universities, university professors, generals, judges, judges of the Constitutional Court of the Slovak Republic, the Public Prosecutor, and three members of the Judicial Council of the Slovak Republic.
e) Competencies in the field of national defence and security: The President is the Commander-in-Chief of the Armed Forces, although his or her acts in the exercise of this power are subject to a counter-signature by a member of the government. The President can declare war based on previous decisions of the National Council and likewise make peace. A proposal from the government may order the mobilisation of the armed forces and declare a state of war or extraordinariness.
f) Other competences and prerogatives: The traditional powers of the Head of State include the granting of amnesties and pardons, as well as the conferring of honours. It can also declare a referendum and, before it is declared, it may refer the matter to the Constitutional Court to assess the constitutionality of the subject matter.[22]

#### 2.2.3.2. Government of the Slovak Republic

In the Slovak Republic's constitutional system, the government is defined as the supreme body of executive power.[23] These characteristics reflect the position of the government as one of the supreme bodies of executive power and highlight the

22 See also Giba, 2019.
23 Article 108 of the Constitution of the Slovak Republic.

government's managerial position in the system of state administration.[24] However, it should be noted that the government is not a public administration authority,[25] as the bulk of its activities do not involve the exercise of public administration. The government is a political executive body. The relationship between the government (executive) and public administration (administration) is based on the principle that the government represents the political leadership of public administration.[26]

The government is a collective body comprised prime ministers, deputy prime ministers, and ministers. The government is headed by a prime minister, who is appointed and dismissed by the President. The other members of the government are appointed and dismissed by the President at the recommendation of the Prime Minister, who also entrusts them with the management of individual ministries.

The government should establish advisory bodies to perform its tasks. Advisory bodies include plenipotentiaries (for specific tasks, such as Roma communities, youth, sports, or national minorities). Advisory bodies are permanent or temporary government councils that coordinate, consult, and perform expert tasks. Permanent Councils include the Security Council, Legislative Council, and Economic Council of the Government. Finally, the category of advisory bodies includes the so-called Inter-Ministerial Bodies of the Government, whose members are members of the government (e.g. the Council of Economic Ministers). Tasks related to professional, organizational, and technical support of the government's activities are performed by the Office of the Government of the Slovak Republic.

In a state with a parliamentary form of government, the government is accountable to the Parliament—specifically the National Council of the Slovak Republic. This accountability is also reflected in the requirement for the government to request a vote of confidence from the National Council within 30 days of appointment. Additionally, the National Council can also vote for no confidence in the government at any time or in any member of the government. In the event of a vote of no confidence, the President dismisses the government. Similarly, the President also dismisses the government if there was a vote of no confidence in the Prime Minister. If a vote of no confidence is cast against a member of the government, the President dismisses that member.

The government is the collective body that decides on the assembly, and its decisions take the form of resolutions. The government shall have a quorum if the majority of its members are present. A valid resolution requires the consent of the supermajority of all the government members. However, the competence of the government is not exhaustively defined in the Constitution of the Slovak Republic. Other government roles may also arise from these laws. In any case, its role is to decide on the major issues of domestic and foreign policy and to take significant measures to ensure economic and social policy. These orientations materialise in the

24 Palúš and Somorová, 2004, p. 259.
25 Similarly, Machajová, 2014, p. 95; Kosičijarová, 2022, p. 120.
26 Tekeli, 2020a, p. 66

government's programme statement, which it presents to the Parliament. In addition to this competence in national policymaking, the government also makes decisions in the following areas:

a) Legislative: Decides on draft laws, government regulations, state budgets, and state budgets.
b) International relations: Decides on international treaties whose negotiations have been delegated to the government by the President upon the submission of a petition to the Constitutional Court to review the constitutionality of a negotiated international treaty.
c) Defence and state security area: Decides on proposals to declare a state of war, a state of extraordinariness, and mobilisation; it also decides on the proposal to end them, declares a state of emergency, on the deployment of armed forces outside the territory of the state, on the consent to the presence of foreign armed forces on the territory of the state, and on the consent to the passage of foreign armed forces through the territory of the state to the extent that this competence does not fall within the competence of the National Council of the Slovak Republic.
d) Creation area: Appointment and dismissal of state functionaries in cases provided by law and the three members of the Judicial Council of the Slovak Republic.[27]

However, as noted above, the government is the political management of public administration. It follows that the government develops goals and objectives for public administration in accordance with its policy direction, which reflects the political majority in Parliament. The public administration subsequently conducts these tasks using the methods and forms entrusted to it by law.

### *2.2.4. Constitutional bodies with special status*

Among the supreme state bodies that are established in the Constitution of the Slovak Republic, there also exist those which cannot be unambiguously included in any branch of power (legislative, judicial, or executive). As a rule, they perform a supervisory function over the activities of the executive branch, particularly to protect public and private interests. These bodies include the (i) Supreme Audit Office of the Slovak Republic, (ii) Public Prosecutor's Office of the Slovak Republic, (iii) Public Defender of Rights, and (iv) National Bank of Slovakia.

Ad i) Supreme Audit Office of the Slovak Republic. The Supreme Audit Office of the Slovak Republic is a state body bound only by law during its audit activities. It does not have the status of a public administration authority but is independent of it. It is also independent of other constitutional bodies. According to the Constitution of the Slovak Republic, the Supreme Audit Office of the Slovak Republic is an independent body responsible for control over the economic management of constitutionally

27 As in Cepek, 2018, pp. 151–152.

and legally defined funds, property, property rights and claims, and its control competence relates to exhaustively defined subjects in the Constitution of the Slovak Republic. The Supreme Audit Office of the Slovak Republic audits both state and local government entities.[28]

Ad ii) Prosecutor's Office of the Slovak Republic. The Public Prosecutor's Office of the Slovak Republic has a special place in the state system. The Constitution of the Slovak Republic defines the role of the prosecutor's office in protecting the rights and interests of natural and legal persons and the state. The Public Prosecutor's Office is an independent, hierarchically organized, and unified system of state bodies headed by the Prosecutor General, in which prosecutors operate in relation to subordination and superiority.[29] Within the scope of its competence, the Public Prosecutor's Office is obliged to take measures in the public interest to prevent, detect, and eliminate violations of legality, restore violated rights, and hold perpetrators accountable for their violations. In exercising its competence, the prosecutor's office is obliged to use legal means to ensure consistent, effective, and prompt protection of the rights and legally protected interests of natural persons, legal persons, and the state, without any external influence.[30]

The prosecutor's office has an indispensable place in criminal proceedings, with prosecutors acting as public prosecutors. However, the work of the prosecutor's office is broader. One of the most important competences is the supervision of legality in public administration. Prosecutors, on their own initiative or upon motion, review the legality of the decisions, measures, and procedures of public administration bodies, as well as the legislation adopted by these bodies. In the event that an illegality is found, the prosecutor has tools to ensure redress, specifically through a protest of the prosecutor, a warning of the prosecutor, the right to file an administrative action or a petition to initiate proceedings on the compliance of legislation before the Constitutional Court of the Slovak Republic.

Ad iii) Public Defender of Rights (Ombudsman). According to the Constitution of the Slovak Republic, the Public Defender of Rights is an independent body of the Slovak Republic that protects the fundamental rights and freedoms of natural persons and legal entities in proceedings before public administration bodies and other public authorities if their actions, decision-making, or inaction are contrary to the legal order. The Public Defender of Rights is established as a body for the protection of subjective rights, that is, the fundamental rights and freedoms of natural and legal persons against such actions, decision-making, and inactions of public administration bodies that are contrary to the rule of law or the principles of a democratic and legal state. The basic function of the Ombudsman is to review decisions, procedures, recommendations, and inactions that are contrary to law, rules, or are made with malicious intent, to review inconsistency, failure to comply with deadlines,

28 Tekeli, 2020b, p. 183.
29 § 2 of Act No. 153/2001 Coll. on the Public Prosecutor's Office, as amended.
30 § 3 paragraph 2 of Act No. 153/2001 Coll. on the Public Prosecutor's Office, as amended.

incompetence in the exercise of public administration, or the performance of duties and responsibilities in the field of public administration.[31]

Ad iv) National Bank of Slovakia. The Constitution of the Slovak Republic characterises the National Bank of Slovakia as an independent central bank of the Slovak Republic. The primary objective of the National Bank is to maintain price stability. To this end, it participates in the common monetary policy set by the European Central Bank for the Euro area, issues euro banknotes and coins, promotes the smooth and efficient functioning of payment systems, manages, coordinates, and ensures money circulation, maintains and disposes of foreign exchange reserves, conducts foreign exchange operations, and supervises the financial market.[32]

## 3. Organizational principles and structure of public administration

### *3.1. Definition of public administration entities*

Administrative law has a so-called managerial character; that is, it regulates the activities, tasks, and procedures of entities that are entrusted with public administration and the rights and obligations of entities to whom public administration is carried out. Based on this, it is possible to differentiate between administering entities—subjects of administrative law that perform public administration—and administered entities—subjects of administrative law against whom public administration is performed. The first group of administrative entities includes the so-called public administration entities, and the second group includes natural and legal persons.

The subjects of administrative law are the so-called administrative subjects of public administration or subjects of public administration. These are the most organizationally significant components of public administration, as well as the bearers. As a rule, they are not organizationally intertwined by legitimation and governance relationships; therefore, they are separate and distinct (but this is not always the case).[33] The subjects of public administration in this sense are i) public corporations (the state, subjects of territorial self-government, and subjects of interest self-government); ii) public institutions (establishments); iii) public institutes and public enterprises; iv) natural and legal persons, if the law entrusts them with the exercise of public administration; and v) other administrative entities with a special status.

i) Public corporations. A corporation is an association of persons pursuing a common objective as a separate legal entity to which (i.e. not individual members) it is subject to rights and obligations. This is the form of a legal entity. Public corporations are special types that perform (primarily) public interest functions.[34] Only a member-organized

31 Posluch and Cibulka, 2003, p. 113.
32 § 2 paragraph 566/1992 Coll. on the National Bank of Slovakia, as amended.
33 Vrabko, 2012, p. 11.
34 Sládeček, 2009, p. 238.

governing body of public administration can be designated as a public corporation. Only a member-organized governing entity of public administration is democratically legitimised; thus, only such an entity can claim a status completely independent of other public administration entities.[35]

Under the conditions of the Slovak Republic, the Basic Public Law Corporation exists in the state. Thus, the state is a basic subject of public administration. State membership is formed on personal and territorial bases. It comprises citizens of the Slovak Republic (personal principles) and the state territory of the Slovak Republic (territorial principles). The state administers matters concerning its citizens, territory, and the people within it.

The existence of other public law corporations is derived from the state; that is, the state may delegate the performance of its tasks to other non-state entities. These other public corporations are primarily territorial self-governing municipalities and higher territorial units (self-governing regions). They apply the membership principle based on the definition of the permanent residence of natural persons in a certain territory. Municipalities and higher territorial units are independent legal entities with their own legal subjectivity, separate from that of others. They are the holders of power and simultaneously provide public services.[36]

Another category of public corporations is self-governance. These are also built on the membership principle, with membership linked to the performance of a specific activity (e.g. lawyers and sole traders). These include professional chambers and associations. Additionally, they possess the status of legal persons established by law, to which the state has entrusted the performance of certain public tasks.

Public law corporations act as public administration entities through bodies that have their own administrative-legal personalities for such acts, regardless of whether they also possess a general legal personality (whether they are legal persons). The bodies through which these public law corporations act are the so-called administrators of public administration (individual state administration bodies, bodies of municipalities, higher territorial units, bodies of chambers and associations, etc.). For instance, if the state is a public administration entity, then the ministry is an administrator of public administration acting on behalf of the state.

ii) Public institutions (establishments). Public institutions are partially separate from the state-administering bodies of public administration established by law for the purpose of providing for the needs of the public, thus fulfilling the public interest through the performance of organizational activities, provision of public services, and creation of material conditions for achieving the desired status of the object of public administration.[37] These institutions primarily aim to provide public services and related organizational activities. In contrast to public corporations,

35 Vrabko, 2012, pp. 13–14.
36 Cepek, 2018, p. 37.
37 Vrabko, 2012, p. 15.

the prescriptive character of the administrative activity they perform (issuing legal regulations and decisions) does not prevail (although it is not excluded); rather, it has an organizational character.

Unlike public corporations, public institutions are not built on membership principles (unlike public corporations). They are established by law to meet certain public needs. In terms of their territorial scope, they are generally not limited to a certain part of the national territory (region, city); rather, they operate nationwide.

Public administration entities that can be classified as public institutions include Radio and Television of Slovakia, the Social Insurance Institution, public universities, and the Slovak Academy of Sciences.

iii) Public institutes and public enterprises. For both these types of public administration entities, it is true that they are established for the purpose of fulfilling a certain public interest or for the purpose of fulfilling services in the public interest. In these entities, the prescriptive character of the activity is absent, and only the organizational character of the activity is given. These entities (such as public corporations) are not built on membership principles. As a rule, they do not even have a national scope but operate regionally and locally. They are established either directly by law or by statute, by the decision of another public authority to which they are accountable and subject to its control.

Public institutions have been established to provide public services and goods permanently under predetermined conditions. Public institutions include public libraries, theatres, museums, galleries, public archives, public schools (primary and secondary), school facilities, public health facilities, and public social service facilities.

Public enterprises are also involved in the provision of public services, but they conduct these activities to make a profit, which constitutes the income of the person who establishes the undertakings. They are usually established by law, by the decision of another public administration entity (state authority, municipality, city, or higher territorial unit), and are subsequently registered in the commercial register. They can take the form of a state-owned enterprise, but also ordinary commercial companies. Examples include the Slovak Water Management Company, Slovak Forests, Transport Company of the City of Košice, and Slovak Mail Office.

iv) Natural and legal persons, if the law entrusts them with the exercise of public administration. In certain circumstances, the subject of public administration may also be the entities against which it is normally conducted (the so-called extraen). In such cases, the law entrusts a natural or legal person with the exercise of public administration in a specific area and to a certain extent. Therefore, statutory entrustment is required.

In the conditions of the Slovak Republic, the laws entrust natural persons to carry out public administration, primarily consisting of supervising the observance of obligations in certain areas; for instance, in the fields of fishing, hunting, nature and

landscape protection, forest protection, etc. The law creates a special category with a common name 'guard'. Examples include fishing, hunting, and natural and forest guards. If a natural person fulfils the conditions laid down by law, he or she may be appointed to such a position by the competent authority of the state administration.

In addition, based on legal entrustment and subsequent authorisation by the competent state administration authority, natural and legal persons may also carry out activities within the scope of the operation of technical inspection stations, emission control, or originality control. Such entities may also include churches, religious societies, and health insurance companies, with certain exceptions.[38]

Ad v) Other special entities of public administration. The last category includes entities involved in the performance of public administration tasks but, for various reasons, cannot be subsumed under the categories already mentioned. This also stems from the fact that public administration is a dynamically changing system that responds to various internal or external stimuli.

The armed forces and corps were included in this category. They do not have their own legal personality; they are incorporated into the state or municipality (municipal police) but carry out public administration tasks, mainly in the field of internal and external security. This category also covers various public funds that are generally created by law (and, to a limited extent, by statutes). Within them, funds are accumulated to support public interests. These include the State Housing Development Fund, Environment Fund, and National Nuclear Fund for the decommissioning of nuclear installations and management of spent nuclear fuel and radioactive waste.

Finally, this category also includes the bodies and institutions of the European Union or other member states that influence public administration in the Slovak Republic through the vertical or horizontal application of European Union law. The actions of the public administration of one Member State may also have an effect on the territory of another Member State, that is, on the public administration of that state. For instance, the granting of a permit to carry out the activity of collective investment in transferable securities by a public administration entity of one state is valid throughout the European Union, in the territory of the Slovak Republic—and therefore also affects Slovak public administration. However, this is not the purpose of analysing these subjects of administrative law in detail;[39] rather the aim is to highlight that the subjects of public administration can no longer be defined exclusively within the boundaries of national public administration (in an organizational understanding).

### *3.2. Organizational principles of the construction of public administration entities*

Administering entities in public administration include a number of entities that differ in terms of their number, nature of the activities they carry out, and competences. Perhaps the most significant position is held by public corporations, that is, the state, municipalities, higher territorial units, and self-government subjects of

38 Vrabko, 2012, pp. 16–17.
39 See details in Jakab et al., 2020; Handrlica, 2017.

interest. These public corporations are the most numerous actors in administrative law relations who exercise prescriptive powers. However, it should be added that they have their own legal subjectivity granted by the law, but in specific administrative law relations, they act through their own bodies, which have their own administrative law subjectivity (the capacity to be a party to an administrative law relationship), while they may or may not have their own legal subjectivity. These bodies are the public administration administrators. In the next section, we focus on public corporations as the basic subjects of public administration and their bodies, which have the status of administrators of public administration.

Within the organization of public administration, there are numerous administrators with varying statuses, compositions, and competencies. This results from applying the principles of the construction of a public administration organization. Different combinations of individual principles give rise to a particular body that has a place in the organization of public administration.

The science of administrative law[40] distinguishes three categories of principles for the construction of public administration organizations: (i) principles related to the structure of the organizational base of the public administration system, (ii) organizational-localisation principles, and (iii) organizational-structural principles.

Ad i) Principles related to the structure of public administration. This category includes (a) the principle of segmentation, (b) the principle of organizational-structural continuity, and (c) the principle of instances.

(a) The principle of segmentation. This principle asserts that the organization of public administration is generally, or at least at a certain level, subdivided into two or more segments, each characterised by a common feature. This commonality may pertain to the same organizational form (e.g. ministries), status (e.g. other central government bodies), or incorporation (e.g. specialised local government bodies, incorporation outside the general local government system). Each segment represents a number of public authorities and can, therefore, be further subdivided.[41] For instance, at the central level, two segments can be distinguished: one comprised ministries, the other of other central government bodies. Similarly, at the local level, a distinction can be made between two segments: general (integrated) local government bodies and specialised local government bodies.

(b) The principle of organizational-structural continuity. This principle states that there is a relationship of organizational continuity between the internal organization of the central government bodies and relevant local state administration bodies. Thus, the internal organization of local state administrative bodies replicates that of the central government body. This principle was particularly strong during the period when there was almost exclusively a specialised local government (2004-2013). At that time, the internal organization of the local state administration bodies closely adhered to the internal structure of the relevant ministry (e.g. the Regional

40 Gašpar, 1973, pp. 158–162.
41 Gašpar, 1973, p. 158.

Environmental Office and the District Environmental Office followed the internal structure of the Ministry of the Environment of the Slovak Republic). Currently, this principle has limited application, mainly because of the concentration of local state administrations within one body, – the district office – whose agenda falls under almost all ministries. In addition, many tasks are entrusted to local authorities, so they are not carried out by the district authority; therefore, they do not create corresponding organizational structures.

(c) The principle of instances. This principle is based on the certainty that public administration bodies are constructed in instances; that is, to ensure that another public administration body is superior in terms of instance. This implies that the public authority should also have an instance superior to the public authority so that decisions can be reviewed by the instance. In relation to ministries and other central government bodies, it is not possible to ensure that this principle is fulfilled (because there is no superior authority). However, this principle is applicable to local state administrative bodies (e.g. the Ministry of the Interior is institutionally superior to district offices).

Ad ii) Organizational-localisation principles. Within this category of principles, it is possible to identify the a) centralising, b) decentralising, c) concentrating, d) deconcentrating, e) delegating, f) territorial, g) and substantive principles.

(a) The centralisation principle. This principle reflects the tendency to concentrate on certain competences along a vertical line at the higher levels (grades) of administrative units. Specifically, this implies that the exercise of public administration is concentrated in the state as a basic public corporation, and not in local self-government entities as derivative public corporations. It would be a manifestation of the principle of centralisation if the law were to withdraw the competence of, for instance, a higher territorial unit in the field of self-government. For example, under the new legislation, this competence would be exercised by local state administration bodies as the exercise of state administration.

(b) Decentralisation principle. This principle is the opposite of the centralisation principle and consists of the transfer of competencies to lower levels outside the original organizational system, that is, in the transfer of competencies from the state to self-governing entities, whereby these competencies become their own. The transfer of competences necessarily entails the transfer of responsibility for their implementation, as well as the financial coverage of the possibility of their real provision. After 1989, in the Slovak Republic, this principle was mainly applied; competencies were transferred first to municipalities, then to higher territorial units, and this process is still incomplete.

(c) Concentration principle. This principle, as well as the principle of deconcentration, applies only to state administration. It consists of the concentration of competence in a higher or even the highest unit within the same organizational structure. The concentration occurs in two forms: horizontal and vertical. Horizontal involves the concentration of competences from several authorities at one level in the hands of one of them (e.g. the abolition of the former Ministry of Construction and Regional

Development of the Slovak Republic and its incorporation under the Ministry of Transport and Construction of the Slovak Republic). An example of vertical concentration is the creation of the Government Audit Office of the Slovak Republic, which combined the competences of local financial control offices. The financial control offices were three local state administrative bodies that exercised their competence in the territorial districts of Western, Central, and Eastern Slovakia. The Government Audit Office is the only body with nationwide coverage.[42]

(d) Deconcentration principle. This principle is also applied within one branch of government—in this study's context, only in the state administration. Deconcentration refers to separating related groups of administrative activities and making them relatively autonomous in the form of new organizational units of the same organizational structure.[43] Deconcentration can also be vertical or horizontal. Vertical deconcentration consists of the separation of competences into a separate organizational unit, which is at an organizationally lower level, while this lower organizational unit is subordinate to the organizational unit from which it has been separated (e.g. from the Ministry of Labour, Social Affairs and Family has been separated from the Central Office of Labour, Social Affairs and Family, etc.). Horizontal deconcentration consists of the separation of competence from one organizational unit to a new organizational unit at the same organizational level. Examples include the separation of the Ministry of Environment of the Slovak Republic from the former Ministry of Agriculture and Rural Development.

(e) Principle of delegation. The essence of this principle is the transfer of competences from the state to self-government entities, which, however, do not exercise these competences as their own but as delegated competences of the state (delegated exercise of state administration). The state remains responsible for the performance of these activities; it controls their performance and provides methodological guidance, but simultaneously finances them. For instance, this includes the delegation of the construction agenda to municipalities, which carry it out as a delegated exercise of the state administration.

(f) Territorial principle. On the basis of the application of this principle, the territorial boundaries of individual public administration bodies are defined within which they can exercise their competences. In terms of territorial principles, a public administration body may have national competence, regional competence, district competence, or competence in a special district within the territory of a municipality.

(g) Substantive principle. This principle involves defining the competencies of public authorities. Whether the authority in question exercises competences of a particular kind that are similar, related, or close, or exercises competences that cross-cut across the whole field of public administration. Based on this, bodies with specialised

42 Cepek, 2018, p. 54.
43 Machajová, 2009, p. 88.

competencies (e.g. district mining offices) and bodies with general competencies (e.g. district offices) were created.

iii) Organizational-structural principles. The internal structure of public administration bodies is built on the application of organizational-structural principles, including the following: a) the monocratic principle; b) the collegiate principle; c) the electoral principle; d) the appointment principle; e) the parity principle; f) the disparity principle; and g) the principle of proportional representation.

(a) Monocratic Principle. This principle arises from the way in which the will of the body in question is formed. If the monocratic principle is applied, then the will is shaped by a single subject, who is the head of the relevant public administration body (e.g. a ministry).

(b) The collegiate principle. This principle is similar to that of the previous method. In the application of the collegiate principle, the will of the body is shaped by the decisions of a particular college, a body consisting of several persons. As there are a number of decision-makers, it is necessary to have rules regulating their convening, meetings, quorum, etc., whether in the form of a law or internal regulation (rules of procedure). Such a body is, for example, a municipal council or a media services board.

(c) The principle of election. This principle is based on the fact that a competent public authority is created through elections either directly by citizens (inhabitants) or by a representative assembly. For instance, the principle of election is applied in the case of the municipal council, mayor, and presidency of the Slovak Bar Association. This does not mean that the principle of election must apply only to collegiate bodies.

(d) Appointment principle. It is also based on how competently the authority is created. The appointing principle arises from an appointment by another body stated by law. This principle applies, for example, to the government and its members (ministers), heads of district offices, and so on.

(e) The principle of parity. This principle is particularly relevant for collegiate bodies. Equal representation of persons within the body nominated or appointed by those empowered to do so. For instance, the Regulatory Board has six members appointed by the President; three are nominated by the National Council of the Slovak Republic and three by the Government of the Slovak Republic.

(f) Principle of disparity**.** This principle negates the principle of parity, that is, the equal representation of persons. Thus, it consists in the fact that there are persons in the collegiate body who have been proposed by different entities, and the number of persons proposed by the different entities is not even. For instance, the committee for the selection procedure of judges comprises one candidate recommended by the Judicial Council of the SR, two candidates proposed by the Minister of Justice, and one candidate proposed by the Council of Judges of the Court.

(g) The principle of proportional representation. The essence of this principle is that the composition of a public administration body (especially a collegiate one) reflects the proportional representation of certain groups, e.g. the proportional representation of political parties or movements, national minorities, etc. An example

of the application of this principle is the composition of the municipal board, which requires the composition of the municipal board to consider the representation of political parties, political movements, and independent candidates in the municipal council.

### *3.3. Organization of administrators of public administration*

As mentioned previously, the basic entities of public administration are public corporations. These include the state, local self-government, and interest in self-governing entities. These entities enter administrative-legal relations through their bodies, which are the administrators of public administration. As mentioned previously, there is also a special category of entities called 'other public administrations'. The purpose of this chapter is to characterise the organization of public administration administrators, that is, to define public administration from a formal or institutional point of view.

Certain specific features apply to the organization of public administration in the Slovak Republic. First is the complexity of the organization of public administration. Slovak public administration is a complex, internally structured system consisting of several subsystems. The complexity of public administration increases continuously with the expansion of its tasks. The second feature is the dynamic nature of public administration organizations. Since 1990, Slovak public administration has undergone frequent changes at all levels. Third, the organization of public administration is often controlled by internal regulations. The basics of the organization of public administration are regulated by the law—the establishment and competence of public administration bodies. However, the internal organization and management of public administration are also regulated by internal regulations, such as statutes and rules of the organization.[44]

Additionally, it should be noted that the organization of Slovak public administration has been built on the so-called dual system of public administration organizations since 1990. This indicates that two systems of organization operate side by side—the system of state administration bodies forming the organization of administrators of state administration and the system of self-government bodies (territorial and interest). These systems operate both independently and in parallel. For the sake of completeness, it should be noted that until 1990, there was only one system within Slovak (or Czechoslovak) public administration, which is the system of state administration. Thus, public administration was made up only of state administration. After 1990, the principle of decentralisation began to be applied, consisting of the creation of public administration entities distinct from the state to which the performance of public administration was also transferred.

Given the existence of such a dual system in the organization of public administration, we characterise the organization of state administration on the one hand and the organization of self-government on the other.

44 Tekeli, 2020a, p. 65.

*3.3.1. Organization of state administration*

As a public administrative entity, the state has public rights and obligations. However, it does not exercise public administration. For this purpose, it sets up bodies which exercise directly on behalf of and in place of the state, which is part of public administration known as state administration. Public administrators are referred to as direct administrators.[45] The direct administrators of state administration are state bodies established by the state, usually as organizational units or bodies of the state, which directly carry out state administration instead of the state, but under its responsibility, in its interest, and on its behalf. They are also characterised by the fact that their employees are in a state service or in other similar relationships with the administrator of public administration.[46]

On the other hand, indirect administrators of state administration are those who do not have the status of state authority but are entrusted by law with the performance of state administration activities. This activity is carried out on behalf of the state, under its responsibility, and the state must provide financial coverage. These administrators do not conduct state administration for most of their activities. They can exercise public administration; however, this is not the nature of state administration. These are primarily local self-government bodies but may also include other natural and legal persons.[47]

The direct administrators of state administration in the Slovak Republic include: i) central state administration bodies, ii) state administration bodies with a national scope, and iii) local state administration bodies.

Ad i) Central state administration authorities

It is specific for the central state administration bodies in the Slovak Republic that they have nationwide competence; that is, they operate within the entire Slovak Republic. In terms of subject matter competence, they demonstrated partial subject matter competence. This means that they operate in a defined area of administration that may vary among authorities. However, it has a sectoral character (health, justice, competition, etc.). Similarly, a monocratic principle is applied to these bodies, consisting of the fact that a single entity, the head of the relevant central public administration body, makes the decisions. Finally, another characteristic of these bodies is that they are directly accountable to the government through which it implements its policies.

This category of central public administration bodies is further subdivided into two segments: (a) ministries and (b) other central public administration bodies. There were no fundamental differences between categories. However, only minor differences were observed. First, the other central state administration bodies have a narrowly defined subject-matter competence focused on very specialised areas

45 Machajová, 2009, p. 95.
46 Vrabko, 2012, p. 122.
47 Cepek, 2018, p. 147.

(competition, public procurement, and protection of classified information), while the ministries have a broader competence, sometimes cross-cutting (finance, foreign affairs, etc.). Another difference is who heads them. The ministry is headed by a minister who is also a member of the government. It is a political post that is also linked to how it is appointed (appointed by the President based on the proposal of the Prime Minister). On the other hand, other central state administrative bodies are headed by a chairman (or head and director) who is usually a specialist in the field. The latter are usually appointed by the government following a competitive selection process.

Currently, there are 14 ministries in the Slovak Republic, namely, the Ministry of Economy; Ministry of Finance; Ministry of Transport; Ministry of Agriculture and Rural Development; Ministry of Investment, Regional Development and Informatisation; Ministry of the Interior; Ministry of Defence; Ministry of Justice; Ministry of Foreign and European Affairs; Ministry of Labour, Social Affairs and Family; Ministry of the Environment; Ministry of Education, Science, Research and Sport; Ministry of Culture; and Ministry of Health.

There are also 11 other central state administration bodies: the Office of the Government, Antimonopoly Office, Statistical Office, Office of Geodesy, Cartography and Cadastre, Office of Nuclear Supervision, Office for Standardisation, Metrology and Testing, Office for Public Procurement, Industrial Property Office, State Material Reserves Administration, National Security Office, and Office for Urban Planning and Construction of the Slovak Republic.[48]

Ad ii) State authorities with national competence

State administrative bodies with nationwide competencies constitute a special category. This is a highly inhomogeneous group of state administrative bodies with different roles and positions in administrative-legal relations. They stand on the borderline between central state administration and local state administration; that is, they belong neither to central state administration nor to local state administration.

A common feature between state administration bodies with a nationwide scope and central state administration bodies is the extent of their local competence. The local competence of state administration bodies with national competence covers the entire territory of the Slovak Republic (as is the case with central state administration bodies). However, the legislator did not 'elevate' the state administration bodies with nationwide competence to the level of the highest central state administration bodies. They were not included in the exhaustive list of central state administrative bodies in the Competence Act.[49]

Although they are a nonhomogeneous group of distinct bodies, they can be categorised as (a) Regulatory and Supervisory Authorities, (b) Deconcentrated Authorities, and (c) Inspection Authorities.

48 The official name of the ministries and other state administration bodies contains suffix 'of the Slovak republic'.
49 Tekeli, 2020a, p. 83.

(a) Regulatory and supervisory authorities. A characteristic feature of this category of bodies is their independence from other state administration bodies and sometimes even from the government. It follows that they have no superior authority within the organizational structure of the state administration. The requirement of independence is due to the fact that their agenda includes activities that should not be subject to political influence (e.g. regulation of network industries, protection of personal data). The creation of this group was mainly conditioned by the need to implement European Union law into the legal order of the Slovak Republic at the pre-accession stage, as the European Union law stipulated the requirement of independence for some of such bodies.[50] Such bodies include the Electronic Communications and Postal Services Regulatory Authority, Media Services Council, Office for Personal Data Protection, Office for Regulation of Network Industries, Office for the Protection of Whistleblowers of Anti-Social Activities, and Office for the Regulation of Gambling.

(b) Deconcentrated Authorities. The essence of these bodies is that they were created as a result of the separation of a part of the competence of a ministry or other central state administration body and its attachment to a separate body; that is, so-called deconcentration was implemented. It also follows that these bodies have superior authority: the relevant ministry or other central state administrative bodies. Such bodies include the Financial Directorate, the Transport Authority, the Main Mining Authority.

(c) Inspection Authorities. This group of authorities is characterised by the fact that they have competencies focused on the exercise of specialised administrative supervision in a particular area of public administration. As a rule, these bodies are subordinate to a ministry or other central state administration body (e.g. the Slovak Environmental Inspectorate, the National Labour Inspectorate), or are an intra-organizational component of a central state administration body (e.g. the Office of the Inspection Service of the Ministry of the Interior).

Ad iii) Local state administration authorities

Local state administrative authorities are direct implementers of state administration with limited territorial jurisdiction. This territorial competence is either linked to administrative units in accordance with the territorial-administrative division of the Slovak Republic (districts and regions) or has a specially defined perimeter of its territorial competence. Their main task is to carry out decision-making activities towards the addressees of administrative and legal action (natural and legal persons) and to ensure the implementation of state policy in the defined territory. They also legislated to a limited extent.

These bodies can also be internally differentiated into (a) integrated local state administrations, (b) specialised local state administrations, and (c) corpora.

50 See in Jakab, 2020d.

(a) Integrated local state administration. The essence of this category of authority is that the state has sought to integrate all the competences of local state administration into one category, which may not be exercised by specialised authorities. The district offices exercised these competencies. The territorial scope of the district office reflects the territory of the district in accordance with the territorial-administrative division of the Slovak Republic (in Bratislava and Košice, only one district office was established for all districts in these cities). However, not every district office possesses all these competencies. Some were carried out only in the larger district offices, and others only in the district offices in the seat of the region (eight district offices).

(b) Specialised local state administration. Due to certain specificities, it has not been possible to integrate all the competencies of state administration at a local level into one category of local state administration. Therefore, specialised local state administration bodies remained. They either operate in specific territorial districts (e.g. district mining offices), operate only at the regional level (regional public health offices), or carry out a specific activity that is subject to the direction of a special state administration body with national competence (e.g. labour, social affairs, family offices, or tax offices).

(c) Corps. These are special bodies of the state which operate throughout the territory of the state, as well as their components within certain limited territorial units. Their primary activity is not the performance of state administration, but the provision of other tasks in the state. However, the state has also entrusted them with certain state administration tasks. These corps include the police force and the fire and rescue corps of the Slovak Republic. The district and regional headquarters operate locally. For instance, the primary task of the police force is to ensure a state's internal security. Only to a limited extent does it carry out state administration; for example, in the form of issuing various documents, registering motor vehicles, etc.

### *3.3.2. Organization of self-government*

In the field of public administration, self-government is exercised by public administration bodies, which are characterised by the fact that they are not state bodies but non-state legal entities, that they are established by law, and that their self-government tasks are defined by law.[51] Under the conditions in the Slovak Republic, the right to self-government was self-evident. This means that even if the state did not enshrine it through legislation, self-government would develop in a certain way. Self-evident nature of self-government, whose material basis is the need to manage one's affairs within the limits of the law, is a prerequisite for subsequent institutionalisation.[52]

Although self-government is separate and independent from state administration, it was created by means of separation—decentralisation from state administration based on the will of the state. Thus, the existence of self-government and the scope of its competencies and powers are determined by the state's will. Under the modern

51 Cepek, 2018, pp. 172–173.
52 Tekeli, 2020a, p. 97.

conditions of the Slovak Republic, self-government began to take shape only in 1990. During the communist regime, public administration was concentrated in the hands of the state and there was only a state administration. The creation of self-government occurred only after the collapse of the regime. Self-governance at the municipal level was established in 1990.[53] This was supplemented by regional self-governance in 2001.[54] Simultaneously, self-government is also beginning to be created, with the formation of self-government in various professions (e.g. attorneys,[55] commercial lawyers,[56] notaries,[57] authorised surveyors, cartographers[58]), as well as the self-government of universities.[59]

Public authorities are vested by law and have the power to conduct public administration. They carry out this public administration on their own, in their own name, from their own resources and are accountable for its performance. This is the self-governing competence of self-government entities. However, in addition to such competencies, the state may delegate the performance of part of the state administration to self-government entities. This is the so-called competence in the delegated exercise of the state administration. In this case, they are the so-called indirect administrators of state administration. However, they do not carry out such delegated state administration on their own behalf, but on behalf of the state. The state is also obliged to ensure financing for the implementation of delegated state administration by self-governing entities. Finally, the state is responsible for the implementation of the state administration and is thus delegated.

Public self-government entities can be divided into (i) territorial entities and (ii) self-government entities of interest.

Ad (i) Territorial self-government entities

The establishment of territorial self-government in Slovakia was conditioned by profound social changes after 1989. There is no doubt that territorial self-government is a constitutional matter because it is one of the fundamental social relations that form part of the functioning of a democratic society, and the principle of territorial self-government is one of the founding principles of modern constitutionalism.[60] The Slovak Constitution[61]

53 Act No. 369/1990 Coll. on Municipal Establishment, as amended.
54 Act No. 302/2001 Coll. on self-government of higher territorial units (Act on self-governing regions) as amended.
55 Act of the National Council of the Slovak Republic No. 132/1990 Coll. on Advocacy, as amended.
56 Act of the National Council of the Slovak Republic No. 129/1991 Coll. on Commercial Lawyers, as amended.
57 Act of the National Council of the Slovak Republic No. 323/1992 Coll. on Notaries and Notarial Activities (Notarial Regulations), as amended.
58 Act of the National Council of the Slovak Republic No. 138/1992 Coll. on Authorised Architects and Authorised Civil Engineers, as amended.
59 Act of the National Council of the Slovak Republic No. 172/1990 Coll. on Higher Education Institutions, as amended.
60 Palúš et al., 2010, p. 14.
61 Constitution of the Slovak Republic No. 460/1992 Coll. as amended.

also regulates the existence and status of local self-government, as discussed in the fourth chapter. It distinguishes between municipal self-government, which is based on a municipality, and regional self-government, which is based on a higher territorial unit (self-government region). In the following section, we discuss the division of territorial self-government entities into (a) municipalities and (b) higher territorial units.

(a) Municipalities. Based on its statutory definition, a municipality is an independent territorial, self-governing administrative unit in the Slovak Republic. This brings together the people who permanently reside in their territory. A municipality is a legal entity that manages its own property and income independently under the conditions laid down by law.[62] The municipality independently decides and performs all acts related to the administration of the municipality and its property and all matters that are regulated by a special law as part of its self-governing competence, unless such acts are performed by the state, another legal person, or a natural person according to the law. Similarly, the state also transfers competence in the field of state administration (e.g. the activities of the building office and the registry office) to the municipality. The municipality exercises its power through its bodies, the mayor and the municipal council. The Municipal Council is a collective body consisting of members directly elected by the inhabitants of the municipality, who decide on the most important issues of the municipality. The mayor is the statutory body of the municipality, elected directly by the inhabitants, and performs all activities that are not entrusted to the municipal council.[63]

(b) Higher territorial unit. A higher territorial unit or self-governing region is an independent territorial, self-governing, and administrative unit. It is a legal entity which, under the conditions laid down by law, manages its own property and income independently and ensures and protects the rights and interests of its inhabitants. The territorial district of a higher territorial unit is the territory of the region in accordance with the territorial-administrative division of the Slovak Republic. It follows that eight higher territorial units exist in Slovakia. It is also true that this entity provides both tasks in the exercise of its self-governing competence and tasks delegated to it by the state during the exercise of state administration. The bodies of the higher territorial unit are the council and the chairman. The Council decided on the most important issues in the self-governing region. The chairman is the statutory body of the self-governing region and decides all other matters not reserved for the council. Both bodies were elected directly by the inhabitants of the self-governing region.[64]

Ad II) Interest self-government entities

Interest in self-government is characterised by the alignment of group interests with public interests. To be considered a part of public administration, the bodies of interest

62 Article 64a of the Constitution of the Slovak Republic, Article 1 of the Act No. 369/1990 Coll. on Municipal Establishment, as amended.

63 See in Tekeli et al., 2021a.

64 See in Tekeli et al., 2021b.

in self-government must have the power and competence conferred on them by law. Professional self-government in the Slovak Republic is represented by chambers that bring together individuals based on their professional focus, such as attorneys, notaries, patent attorneys, doctors, nurses, and midwives. Within chambers, a distinction is made between compulsory and optional membership. Specifically, the exercise of certain licences is subject to compulsory membership in the relevant chamber.[65] Chambers act through their bodies and there is no uniformity in their designation. First, it is a collective body that brings together all the members of the chamber (e.g. conference, assembly, congress, and general assembly). A collective executive body is referred to as the presidency, board of directors, or managing board. This body is usually headed by a chairperson who is also a statutory body (or President). Control over the activities of the chamber is exercised by a collective control body (e.g. a supervisory board or review board). As the chamber exercises disciplinary jurisdiction over its members, a collective disciplinary body (e.g. a disciplinary committee) is also established as a standard practice.

Special self-government is also part of self-government interests. It is a special kind of self-government that cannot be classified as either territorial or professional self-government in a narrower sense. This occurs in areas where the state has delegated the right to decide on certain issues in public administration to separate entities. This type of self-government is found in education (self-government of universities as well as primary and secondary schools), justice (self-government of judges), and prisons (self-government of prisoners).

## 4. Current challenges in public administration

The European Union and its laws also have an impact on the way public administration is organized in each Member State. European Union law requires Member States to ensure that they have a sufficient apparatus of public authority to ensure compliance with obligations arising (directly or indirectly) from European Union acts and to hold perpetrators accountable in the event of breaches. However, the European Union does not specify the requirements for the category, the status of such a body in the public administration organization of a Member State, or the public administration organization as such.

However, there are some exceptions to the statement in the previous paragraph. In particular, European Union law requires the creation of so-called national regulatory authorities, exercising their competence particularly in relation to markets where competition is not sufficiently developed (especially network industries), or regulating pan-European issues (e.g. personal data protection, media services). In addition to the requirements for the existence of such bodies, European Union law imposes further requirements on their independence, power, and procedures.

65 Seman, 2020, pp. 44–45.

In the context of the Slovak Republic, the expansion of the category of state administration bodies with nationwide competence has become increasingly evident. These bodies possess an independent status from other public administration bodies, including central state administration bodies. Under the influence of European Union law, whether after the Slovak Republic's accession to the European Union or in the process of law approximation in the pre-accession period, several bodies in this category were created (e.g. the Office for Personal Data Protection, the Office for the Regulation of Network Industries, the Office for the Regulation of Electronic Communications and Postal Services, etc.).

As integration processes deepen, European influence on the organization of public administration is also expected to grow. It will therefore be the task of Member States, including the Slovak Republic, to respond adequately to these trends and implement them appropriately in national legislation.

One of the policy objectives of governments in the Slovak Republic is to stabilise public finances by increasing state budget revenues and reducing state apparatus spending. For this reason, various ways of 'slimming down' and streamlining public administration are being considered politically. These trends also apply to the organization of public administration. While this approach may achieve the aforementioned fiscal objective, it may also lead to serious disruptions in existing processes, thus generating serious negative consequences. Therefore, the application of re-organizational changes within public administration at any level requires prior scientific and professional examination, setting out both legal prerequisites and legal consequences.

One such method is merging ministries, other central state administration bodies, or bodies with national competence. Although the merger of central state administrative bodies or bodies with a national scope requires prior scientific examination, the actual situation is different. Whether there will be a merger or split of the central bodies is more of a matter of politics and agreement between the political parties that form the government. Often, this process is not influenced by professional arguments regarding the appropriateness of combining the performance of certain agendas and processes. However, political parties' parochial interests control certain areas. This is why disparate areas are sometimes combined (e.g. transport and construction). Based on this, it is evident that the current state of learning and streamlining of the organization of public administration at the central level is at an early stage. Whether there will ever be a shift in this area remains questionable, as political tendencies are more prevalent than professional or scientific ones. This change cannot be expected in the near future.

However, the situation is different at the level of the local state administration organization in the Slovak Republic. Starting in 1990–the fall of the communist regime–the country was subject to turbulent changes. One reform of the local state administration organization succeeded in another. Owing to the very short duration of a particular model of a local state administration organization, it has not been possible to test the viability of that model. Every political party that came to power after

1990 had their own idea of what the public administration model should look like. Therefore, frequent changes occur. Much more than changes in the material understanding of public administration, political representation has focused on changes in the formal organization of public administration.[66]

Between 1990 and 1996, a mixed model of local state administration was established. Within it were bodies of general local state administration (district offices and county offices), as well as bodies of specialised local government. This change occurred in 1996 when the general local state administration model was introduced. The performance of local state administration was integrated into the regional and district offices. Another change occurred in 2004, when the opposite trend was observed. Specialised local state administration bodies exercising partial competencies in a specific area have disintegrated from the local state administration bodies. The most recent change occurred in 2013 when the integrated local state administration model was reintroduced, with some exceptions. This status of affairs persists today. The aim of this latest reform was to provide citizens with a single authority to handle all necessary matters, thereby simplifying their contact with the state. Simultaneously, this should be in line with the interests of transparency, accountability for decision-making, efficiency in the use of public funds, and effectiveness of control.[67] This model was described in the previous section.

The established model of the local state administration organization should be maintained in the future to properly test its functionality. Considering the increasing computerisation of the performance of state administration activities and the increasing level of the population's ability to use electronic state administration services, this model has the potential to be effective. However, at the same time, it allows for the achievement of the goal. First and foremost, to simplify the contact of citizens with the authorities, as well as to ensure savings in the fiscal expenditure of the state, while fully providing all services of the state.

However, greater challenges await the organization of local self-governments in the future. As mentioned in the first chapter, between 1970 and 1990, the political regime attempted to artificially merge municipalities into larger administrative units. However, the opposite trend was observed after 1990. Individual municipalities have begun to become independent. Currently, there are almost 2,900 municipalities in the Slovak Republic, with populations ranging from a few dozen to almost 500,000 inhabitants. Regardless of the number of inhabitants, each municipality performs essentially the same tasks, both self-government tasks and tasks, in the delegated exercise of state administration (some exceptions shall apply, for example. when acting as registry offices). In this context, it is not surprising that small municipalities with few inhabitants do not have sufficient staff, professionals, and, above all, the financial capacity to perform all tasks. In the case of small municipalities, it is

66 Tekeli, 2020, p. 88.
67 Hrtánek, 2013, p. 122.

not unusual for them to be unable to staff even the basic bodies of the municipality, namely, the office of the mayor and members of the municipal council.

Smaller municipalities are trying to eliminate the lack of professionals, personnel, and financial capacity by creating joint municipal offices. However, these common offices are mainly used for the performance of the competences of the delegated state administration (construction agenda, road administration, and school agenda). However, local self-government competencies are usually provided by the municipalities themselves (e.g. local taxes and fees, management, and maintenance of green areas). Second, the degree of intermunicipal cooperation should intensify.

It is also necessary to address the possibility of voluntary or involuntary mergers among municipalities. Municipalities should be motivated to merge voluntarily through financial considerations. On the expenditure side, they save costs, and on the revenue side, the state provides a subsidy to the merged municipalities for this purpose. Involuntary merger should apply where a municipality is unable to fulfil its tasks or where it is unable to constitute its bodies. Even today, an institute for municipal annexation exists.[68] However, this was limited to municipalities that did not have a municipal council or mayor after two consecutive elections. I believe it is necessary to broaden the grounds for the compulsory annexation of a municipality. Such reasons include the municipality's failure to perform its tasks properly and in a timely manner, whether municipal or delegated by the state administration.

It would also be advisable to change the state's approach to transferring the competencies of state administration to municipalities. Currently, the model assumes that the state transfers the competencies of state administration equally to all municipalities. They do this within their territory and towards their inhabitants. However, the state could transfer these competences only to some municipalities (usually larger ones), which would also exercise them in relation to the territory and inhabitants of other municipalities, especially neighbouring municipalities. This model is also currently applied to the competencies of the registry office. The same can be applied to other devolved competencies of the state administration. This would ensure that state administration tasks are carried out with sufficient staffing, expertise, and funding.

The second level is regional self-government, represented by higher territorial units (self-governing regions). Currently, eight of these regions have territorial boundaries. First, these territorial districts did not copy the historical formations that existed in the territory of the Slovak Republic. However, it is questionable whether it is necessary to have eight regional self-governments of the size of the state and population. I believe that these three regional self-government units are sufficient. For example, Poland is six times larger than the Slovak Republic and has only 16 voivodeships ( twice as many as the Slovak Republic).

Simultaneously, it is also necessary to consider whether self-governing regions have been entrusted with sufficient competence. If the full potential of regional self-government is fully exploited, it would be appropriate if several or even all

68 § 2aa of Act No. 369/1990 Coll. on Municipal Establishment, as amended.

competences of the general local state administration, where it is not expedient to delegate them to municipalities, were transferred to it. These are the tasks of integrated local state administration bodies (district authorities). However, the State is cautious about the transfer of competence. However, this results in the coexistence of local state administrations and regional self-governing bodies.

As can be inferred from the above discussion, the organization of public administration is a dynamic system that reflects societal changes and expectations. However, it is desirable to make changes to the organization of public administration when changes are made to the processes and tasks that public administration is supposed to perform. Changes in the organization of public administration (changes in form) are intended to respond to changes and streamline public administration activities and processes (changes in matter/content). A mere renaming of the office is unnecessary.

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# General Principles and Challenges of Public Administration Organization in Slovenia

Nejc BREZOVAR – Bruno NIKOLIĆ

**ABSTRACT**

Slovenia is a democratic parliamentary republic. Citizens exercise power directly (e.g. referendum) and through elections, in line with the principle of the separation of powers. Power is divided into the legislative (Parliament, which consists of the National Assembly and the National Council), executive (Government and President of the Republic of Slovenia), and judicial branches. Although the President of the Republic is considered the nominal head of executive power, the government is the de facto holder of executive power. The principle of separation of powers is not implemented in a 'pure' form due to several elements that disrupt the relations between the different branches of government. There is an imbalance in this relationship favouring the legislature, which is reflected in the significant power of the National Assembly in appointing officials and, conversely, the limited power of the President of the Republic.

The state administrative bodies in Slovenia include government offices, various government departments, ministries, and different bodies within ministries and administrative units. The government comprises a President and ministers. Government and state administration are closely related, with the government also serving as the largest body within the state administration in the Republic of Slovenia. The government represents the top of the political executive power structure, while the state administration is the professional part of executive power. State administration, governed by fundamental principles, constitutes a collection of state bodies that develop the professional basis for the government's political decision-making and directly execute decisions issued by both the government and parliament. Administrative units carry out the tasks of state administration, which must be organized and implemented uniformly across any of the state's 58 administrative units. In addition to administrative decentralisation through these units, the Constitution guarantees territorial decentralisation through local self-government. Slovenian local self-government has only one level – the municipal level – comprising 212 municipalities. In recent years, Slovenian public administration has faced the following main challenges, which will determine its further development: reform of the salary system, public authority dilemmas, regional establishment, number of municipalities, and financing methods.

**KEYWORDS**

Slovenia, public administration, constitutional order, organizational principles, structure of the public administration

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## 1. Basic social, geographical, and economic overview

Slovenia is located in south-central Europe, bordering Austria to the north, Italy to the west, Croatia to the south, and Hungary to the northeast. It covers 20,273 square kilometres and has a population of 2.1 million. Slovenia is a small but topographically diverse country, comprising portions of four major European geographic landscapes: the European Alps, the karstic Dinaric Alps, the Pannonian and Danubian lowlands and hills, and the Mediterranean coast.[1] Nearly 60% of Slovenia is covered by forests, making it the 3rd most forested country in Europe, with up to 39% of its territory being protected by the Natura 2000 ecological network—the highest level in the EU. The capital, Ljubljana, was declared the Green Capital of Europe in 2016 and is one of the most sustainably developed tourist destinations in Europe (ITB Berlin).[2]

Slovenian ancestors settled in the area in the 6th century AD and established the Principality of Carantania. After the 9th century, the Slovenians lost their sovereignty for the entire millennium but maintained their language and cultural identity.[3] For many centuries, Slovenia was largely controlled by the Habsburgs of Austria and its successors, the Austrian Empire and the Austro-Hungarian Empire.[4] Following World War I, when the Austro-Hungarian Empire collapsed, Slovenians co-established the Kingdom of Serbs, Croats, and Slovenes, later renamed the Kingdom of Yugoslavia.[5] During World War II, the Slovenian territory was divided into German, Italian, and Hungarian occupation zones.[6] After World War II, Slovenia became part of the socialist Yugoslavia and its most prosperous federal republic.[7] Yugoslavia was a one-party state with significant diversity in national, economic, social, religious, and other aspects.[8] Following a plebiscite for independence in December 1990, Slovenia declared its independence in 1991. In the early 21st century, Slovenia integrated economically and politically with Western Europe, joining the North Atlantic Treaty Organization and the European Union in 2004.[9] Slovenia adopted the euro, joined Schengen in 2007, and held two presidencies of the Council of the EU: the first in 2008 and the second in 2021.[10]

Slovenes are South Slavic people who speak a unique language. Approximately 83% of Slovenes are ethnically Slovenians. They were the descendants of settlers, mostly Slavs, who migrated westward from the vast Russian Plain. Italians, who live

1 Lavrencic et al., 2023.
2 Slovenian Business Portal, 2023.
3 Slovenian Business Portal, 2023.
4 Lavrencic et al., 2023.
5 Slovenian Business Portal, 2023.
6 Government Communication Office, 2021.
7 Slovenian Business Portal, 2023.
8 Government Communication Office, 2021.
9 Lavrencic et al., 2023.
10 Government Communication Office, 2021.

mainly in Primorska (southwestern Istria), represent 0.1% of the population, and Hungarians, who live in the northeastern Prekmurje region and represent 0.3% of the population. They are Slovenia's two main ethnic minority groups. The Roma are also autochthonous to Slovenia and are found mostly in northeastern Slovenia, as well as scattered throughout southern Slovenia near the border with Croatia.[11] Other large ethnic groups include Serbs, representing 2% of the population; Croats, representing 1.8% of the population; and Muslims (including Bosniacs) representing 1.6% of the population.[12] In 2020, the population density in Slovenia was 103 per km$^2$, and approximately 55% of the population was urban. The median age of Slovenia has been rising rapidly, from 34.2 years in 1990 to 44.5 years in 2020,[13] representing a major Slovenian demographic problem.

Today, Slovenia is a democratic parliamentary republic with a fast-growing export-oriented economy.[14] In 2021, the share of agriculture in Slovenia's gross domestic product was 1.69%, industry contributed approximately 28.48%, and the service sector contributed approximately 57.71%.[15] Slovenia's economy has been stable, with a sustained growth rate in recent years, optimistic forecasts for the future years, low inflation, a large fiscal and current account surplus (above 8.5% of Gross Domestic Product (GDP)), and declining sovereign debt, currently at 69.9% of GDP. In 2022, the GDP per capita was EUR 27,937, the average monthly gross earnings for the year were EUR 2,023.92, and the unemployment rate was 4.2%.[16] Slovenia focuses on exports, which represent a large proportion of its economy. In 2021, Slovenian exports of goods amounted to EUR 26.8 billion while exports of services reached EUR 6.3 billion—a combined total of EUR 33.1 billion, which is approximately 63% of the country's GDP.[17]

Slovenia is decentralised,[18] territorially unified, and indivisible[19][20]. Territorial decentralisation is reflected in local self-government and administrative decentralisation through administrative units. The Constitution guarantees local self-government[21] and defines regions as the first level of territorial decentralisation,[22] which has never been implemented in practice. Thus, Slovenian local self-government has only one municipal level, comprising 212 municipalities. State administration tasks

11 Lavrencic et al., 2023.
12 European Commission, 2023.
13 Worldometer, 2023.
14 Slovenian Business Portal, 2023.
15 O'Neill, 2023.
16 SURS, 2023a; SURS, 2023b; Slovenia Business, 2023.
17 Slovenia Business, 2023.
18 For more see Brezovnik, 2008.
19 Article 4 of the Constitution.
20 The Constitution of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, no. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99, 75/16 – UZ70a and 92/21 – UZ62a).
21 Article 9.
22 Article 143.

are conducted by 58 administrative units, each including the area of one or more municipalities.[23]

## 2. Public administration and constitutional order

### *2.1. Conceptual positioning of the government within the broader constitutional order*

Slovenia is a democratic parliamentary republic. Citizens exercise power directly (e.g. through referendum) and through elections according to the principle of the separation of powers.[24] Like other modern constitutional systems, Slovenia's is also based on the 'tripartite' separation of powers.[25] Power is divided into the legislative, executive, and judicial branches. The holder of legislative power is the parliament, which consists of the National Assembly and National Council. Executive power is vested in the Government and the Head of State – the President of the Republic of Slovenia – and judicial power is separated from both legislative and executive powers. The Constitutional Court has a special place, as it performs the function of constitutional judicial review.[26] This section focuses on the legislative and executive branches of the government and their relationships.

The legislative branch is held by a bicameral parliament that operates in a system of incomplete bicameralism.[27] The Slovenian Parliament is composed of the National Assembly and the National Council. The National Assembly has 88 representatives of political parties and two representatives of Hungarian and Italian national minorities. The National Assembly has legislative, electoral, and supervisory competencies. Legislative powers include the adoption of amendments to the Constitution, the adoption of legislation, declarations, resolutions, rules of procedure, and the ratification of international treaties. Within its electoral powers, the National Assembly elects or appoints and dismisses high-ranking state officials, particularly, the Prime Minister and ministers, the President and Vice-Presidents of the National Assembly, the Chairpersons, Vice-Chairpersons, and members of the working bodies of the National Assembly; the Secretary-General of the National Assembly; judges,[28] including judges of the Constitutional Court; judges and members of the Judicial Council; the Governor of the Central Bank; members of the Court of Auditors; the Ombudsman; the Information Commissioner; and others. In its supervisory role, the National Assembly

23 For more about territorial decentralisation of Slovenia, in particular local self-government, see sections The Government and State Administration and Administrations of self-governing local communities.
24 Article 3 of the Constitution.
25 Grad et al., 2018, p. 209.
26 Gov.SI Portal, 2023; Grad et al., 2018, p. 209.
27 Grad et al., 2018, p. 210.
28 Currently there is a vocal expert debate about the constitutional reform that would transfer the power to appoint judges from the National Assembly to the Judicial Council and the President of the Republic.

exercises political control over the executive branch and social oversight. The latter is exercised mainly through parliamentary inquiry, while political control is exercised primarily through the motion of (no)confidence in the government and deciding on the impeachment of the President of the Republic, the Prime Minister, and ministers before the Constitutional Court. The National Assembly also has highly important competence in deciding on declarations of martial law, states of emergency, and the use of defence forces.[29]

Unlike the directly elected representatives of the National Assembly, who are representatives of all the people,[30] members of the National Council (40), who are nominated and elected by different interest groups in society (employers, employees, farmers, craftsmen, independent professions, and non-commercial activities), represent organized social interests and the interests of local communities. The National Council represents a weaker second chamber than the National Assembly because of its limited or uneven competences and instruments at its disposal to influence the exercise of the legislative function in comparison with the National Assembly.[31] These include proposing the adoption of laws to the National Assembly, offering the National Assembly an opinion on all matters within its competence (opinion is non-binding), and requesting that the National Assembly vote again on a law before it is promulgated (suspensive veto).[32]

The most important functions of the modern state (repressive, social, and economic) are most directly exercised by executive power, which is why it is the most vital and powerful branch of government.[33] The current constitutional arrangements, by introducing the principle of separation of powers and the parliamentary system (at least at the level of principle), have introduced a completely different position and organization of executive power compared to past arrangements. Although the President of the Republic is considered the nominal head of executive power, the government is the de facto holder of executive power.[34] The government is a collegial institution that directs and coordinates the implementation of state policies in line with the Constitution and legislation. It adopts regulations and other legal, political, economic, financial, and organizational measures necessary to ensure the efficient and effective implementation of state policies. In addition, it drafts and proposes laws, the state budget, and other general acts that determine the long-term political orientation of the state.[35] The composition and functions of the government are described comprehensively in the following sections.

In contrast to the previous constitutional system, in which the office of the Head of State was held by a collective body (the Presidency of the Republic), the current

29 Grad et al., 2018, p. 392.
30 Article 82 of the Constitution.
31 Grad et al., 2018, p. 210.
32 Grad et al., 2018, p. 448.
33 Grad et al., 2018, p. 500.
34 Grad et al., 2018, p. 505.
35 Gov.SI Portal, 2023.

system is held by the individual President of the Republic. As noted previously, the constitutional position of the President of the Republic is based on the principle of separation of powers and the parliamentary system. His or her position in relation to the bodies and institutions of the executive, legislative, and judicial branches of government is weaker than that of other parliamentary systems in European countries. The President exercises most of their rather limited powers in relation to the National Assembly, whereas the legal relationship between him/her, the government, and the judiciary is limited.[36] The most important powers of the President of the Republic are: representing and defending the interests of the Republic of Slovenia in relation to other nations, serving as commander-in-chief of the country's defence forces, calling elections to the National Assembly, promulgating laws, appointing state officials, ambassadors, and envoys of the Republic of Slovenia, receiving credentials of foreign diplomatic representatives, issuing instruments of ratification, granting pardons, awarding decorations and honorary titles, nominating the Human Rights Ombudsman, and appointing judges of the Court of Auditors and judges at the European Court of Human Rights.[37]

The principle of separation of powers is not implemented in a 'pure' form,[38] as there are several elements that disrupt the relations between the various branches of government. There is an imbalance in this relationship in favour of the legislature, which is reflected in the excessive powers of the National Assembly to appoint officials and the limited powers of the Head of State. The latter is most problematic when concerning the formation of the government, which is elected by the National Assembly rather than the President of the Republic.[39] The role of the President of the Republic in the formation of the government is considerably weaker in the Slovenian system than in other parliamentary systems. Following the German model, the President of the Republic proposes a candidate as Prime Minister to the National Assembly for election, but unlike in the German system, he/she has no role in the appointment of ministers, who are appointed solely by the National Assembly.[40]

The President's powers to resolve disputes between the parliament and the government are also limited. In a traditional parliamentary system, the Head of State can dissolve the parliament on the recommendation of the Prime Minister if the parliament passes a motion of no confidence against the government. In the Slovenian system, the President has no such power, since the Constitution specifically outlines the cases in which the President of the Republic can dissolve the National Assembly and call for early elections. The President can do this only (i) if the government cannot be formed, and (ii) in the case of a vote of no confidence against the government, if a new Prime Minister is not elected, or the old government fails to win a vote of

36 Grad et al., 2018, pp. 470–471.
37 Grad et al., 2018, pp. 480–493.
38 For more on the pure form of the principle of separation of powers see Grechenkova, 2022, p. 6.
39 Grad et al., 2018, p. 210.
40 Grad et al., 2018, p. 505.

confidence (constructive vote of no confidence). These departures from the German model render our current system considerably less stable than its role model. This also brings our system closer to the 'assembly system', in which usually only the parliament forms the body that performs the executive function. Such a constitutional setting of legislative and executive institutions also weakens and obscures the constitutionally established principle of the separation of powers.[41]

### *2.2. Conceptual positioning of the public administration within the broader constitutional order*

Executive power is divided into two parts, a political-executive part, and an administrative-executive part. Political executives provide the leadership, direction, and supervision for law enforcement. This function is always performed by the authorities that have a political mandate. The administrative-executive part is responsible for the direct implementation of the law, which is carried out by a professional civil service that directly implements the law.[42]

The Slovenian Constitution regulates the organization of the state in chapter IV, 'State organization', and chapter V, 'Self-government'. Constitutional regulation of the organization of Slovenian public administration is scarce, as Article 120(1) of the Constitution merely provides that the organization of (public) administration and its competences shall be regulated by law. Article 120 aims to ensure transparency and stability in the organization of the administration.[43] This provision is linked to Article 114(2) of the Constitution, according to which the number, competence, and organization of ministries are determined by law.[44] The provision for statutory regulation of competences (also) has organizational significance (substantive and territorial competences).[45] Specific ministries must be defined by law; however, for other administrative bodies, typification (defining the types of administrative bodies), rather than defining specific administrative bodies, is sufficient. Ministerial bodies and administrative units are, for instance, established by a government decree, which also lays down the foundations for the internal organization of administrative bodies. The internal organization of a specific body is determined by its internal acts.[46]

Regarding the organization of administrative bodies, Article 121(1) of the Constitution originally provided that administrative tasks were to be performed directly by ministries. This arrangement not only allowed for the deconcentration of the state administration but also prevented decentralisation. With the amendment of the Constitution in 2006,[47] this provision was deleted as it constituted an obstacle

41 Grad et al., 2018, p. 505.
42 Grad et al., 2018, p. 537.
43 Rakar, 2021, p. 303.
44 Pirnat, 2019.
45 Virant, 2002.
46 Rakar, 2021, pp. 303–304.
47 Constitutional Act Amending Articles 121, 140 and 143 of the Constitution of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, no. 68/06).

to the transfer of administrative tasks from the state to local communities, regions, and other organizations. Previously, this could only be achieved with the consent of the municipalities themselves, except for city municipalities, to which the state could delegate some of its tasks related to urban development by law. The amendment of the Constitution made it possible to decentralise administration and apply the principle of subsidiarity.[48]

Article 120(2) of the Constitution stipulates that administrative authorities must carry out their work independently, within the framework, and on the basis of the Constitution and law (principle of legality).[49] Furthermore, Article 120(3) of the Constitution guarantees judicial protection of the rights and legitimate interests of both citizens and organizations against decisions and actions taken by administrative authorities and public officials, thereby establishing a system of judicial supervision over administrative matters.[50]

Certain functions of the state administration may also be performed through public authority.[51] The previous version of the Constitution stipulated that (only) the law could grant public authority to self-governing communities, companies, and other organizations and individuals to perform certain functions of state administration. This provision was amended in 2006. Following the constitutional amendment, public authority may also be granted by an act based on law, which makes it easier to confer public authority. Under the amended Article 121 of the Constitution, public authority can be granted to legal or natural persons. Finally, the Constitution states that recruitment to administrative services is based on public tender, except in cases specified by law.[52] This constitutional provision establishes the modern principle that civil servants should normally be recruited by public tenders (competition), which is a crucial element in the democratisation and accessibility of the civil service, as well as in protection against various abuses.[53]

### *2.3. Constitutional principles and rules affecting the functioning of public administration*

Despite the modest legal regulations on public administration in the Slovenian constitutional order, numerous constitutional principles and rules govern the functioning of public administration. Among the most important, which will be further discussed below, are the principle of legality,[54] the principle of democracy,[55] the principle of the

48 Grad et al., 2018, p. 537.
49 For more on the independence of administrative authority, see section Constitutional principles and rules affecting the functioning of public administration.
50 Grad et al., 2018, p. 540.
51 Article 121(2) of the Constitution.
52 Article 122 of the Constitution.
53 Grad et al., 2018, pp. 540–541.
54 Article 120(2).
55 Article 1.

rule of law,[56] the principle of separation of powers,[57] the protection of human rights,[58] the principle of equality,[59] the equal protection of rights,[60] the right to a fair trial,[61] the right to a remedy,[62] and the general freedom of action.[63]

The principle of legality, as defined in Article 120(2), is one of the fundamental constitutional principles that bind the activities of administrative authorities to the framework of the Constitution and the law. Respect for the principle of legality is crucial to the relationship between legislative (parliament) and executive (government) power in a parliamentary democracy. Legal theory defines the principle of legality as the basis defining the relationship between legislative and executive power, ensuring that the actions of executive power are grounded in law. Consequently, the law must serve as the substantive basis for the issuance of bylaws and individual acts of the government and administrative bodies. These actions should align with the law's requirements, even without an explicit mandate. Furthermore, they must fully conform to the law in terms of their substance.[64] In addition to Article 120(2), the Constitution contains several other provisions that explicitly or implicitly establish the principle of legality for the functioning of administrative authorities. Article 153(3) of the Constitution provides that bylaws and other general acts must comply with the Constitution and the law. Article 154(4) of the Constitution stipulates that the individual acts and actions of administrative bodies, local authorities, and holders of public authority must be based on law or lawful acts. The Constitution also provides that the Constitutional Court is competent to review the conformity of bylaws with the Constitution and the law, and to rule on constitutional appeals on the grounds of violation of human rights and fundamental freedoms by individual acts.[65] The constitutionality and legality of abstract administrative acts are assessed by the Constitutional Court, whereas the legality of concrete and real administrative acts is assessed first by superior administrative authorities and then by the Administrative Court.[66]

The principle of legality is, in the context of public administration, also linked to other constitutional principles, particularly the principle of democracy, the principle of separation of powers, the rule of law, and the protection of human rights and fundamental freedoms. The principle of democracy[67] mandates that directly elected Members of Parliament make the most important decisions, particularly those affecting citizens. Consequently, executive power (government and administrative bodies)

56 Article 2.
57 Article 3.
58 Article 5.
59 Article 14.
60 Article 22.
61 Article 23
62 Article 25.
63 Article 35.
64 Šturm, 2002a.
65 Article 160 of the Constitution.
66 Šturm, 2002b.
67 Article 1 of the Constitution.

can only legally act on the basis of substantive law and within the framework of the law, and not on the basis of its own rules. In this respect, the primacy of the law, as the primacy of the legislature, also plays an important role in the delimitation of powers between the legislature and the executive, in accordance with the principle of separation of powers.[68] The independence of administrative authority, as provided for by Article 120(2) of the Constitution, is also derived from the principle of separation of powers. Independence in issuing abstract legal acts means that administrative authorities do not need specific power in the law – the supposed enforcement clause – to issue administrative rules. If a law contains an enforcement clause, it should be understood as a duty imposed by the legislator on the executive branch of the government or as a competence clause, which is sometimes necessary to delimit competences and designate the responsible enforcer of the legal norms among the different administrative authorities. However, this does not mean that administrative authorities will not issue rules if the law does not contain an enforcement clause. This right, based on the principle of separation of powers, is expressly conferred on them by the constitutional provision on the independence of their work.[69] The independence of the administration is expressed in the same manner as the issuance of specific administrative acts and the application of real acts. Other public authorities may not interfere with the work of administrative authorities in specific cases.[70]

The rule of law[71] requires legal relations between the state and its citizens to be governed by law. It not only sets the framework and basis for the administrative and legal action of executive power but also makes this action known, transparent, and predictable for citizens, which increases their legal certainty[72].[73]

The principle of the protection of human rights and fundamental freedoms[74] mandates that human rights and fundamental freedoms may only be restricted by the legislature, in accordance with the principle of democracy and the rule of law, and not by executive power. Any limitations imposed must comply with the Constitution.[75] This principle is essential for the effective protection of individual rights and legal interests, including the effective review of the constitutionality and legality of administrative acts. Within the framework of the constitutional provisions in the Chapter on Human Rights and Fundamental Freedoms, the functioning of public administration is particularly affected by the equal protection of rights under Article 22, the right to judicial protection under Article 23, the right to a legal remedy under Article 25, the principle of equality under Article 14, and the general freedom of action under Article 35.[76]

68 Article 3(2) of the Constitution.
69 Article 120(2).
70 Šturm, 2002a; Šturm, 2002b.
71 Article 2 of the Constitution.
72 Šturm, 2002a; Šturm, 2002b.
73 The duty to state reasons for an individual administrative act, which is a general principle of law, has also been identified in theory as an implementing principle of the rule of law.
74 Article 5(1) of the Constitution.
75 Article 15: 'Exercise and Limitation of Rights' and Article 2: 'Principle of Proportionality'.
76 Šturm, 2002b.

## 3. Organizational principles and structure of the public administration in Slovenia

Public administration is often considered in the context of the definition of the public sector. Therefore, public administration (often also referred to as the public sector), in a wider sense, encompasses all activities undertaken in the public interest within the framework of instrumental public governance, such as the implementation of public tasks, adoption of executive regulations, decision-making in administrative procedures, inspection control, and ensuring the implementation of public services. Meanwhile, public organization, according to the narrower, organizational concept, is defined as a system of state administration bodies, self-governing local community administrations, public authority holders, and public service providers who perform authoritative and public service tasks. Public administration is, therefore, the term traditionally used to define formal arrangements through which public organizations serve the government in the public interest. Organizational aspects refer to the overall structure and relationships within public administration.[77]

There are two territorial organizations with the status of legal persons: (i) the State and (ii) municipalities. Only the State has imperium (supreme power, absolute authority, or rule). The State is a legal entity while all state authorities (bodies etc.) important for the functioning of the State are not. These state authorities are: 1) legislative power: the National Assembly and the National Council; 2) executive power: the President of the Republic and the government (the Prime Minister, ministries) and state administration (ministries, government offices, different bodies within a ministry, and administrative units); and 3) judicial power: the Constitutional Court and other courts (the Supreme Court, higher courts, district and circuit courts, specialised courts such as labour and social courts, and administrative courts). Other state authorities and legal persons under public law include public agencies, funds, institutions, and social insurance providers.

### *3.1. The government and state administration*

The state administrative bodies in Slovenia include government offices, (different) government departments, ministries, and different bodies within ministries and administrative units. The organization of the state administration, its powers, and the method of appointing officials are all regulated by law. Administrative bodies perform their work independently within the framework of the Constitution and laws. The judicial protection of the rights and legitimate interests of citizens and organizations is guaranteed against the decisions and actions of administrative bodies and holders of public authority.[78]

77 Johnston, 2015.
78 Article 120(3) of the Constitution.

As noted in the previous section, the government and the President of the Republic represent the executive branch of power. The government comprises Presidents and ministers. It is a collegial body in which the Prime Minister ensures the unity of the political and administrative direction of the government and coordinates the work of the ministers, who are jointly responsible for the work of the government, and each minister for the work of their ministry. The law determines the number of ministries, their powers, and the organization of ministries and other administrative bodies. Ministries have been established to perform tasks in one or more administrative areas.[79] The government supervises the work of the ministries; issues them guidelines for the implementation of policies and enforcement of laws, regulations, and general acts; and ensures that the ministries carry out their tasks in a coordinated manner. The government and individual ministers are independent and accountable to the National Assembly within their powers. The National Assembly can pass a vote of 'no confidence' only by electing a new Prime Minister on the recommendation of at least ten deputies (members of the National Assembly) with a majority vote of all deputies (at least 46 out of 90). Based on this, the previous Prime Minister is dismissed, but they and their ministers must perform the ongoing business until the new government is sworn in. At least forty-eight hours must elapse between the submission of a recommendation for the election of a new Prime Minister and the vote, unless the National Assembly decides otherwise with a two-thirds majority of all deputies, or if the country is in a state of war or emergency.[80] If the Prime Minister or other ministers violate the Constitution and laws while performing their duties, the National Assembly can bring them before the Constitutional Court. With two-thirds of all judges, the Constitutional Court can decide on the temporary incapacity to perform office or on removal from office. Prime and individual ministers may also resign.

Government and state administration are closely related, as the government is also the highest body of state administration in the Republic of Slovenia. The government represents the top political executive structure, while the state administration is the professional branch of executive power. The government directs state administration through its ministers and determines, directs, and coordinates the implementation of state policies, performing governance. It issues regulations and adopts other legal, political, economic, financial, organizational, and other measures necessary to ensure the country's development and to regulate matters within all areas under state authority. The government proposes laws, state budgets, national programs, and

79 The acting Government comprises the following ministries: Ministry of Foreign and European Affairs, Ministry of the Interior, Ministry of Finance, Ministry of Defence, Ministry of Labour, Family, Social Affairs and Equal Opportunities, Ministry of Health, Ministry of Justice, Ministry of Public Administration, Ministry of Solidarity Future, Ministry of Environment, Climate and Energy, Ministry of Higher Education, Science and Innovation, Ministry of Economy, Tourism and Sports, Ministry of Culture, Ministry of Agriculture, Forestry and Food, Ministry of Infrastructure, Ministry of Natural Resources and Space, Ministry of Cohesion and Regional Development, Ministry of Digital Transformation and Government office for Slovenians abroad and around the world. Altogether 19 minister and the president of the government.

80 Article 116 of the Constitution.

other general acts that determine the principles and long-term political directions for various areas within state authority, for adoption in the National Assembly. The National Assembly is also responsible for the state policy leadership and oversight of all areas under the state authority. Additionally, it is accountable for the implementation of laws and other regulations of the National Assembly and foreseeing the administration's functioning.

State administration is a collection of state bodies that prepare the professional basis for political decision-making by the government (and indirectly by the Parliament, or especially the National Assembly) and directly implement the decisions made by the government and the parliament (laws, budget, regulations, etc.).[81] Therefore, the state administration is the state's professional apparatus. The executive and administrative functions are often regarded as synonymous. State administration (as part of the executive power) in the Republic of Slovenia performs administrative tasks. The most important administrative tasks are: (i) cooperation in policymaking (preparing proposals for laws, subordinate legislation, and other acts and materials, and providing other professional assistance in policy formulation); (ii) executive orders (enforcing laws and other regulations adopted by the National Assembly, ratifying international treaties, the state budget, subordinated legislation, and other acts of the government by issuing regulations and individual acts as well as internal acts), (iii) inspection control (carrying out inspection control over the implementation of regulations), (iv) status monitoring (monitoring the state of the society in the areas for which it is responsible and promoting development in accordance with the adopted state policy), (v) development tasks (encouraging or directing social development), and (vi) provision of public services (ensuring the performance of public services in accordance with the law).[82]

State administration is governed by three fundamental principles: 1) the principle of legality and independence, which requires the administration to perform its work independently within the framework of, and on the basis of, the Constitution, laws, and other regulations, 2) the principle of professionalism, political neutrality, and impartiality, which requires administration to perform its work according to the rules of the profession, while also being politically neutral and act impartially; this implies that it must not give unjustified benefits and advantages to individuals or individuals, legal entities or interest groups, and 3) the principle of transparency, which implies that the administration is obliged to ensure the publicity and transparency of its work, considering the restrictions arising from the regulations governing the protection of personal and confidential data, as well as other regulations. State administration, therefore, performs its work independently within the framework of, and based on, the Constitution, laws, and other regulations, and according to the rules of the profession.

81 Tičar and Rakar, 2011, p. 150.

82 Articles 8 to 13 of the Act on State Administration (Official Gazette of the Republic of Slovenia, No. 113/05 – official consolidated text, 89/07 – odl. US, 126/07 – ZUP-E, 48/09 , 8/10 – ZUP-G, 8/12 – ZVRS-F, 21/12 , 47/13 , 12/14 , 90/14 , 51/16 , 36/21 , 82/21 , 189/21 , 153/22 and 18/23).

As noted in previous sections, employment in administrative services is possible only on the basis of public competition, except in cases stipulated by law[83].[84] When conducting this work, the administration must be politically neutral. The official language of the administration is Slovenian, but in municipalities where indigenous Italian or Hungarian national communities reside, the official language of the administration is also Italian or Hungarian. In these areas, the administration conducts business in the language of the national community. A public servant is an individual who enters an employment relationship with the public sector. According to the legislation, the public sector consists of (i) state bodies and administrations of self-governing local communities; (ii) public agencies, public funds, public institutions, and public economic institutions; and (iii) other public law entities, if they are indirect users of the state budget or local community budget. Officials elected in state and local community bodies are not civil servants. The public servant system is based on certain principles, such as 1) the principle of equal access (recruitment must be conducted in a manner that enables equal access to jobs for all interested candidates under the same conditions and ensures that the candidate best professionally qualified to perform workplace tasks is selected); 2) the principle of legality (public servants must perform tasks on the basis of and within the limits of the Constitution, ratify, and publish international treaties, laws, and subordinate legislation); and 3) the principle of expertise (public servants must perform public tasks professionally, conscientiously, and in a timely manner. In their work, they act according to the rules of the profession and, for this purpose, constantly train and improve, whereby the conditions for professional improvement and training are provided by the employer; 4) the principle of honourable conduct (civil servants must act honourably when performing public duties in accordance with the rules of professional ethics)[85]; 5) the principle of confidentiality (civil servants must protect classified information, regardless of how they obtained it). This duty also applies after the termination of the employment relationship; the duty to protect confidential information applies until the civil servant's employer discharges this duty; 6) the principle of responsibility for results (the civil servant must be responsible for the high-quality, fast, and efficient execution of entrusted public tasks); 7) the principle of good management (civil servants must use public funds economically and efficiently, with the aim of achieving the best results at the same costs, or the same results at the lowest costs); 8) the principle of protection of professional interests; and 9) the prohibition of the harassment principle.[86]

Administrative units perform the tasks of state administration, which must be organized and implemented uniformly in any of the 58 administrative units across

83 Article 122 of the Constitution.
84 Such exceptions are certain positions in prime ministers and ministerial offices.
85 Code of Conduct for Public Servants (Official Gazette of the Republic of Slovenia, No. 8/01).
86 Article 7 to 15 of Law on Public Servants (Official Gazette of the Republic of Slovenia, No. 63/07 – official consolidated text, 65/08 , 69/08 – ZTFI-A, 69/08 – ZZavar-E, 40/12 – ZUJF, 158/20 – ZIntPK -C, 203/20 – ZIUPOPDVE, 202/21 – od. US and 3/22 – ZDeb).

the state. The areas of administrative units are therefore determined to ensure the rational and efficient performance of administrative tasks. As a rule, the area of an administrative unit includes the areas of one or more local communities and municipalities. Administrative units perform administrative tasks that need to be organized territorially due to their nature. Such territorial organizations bring the tasks of state administration closer to those of citizens. Administrative units are a form of administrative deconcentration, where the areas of work for state administration authorities are distributed across the state territory. However, these territorial state authorities remain subordinate to the central state administrative authority (the government and ministries). Administrative units make decisions on the first instance of administrative matters under state jurisdiction, unless otherwise specified by law for individual administrative matters. Each ministry, within its own field of work, provides administrative units with guidelines, professional guidance, and other professional assistance in the execution of tasks within their jurisdictions. Ministries also give mandatory instructions to administrative units, monitor their organization of work and competences of employees to perform tasks, improve the efficiency of work in solving administrative matters, supervise the execution of administrative tasks, order the administrative unit to perform certain tasks or take certain measures within the limits of its powers, and report on progress. Administrative units represent the first instance of state administration, while ministries represent the second (appellate) level. Therefore, the ministry responsible for a certain administrative area decides on an appeal against a decision or other individual acts issued by an administrative unit in the first instance.[87]

### *3.2. Administrations of self-governing local communities*

The Constitution of the Republic of Slovenia guarantees local self-government.[88] A special chapter in the Constitution (Chapter V) is dedicated specifically to local self-government, where its fundamental institutions are defined, such as the implementation of local self-government, the municipality, the work area of self-governing local communities, the city municipality, the income of the municipality, the region, and the control of state bodies. The constitutional provisions of local self-government are defined comprehensively by local legislation, which regulates the general position of local self-government, the establishment of municipalities, the financing and financial relief of municipalities, local elections, the position of the capital city, and so on. When the Act on Local Self-Government was implemented in 1994, it was considered the beginning of modern Slovenian local self-government. In 1996, Slovenia ratified the European Charter of Local Self-Government, which respects the principles of local self-government as pursued by the Charter. Some authors warn that the Charter was never fully implemented, as the subsidiarity principle was never

87 Act on State Administration.
88 Chapter I, Article 9.

fully implemented.[89] Although the Constitution mentions both municipalities and regions, Slovenian local self-government has only one level: the municipal level. The 2006 constitutional amendment introduced regions, but it did so only on paper. A law that should have established regions was never adopted due to a lack of political will. Thus, the basic self-governing local community in Slovenia is a municipality. The territory of the municipality includes a settlement or several settlements connected to the common needs and interests of the inhabitants. A municipality is established by law, following a referendum that determines the will of the residents in a certain area. Slovenia has 212 municipalities, of which 12 are classified as urban or urbanised areas. While there are no significant differences between ordinary and city municipalities, the state can delegate certain responsibilities related to urban development specifically to city municipalities. The municipality's jurisdiction includes local matters that it can regulate and manage independently, concerning only the residents of the municipality. Examples include: managing the municipal property; providing conditions for the economic development of the municipality; regulating, managing, and caring for local public services; promoting social welfare services; pre-school care; offering primary care for children and families; for the socially vulnerable, the disabled, and the elderly; promoting the development of sports and recreation; building, maintaining, and arranging local public roads, public paths, recreational and other public areas; organizing the performance of cemetery and funeral services; and organizing municipal administration. By law, the state can delegate the performance of individual tasks under its jurisdiction to municipalities, provided it also supplies the necessary resources. In matters transferred to local community authorities by the state, state authorities supervise the appropriateness and professionalism of their work.

Municipalities are entities under public law with the right to own, acquire, and dispose of all types of property, and are financed from their own resources. These sources include income tax, compensation for the use of building land, various taxes, concession fees, revenue from fines, and real estate rental. The same financing system applies to all municipalities in the Republic of Slovenia, regardless of their diversity. The largest part of municipal revenue is provided by income tax, compensation for the use of building land, and simplified personal and property taxes, which are comparable to most other European local self-government financing systems. Income tax, which is the largest source of income for municipalities, is shared according to a special system based on solidarity between municipalities. Municipalities are also provided with additional funds from the state budget to finance joint municipal administrations. In addition, municipalities are not completely independent in borrowing, as they can only borrow based on the prior consent of the minister responsible for financing and under the conditions set by the law governing the financing of municipalities. Despite this, the financial autonomy of municipalities in Slovenia is minimal, as financing largely depends on legislation and the state budget adopted by the legislature.

89 Haček, 2020.

Municipalities are managed by three independent bodies: the mayor, the municipal council, and the supervisory board. The municipal council is the highest decision-making body for all matters within the scope of the municipality's rights and duties. Its work resembles that of the parliament. It comprises seven to 45 members, depending on the size of the municipality. Members of the municipal council are elected in local elections for a four-year period; they perform their function on a nonprofessional basis (i.e. they receive meeting fees, but not salaries). Elections are generally held according to the proportional system, except in municipalities with fewer than 11 members on the municipal council, where elections are held according to the majority system. In ethnically diverse areas, the Italian and Hungarian national communities have at least one representative on the municipal council. The Roma also have at least one representative from 20 municipalities. Foreigners can also be elected to municipal councils (the principle of permanent residence, not citizenship, prevails). The municipal council adopts the municipal statute, the rules of procedure of the municipal council, decrees, and other municipal acts, as well as the spatial and other development plans of the municipality. The council also adopts the municipal budget and final account, and appoints and dismisses members of the supervisory board, the working bodies of the municipal council, and representatives of the founder in the bodies of public institutions and companies established by the municipality. The municipal council supervises the work of the mayor, deputy mayor, and municipal administration regarding the implementation of municipal council decisions based on regulations governing the handling of real property belonging to the state and self-governing local communities, and performs other tasks specified by law or municipal statute.

The mayor represents the municipality. Thus, they are the executive authority of the municipality. They are elected directly in local elections according to the majority electoral system and have a four-year term. The mayor represents the municipal council, convenes it, and leads municipal council meetings, but does not have the right to vote at these meetings. However, they have the exclusive authority to propose the adoption of the municipal budget, the final budget account, and the act on the organization of the municipal administration to the municipal council. The mayor is a municipal functionary who can perform their functions on a nonprofessional or professional basis. They at least have one deputy mayor appointed from among the members of the municipal council. The latter replaces the mayor in cases of absence or reluctance.

As the third municipal body, the Supervisory Board oversees public spending in the municipality. It supervises the handling of the municipality's property and controls the purposefulness and expediency of the use of budget funds and the financial operations of budget fund users. Members perform their functions on a nonprofessional basis, similar to members of the municipal council.

Even though representative bodies do exist, residents are the closest to the authorities in municipalities; therefore, this is the place where it is easiest for them to exercise their right to participate in decision-making. Municipality residents can participate in decision-making by engaging in consultations, voting on a participatory

budget, proposing referendums, considering proposals, and having access to all public information.

Additionally, each municipality has its own municipal administration, which performs administrative, professional, acceleratory, and developmental tasks, as well as tasks related to the provision of public services under municipal jurisdiction. In relation to municipal administration, the mayor has the most authority. The municipal administration is established by the municipal council at the proposal of the mayor, with a general act that determines its tasks and internal organization. The mayor also directs and supervises the municipal administration, which is led by the secretary (or director) of the municipality, who is also appointed and dismissed by the mayor. Disputes about jurisdiction between municipal administration bodies are also decided by the mayor, who determines the more detailed internal organization and systematisation of jobs in the municipal administration.

### *3.3. Holders of public authority*

The public authority is a constitutional institution, as the Constitution of the Republic of Slovenia stipulates that 'by law or on its basis, legal or natural persons may obtain public authorisation to perform certain tasks of the state administration'. It is also a fact that public authority is mentioned ten times in the Constitution, together with the holders of public authority. Public authorisation is most often treated as a special institution of administrative law, where it belongs to a circle of institutions, such as legal entities under public law, administrative contracts, concessions, and public procurement.

To summarise, the purpose of granting public authority is to ensure a more expedient and efficient performance of public (administrative) tasks.[90] Since public authority is granted for the performance of certain tasks of the state administration, it is also necessary to clarify what these governmental or administrative tasks are that warrant the granting of public authority. Simply put, these tasks include the issuing of general acts, individual administrative-legal acts, decision-making in individual matters, and the performance of material actions.[91] However, it is crucial to remember that public authority (and with it) is primarily reserved for the state and never represents a solitary and indivisible element.[92] Public authority is related to the issuing of authorisations or authoritative acts by (private) entities outside the state organization, which are entrusted with the right to (co)execute authority within the framework of, or in connection with, the performance of a certain public service, e.g. issuing public documents, keeping public records.[93]

It should be emphasised that public authority is granted for the performance of certain tasks within the state administration. The reasons for granting public authority are as follows:

90 Pečarič, 2018, p. 185.
91 Pirnat, 2011, p. 1273.
92 Goldmann, 2018, p. 332.
93 Kovač, 2006.

(a) A more rational, efficient, and economical performance of these tasks (there is also the interest of the user, e.g. technical inspections are services for which the user pays directly; it is easier for a car service company, which provides such services at any time, than for the state administration. Simultaneously, vehicle registration can also be performed, which is easier for the user and more efficient),

(b) The need for self-regulation (e.g. which chambers—a trade licences issued by trade chambers, that is, decision-making in certain professional matters is left to an interest group),

(c) The need for independent management (regulation—depending on the nature or type of tasks, permanent direct political control over the performance of the tasks of, for example, public agencies, are not necessary or appropriate. The government must not interfere directly in the work of public agencies, such as the Securities Market Agency, Insurance Supervision Agency, Agency for Communication Networks, and Services of the Republic of Slovenia. There are seventeen public agencies in the Republic of Slovenia).

One of the prevailing types of public authority holders is the supposed public agency, which may be established to perform administrative tasks in accordance with a special law governing public agencies: (a) if this enables a more efficient and effective performance of administrative tasks than would be the case in an administrative body, especially if the performance of administrative tasks can be fully or mainly financed by administrative fees or user payments, or (b) if, given the nature or type of tasks, permanent direct political control over the performance of tasks is not necessary or appropriate.

By law, or based on the law, other entities under public law, as well as individuals and legal entities under private law may also (besides administrative bodies) obtain public authority to perform administrative tasks. If the law allows several natural or legal persons to apply for public authorisation, selection is made through public competition. When exercising public powers, the holders have rights and duties of administration that are determined by law or other regulations.

### *3.4. Public service providers*

One of the functions of state administration is the service function, which involves providing public goods and services. The state administration ensures the delivery of public services in accordance with the law. These services are provided (mainly) by public institutions and (public) companies, as well as other organizational forms specified by law, including administrative bodies. They provide public services (fr. service public), which can be divided into economic and non-economic public services. The EU uses a similar distinction between non-economic services of general interest and services of general economic interest. Typically, public services operate under a special legal regime that pertains to activities in the public interest, falling under the authority of state or municipal governments. Public services can be divided into different categories such as economic and non-economic, state and municipal, compulsory and optional. Economic public services are provided by the state or

municipality in the form of public economic institutions and public companies, either by granting concessions or in an overhead department when it would be uneconomical or irrational to establish a public company or grant a concession because of the small scale or characteristics of the service. They usually provide public services in sectors such as transportation, energy, infrastructure, digital society, electronic communications, and utilities. Non-economic public services, conversely, are provided in the form of public institutes, public-private partnerships, or concessions. They typically provide public services in sectors such as education, healthcare, culture, and welfare.

## 4. Current challenges in public administration in Slovenia

### *4.1. Public sector salary system (reform)*

One challenge in the Slovene public sector is the salaried system. Since Slovenia's independence in 1991, steps have been undertaken to maintain and complement the centralised bargaining system over wages and other terms and conditions of employment in the public sector. Prior to the implementation of the Public Sector Salary System Act (ZSPJS),[94] public wages in Slovenia were regulated by the Salary Ratio Act of Public Institutions, State Bodies, and Local Community Bodies (ZRPJZ).[95] The ZSPJS was adopted in 2002 but was implemented in 2008, providing a single payment scale composed of 65 wage grades for all public sector employees. It specifies that wages should comprise a basic wage, additional payments, and a part related to employee performance. To date, the law has been amended (in one way or another) over thirty times. A new Law on Common Principles of the Public Sector Salary System was adopted at the end of 2024 and will be implemented at the beginning of 2025.[96] By the end of 2007, 155,000 people were employed in the public sector. Despite the financial crisis, the number of employees increased to 160,000 by the end of 2011. The number of employees in the public sector is expected to reach almost 190,000 by the end of 2022. They are employed by more than 3,000 budget users (state bodies (government, ministries, administrative units) and self-governing local communities (municipalities), public agencies, public funds, public institutes, etc.), and the total volume of wages will reach almost 5 billion EUR in 2022.[97] Universal access to quality

94 Act on the wage system in the public sector (Official Gazette of the Republic of Slovenia, No. 108/09 – official consolidated text, 13/10 , 59/10 , 85/10 , 107/10 , 35/11 – ORZSPJS49a, 27/12 – odl. US, 40/12 – ZUJF, 46/13 , 25/14 – ZFU, 50/14 , 95/14 – ZUPPJS15, 82/15 , 23/17 – ZDOdv, 67/17 , 84/18 , 204/21 and 139/22 ).

95 The Act on Salary Ratios in Public Institutions, State Bodies and Local Community Bodies (Official Gazette of the RS, no. 18/94 , 36/96 , 20/97 – ZDPra, 39/99 – ZMPUPR, 86/99 – odl. US, 98/99 – ZZdrS and 56/02 – ZSPJS).

96 Official Gazette of the Republic of Slovenia, No. 95/24.

97 Public sector wages portal [Online]. Available at: http://www.pportal.gov.si/ (Accessed: 15 February 2024).

services and the implementation of public services in the fields of education, healthcare, social services, etc. incur cost.

As mentioned earlier, Slovenia has a centralised bargaining regime regarding public sector wages. Collective bargaining occurs at the national and state levels. Central negotiations are attended by all representative public sector unions; here, they usually discuss common foundations and matters that apply to everyone in the public sector.[98] One of the issues with the existing public-sector wage system established in 2008 is that it cannot be called uniform. The analysis presented by the Ministry of Public Administration before the start of the last negotiations on wage reform notes, among other things, that by concluding partial agreements with individual professional groups represented by different public sector unions and introducing wage provisions into sectoral legislation, the uniform system was circumvented, leading to individual groups gaining substantially more than others. An increasing number of wage classes are below the minimum wage, and the ratio between the lowest and highest wages has dropped from 1 to 10.5 when the system was established to 1 to 4.7 at present.[99]

In addition, the age structure within the public sector favours older generations. In retrospect, this was also the result of the Public Finance Balancing Act and the constant drive to reduce employment in the public sector (especially the state administration). This situation has resulted in a shortage of young or younger people in the system, making it challenging to transfer knowledge and experience from older to younger generations. Part of the blame for this rests on the existing salary systems. The existing system was based on good starting points, such as the desire for system transparency, controllability of the system from the point of view of public finances, and equal pay for work in comparable positions, titles, and functions. One idea was that the established system would be flexible and stimulating, to ensure that wages would be more closely related to work efficiency and results. This never happened, nor did it occur within a limited scope. Partial interventions in the system triggered the feeling that some wage disparity was established in relation to other professions or wage groups. Such practices initiate a supposed domino effect, which means that when employees in a certain profession in the public sector and their requirements—for example, higher wages—are partially considered, other comparable professions will quickly follow suit. This can lead to a vicious cycle that becomes increasingly difficult to manage. The salary system in the public sector is also rigid; therefore, it is challenging to obtain deficit professions, whereas they are more generously compensated in the private sector, particularly for specialists in areas such as digitalisation and IT.

The objectives of this announced salary reform are to ensure adequate and stimulating remuneration for work, increase the efficiency of individual work in the public

98 Stanojević and Poje, 2019, pp. 545–551.

99 More data is available at: https://www.gov.si/zbirke/projekti-in-programi/prenova-placnega-sistema-v-javnem-sektorju/ (Accessed 30 March 2023).

sector, and ensure high-quality and accessible public services. To achieve these objectives, several key solutions must be implemented, including the establishment of a new salary scale and salary columns that would include comparable professions, renovation of the promotion and reward systems, renovation of the system of allowances, and so on. The new Law on Common Principles of the Public Sector Salary System will be implemented in 2025, so we need to wait for more concrete results.

### *4.2. Public authority dilemmas*

Some authors assert that the institution of public authority also has side effects, such as challenges in coordination of the administrative system, reduced responsibility, and democratic deficit.[100]

The state, either with or through public authority, transfers or delegates a part of the official (administrative) tasks (e.g. regulation) to those that were previously regulated, including some non-governmental organizations. These presumed public authority holders regulate not only themselves but also other entities. Therefore, it enables a legal or natural person (individual), who is not an integral part of the state or local apparatus, to perform public (or administrative) tasks. Recently, there has been a shift from public to private contractual management, from supply chain management and self-regulation of some regimes to corporate social responsibility. A significant part of the norms that direct and determine global exchanges is developed within transnational and private frameworks or through hybrid arrangements with national and international public institutions. This development represents a shift in authority and power from (democratic) nation-state institutions and towards (irresponsible) transnational private regimes. In other words, there is a noticeable transition from public to private authority, and thus from public to private law, and from legislation to contracts.[101] This transition often occurs at the national level, one of its manifestations being the granting of public authority to private entities. Political control and control of the people, or democratic control of the public, are necessary in democratic societies. Otherwise, we risk quickly finding ourselves in undemocratic or authoritarian political systems. In a democratic system, the state apparatus or administration is responsible for governance, and the latter is accountable to parliament, which serves as an institution representing the people. However, this control and responsibility is reduced in the case of public authority holders.

Therefore, the legal instrument of the public authority reduces democratic control over work and the implementation of administrative tasks. The means of democratic control by the public, voters, and residents are primarily intended to control executive power and, as a rule, do not extend to the bearers of public authority. Therefore, it must be considered that administrative tasks are generally performed by the state administration, and that they can only be entrusted to a public authority if certain reasons exist, such as rationality and efficiency, the need for self-regulation, or

100 Kovač, 2007, p. 16.
101 Kjaer, 2018, p. 14.

requirements for the independent management of a certain area. However, if these reasons are met, there are no restrictions on the scope, type, or number of administrative tasks that can be entrusted to a public authority (Pirnat, 2010, p. 893).

Public authority must be an exception rather than a rule in a democratic society in which people (citizens or voters) have power. As a rule, administrative tasks must be performed by the state administration. One of the key challenges in the granting of public authority lies in balancing the need for self-regulation and independence of public authority holders on the one hand, with the imperative to exercise democratic control in the public interest on the other.

### *4.3. Regions, number of municipalities, and financing*

At the level between the state and municipalities, the Constitution defines an additional subsystem of local self-government, namely, regions. The Constitution stipulates the establishment of regions through laws adopted by the National Assembly, requiring two-thirds of the votes of the deputies present. Additionally, the participation of municipalities must be ensured in the process. Despite several attempts, regions have yet to be established due to the lack of political consensus on their establishment.[102] With the constitutional amendments of 2006, it was determined that regions should be established by the state, but that they still do not exist. There was little genuine political interest in them, although many legal experts emphasised that it would be beneficial for everyone if they were established. In the (advisory) referendum held in 2008, regarding the areas and names of regions in Slovenia and the status of the Municipality of Ljubljana, citizens decided in favour of 13 regions. However, none of these regions exist today. Regions have been prioritised by many governments, but they remain mere dead letters in the Constitution. A (de facto) constitutional majority (two-thirds) was required to establish these regions. Although the regions are included in the Constitution, there has been no consensus on how many seats should be established and where they should be located. In terms of territory, according to some experts, Slovenia is too small a territory; the establishment of regions would mean too many levels of government in the country, and the scale of the proposed regions is too large to be internationally comparable and competitive. Meanwhile, the OECD, in a 2011 study, noted that the absence of a regional tier of government and the extreme fragmentation of the municipal level of authority indicate that Slovenia must develop capacity at intermediate levels. This would enable the country to address policy issues more effectively, as some problems are best tackled at a scale between the local and national levels. The creation of regions could facilitate a more balanced development of Slovenia and more successful integration with the regions of neighbouring countries. The Slovenian Constitution in Article 143 stipulates the establishment of regions when it says that:

102 Republic of Slovenia: Local self-government [Online]. Available at: https://www.gov.si/en/policies/state-and-society/local-self-government-and-regional-development/local-self-government/ (Accessed: 15 February 2024).

> A region is a self-governing local community that handles local matters of wider importance and matters of regional importance determined by law. Regions are established by law, which also determines their area, seat, and name. The law is adopted by the National Assembly with a two-thirds majority of the votes of the m present. The participation of municipalities must be ensured in the procedure for adopting the law. By law, the state transfers to the regions the performance of individual tasks under state competence, but it must provide them with the necessary resources for this.

The non-implementation of this decision in practice certainly indicates that the legal arrangement of local self-government without regions in Slovenia is, in some manner, disabled.

This was related to the number of municipalities in Slovenia. There are 212 municipalities operating in Slovenia, of which 12 are urban (city) municipalities. Based on the new Slovenian Constitution of 1991, 147 municipalities were established in October 1994, following the European model, which replaced 62 socio-political communities. State functions previously performed by territorially larger municipalities were transferred to administrative units, and local tasks were taken over by the new municipality authorities. Four years later, the number of municipalities increased to 192, and in 2002, it increased to 193. In 2006, the number of municipalities in the Republic of Slovenia reached 210, and the last two were founded in 2011. Amendments to the Local Self-Government Act have also made it more difficult to create new municipalities. Despite the existence of 212 municipalities with approximately two million inhabitants, the number itself is not particularly problematic. However, the municipalities differ from each other, as we have municipalities with approximately 300 inhabitants as well as those with approximately 300 thousand inhabitants. Nevertheless, they were all (more or less) required to perform the same task.

The municipal financing system in the Republic of Slovenia aligns with the European Charter of Local Self-Government, but certain aspects need improvement, such as replacing and upgrading compensation for the use of building land (NUSZ) with a real estate tax. It would also be essential to enforce more consistent financing of municipalities using their own tax and non-tax sources. The financial component of local self-government involves securing adequate financial resources for the functioning of municipalities, a crucial goal in achieving decentralisation. In doing so, it is necessary to consider the principle of financial autonomy and connectedness, which stipulates that the municipality should be financed from its own resources and that financial resources must be proportional to the scope of tasks, powers, competences, and obligations of the municipalities. The only tax on which local authorities can set the rate is property tax.[103] Therefore, more effort is needed to increase the financial autonomy of Slovenian municipalities.

103 Rakar and Klun, 2019, p. 181.

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