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Public Administration System

Authors:
dr. Boštjan Brezovnik
dr. Gorazd Trpin
dr. Senko Pličanič


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Title: Public Administration System

Authors: assoc. prof. dr. Boštjan Brezovnik (University of Maribor, Faculty of Law), assoc. prof. dr. Gorazd Trpin (University of Ljubljana, Faculty of Law), assoc. prof. dr. Senko Pličanič (University of Ljubljana, Faculty of Law)

Reviewers: prof. dr. Polonca Kovač (University of Ljubljana, Faculty of Administration), prof. dr. Franc Grad (University of Ljubljana, Faculty of Law)

Book Series: Public Administration

Series Editor: assoc. prof. dr. Gorazd Trpin (University of Ljubljana, Faculty of Law)

Kataložni zapis o publikaciji (CIP) pripravili v Narodni in univerzitetni knjižnici v Ljubljani

35.07

BREZOVNIK, Boštjan
Public administration system / authors Boštjan Brezovnik, Gorazd Trpin, Senko Pličanić. - Maribor : Institute for Local Self-Government, 2019. - (Lex localis. Public administration)

ISBN 978-961-6842-90-7
1. Trpin, Gorazd 2. Pličanič, Senko
298406400

First Published in 2019 by
Institute for Local Self-Government Maribor
Smetanova ulica 30, 2000 Maribor, Slovenia
www.lex-localis.press, info@lex-localis.press

For Publisher:
Grega Horvat, B.Sc., director

Edition: 100 copies

Price: free copy

https://doi.org/10.4335/978-961-6842-90-7 ISBN 978-961-6842-90-7
© 2019 Institute for Local Self-Government Maribor
Available online at http://www.lex-localis.press.

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January 2019

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BOŠTJAN BREZOVNIK, GORAZD TRPIN & SENKO PLIČANIČ

Abstract This book provides a comprehensive overview of the public administration system. Its special quality is that it deals with the entire public administration system in one place, which is why the authors had to define its boundaries, core institutions and functions and its relationship with the external environment. The purpose was not to consider all public administration issues in depth, but at a system level, making it an overarching work for further study of the public administration system. In that context, present and future scientific and expert works may be linked with it in areas such as the protection of individuals' rights in relation to the administration including administrative procedures, judicial control over the operations of the administration and informal protection of individuals' rights in relation to the administration; the area of internal relations within the public administration system including the issues of people in the public administration and organisational issues of the administration; and the area of public administration insitutions and functions including the organisational and operational issues of the state administration, local self-government and public services or activities of general interest. Hence, a series of papers can be expected on the basis of this work that will deal with the mentioned issues. This paper will bring them together in a systematic whole. This book, therefore, provides a system framework for the future study of public administration and offers new system bases for the further development of administrative science.

Keywords: • public administration • organisation • public law entities • state administration • non-state administration • local self-government • public services

CORRESPONDENCE ADDRESS: Boštjan Brezovnik, Ph.D., Associate Professor, University of Maribor, Faculty of Law, Mladinska ulica 9, 2000 Maribor, Slovenia, email: bostjan.brezovnik@um.si. Gorazd Trpin, Ph.D., Associate Professor, University of Ljubljana, Faculty of Law, Poljanski nasip 2, 1000 Ljubljana, email: gorazd.trpin@pf.uni-lj.si. Senko Pličanič, Ph.D., University of Ljubljana, Faculty of Law, Poljanski nasip 2, 1000 Ljubljana, email: senko.plicanic@pf.uni-lj.si.

https://doi.org/10.4335/978-961-6842-90-7 ISBN 978-961-6842-90-7
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Available online at http://www.lex-localis.press.

Content

Introduction

Public administration is a social system. Like any system, it has interrelated and interdependent elements, external and internal relations, institutional forms and functions. Elements in the public administration system are internal and external social relations that emerge in social governance, institutions are its forms of organisation, while functions are its operations laying down its sub-system status within the scope of the global social system and its relation to other social sub-systems.

The position of the public administration system within the scope of the global social system is defined by two of its core functions that make it substantially different from all other social sub-systems. The first function is the exercise of authority, which implies coerced social regulation that is the fundamental condition for social coexistence at the present level of social development. In the pursuit of that function, the public administration system is directly faced with politics, which provides it with the fundamental policies for its actions and manages it in that position, while being the policy enforcer and thus a political tool for the enforcement of political will. A political system and public administration system are in a monopoly-monopsony position, since one cannot exist without the other. That relation also provides the basis for the extreme social power of the public administration system, which may have a great impact on political decision-making and an even greater impact on the implementation of decisions. Within that scope, the public administration system is also closely related to law, since the latter is an instrument for the enforcement of political will and an instrument for the implementation of decisions that are adopted by the public administration system.

The other core function that defines its position within the scope of the social system is the provision of public goods and public services, i.e. those goods and services that cannot be provided through a market exchange system for different reasons. That function provides social welfare and social solidarity, as it provides individuals with access to individual, extremely important goods which they otherwise could not access due to their economic or social position. That is the value foundation for such activities, which are extremely important and extensive, since they follow individuals from their birth to their death. The part of the public administration system pursuing that function is hence in continuous and direct interaction with an individual and its quality largely determines the normal life of an individual.

Considering the above, the public administration system has a great impact on the social system and its development. A society or, rather, a state that neglects its public administration system waives the fundamental instrument for guiding social development. In a modern world with global interrelation and interdependence, it is not possible to advance or even exist without proper social guidance. In light of the above, the study of the public administration system and concern for its further development is the *conditio sine qua non* of each social system that wishes to provide its members with an adequate living environment and development opportunities.

Such fundamental findings are the basis for this book, which systematically shows all such relations, institutions and functions. The paper is not concerned with individual regulations offered by positive law, but tries to provide theoretical frameworks for the modern public administration system based on the findings of administrative science, which is fundamental for the study of social governance. As such, it is primarily intended for students of law and other social sciences, but will no doubt also be a well-received tool for politicians and administrative workers, helping them to better understand their position and actions.

People forming organisations

As far back as our knowledge about humans goes, we can see that people have always lived together with their peers, as this has been the only way to live, ensure existence, continue kinship, and satisfy human needs. Based on human needs, which are classified as: primarily physiological, such as sleeping, eating, breathing,– the most important and basic needs; the need for security and safety as a psychological, biological and physiological need, for example, having a home, work, personal safety; the need for love and belongingness, which includes family, friends, society; and the need for respect and accomplishment, such as the wish to enjoy good reputation, success and self-esteem, (Dautbašić, 1980: 17-18); we can conclude that humans are psychological, physiological and social beings.

A human as an individual is the only holder of all these needs. Only humans feel the need for 'goods', that is, things that can satisfy needs. These are material things, namely, durables and consumables, which are natural or man-made, and services. Goods can be evaluated in terms of how important they are for the life of an individual person, but such evaluation is always subjective. Hence, we cannot determine the criterion of certain needs or goods, such as material goods, being primary, claiming that they are more important because it would be impossible to live without them, and goods to satisfy spiritual needs being secondary.

In today's method of production, products are no longer manufactured on the basis of knowledge, but more to the condition demanded by customers' individual needs.

In terms of a person's physiological processes, goods can be valued objectively. Certain goods are objectively necessary in order to produce other goods or to live at all. Therefore, we can categorise primary, secondary, tertiary, etc., goods in terms of the process of providing end goods, which an individual can use directly.

Only directly usable goods are important for a person, that is, goods that humans can use to directly satisfy needs. However, in the process of delivering directly usable goods, indirectly usable goods are also important, that is, those used for the production or provision of directly usable goods. (Bučar, 1969:11, 41).

It is clear that a person, being a social being, satisfies his needs more easily in social coexistence (social community) than alone. By living in a social community, he must actively participate in the satisfaction of its (generally social) needs in order to ensure

the existence of the community (Kušej et al, 1992: 24-26). However, we cannot talk about general social needs from the perspective of an individual, as an individual does not feel such needs, but it is clear that a social community must create a certain quantity of goods, which are either directly useful for every individual member of a certain society or, usually, indirectly useful for the production or provision of other goods that can directly satisfy an individual's specific need (Kušej et al, 1992: 24-26).

Over the course of human evolution, by meeting needs and the needs of the social community, man has become a creature who produces goods. This influences nature, as man receives from it the goods necessary for existence. There is no doubt that the production of material goods essential for life, was, is and will be the foundation of society and social communities of people.

The concept 'society' represents an aggregate of people producing and consuming material goods, ensuring the continuation of humankind, developing material and spiritual cultures by enabling and promoting various kinds of socially beneficial and important activities (more: Flere, 2003). All these activities consist of individuals' actions, which must be consistent and coordinated between each other in order to achieve the desired social effect and success. The concept of society includes elements of orderliness, that is, a system of certain behaviour and conduct of the individuals who make up the society. Such orderliness relies on proper rules of social behaviour and conduct as well as on the actual effectiveness of these rules, that is, the fact that most of the members of society follow them. This way, the aforementioned rules are used to regulate socially important activity and behaviour of individuals and social organisations into a regulated unity. In human society, which is regarded as a general and comprehensive organisation of social life, this is reflected as a special narrow functional organisation, which is nowadays understood under the concept of a state organisation (state) (Kušej et al, 1992: 24-26).

1 Origin and development of organisations

Every society wishing to satisfy its needs or the needs of its members must be organised as a community. The simplest form of initial social organisation was represented by hunting societies who gathered with the purpose of joint survival hunting. The leadership of such groups relied on personal qualities, which the leader had to prove in front of the group. This was an organisation of human society in which people gathered because they shared the same goals; to provide the goods needed to satisfy the needs of its members.

Hunting societies were evolutionally followed by tribal societies, which were significantly larger and already showed better organisation (in the sense of their structure). Tribal societies were based on the awareness of human or cultural kinship, in which individuals felt connected by sharing the same language or tradition; they felt that they were 'one tribe', which differed from others. Leadership by chiefs represented a

higher level in the evolution of organisations. This was a unity of several groups under the leadership of a hierarchically highest standing chief who exerted great power and had predetermined successors. The chief had to prove himself with his personal qualities (strength, heroism, wisdom, etc.) (Trstenjak, 1985, 249-251).

The next development phase of global organisational forms of society was the emergence of the 'state'[1]. A wide range of theories attempted to determine the fundamental factors leading to the emergence of the state (as a result of weaker leaderships being conquered by the stronger one, thereby expanding its power; e.g. as the need for organising and managing the workforce in the construction of irrigation systems along the Nile, Euphrates, Tigris...; as a result of warfare where the winner subdues another area; as a result of class conflicts where the leading class assures a monopoly of resources for physical coercion in order to maintain a social order to its liking, etc.). The following quote of *Aristotle* is interesting: 'Man is by nature a social animal. Anyone who either cannot lead the common life or is so self-sufficient as not to need to, and therefore does not partake of society, is either a beast or a god' (Pitamic, 1996). Since its emergence, the state has undergone exceptional development; it is an organisation in the civilised world and the highest form of institutionalised life.

2 Social role of organisation

Today, we can claim that organisations hold the power and powerlessness of modern man. People cannot enjoy progress without organisations. The development of society into a state and other narrower forms of integration by people, has turned out to be a paradox (Trstenjak, 1985: 252): on the one hand, a person gets freedom (by yielding to natural forces), which, on the other hand, is taken away from him (because arbitrary behaviour is limited by laws and sanctions); organisations of people give the feeling of safety, while at the same time represent new danger (with the police, prisons, punishment…); a state, for example, promotes education (mandatory schooling, etc.), but at the same time it limits people by forcing upon them a system of education and mind-set, etc. In this way, an individual's behaviour in a legally organised state can nowadays be predicted with high probability, as an individual person makes decisions in line with society and its rules. An individual's decision is more or less the society's decision, whilst an individual only seemingly makes independent decisions. This way we find ourselves in an interesting conflict: exonerating people (by means of an organisation) actually limits them and their freedom of choice.

[1] The emergence and development of a state is not a subject of public administration study, but the concepts are inevitably connected and interdependent, therefore understanding this concept is essential in order to understand the subject of public administration study. Read more about the concept 'state' in the continuation and in, for example, Platon, 1976; Pitamic, 1996; Spektorski, 2000; Pavčnik, 2003; et al.

Humans have created organisations to use them, together with other people, to do what they are unable to do alone. An organisation has become independent and taken possession of the human by taking away his freedom to carry out activities and freedom of opinion. We say that man is alienated (distanced from himself) and dehumanised.

3 Basic elements of people forming organisations

As mentioned before, man is the only holder of all needs. He feels the needs for goods, that is, things that can satisfy his own needs, and he shows 'interest' or 'image about a certain value that delivers favourable, positive results, benefits'. Interest, therefore, depends on 'values', which determine the conceptual guide of people's (and organisations') behaviour (Šmidovnik, 1980: 46). Every person (from his perspective) creates a belief about what is good (desired) and what is bad (undesired) for him. He has his own value system encompassing a range of values that he compares and categorises into a certain hierarchy. For example, a man who puts money or wealth in first place will perceive his interests and practical measures for realisation differently than the one who puts honour, honesty, education, human understanding or another value first. The higher a value is in a person's hierarchy, the more intensive his endeavours to achieve such a value will be. An individual's value system is created by his upbringing, education, life in the environment and tradition (a new society cannot delete its past – it lives in the present and represents an integral part of social awareness).

An individual may essentially enforce his direct interests, that is, interests in satisfying his needs, in two different ways: alone or together with other members of society. He can enforce and satisfy his interests individually when he alone is able to identify such an interest and satisfy it. He will satisfy his needs together with other society members when he can identify and, especially, satisfy them together with them (Bučar, 1969: 93-95).

It is this interest in satisfying needs together with other society members which is the fundamental element of people joining in organisations. In administrative theory and practice, the concept 'interest' appears in various terminological forms, which can be categorised differently. The following terms are used in theory and practice: 'subjective interest' and 'objective interest' and 'individual interest', 'general interest', 'social interest' and 'public interest'; and 'territorial interest', 'interest of specific categories of society members'.

The first question we need to answer on the way towards understanding why people form organisations is whether or not these interests are only synonyms for the same thing or whether there are any conceptual differences between them.

3.1 Subjective and objective interests

Every interest can be qualified as subjective or objective. Subjective interest is an individual's belief that something is to his benefit based on his value assessments – criteria. An individual's interest differs between different things, being either lower or higher. Objective interest, on the other hand, is defined as something that benefits an individual in terms of socially accepted value criteria.[2]

3.2 Individual, general, social and public interests

'General interest' can be defined only in relation to an 'individual interest', whose holder can only be a person or an individual. From his perspective, his interest is an emotional feeling related to certain material or spiritual goods or a certain personal situation. Such a feeling can refer to a desire to get or keep certain goods or situations. Realising that interest in this sense is an emotional state we can ascertain that only a person as a thinking and sensitive being is able to have such interest. This equally applies to individual and also general interests, as no 'generality' exists outside an individual that would be capable of emotional thinking and sentiment and, as such, be the holder of a certain general interest.

Unlike individual interest, which can hypothetically exist independently of the environment, general interest occurs as a direct consequence of the coexistence between people and their mutual relationships. As social beings, people create a network of mutual relationships which, in this situation, gives meaning to their conduct. Such mutual relationships enable them to create in harmony with each other, which has brought man to today's stage of development. Just like every activity which is performed by people, such joint creation must be based on a certain interest, and in this

[2] Sometimes, material differences can occur between the objective and subjective interests, and differences or conflicts also arise between the interests of individuals. Conflict of interests arises where interests of individuals or an organisation can only be realised to the detriment of other individuals or organisation; because of shortage of material resources to realise all existing interests; in the case of logical incompatibility of interests (e.g. greed for high social positions, which are limited in number); because of intentional benefiting on account of others, etc.

The increasing organisational density and number of people opens more and more room for conflicts. Hence the question of how to deal with conflicts. There are three ways to solve conflicts:

- the reorientation method – which enables satisfying interests with another alternative (e.g. a person interested in a certain function is offered another one...);
- the compromise method – which is realised with agreement and pleases all interested persons, but everyone must make a compromise. Every democratic society must make compromises of interests, otherwise members must subdue to the domination of individuals.
- the domination method – according to this method, interests of an individual or one group prevail, while others are pushed aside. This enables authority, social power and other types of monopoly (Šmidovnik, 1980: 45-46).

context we can look to the concept of general interest. In such joint creation, the general interest is tied to a person's individual interest, but this is not simply a matter or a collection of such interests, but rather their consequence. This means that in mutual interactions, individuals must form a general interest based on their own individual interests in the process of their adjustment and change; such general interest then provides a framework for their joint activity or creation. The general interest created in such a way cannot be entirely identical with the interests of individuals who have formed such interest in their mutual relationships. In this sense, the general interest has a new content, which must, at least in certain elements, match individual interests of those who are the creators and holders of the general interest in mutual relationships. In terms of the concept, it therefore cannot be opposed to individual interests of the people who are simultaneously the holders of these and the general interest.

The latter finding is not related to the question whether individuals are always aware of the exact content of the general interest. Awareness about the direct content of the general interest is not important for an individual at all; what is important is only whether he can realise his individual interest in the context of the general interest's realisation or if the realisation of the general interest is the condition for the realisation of his individual interests. The finding about interdependence of both interests arises from this, whereby individual interest is always primarily in relation to the general interest, as the latter always arises from the first one. Without having the basis in individual interests, the general interest cannot conceptually exist at all, as its realisation is finally always correlated to the realisation of the direct interest of an individual. If such a connection does not exist in an individual case, then it is not a case for the general interest, but of some other interest, which is completely unrelated to the concrete holder of an individual and general interest.

The next question relates to the conceptual context of 'social interest'. This definition can be directly derived from the general interest, the difference here being that an institutional part can be included. People live in a society composed of a network of their mutual relationships and behaviours in such interactions. In this sense, society is not an individual essence, but again an actual phenomenon arising from the coexistence between people in a certain area. For this reason, society cannot have its own interest, because it has no mind-set and sentiment, which are in the domain of the members forming a certain social community. Members of a certain society are, similarly to the general interest, the holders of a social interest, whereby also in this case the social interest is the result of individuals' interests. Basically, the social and general interests denote the same phenomenon, with the only difference being that the definition of the social interest specifically emphasises the institutional part of the general interest, that is, its connection with the social system. In this, we consistently avoid objectification of the social system and, hence, interpreting the social interest as an independent interest, which is independent of individuals, we interpret it as an interest of individuals who live in a certain social community and whose realisation finally enables the realisation of particular interests of such community's members.

Even more institutionally tied than the social interest is the 'public interest'[3]. Public interest is directly linked to the state as an institution for exercising political power and, considering this, is slightly narrower than the general or social interest. Political power includes social power, which enables the entity controlling the state as an institution for exercising political power to use it to force its interest on others. This is usually not done directly, but by defining such interest as public whose realisation is then ensured via the state as a controlled organisation. The concept of public interest is related to the state and its social regulatory instruments, as it is these instruments which determine which interests are in the public interest. Unlike general interest, which is a social phenomenon, public interest is a normative phenomenon. No general interest can become public interest by itself or pursuant to its properties, but only after it has been defined as such by a rule of law. The same applies to an individual or group interest, which can become a public interest based on the decision of the social power holder, who can this way enforce its interest in the form of public interest despite the relationship of other social community members.

Despite being a normative phenomenon, public interest must have a certain relationship with the general interest and individual or group interests of social power holders. The position where the public interest completely corresponds to the general interest is ideal. In this case, the normative phenomenon is primarily identical to the actual social phenomenon; therefore, there is no need for it, as there is no need for forced regulation of the general interest. Such a situation is, naturally, completely idealised, as it does not exist in real social life. Even if we hypothesise that public interest entirely matches the general interest, all individuals may not be equally aware of the content of general interest, therefore coercion may be more than necessary for its realisation in this case. Despite this, every social regulation must endeavour to ensure that these two interests match as much as possible, as this ensures social system stability and leads to the minimal use of social coercion (Trpin, 2005: 357-358).

3.3 Territorial interest and interest of certain society member categories

Since public interests are a consequence of society members' interests, we cannot but ask ourselves how an individual is organised to enforce such interests. Here, we are dealing with the fact that a state exists and it influences the establishment of organisations and the interests enforced by them. Inside the state, interests are enforced as being everyone's own or own to the majority of the population in a certain a) territorial area, and b) category of society (e.g. profession, property, expertise, occupation, etc.).

[3] 'Public interest' is the central concept of the science of public administration; this concept has not been exactly defined. In theory and practice we can find a range of attempts to define and use it (e.g. Krbek, 1932; Bučar, 1969; Šmidovnik, 1980; etc.).

If public interests by their origin are interests of individuals, it follows that individuals, in the first place as members of a certain territorial community, gather in territorial organisations as their own communities of interest, and that they alone decide what such organisations will be like in terms of the territory and what joint issues will be solved. The latter, of course, depends primarily on the state, as no territorial community can be created against the state's will. Here, the state alone decides what is considered a general interest, which only the state wants to represent and enforce, that is, interest common to all citizens, and what is considered an interest common only to inhabitants of a certain territory. The same holds for the interests that are common to certain society members of a specific category (Bučar, 1969: 97-99).

4 Communities of interest

Public interest can be defined and enforced in an organised way only through specially organised communities of interest. A community of interest is an organised community of people who share the same interests that jointly define them, and they try to enforce or satisfy them as a community. Not every community of people sharing the same interests is a community of interest. A certain type of people may share the same interests, but it cannot be called a special community of interest, because it is not specially organised, as individuals may not even know about other people who share the same interests with them. We also cannot talk about a special community of interest, if a community of persons who share the same interests identify such interests directly by themselves and, especially, alone look for possibilities to satisfy them. A community of interest represents mutual dependency of community members. They can identify and satisfy their interests only as a community (Bučar, 1969: 127-128).

4.1 Public-law community of interest

Communities of interest can be created in a vast range of areas with the most diverse interests. Every organisation is a community of interest because people join them to realise a certain goal that all members have in common. In the field of public affairs, special public-law communities of interest are established with the goal to realise certain public interest. A public-law community of interest is a community of people (natural or legal entities), which is organised with the purpose to identify and define certain public interests and tries to satisfy such public interests with joint cooperation of all community members. Since public-law communities of interest aim to realise public interest, the following is typical of them:

- they are controlled organisations, which makes them materially different from all other communities of interest. In all other communities of interest, an individual may choose by him/herself whether or not to join a community and whether or not to accept the decisions of a community and submit to them; in the opposite case, he can always exit such community. It is, however, impossible to exit a public-law community of interest; membership is compulsory and there is no special

instrument of accession; such community's decisions are enforced on all members who must unconditionally submit themselves to them;
- since public interest is also primary in relation to the interest of an individual, the interests of all individuals as well as narrow communities of interest must be submitted to the interests of a broad public-law community of interest and they are only satisfied when the interests of the broad public nature have been satisfied;
- public-law communities of interest are formed directly at the will of the state and the enforceability of their decisions is based on the state's will (Bučar, 1969: 128-129).

All other communities of interest are created freely in the framework of the applicable legal order (meaning the state does not allow for the formation of such communities of interest which would pursue the objectives that the state disagrees with); but the state does not have an influence on whether such communities are formed or not. Also, the state is indifferent to the question whether or not they stop operating. The state's relationship to public-law communities of interest is just the opposite. The state establishes such communities directly by law, which it also uses to determine the material and territorial jurisdiction. With its coercive power, the state especially ensures enforceability of their decisions. If such communities could not count on the state's coercive power to ensure enforcement of their decisions, they would cease to exist as public-law communities of interest. In this case, an individual would either approach such communities or not and, most of all, they would stop existing as public-law communities of interest. They would change into interest groups as all other organisations. If a public-law community of interest could ensure coercion of its decisions from its own power, it would become independent of the state. It would turn into an independent state, which could only have a voluntary connection with the parent state. Because public law communities draw their power for compulsory enforceability of their decisions from the state, they can be created only through direct cooperation of the state; therefore, all of their acts rely on it. They are dependent on the state in their essence. The state may allow its citizens to form public-law communities of interest within certain limits, but in such cases communities are established at the state's will. The only difference is in the establishment method: regarding some public interests, the state has allowed citizens in an individual area or field to determine the organisation of a community and its powers themselves. If citizens did not do this, the state would have to take over the management of such issues directly. The state allows citizens to organise themselves in certain communities of interest only in order to better protect and satisfy the public interest, because citizens are better able to determine it and make better decisions about it in a certain area or field, as the interest only refers to a certain area or field and not the entire social community. Since these are compulsory communities of interest, it is not necessary that the interests of all community members are identical. A community of interest expresses the will of those members who overpower the others in the community. But this is not necessarily the case; a minority which has resources available to overpower the will of the majority may just as well enforce its will (Bučar, 1969: 129-130).

4.2 State as a community of interest

The state is the broadest community of interest. The state represents and enforces those interests that should be shared by all citizens as members of the broadest community of interest organised in the state. Since the state is a compulsory community, which has the option to enforce its will on everyone in its territory and not to share its authority with anyone else, and based on the method of enforcement of public interest, we can sum up the following:

- the state alone decides what is the most general social interest and when all citizens share such interest. Here, the question whether such interest is actually shared by all citizens is not important. The state has the power to determine and enforce it as such;
- it is impossible to exit the state as a community of interest. The state alone decides who its citizens are and it alone determines the conditions as to in what situation someone can renounce their citizenship, when citizenship may be renounced.
- the state alone decides on which narrow public-law communities of interest can be formed in its area. The state is comprised of various areas and various communities of interest, which can be more or less organised and which have various interests. These different interests are in constant conflict in the state; they are mutually confronted and balanced, hence the state is often forced to give in to various communities of interest and consent to the formation of certain public-law communities of interest. But even in these cases, the creation of the interest has been established at the discretion of the state. Without the state's consent, such community of interest could not be established and, especially, could not function;
- in the conflict of interests between individual communities of interest, the state's general interests always prevail. Just like public interest always has advantage over an individual's interest, the state's general interest has advantage over the interest of any narrow community of interest. The essence of public interest is that satisfying its interest is the condition for satisfying other interests. Satisfying the most general interests is the condition for satisfying more specific interests or for the existence of an individual, as well as narrow community of interest (Bučar, 1969: 130-131).

4.3 Communities of interest in individual areas or fields

The nature of interests is such that they can either concern everyone in an individual territory or that they concern people based on their personal or property characteristics; therefore, communities of interest are formed accordingly. We know of general communities of interest for individual areas and communities of interest relating to people of certain categories, regardless of the territory (Bučar, 1969: 131).

4.3.1 The narrowest local communities

The most general and primary interests are those that connect all inhabitants of a certain narrow territory. These are the narrowest local communities. A narrow territorial area has a joint interest in ensuring those general conditions that enable social life in its area. These are, for example, needs for local communications, certain common means of transportation, the arrangement of a sewage system, public lighting, supply of water, gas, planned construction of buildings, etc. In general, these are all the needs that are usually communicated with the expression 'communal matters'. These are the matters that only concern the inhabitants of a specific, usually narrow, local area and which directly affect the possibility of an organised social life in the area. These do not concern anyone else except the inhabitants of the area in question. The decisive point in determining the concept of local interests is the identity of the interests of those people who are tied to such an area by their living conditions. In this case, the criterion is not the size of the area. The local community can be very small in terms of the population as well as in terms of the local area; on the other hand, it can be very large in terms of the population (e.g. cities with millions of inhabitants) and cover a wide local area. Usually, such local areas were created historically and they are a result of the activity of a wide range of different factors. The state, therefore, generally accepts them in such a form and recognises them as public-law communities of interest, allowing them to independently manage the matters that only concern them. This is thus a matter of communal self-government where the state does not directly interfere. Such local communities of interest may include narrower communities of interest for individual areas or fields (e.g. village or local communities). Namely, certain matters only concern even narrower areas. Such communities are created and they operate in the context of the powers granted to them by the basic local community which also provides for the enforceability of their decisions (Bučar, 1969: 131-132).

4.3.2 National communities

There is usually no dispute about what is considered as matters of narrow local communities. The question of what is covered by matters of broad social communities is more complex. Matters of the narrowest local significance are already defined by their function in the social life of the community. Much more complex and disputable is the issue of all other social matters: are all matters that do not have a narrow local significance already matters for the broadest social community, the state? The gap between the narrowest and the broadest social communities is wide and it offers room for the broadest range of interests. The fact that the competence of the narrowest local community only covers those issues that directly concern it and nobody else is undisputable. For other issues, it is debatable whether they fall within the competence of the state or into the competence of other core regional interest communities formed between the narrow local community and the broadest state community (Bučar, 1969: 132-134).

4.3.3 Communities of interest in individual areas or fields

Specific features of individual narrow areas can be discussed only because of special conditions under which certain general interests are enforced in such an area. In these cases, the state community allows individual areas to independently manage certain issues based on their special needs. This way, special local communities are established at the state's will and they have the right to independently decide on individual issues. This is where conflict of interests between individual areas in the state arises. It is solved by the state acknowledging independence, to a higher or lesser degree, to individual narrow areas in solving general matters.

Rarely, situations occur where an individual narrow or broad area in the state has its own special interests in all social affairs. Typically, these are specificities of general interests based on the nature of the individual narrower area. For example, a certain territory may have a specific nature of interests in the field of health which are completely different from the area in which the specific interests of education are enforced. Furthermore, there may be territories with a completely different water economy, road economy, etc. Generally, we can speak about a community of interest which covers all common interests shared by all inhabitants in a certain area, only in the cases of the narrowest local community (where communal matters affect all inhabitants), and the case of the national and state community (national defence affairs, external affairs, money system, etc., affect all citizens). In all other cases, communities of interest are formed based on the nature of an individual interest, which is enforced in the area and which can be entirely different from the area of general communities of interest (e.g. a community of interest for a specific type of education, for health care, water economy, etc.). As a member of a general community of interest, an individual can, at the same time, be a member of various communities of interest for individual fields. Hence, the areas of individual communities of interest do not overlap, but they can cross and intertwine with each other. It cannot be realistically expected that interests of various fields can be equally reflected in the same areas. Communities of interest for individual fields can even be formed so that members of such a community of interest are inhabitants of a particular area, as well as members of other interest communities (Bučar, 1969: 134-135).

4.3.4 Self-governance of communities of interest

Every public-law community of interest is a self-governing community. Self-governance means that such a community independently decides on its own matters, for which it has been established. Such self-governance is, naturally, not an original right. Every community of interest draws its self-governance rights from the state's will. In terms of its essence, complete self-governance in public affairs is identical to the statehood, meaning that nobody can enforce their will over a self-governing community and that such a community can always enforce its will against anyone. Only a sovereign state is entitled to do this, and all self-governing communities in the state depend on it.

Various theories on the originality of individual rights are only a theoretical explanation for what has actually already been enforced or the apologetics of what is to be enforced (e.g. the theory of an individual person's original rights, a community's original rights, the state's original rights, etc.). Actually, today, the state's power is established as the supreme power over all citizens on its territory. If the state recognises self-governance of an individual community of interest, such self-governance means:

- that only such a community of interest is entitled to manage all affairs that fall into the field of interest acknowledged to it. No community of interest cannot interfere with its scope nor give it any kind of instructions, and especially not mandatory orders;
- that the community of interest makes final decisions about all matters falling within its field. No complaint can be made against the decision of a community of interest to anyone outside of the community of interest. In this case an appeal body would decide on a matter that is not within its jurisdiction (thereby disqualifying it for decision-making), or this would mean that a community of interest against which a complaint has been filed is not self-governing, because somebody else is making final decisions for it. If a citizen's legal right is violated with the decision of a self-governing community of interest, the citizen can turn to the relevant social community which is competent for civil rights protection. This is no longer a complaint against the decision of a self-governing body, but some other right about which the self-governing community cannot decide;
- that it is not possible to establish two communities of interest with the same competencies for the same area. For example, it is not possible to exclude a certain field (e.g. education, health, science, etc.) from the general competence of the national social community and form a special community of interest for such fields in the same area. If a special community of interest is formed for such individual fields, the members of the community of interest are the same members as the members of the general social community, which means that they cannot decide on their own matters coherently and that they cannot satisfy their needs in the order and to the extent as decided by them. This way, the general community of interest is deprived of its self-governing rights. Such rights pass on to those who are not entitled to decide on the general social needs;
- that a community of interest, which has the right to independently decide on the matters under its competencies, shall alone ensure the resources to satisfy its needs;
- that no other community of interest can impose burdens on a self-governing community to cover the needs of another social community of interest, and it also cannot impose on it the duty to execute transactions for another social community of interest;
- that in order to satisfy the needs of its members, it establishes bodies and organisations, which carry out the services needed to satisfy the needs of its members and that it determines the way these bodies and organisations should operate, such as it deems as necessary according to the established needs – if an

organisation cannot render such services or provide the needed goods under the rules of the commodity economy (Bučar, 1969).

4.3.5 Interdependence of communities of interest

Self-governance of communities of interest does not exclude their interdependence. Just like a person is independent and free, but is forced, for the purpose of coexistence, to act in a way not to violate the equal rights of others, so are communities of interest tied to each other in their functioning. First and foremost, they all depend on the state, as only the state ensures their existence by guaranteeing the enforceability of their decisions. This fact alone makes their self-governance relative – it depends on the entity to which the community of interest is tied. Since it is impossible to satisfy all the needs of individuals or the society because of limited resources, an individual always acts as an integral person and all needs appear as a whole – including the perspective of the general social needs – a certain balance must be found between the available resources and the satisfaction of needs. An individual person creates such inner balance alone, regarding the needs satisfied via the market. The needs that can only be satisfied via a social organisation, however, do not have a common holder; every community of interest acts independently in terms of satisfying its own needs. This is how competition arises between individual communities of interest in relation to the same resources that were created in the social production. Moreover, social needs as a whole compete for the same resources of the national income as opposed to the needs satisfied by an individual person via the market. By not ensuring such inner balance, we prevent the production of goods in terms of the volume and quality such as enabled by the achieved level of production forces' development. If the society takes an amount of resources for public needs (e.g. for the military force, external affairs, educational system, health system, state administration, etc.) creating a deficit for proper production and consumption of market goods, it may lead to economic stagnation or even recession, resulting in a deficit of resources for public needs. Another likely scenario is the opposite, meaning that by neglecting public needs, the basic conditions without which the economy cannot function normally are not ensured. Hence, the inner balance between these two basic holders of consumption must be ensured with social measures, that is, measures of the broadest social community (Bučar, 1969: 138-139).

The rule of interdependence also applies for the state. The state's failure to comply with the needs of citizens and their communities of interest destroys the inner relationships dictated by a certain method of production and the possibility of satisfying the needs at a certain level enabled by the production forces' development. If the state does not consider the requirements of communal communities so that they can satisfy their own local needs; for example, it does not enable the educational system to obtain the resources needed to carry out its functions needed by the society; it puts the needs of the armed forces so high above the needs of all other fields that these cannot receive the resources needed according to their role in social production; and especially, if it takes so many resources from the national income for public needs that the market part of the

economy has no resources for new investments in the extended reproduction; social production, as a whole, will start stagnating and regressing. This can give rise to overall public dissatisfaction. The state must take action to ensure the required balance in the satisfaction of all needs: the general, social needs as opposed to those satisfied in the commodity based market manner, and within the general social needs it must ensure the proper proportions of the needs satisfied by individual communities of interest. Social communities in a smaller area have the same obligations regarding all types of consumption in their areas. Such obligations and rights of the broader social community relating to the balance between various types of consumption have not the right and obligation to enforce equal standards of consumption in its entire area. Just like it does not have the right to determine an individual citizen's extent of consumption, it does not have the right to determine the consumption of such a narrow community. It must only make sure that there is the necessary balance between individual types of consumption. It thus eliminates those imbalances that endanger the development of the entirety, and no more. If there is no balance here, the entire social production stops. One of the essential functions of social community is proper allocation of national income for various needs. A society which has not found suitable proportions in this field cannot count on success in satisfying its needs or the needs of its members (Bučar, 1969: 139-140).

The modern society is becoming an increasingly highly organised society, which is more and more interdependent. An increasing number of needs can be satisfied in a manner directly organised by the society. Despite the increasing quantity of goods produced in a commodity based market way, this circle of goods has been relatively decreasing compared to the circle of goods that the society must ensure directly, outside of the market, with its direct intervention. This is why the question of internal balance between individual types of consumption and the question of sharing the social product are becoming increasingly important social questions. This circumstance introduces new relationships into the battles between individual communities of interest in the state. The chance of an individual community of interest directly enforcing its will in social product-sharing to the detriment of others is decreasing; it is forced to consider the needs of others despite its dominance, as it otherwise also harms its own interests. The chance that in social relationships, only the rough force of the stronger entity is enforced in a primitive way (such as that typical of much simpler social arrangements in the past), has been decreasing. The types of battles between individual interests in society are much more complex and require much more knowledge about what benefits a holder of an individual interest, where is the limit of rough enforcement of individual interests regardless of all others, and to what degree he must consider the interests of others so as not to harm his or her own interests as well. The possibility of suppressing and exploiting others has, in this context, substantially narrowed down, because society has become so complex and internally interdependent that it is very difficult to enforce the interests of one community on account of another without destroying the harmonious functioning of the entirety. This is why it is much less possible for the holders of the most primitive of interests or interests that reflect a lag in social

development to be able to successfully enforce superiority without destroying the entirety and harming themselves as well. An increasing internal interdependence of the society also affects the chances to enforce the local self-government or self-government in individual excluded areas. The need to integrate individual interests at the level where the needed balance between them can be established and ensured prevents such interests from being enforced in narrow local areas or narrow fields of expertise. The society is spreading and opening up from narrow patriarchal and professional frameworks. The principle of the narrowest local community being competent for all matters except those reserved for the broad social community with a special law, can no longer be adopted without harming the community, and likewise, special communities of interest limited to individual narrow fields (e.g. educational system, health system, science, etc.) cannot be formed. The educational system is not an issue of educators, the health system is not an issue of the health workforce, and science is not an issue of the scientific workforce, etc. These are the issues of interest for, and concerning all, inhabitants of a certain social community. If such fields are to be eliminated from the general community of interest as special communities of interest, such a general community can no longer establish the needed proportions in the general social consumption. Such fields would, as a result, develop disproportionately to other social needs; inner balance would be destroyed and the general social production or satisfaction of needs would drop to a lower level. Moreover, the joint national interests in these fields would be broken down into a handful of local interests, which would prevent the development of such activities in accordance with the social function (Bučar, 1969: 141-142).

5 Formal organisation

Every activity is performed with a certain purpose and it includes one or more people. The activity that includes conscious cooperation of two or more persons can be considered an organised activity. Here, the question of how to realise a certain purpose is of special importance. In every case of people's cooperation, there is a question as to in what way such cooperation has been achieved, what the purpose of such cooperation is and how to realise the set purpose. Having all these components in mind, we reach the concept of formal organisation. A formal organisation is a type of people's cooperation in pursuing a certain purpose where a wilfully determined circle of people will cooperate in the realisation of a wilfully determined purpose, where every participant's role and responsibilities are separately determined and where the resources and the way to achieve the set purpose are specified. Public administration is a formal organisation:

- it is specifically determined who and how it cooperates in the realisation of the goals pursued by a certain social community. Social communities as communities of interest are separately formed, whereby the state or the leading force in society plays a special role;
- goals of an individual social community are determined in a specific way, whereby the question of how public interests are formed and established within a

community of interest is of special importance as well as the question of which interests an individual community of interest enforces;
- the resources and methods to realise the organisation's set goals are determined in special ways (Bučar, 1969: 157-158).

The organisation of public administration as a formal organisation is thus in no way only a result of certain predetermined concepts or a model to create the public administration that will function most ideally. All elements that are decisive for every formal organisation are also expressed in a specific way in public administration; they are intertwined and affect each other. This is why every public administration has entirely individual features. The formal organisation of public administration depends particularly on the purposes set by the society and its available resources to achieve such purposes (Bučar, 1969: 157-158).

5.1 Centralisation and decentralisation as organisational factors

An organisation can have a whole variety of goals, but it must find the ways to realise them in the most efficient and reliable way. In doing so, an organisation is faced with the question as to who should make decisions about the goals to be achieved, who should make decisions about the method to achieve them, and who should carry out various tasks to achieve them. By its nature, an organisation is a means to achieve a special allocation of work and decision-making as well as the appropriateness of the realisation of a set goal. An organisation has a range of possibilities in this matter: all members of the organisation decide about its goals, all members decide about the ways to achieve them, and all members of the organisation cooperate in the realisation of the decision. Such internal organisation can only be afforded by those organisations, which are small enough to enable such advanced cooperation of all of its members or which have such simple and plain goals that they can be decided upon with the involvement of all members and where the nature of activity enables direct involvement of all members. In the case of large organisations whose goals are big and complex and which require special professional activity to realise the set goals, such a simple form of cooperation is not possible. First, the competencies to make decisions about the goals of the organisation and the methods to realise such goals must be allocated. Due to the number of organisation members, it is impossible for all of them to be directly involved in decision-making. Special people in the organisation must be found to make decisions for the organisation on behalf and in the name of the entire membership. Often, the decision-making authorisation is essential for an organisation also because the decisions that are being made require specific expertise. However, in the majority of cases the decision-making requires specific expertise, which members of the organisation do not have. In all such cases, it must be specified who and what they will do. Therefore, it may be that the people deciding the goals of the organisation are different from the people who implement such decisions. (Bučar, 1969: 173-174).

The division of work between organisation members is not performed only horizontally. Work can also be divided in individual decision-making and realisation phases. For example; in an individual case, matters of the most general decision-making about the way to realise the goals of an organisation or decisions about the goals of an organisation can be carried out, as can very straightforward decisions; the realisation of decisions (intensified from the most general to the most concrete tasks.) The decision-making and realisation process then approach the level of further, vertical division: certain individuals decide only about the most general matters, while others about the most concrete and direct matters. Who will decide about what and who can do what is, to the maximum degree, a matter of technological process. A certain technological process requires an appropriate course of the decision-making and realisation process. Not only are decision-making about the goals, the method of realisation and the realisation itself, separated, but these three elements are divided to different levels in the decision-making and the decision realisation process in order to realise the goals of an organisation. It is understandable that a decision about such division of decision-making and realisation has a decisive effect on the organisation as the means to realise the goals of the organisation. From this perspective, the issue of centralisation or decentralisation is not only a technological and economic issue but also an important socio-political issue. Due to the division of the decision-making and realisation competencies, certain individuals are in a position to give orders and others to take them (Bučar, 1969: 173-175). Both centralisation and decentralisation have a material effect on not only the status and position of people but also the entire organisation of the state and the public administration system.

5.1.1 Centralisation and decentralisation as political factors

The question of centralisation and decentralisation is one of the most sensitive political issues. By dividing the decision-making and realisation process in an organisation and then further dividing both into several levels, the relationships between the members of the organisation are being interfered with in a far-reaching and sensitive way. This immediately creates a difference between the members of the organisation, that is, those who make decisions and those who realise them, those who make decisions about very important and far-reaching issues and those who only decide about the least relevant and implementing matters. It is especially important that such a division of competencies is eliminated and an important position is given to those who decide the goals of organisation. Centralisation necessarily strengthens the power of those who decide the goals from the centre of the organisation and the way to implement them. As soon as they have power, risk may arise that they will not only use the organisation as a means to realise their goals or at least those that they believe are the most important, but also that, due to the distance between their decision-making position and the position where a decision is needed, there will be constant risk that they will make decisions without being fully aware of the actual situation, hence their decisions will be inappropriate – but they have the power to enforce them in any event. If a business organisation makes inappropriate decisions, it alone suffers the consequences by, for

example, not being able to sell the produced goods on the market. An organisation however, does not only produce for its members, but for the market, whereas public administration renders services directly for its members. Members of a community of interest are directly affected by the work of their public administration. The centralisation of decision-making can transfer decision-making onto those who do not represent the community of interest and will, hence, use decision-making against the members of such community. At this point, it should be noted that a community of interest is an organisation of those who have interest. Only they can decide about their interests. If decision making about the matters concerning them is transferred to a broader community of interest, the decisions of such a broader community of interest will also reflect interests that are not identical to those of the narrower community of interest (Bučar, 1969: 178-179).

In public administration, decision-making centralisation means the rights to decide about individual social affairs are transferred to the broader social community. Therefore, there is always the question whether such a broader social community is also the holder of the interests about which it makes decisions. If it is not the holder of such interests, its decisions will constitute violence against the real holders of the interests about which it decides. Since, in public administration, we are dealing with the state which holds the instruments of coercion in its hands, the risk of centralisation is that much higher, as centralisation has always accompanied the attempts of a minority to rule over the majority. Attempts of suppression are always accompanied by public administration centralisation. Therefore, the fight against suppression and the fight for democratisation has always been a fight against unjust centralism in public affairs. Likewise, the legitimate interests of a certain social community are downgraded, if the matters that fall within the broad social community are decided in narrow social communities. The same consequences are delivered by the narrowing of decision-making rights in the horizontal direction. Even though public affairs centralisation was very often one of the main ways to enforce violence over the entire, or a part of, society and despite, conversely, decentralisation representing an attempt of the society or its parts to free themselves of suppression and to introduce equal relationships between society members, it is not possible to make the statement that centralisation, by itself, is the method of suppression while decentralisation is the method to free people and introduce equal relationships. Decentralisation that is not analogous to a community of interest, that unjustly transfers decision-making competencies regarding an issue to a narrow social community, while such an issue falls within the interest field of a broader community of interest, may be just as well or even more harmful than unjust centralisation. Such decentralisation leads to inappropriate relationships between society members, while on the other hand it is very frequently ineffective. Inappropriate centralisation and inappropriate decentralisation are, therefore, also contrary to optimally dealing with public affairs, because both cause ineffectiveness in public administration. Namely, both lead to inappropriate decisions as both are based on incorrect findings of the actual situation. Both are distant from the actual events and

interest. The only difference is in the direction. In centralisation, the shift is directed upwards, while in decentralisation it is downwards (Bučar, 1969: 179-180).

5.1.2 Advantages of centralisation and decentralisation

In public affairs, which are indirectly always tied to the existence of the state, decisions are never made only from the perspective of the optimal satisfaction of certain needs of all of the social community's members. Deciding about public affairs at least indirectly also affects special holders' other interests, being either interests of a minority which holds the state in its hands, or the interests of other groups, which tie their interests or enforcement of the ideas they represent to such or other decision-making about public interests. Therefore, the interests of the technological and economic optimum in public affairs are usually never dominated by interests of individuals, but every decision includes various political aspects, which may even be contrary to the optimum decision regarding the satisfaction of the social interest. Sometimes, such political aspects even prevail in the short-term. The advantages of centralisation as a political instrument lie especially in its state-building function:

- under certain conditions, centralisation strengthens political unity and gives the feeling of joint affiliation; it weakens separatist tendencies and is therefore important especially in cases of building the unity of a state that was created from various parts;
- the realisation of big ideas is usually doable where centralisation is a strongly uniting principle; typical of this is that all big revolutions led to strong centralisation, which from the beginning proved to be the most effective means to enforce revolutionary principles;
- centralisation is a suitable method to enforce strong personalities who enforce their will over poorer and irresolute elements via the centre, etc. (Bučar, 1969: 181).

Sometimes, decentralisation proves better at serving certain political goals:

- states composed of several nationalities will resist centralisation. Only proper decentralisation, which gives nationalities the feeling that their interests are protected in the state can be a suitable uniting principle;
- decentralisation enables the influence of a larger number of people on decision-making regarding public affairs. Therefore, it is an important element for democratisation and it will be an important political instrument where attempts are made to break the centralised etatism, which was used as a method to exercise violence (Bučar, 1969: 182).

5.2 Decentralisation

In order to estimate the level of decentralisation, we must first discuss the concept of decentralisation which is closely connected to the limitation of authority and, most of all, the vertical division of the enforced authority. Vertical division of authority has a big importance in both federatively organised states as well as those that are not

organised federatively; in these, an important share of vertical division of authority belongs to local self-government. According to Šturm, constitutional regimes where local self-government is explicitly defined as a constitutional category are a matter of a specific type of vertical authority division, whereby he points out the autonomy of local self-government and minimum requirements for autonomy (legal personality, property right and competence and eligibility for executing public tasks at the local level). Modern constitutional regimes enhance such autonomy by explicitly declaring it in the constitution and ensuring its effective protection because they believe it has the status of a fundamental freedom. On the one hand, this is a matter of political self-government of a local community, and on the other hand of executive authority of local self-government. The modern doctrine of today does not view authority division as a rigid concept to separate power but as a flexible model that acknowledges the recognition that every branch of authority performs several state functions, provided that mutual balance between various state bodies is ensured. When looking for the answer to the question of how to ensure effective distribution of political power in modern democratic states, new types of power distribution have proven effective in theory and legal arrangements, in line with the recognition that the division of authority has its own content in every period, which is neither eternal not absolute (Šturm, 1991).

Vertical division of authority also has big importance in modern interstate forms, such as the European Union. In the latter, the so-called subsidiarity principle is especially important as a principle of vertical limitation of authority. Subsidiarity is a modern idea whose origin dates back to Aristotle. In recent times, this term was used explicitly in the Maastricht Treaty on the European Union, but it has no legal consequences by itself. The basic idea on which this principle is based is that political authority can interfere only when the society and its constitutive parts, from an individual person to family, local communities and to various broader arrangements, are not able to satisfy various needs. This way, subsidiarity is nothing else but a simple principle of an institutional organisation that applies to relationships between an individual person and the society and relationships between the society and institutions, prior to the possible determination of the division of powers between the base and the top. The subsidiarity principle thus represents the general basic principle of an institutional organisation, which aims to give advantage to the base rather than the top and as such has various definitions (Vlaj, 1998).

The subsidiarity principle as a principle of social organisation means that a higher authority, particularly the state's authority, may interfere only to the extent in which lower authority has shown or proven its own inability. This first meaning is the basis of the principle of state authority's non-interference with the work of structurally lower authorities. The subsidiarity principle is, thus, firstly a principle of authority limitation, which however does not have a normative nature. Rather than determining the norm, the subsidiarity principle indicates a trend. It leaves open concrete conditions of its use, which may differ in accordance with the circumstances of time and place. The second meaning brings up the idea of helping lower levels of authority. Here, this is a matter of

assessment and not whether an authority is entitled to interfere, but whether or not it has an obligation to do this. It is a matter of help that strengthens and gives the right of autonomy (Vlaj, 1998). In order to be able to properly ensure this, the state and authority must be properly organised (Ivanc, 2005).

Types of state organisation depend on legal (in)dependence of the organisational parts of which the state consists, and the legal relationships established between them. Such relationships are either centralised or decentralised. (Kušej, Pavčnik, Perenič, & Cerar, 1998)

It is generally typical of a state to have a central authority that applies to the entire territory and its decisions are mandatory and binding for all citizens. It is especially important for a state that its branched organisation also establishes non-centralised authorities, which apply to an organisationally limited area and whose decisions are not mandatory or binding for all of its citizens, but merely for the population of the narrow community. Here, the question arises as to the content and extent of authority of non-centralised units.

State organisation is most frequently divided in line with the territorial principle. This way, the central bodies' authority applies to the entire territory of the state, while the authority of non-central bodies applies only to certain parts of the territory.

The system in which central and non-central bodies exist in a certain state is marked with the concept of actual decentralisation. In this system, authority is not enforced only by central bodies, but also non-central ones, because they make decisions and realise them. Based on this, we can conclude that there is no completely centralised state in the world. Yet, we need to separate actual decentralisation from legal decentralisation. In the legal context, non-central bodies can have various relationships with the central authority. If they enforce authority on behalf of central bodies as subordinate bodies and, in doing so have no independent authority, it means that legal decentralisation exists and non-central bodies are actually centralised. If non-central bodies have original independence, we speak about actual decentralisation. As aforementioned, relationships between individual bodies, which can be centralised and decentralised, should not be neglected. We speak about centralisation as a notion of mutual relationships when higher bodies do not control lower ones or when these work constitutionally and lawfully, but they may annul and change the decisions of a lower body, including when lower bodies do not act soundly. For decentralised bodies, this means that they are not independent in carrying out the tasks that fall within their competence. In this context, decentralisation is strictly separated from centralisation: where relationships between state bodies are decentralised, lower (decentralised) bodies are independent task performers (Lukić, 1961).

The criterion of legal decentralisation classifies states into various types of state organisation. If decentralised units have the same level of authority as the state, we

speak about the so-called composite state, and when the level of decentralisation is lower, we speak about a single or unitary state, which can be centralised or decentralised.

Decentralisation is, hence, a system of relationships between the central and local state bodies, where local bodies have a set level of independence laid down by the constitution and laws. Decentralisation appears in various types and forms. Based on the extent of decentralisation, we speak about a one-tier and two-tier decentralisation. One-tier decentralisation means that the same body is decentralised when performing certain matters, while it is centralised for others. In the matters for which it is centralised, it performs such tasks under the principle of subordination, whilst it enjoys a certain level of independence in the performance of other tasks. In the case of two-tier decentralisation, state bodies exist in a unit besides local bodies. This means that the issues that are centralised are carried out by certain bodies in the same unit, and others carry out decentralised issues. Of course, there is also the third system in which there are no centralised bodies (Friškovec, 1979).

To understand this work, the division of decentralisation into bureaucratic and democratic is particularly important, that is, division by the decentralised bodies' establishment method. Bureaucratic decentralisation occurs in cases where higher bodies appoint and remove lower decentralised bodies, whereas democratic decentralisation occurs in cases where local bodies are elected by the people (Friškovec, 1979).

We should point out that unlike democratic decentralisation, bureaucratic decentralisation is unfavourable for narrow social communities, as the bureaucratic body that is not made up of the people over whom authority is exercised and does not depend on them, will not be able to get accustomed to the life of the narrow social community or understand its needs. This way, it will always observe the will of the central body. Of course, it needs to be pointed out that a bureaucratic organisation can be implemented so that decentralised bodies are not appointed by the central authority but by somebody else. A typical feature of democratic decentralisation is that the bodies are elected by the inhabitants of local communities and that the elected body is under the authority of a local community. In the world, such decentralisation is known as self-governing decentralisation. This concept denotes the characteristic that the population of a narrow social community manages a social community through the elected bodies (Lukić, 1961). The so-called direct democracy in managing a narrow social community is also typical of decentralised units managed by the elected bodies in modern democracies. This is very important because the inhabitants of a decentralised unit can directly enforce their interest in satisfying their own needs for goods and services through the available institutes within the limits as determined by the state.

5.2.1 Self-government

Typical of decentralisation as a general concept is the transfer of tasks from the state to other organisations, which are not integral parts of the state but are rather relatively independent. In legal theory, decentralisation is explained through self-government. Self-government is based on the idea that every individual and every social group should be entitled to a say and have an influence in the matters concerning their interests and benefits, meaning that matters are decided by those concerned (Grafenauer, 2000). Therefore, in the broad sense, self-government means that a circle of interested individuals manage their own tasks. Self-government exists in that certain transactions are carried out by people from an organisation that is directly interested in such transactions, and not by the central government or its subordinate administration (Pitamic, 1996).

In the broad context, it is subordinate to the concept of democracy, as it reflects a requirement of a certain area's population to decide on the issues that directly concern them alone. (Vrban, 1995)

At this point, it needs to be pointed out that the concept of self-government should not be confused with the concept of administrative decentralisation. The latter means that in addition to one-tier central state authorities, lower authorities at the medium and local levels are organised in a state and such authorities receive independent administrative decision-making powers. Administrative decentralisation is an institute, in the French legal theory marked with the term deconcentration. Deconcentration and decentralisation have, in technical terms, a common element: both involve the transfer of tasks from central bodies to other, narrower authorities; the differentiating element between them is that in deconcentration, transfer is made to subordinate authorities, while in decentralisation transfer is made to insubordinate, independent authorities (Šmidovnik, 1995).

The ideational and legal foundation of decentralisation is based on the unity of the entire sphere of authority, which is represented by the central state bodies. A state may hand out a part of such authority or a part of public tasks, namely tasks of local importance (in practice, these are also called local affairs) to local communities, which should in principle carry out these tasks independently, with their bodies, their resources, but only under certain control of the central state authorities. Such tasks are local communities' own or self-governing tasks. Tasks to implement local public services, which local communities must implement independently and with their own resources, are also transferred to local communities. The second round of tasks is the one imposed by the state on local communities to carry out on its behalf; these are transferred tasks carried out by local communities' bodies. When performing such tasks, local communities' bodies act as an extended arm of state bodies, yet they act with a higher degree of independence than state bodies (Šmidovnik, 1995).

As aforementioned, the fundamental feature of self-governing decentralisation is that the population of a narrow social (local) community (self-)governs such social community via the elected bodies (indirectly) and with institutes of direct democracy (e.g. assembly of citizens, referendum, people's initiative), whilst the foundations of local communities' self-governance are independence and autonomy. The most general definition of the concept of self-government is that it is the right to independently decide about one's own matters, including the satisfaction of the needs of a narrow community's inhabitants for goods and services based on its own power. It is, however, impossible to speak about such independence and autonomy of local communities' self-government as an absolute category, as the state determines the limit of local authority with its legal order. The state does not allow the emergence of an authority, whose force and effect would be equal or similar to the state authority, in the territory controlled by the state authority. Therefore, the state authority will, regardless of the level of decentralisation and democracy, always keep control over a part of the authority of narrow local communities and, for example, limit both the establishment as well as shut down public services in the narrow social community, and at the same time it will establish a legal framework within which the narrow social community can establish a special legal regime over the activity of public service.

A concept close to self-government is autonomy, which differs from it by the fact that, for example, in continental European legal tradition, self-government is usually limited solely to the executive authority and not the adoption of general legal acts – laws.

The condition for relative independence and autonomy of self-governing narrow social (local) communities is a suitable level of territorial, administrative and fiscal decentralisation (Brezovnik, 2008).

5.2.2 Territorial decentralisation

The concept of territorial decentralisation is most closely related to the concept of local community and local self-government, as through history, decentralisation in general started developing as territorial decentralisation.

With the existence of authority and population, the territory is the fundamental element for the existence of a state and as such also an essential element to determine the concept of local community. Territory as a concept merely points to the physical components of a person's residence and it is important only in relation to the settlement of people in it. Throughout history, states as well as local communities were, as a rule, transformed several times in the territorial reorganisation process, where certain criteria of rationality are always attempted to be entered. At this point, it should be mentioned that local communities, that is, municipalities and broader self-governing local communities, are, like the state, not formed based on certain rationality criteria under which it could be decided in advance whether they are able to carry out the tasks that must be performed, which includes ensuring the performance of local public services.

The majority of today's territorial decentralised local communities are a result of historical development, traditions, political compromise, geographical and other factors, which are connected with the rationality criteria based on the tasks and needs they must do or satisfy (Grafenauer, 2000).

5.2.3 Administrative decentralisation

The concept of administrative decentralisation or decentralisation of administrative systems includes transferring administrative functions from the system's centre to its individual parts. This is primarily a matter of transferring three fundamental functions: enforcement, decision-making and control. These functions can be transferred in various extents; the level of administrative systems' decentralisation depends on the extent. In the case of a low level of decentralisation, only the functions of enforcement can be transferred, while in the case of a high level of decentralisation, the enforcement and decision-making functions, as well as a part of the control function, can be transferred to lower levels. It needs to be mentioned that all three functions cannot be entirely transferred, because their complete transfer would no longer represent system decentralisation, but rather breakdown and creation of new decentralised systems.

Administrative decentralisation is not only a technical process, but it often carries in itself an explicit interest charge. The type and extent of decentralisation depend on the realisation of interests. This way, decentralisation of administrative systems can be broken down into the administrative-technical and the interest aspects. The goal of the first is to achieve maximum rationality and effectiveness of management, while the goal of the latter is to enhance the possibility of enforcing its holders' interests. The two aspects are intertwined in the implementation of decentralisation. The mentioned bases of administrative systems' decentralisation are the foundation of the relationship between local self-government and administrative decentralisation. The fundamental goal of administrative decentralisation is to ensure an effective and rational administrative process, while in local self-government interests represent a direct basis of the administrative system's decentralisation. These interests are an essential element of the concept of local self-government, which is formed as a territorially administrative system in a narrow area exactly in order to satisfy the interests arising from common needs. In terms of transferring functions in the context of administrative decentralisation, local self-government is primarily a matter of transferring the decision-making function (about interests), which is logically followed by the transfer of the function to enforce such decisions. As a rule, these two functions also transfer part of the control, which directly refers to the implementation of the first two functions, while the part of the control to ensure harmonised functioning of all local self-government units, is kept in the centre (Trpin, 1998: 186).

For effective performance of local public services and, hence, the satisfaction of the local population's needs, it is essential to provide the local community's administrative system with a suitable number of professionally trained employees. The type of local

public service performance primarily depends on the number of employees and their expertise in performing local public services. If local communities have a sufficient number of trained civil servants, they can independently perform local public services, or, if this is not the case, the state must ensure, via its legal order, a range of versatile public service implementation forms, for which local communities can independently decide and in which the private sector can participate (Brezovnik, 2008).

5.2.4 Political decentralisation

As aforementioned, in terms of transferring functions in the context of administrative decentralisation, local self-government is primarily a matter of transferring the decision-making functions (about interests), which is logically followed by the transfer of the function to enforce such decisions. It is essential for local self-government that the population of a local community alone governs its own affairs. Governance means that the population of a local community makes decisions directly or through local self-government bodies. Hence, the essential question of local democracy is what are the chances of a local community's population participating in decisions made by a local community?

The main foundation of authority decentralisation is definitely the transfer of the powers to make decisions on local affairs at a lower level. This way, the central authority is actually decentralised. Of course, this raises the question as to what local affairs are at all and what decision-making criteria are used when transferring decision-making on local affairs. In the context of a democracy, it would make sense that a local community's inhabitants would directly manage a local community, meaning they would alone make all decisions. However, this is impossible in modern democracy, as the needs that are satisfied in it are too diverse and complex to be decided by all citizens and because modern life requires constant decision-making. Therefore, the making of all or most of the decisions concerning local self-government is entrusted to various local self-government bodies, where the representative body (e.g. municipal council) has the central place and importance for local democracy. This is how local self-government is understood by the European Charter of Local Self-Government (MELLS), pursuant to which local self-government is usually realised by councils and assemblies composed of members who are elected via free and secret vote based on direct, equal and general voting right. These bodies may have executive bodies, and it specifically emphasises that this does not affect the discussion of issues at meetings of locals, referendums or other types of direct involvement of the citizens, where this is permitted by the law. This means that the Charter considers decision-making by representative bodies as being an essential condition for local self-government, whereas direct democratic decision-making is not a mandatory part of local self-government, but it depends on the tradition of an individual state and it actually strongly differs between European countries. (Grad, 1998, str. 20)

5.2.4 Fiscal decentralisation

The ability to perform decentralised tasks depends much more on the actual than normative features of an individual local community. It is true that local communities are based on the normative foundation, yet the establishment of narrow local communities usually does not follow the rationality principles. Due to this, discussion about financial resources allocated to local communities for the performance of the said tasks must be raised alongside the issue of the ability to perform local service activities at the local level. Based on this, discussion must be raised about so-called fiscal decentralisation, also known as fiscal federalism (Oates, 1972).

According to the theory, the basic purpose of establishing decentralised units is achieving higher national economic benefits than would be achieved without decentralisation. The basic level of the state is therefore divided in various lower levels, which perform certain tasks in the public interest on its behalf, usually laid down with constitution and laws. Roughly, we could say that the state's task is to ensure macroeconomic stabilisation, national safety and income redistribution, while the lower levels of the state (decentralised units) assume those tasks that the state, due to its nature, is unable to perform effectively enough. Here, we mean primarily the supply of those public goods, whose consumption is generally limited to the borders of a decentralised unit.

The main factor to achieve higher levels of national economic benefits with decentralisation lies in that by forming decentralised units, we approach the actual needs of the environment better, as due to the information asymmetry the centralised level of governance is in an inferior position compared to individual decentralised levels (if additional factors, such as political, constitutional, and the like, are also neglected). Empirical analyses have shown that the need for decentralised units increases with demographic, geographic, cultural and economic diversity of the environment, whereas demand for local goods and services is strongly non-elastic in terms of the price. Tiebout laid the first foundations for fiscal decentralisation in 1956 with his famous Tiebout Model. According to him, in the event of high household mobility, households will 'vote with their feet', meaning that families or individuals will choose to live in environments that best suit their personal needs in terms of taxation and the offer of public goods (products and services ensured with the performance of public service activities). Nevertheless, we cannot claim that with complete absence of mobility, decentralisation does not deliver a net increase in total benefits. For example, the so-called Samuelson condition of equating the sum of the marginal rates of substitution to marginal cost says that these vary between jurisdictions (e.g. water or air purity levels in cities are definitely different from those in rural areas) (Tiebout, 1956: 416-424).

Decentralised fiscal units naturally urgently need their own specific fiscal instruments. Here, the question of the 'correct vertical public finance (fiscal) structure' occurs. Namely, an incorrect vertical public finance (fiscal) structure has serious consequences

on the optimal allocation of production resources and it causes disruptions in the functioning of the economic system. (McLure,1983).

Let us return to the theoretical starting points, which refer to the limits and size of decentralised fiscal units or areas where balance between the internationalisation of the flowing benefits (or costs) and the consideration of local specificities (demographic, geographical, cultural and economic) must be found. It is recommended to form some levels of units, such as:

- contained areas, which include city centres where the majority of economic dynamics are carried out, and suburbs where the creators of such economic dynamics live,
- contained areas, which include geographically complete units such as nature reserves, high-mountain farms, forests, other natural resources,
- smaller level local communities which enable their inhabitants to form their own groups of needs, which are then satisfied through the existence of a local community (Oates, 1999).

In addition to the positive sides of decentralisation, there are also negative sides of fragmenting a large area into smaller decentralised units. These so-called decentralisation traps include:

- decentralisation and over-regulation,
- decentralisation and fragmentation of internal market,
- decentralisation and corruption,
- decentralisation and relevant structure of resources and tasks of lower levels of authority,
- decentralisation and macroeconomic coordination, and
- decentralisation and (non-)transparency (Tanzi, 2001).

Certain conditions must be fulfilled to achieve the basic purpose of fiscal decentralisation. Without a doubt, one of the main conditions is that a decentralised unit is autonomous in terms of financing. This means that is has a diverse range of financial resources available to cover the costs incurred with the delivery of the agreed public goods to its inhabitants. The basic financial resources are:

- own taxes determined by a decentralised unit alone or which were determined with the law and are used by all decentralised units,
- tax resources shared by a decentralised unit with the state (so-called assigned taxes),
- non-tax income of various types (taxes, charges, subsidies, other personal income), and
- borrowing.

When preparing a suitable vertical public finance structure it is, therefore, vital to observe the characteristics of a local community which are ultimately a tax basis and

conditions for the amount of the collected resources. It is important that a local community, to a certain part, has an option to determine so-called own taxes, which are formed based on the information it has about its inhabitants, their assets, moral values, economic power, habits and, especially, needs. This makes it is easier for the internal financial construction of a decentralised unit to close; the principle of its autonomy is realised and the effect of increased national economic benefit is achieved. (Brezovnik, 2003; Oplotnik & Brezovnik, 2004). Responsibility for stability is primarily assigned to the central authority, partly because of the problems that would arise in relation to local financial resources in the case of local authorities' independence. Even though the international macroeconomic environment is changing in the direction of fiscal decentralisation and that decentralised local communities play an important role in stabilisation in industrially developed countries, it is obvious that the stabilisation function in developing countries is the function of the central authority. Here, it needs to be noted that the role of local communities in the stabilisation function in developing countries is minimal. Additionally, local communities are often financially highly dependent on the central authority, even in relatively decentralised systems. Besides the mentioned, financial (fiscal) resources of local communities being especially problematic in developing countries, they are generally also not based on stable tax bases, such as assets, but on resources that depend on economic activities in a local community, such as agriculture, economy, etc. According to the mentioned theory about fiscal decentralisation, responsibility for distribution, the same as responsibility for stability, is primarily assigned to the central authority. Such primary responsibility of the central authority can be justified with the following:

- only the central authority is in the position to reallocate financial resources from the wealthier to poorer local communities;
- various programmes of financial resource redistribution between local communities may cause a range of problems, provided that the productive factors are highly mobile. This means that residents and economic entities move from poorer local communities to wealthier ones;
- local communities endeavour to collect public revenue by resources, which are progressive and simple (Smoke, 2001).

The role of decentralised local communities in the function of public finance resource sharing (allocation function) is substantial, primarily because it is impossible to unify public services in all local communities of an individual country. The general welfare in a local community can only be achieved with proper decentralisation, as residents of an individual local community can independently choose public goods and financial resources to cover public expenditure. In the case of a unified offer of public goods, decisions about the quality and effectiveness of the offer are made at the central level. Such a system, however, is not customized to the population living in the area of an individual local community. This is why decentralisation is important, not only because of differences in the offer, but also because decisions regarding public resource consumption are tied to the actual source of costs. If an individual country has a larger

number of decentralised local communities, there is greater likelihood for innovation and improvements in the offer of local public goods and services (Brezovnik, 2003).

6 Types of organisations

The most general classification of organisations (which are dealt with every day) is the classification by the goals for which they are established and the method by which people join them, namely: territorial organisations, personal, functional and administrative organisations (Šmidovnik, 1980: 66).

6.1 Territorial organisations

Territorial organisations are focused on a certain territory and the handling of the territory-related problems. Territorial organisations include all territorial communities (rural and local communities, municipalities, provinces, regions, federations), which make up the state. The essence of these communities is their focus on a certain territory (the territory of a rural, local community, municipality, state, region, etc.). Their function is to create general possibilities for the life and work of people and for the functioning of economic and other organisations on a certain territory. This way they ensure the performance of activities in several social fields – the safety of people and assets, the functioning of the political and economic systems, the functioning of all necessary social activities, etc. An essential feature of territorial organisations is that they are organisations of authority that have political power which they can use to perform their tasks in the context of constitutional and legislative provisions. The state is the fundamental territorial organisation. There is no social community in the world that is not organised as a state or that is not included in a state. Today, the state is always the organisation that has the physical power to enforce its power as an organisation. The state is the supreme organisation to which all other organisations in its territory are subordinate and which has an influence on every organisation in its territory (Brezovnik, 2003).

6.1.1 State

The concept of the state has many dimensions. It is always the central social phenomenon; therefore it is not surprising that the state has always promoted extensive mental responses that have attempted to enlighten its essence and social function from various philosophical and political aspects. It has been the subject of philosophical, sociological and legal research, all leading to various justifications for its fundamental features.

Philosophy, for example, considered the 'state as an idea' (ideal phenomenon), whereby the antique philosophical rationale (its most prominent representative being, without a doubt, Plato with his objective idealism) derived from the fundamental finding that the

essence of a state is not empirical reality, but the state is an independent spiritual formation, whereas in reality one can find only its reflection.

The modern version of such a notion was developed by the German philosopher Hegel, who saw the state as the most perfect and highest form of human spirit development, the realisation of the moral idea and the most perfect human freedom. His philosophical justification of the state was later more or less arbitrarily entered into totalitarian political ideologies, which were used to justify the requirement for complete subordination of an individual person to the state authority.

Moreover, authors mention 'contractual theories' (at least those important for the formation of a modern liberal state), which derived from the division of social development to the social (pre-state) and state situation in the 17th and 18th centuries. The social situation was, at least according to the optimistic version (John Locke), a situation in which people had certain fundamental natural rights, but these were not properly protected in the pre-state situation. In order to achieve their effective safety, people established the state with a 'social contract', outlining the limits of its interference with human rights. At the same time, this theory offers suitable organisational formation of the state authority as the most essential guarantee for effective performance of its fundamental function (the theory of shared authority and the right to control its functioning).

In the 19th century, the 'biological theory of the state' was developed under the influence of important findings in biology. By more or less consistent use of the findings of natural science, this theory tried to explain the complex essence and functioning of the state. It was claimed that the state was a kind of live organism to which similar legalities applied as for all other live organisms.

The modern legal theory about the state sees an exclusively or predominantly legal phenomenon in the state. If the state did not have a legal element, as claimed by its proponents, the state could not be differentiated from other more or less similar organisations. The legal notion of the state was most strongly enforced in the time when the modern legal state was being formed. The most radical representative of this theory is Kelsen, who claims that the state and law are identical phenomena, that the state is just the second expression for the entire legal system. According to him, the state is merely the personification of this system and has no own existence outside of law.

'Sociological theories about the state' perceive the state as a special social phenomenon, which was created by people in order to ensure social peace and protection of the general social interests. A solidaristic version arising from the complexity of modern life and branched division of work emphasises that the state is a product of social solidarity, which requires effective protection of the general social interests. The division into the governing people and their subjects is primarily an inevitable consequence of the division of work in a complex social organism. The theory of force

sees the essence of the state primarily as an effective tool used by the governing social group to subjugate the majority. Such a perspective of the state in this strict form was developed by Marxism, which sees the fundamental cause for the appearance of the state in a society divided into classes, its constant social conflict, arising especially from private property, and the appropriation of the excess value based on it. Such conflicts can be managed to the benefit of the governing class merely by the state's organised force. By eliminating classes and other features of the class society, the state will become unnecessary, hence, it will gradually become extinct (Kušej et al, 1992: 30-31).

According to Spektorski, all attempts so far to frame the concept of the state into one definition have been simplified. Authors usually tried to define the concept of the state either in one phase of state development or only, for example, from a legal, political or sociological aspect. However, regardless of the simplified definition attempts, the state can also be defined by limiting only to the fundamental elements that make up the concept of the state (the formal concept of the state). According to this, it could be said that every country is made up of three elements: the territory, population and authority (Kušej, 1992: 30-31).

The aforementioned elements are the condition for the existence of a state. The fact that a state must have its territory arises from the fact that without the material limits of territory, a state cannot be separated from another state and that no force in the state can keep people in a community, if they are not, at least materially, limited by territory. Of course, people must live in a territory, since the state is a 'social phenomenon'. The state must also have a legitimate authority. Its organisation depends on the legal rules applicable in an individual state. This means that every state must be organised in some way, as in the opposite scenario there would be anarchy in which individuals would prove their own power over others, instead of everyone being subordinate to the common social power (Jovanović, 1922: 18).

In theory, such a classical notion of the state's elements was not unanimously accepted: a part of theory accepts it; another extends it, while the third entirely refuses it. A part of the theory specifically points out that the state is a legally regulated organisation. If there were no law, the state could not exist, which is why law needs to be determined as a component (element) of the state. Such a conclusion applies, *mutatis mutandis*, in the opposite way. This means that the law is an element of the state, as it creates and sanctions it. Under this definition, the state and law are intertwined and they form a dialectical unity (Kušej et al, 1992: 1988).

6.1.1.1 The concept of territory

According to Pitamic, legal amalgamation of people can be established wherever there are people. If legally amalgamated people do not have a permanent residence but they go from one place to another, the rules of such organisation are always enforced where the people are located. The territory where the rules of such an organisation of people

are enforced changes on such occasions. Since everything that is happening must happen somewhere, the issue of space cannot be questionable in this sense. What can be questionable is whether consistency, certainty and limitation of space are essential for the concept of the state. With the settlement of people in one place, the rules of society were enforced in the same, that is, permanently populated territory, which was, united with the state, called the 'national territory'. With permanent settlement, the legally existing organised nations were given the chance to permanently determine the local scope of a state's legal rules. Hence, such local extent or territory has become the essential element of the current states (Pitamic, 1927: 23-24).

Throughout the development of society and, hence, the state, the concept of territory spread from the continental definition of territory to the so-called territorial waters and airspace above the continental territory of a state. The modern definition of the national territory says that it is the part of the globe on, below and above which the state sovereignty is implemented (Spektorski, 2000: 66).

According to the aforementioned, the territory of a state could be defined as a three-dimensional space consisting of the territory's surface area, airspace above, and the underground space below it. Of course, this includes the coastal sea of the state, together with the water mass and the seabed. Such territory is limited by state borders (Vrban, 1995: 65).

State borders represent a line (or more accurately, a vertical surface delineating the surface of the floor, the underground and airspace), which delineates territories of neighbouring states and to which the sovereignty of a state reaches.

The concept of sovereignty represents the territorial and personal dimension of the state authority, which holds the monopoly of assets for physical coercion in the society. Such monopoly in the narrow sense gives the state organisation the character and quality of the strongest and highest force in society. Hence, the state authority is called sovereign or we even speak about state sovereignty.

State sovereignty is usually divided into so-called external and internal sovereignty. External is a synonym for independence of one state organisation towards the other organisations of the same kind. The concept of internal sovereignty is an expression for the fact that state authority is considered, in the limits of a national territory, as supreme, independent, original, comprehensive and unified (več Kušej et al, 1992: 31, 33, 40, 54, 55, 187).

6.1.1.2 The concept of population

In addition to territory, the population is a condition for the existence of a state. A state simply cannot exist without the population. A population living in the territory of a state can be defined by two aspects, namely the narrow and the broader (Perić, 1981: 126).

According to the narrow aspect, the population is made up of individuals who have a special bond tying them to the state, that is, citizenship. According to some definitions, citizenship is a common expression for all legal rules tying a person to a certain state (citizenship is legal affiliation to a certain state – a network of rights and duties that tie an individual to a certain state). In Antiquity, these rules were almost equated with the entire law in many states and 'legal benefits' in a state only applied to its citizens, whereas foreigners had a lawless status. The scope of rights applying to foreigners was extended with general development of civilization and democracy. Today, foreigners and citizens enjoy almost equal rights.

A citizen is, therefore, a person who is legally tied to a certain state and, on this basis, has rights and obligations pursuant to the regulations of the state. Each state's legal order acknowledges a special legal position (status) to the persons it considers as its citizens. This way, citizenship can be determined as a special legal relationship and affiliation of an individual to a state. Citizenship represents a constant legal position and relationship of a person (citizen) to the state and, hence, a special circle of rights and obligations (attaching to both the citizen and the state) (Rupnik et al, 1996: 58).

According to the broader aspect, a population is made up of other individuals who live in the territory of a state (in addition to the aforementioned population in the narrow sense). These can be foreign citizens (foreigners), individuals without citizenship (stateless persons) and individuals with dual citizenship (Perić, 1981: 126).

6.1.1.3 The concept of authority

The concept of authority is a social concept that can be understood as the relationship between two entities. Authority means that one subject is superior to another, that is, it determines (dictates) the behaviour of the other entity, which yields to the first one. Authority, therefore, means giving orders about behaviour to somebody else who listens to such orders and is obliged to fulfil them, that is, authority means superiority of one entity's will over the will of another entity (Lukić, 1961: 33).

The state is a legal entity under public law which has the power to command. Based on such power, it determines the legal order that binds its population and bodies to certain behaviour and conduct. The state may use 'physical coercion' to enforce its will in establishing legal order. The state's 'physical' coercion is seen as a reflection of the state's authority and this is why in the eyes of an individual person the state authority is often equated with state bodies, which in a concrete situation decide on the use of

physical coercion. State coercion as a reflection of state authority is not the major reflection of the state's legal power. By itself, taken as a fact, it does not differ from any other form of coercion, where a stronger entity could exert over the weaker one. But what is typical of it is that, unlike other types of coercion, it is used based on legal order as a legally permitted type of coercion. The major reflection of the state's legal power is not state coercion but determination of the legal order. The state authority is not only a reflection of the use of state coercion, but also a reflection of the power to determine the legal order (Jovanovič, 1922: 127).

From the legal point of view, state authority is the highest in its field. This special feature of the state authority arises primarily from the position and role of the state in the broader society. Its special feature as being the highest in a certain territory is called 'sovereignty'.

As mentioned before, state authority is the highest, but not the only authority in the national territory. In addition to the state, there are other public law entities which have the power to command and use coercion. One of such is, for example, a municipality as a form of local community, which is, however, not equal in terms of power, yet it enjoys a certain level of sovereignty on a limited territory of the national territory. At this point, it is important to mention that the right to command and use coercion enjoyed by other public law entities derives from the state's legal order (this is particularly noticeable in the example of a municipality which is organised based on the national law). A state is, thus, an original public law entity, whereas all other public law entities are derivatives, because their authority derives from the state authority.

Equally, as with the general concept of authority, state authority is a social concept or, more precisely, a social relationship in which one side gives orders and the other side is obliged to observe such orders. The commanding entities are state bodies; the entities obliged to observe the orders are citizens and hierarchically lower state bodies. In order to differentiate state authority from other authorities in the state, it is not enough for it to be stronger than any other authority in the state, but is must protect the broader social interest. The narrow concept of state authority also represents the state's apparatus of coercion or the state organisation in the narrower sense, that is, state bodies as a special apparatus of coercion (Friškovec & Perenič, 1979: 49-50).

Based on the above text, it is essential for the existence and coherent civilisation development of the state that the state exerts actual force (state coercion), which it can use to realise its commands (Pusić, 1974: 73).

6.1.2 State organisation types

Throughout global social development, the state has also developed; it is comprised of three fundamental elements, namely the 'territory', 'population' and 'authority'. Their

features were described in previous chapters. In the modern world, there are several types of state organisation, which are described below.

6.1.2.1 The concept of state organisation types

The types of state organisation depend on the legal (in)dependence of the organisational parts, which make up the state, and of the legal relationships established between them. These relationships are either 'centralised' or 'decentralised' (Kušej et al, 1982: 54).

Typical of an existing organisation is that it has central authority. Central authority applies to the entire organisation, meaning its decisions are compulsory and binding for all of its members. By understanding the state as an organisation, it is typical that it has the central, that is, state authority. It is, however, also important that a branched organisation enables the establishment of non-centralised authorities, which apply to an organisationally limited area and whose decisions are neither compulsory nor binding for all members of the organisation.

State organisation is most frequently divided under the territorial principle. Authority of central bodies, therefore, applies to the entire territory of the state, while authority of non-central bodies applies to certain parts of the territory.

The system under which a certain state has central and non-central bodies is marked with the concept of 'actual decentralisation'. In this system, authority is not exerted only by central bodies but also by non-central ones, because they make decisions and realise them. Based on this we can say that there is no state that is completely centralised. Yet, according to *Lukić,* actual decentralisation must be separated from 'legal decentralisation'. From the legal perspective, non-central bodies can have various relationships with the central authority. If they exercise authority on behalf of central bodies as subordinate bodies and have no independent authority in such enforcement, it is a matter of legal centralisation and non-central bodies are centralised. If, on the other hand, non-central bodies have original independence, we speak about decentralisation.

As mentioned before, relationships between individual bodies which can be centralised and decentralised should not be neglected. Centralisation as a concept of mutual relationships exists when higher bodies do not control it or lower bodies operate constitutionally and lawfully, but when they can annul and change decisions of a lower body, even when such a lower body has not acted soundly. For centralised bodies, this means that they are not independent in carrying out the tasks that fall within their competence. In this perspective, decentralisation is strictly separated from centralisation: where relationships between state bodies are decentralised, lower (decentralised) bodies are independent performers of work tasks (Lukić, 1961: 154-155). States are, thus, classified in various types of state organisation using the criterion of the mentioned legal decentralisation. If decentralised units have the same level of authority as states, we speak about the type of a so-called composite state, and when the

level of decentralisation is lower, we speak about a single or unitary state, which can be centralised or decentralised (Friškovec & Perenič, 1979: 83).

6.1.2.2 Unitary state

In a unitary state, relationships between state bodies are centralised and they form a unified organisational system. Of course, a unitary unit can actually be decentralised and divided in administrative territorial units, which have local self-government or a certain type of autonomy. The essential element is that the level of independence of these units and the scope of competencies and decentralisation does not reach the limit, which is typical of a federative state (more in: Kušej et al, 1992; Lukič, 1961; Friškovec & Perenič, 1979).

A unified state is not necessarily centralised but it can have a high level of decentralisation. The latter includes Slovenia with its established local self-government.

6.1.2.3 Composite state

A composite state, as the name suggests, is composed of several states. This means that there is a central body in such a state with a character of a sovereign body, and it has sovereign state authority. Additionally, there are territorially decentralised bodies, which enforce such high levels of state authority that they alone are considered as sovereign, although they are to a certain limit subordinated to the central authority. This means that the relationship between the member states, even though they are very independent, is so strong that the union of several states appears as one composite state. Types of composite states include confederations and federations.

Confederation is established with an international treaty with which a union of states and certain types of joint bodies with various competencies are established. In this case, it is a union of states, as states remain sovereign and have unlimited authority in a confederation. The authority of a union is entirely dependent on member states and not the other way around. This way, confederate bodies appear only as an auxiliary tool of member states and they coordinate mutual activity, but their decisions are not binding for member states. The modern world does not know confederations, although certain united states with some elements of confederations exist.

Contrary to confederation, a federation's body of member states is the holder of the state, that is, sovereign authority in the correct sense. A central body has the right to make decisions which are compulsory for state bodies. In a federation, member states keep a broad extent of state authority, but they are subordinate to the central body (Friškovec & Perenič, 1979)

6.2 Functional organisations

Functional organisations are those whose basic policy is focused on a certain activity (function). In these organisations, neither the authority nor the territory plays a special role. For example, for a pumpkin oil factory, connections with agricultural cooperatives and other producers of pumpkin seeds is important regardless of whether they are from the same municipality, state, etc. Functional organisations work under the input–processing output formula, meaning they can only exist if they are operationally effective. The fight for existence thus continuously forces them to make progress and discover something new (innovations) and eliminate everything that hinders their existence and development. It is exactly this fight for existence and competition between these organisations that contributes to fast economic and material progress of the entire society where such organisations operate.

Organisations that carry out activities in the public interest, which are importantly connected to the territory where they operate and which offer their services to the inhabitants of such territory (e.g. schools, health institutions, public companies, etc.) represent a special type of functional organisations. These organisations often have certain powers based on which they decide about the rights and obligations of citizens, which is otherwise only in the domain of territorial organisations (Grafenauer, 1988: 14-15).

6.3 Personal organisations

Virtually every organisation is personal, as people are its essential part. But here, we consider those where individuals come together in order to satisfy their own interests as personal organisations (e.g. associations) and which are generally considered as amateur. Based on the law, some of these organisations can carry out certain public tasks (e.g. a public interest association).

6.4 Administrative organisations

An administrative organisation is an organisation where people carry out social affairs as their permanent job based on the permanent division of obligations and authorisations (Pusić, 1989: 6). Under this definition, the main features of an administrative organisation are:

- social affairs; administrative organisations play a social function, namely to carry out those affairs that are needed by the community and which individuals cannot carry out, or at least not well, by themselves. These are the affairs which a social community believes have to be done in a society as a whole, therefore it establishes administrative organisations to do that.
- permanent division of obligations and authorisations; or in other words, the rights and obligations of administrative organisations and people who constitute them are determined by regulations. Here, it needs to be pointed out that administrative

organisations have a specific role in the system of political authority, because they are one of the instruments of authority.

- professional nature of work; meaning that employees in these organisations receive payment and are, hence, also existentially connected to such organisation.

As already mentioned, administrative organisations play a dual role, namely • they carry out certain social affairs and • they have a specific role in the system of political authority.

6.4.1 The emergence of administrative organisations

Since public administration operates to satisfy public needs, the basic motor for the emergence, growth and abolishment of administrative organisations in public administration is the emergence of public needs, awareness of such needs and belief that only a public administrative organisation can satisfy these needs. In terms of their objectivity, the mere existence of public needs alone is not a direct reason for the emergence or abolishment of administrative organisations in public administration, but the recognition of these needs and the recognition of them as general social needsampak spoznanje teh potreb in njih priznanje kot splošnih družbenih potreb. This is a question of how public interest is created and enforced. All circumstances that affect the formation and enforcement of public interest also affect the emergence and abolishment of administrative organisations in public administration. At this point, it should be noted that administrative organisations are not established because of the awareness that a need has arisen in the field of public affairs which requires a proper solution. It is also necessary to recognise and acknowledge that an affair can be solved at all and, moreover, that it can be solved by establishing an administrative organisation or by entrusting the affair for resolution to some already existing administrative organisation. When deciding that the satisfaction of a solvable need should be entrusted to an existing administrative organisation operating in the field of public administration, the following two factors are especially important: • belief that in order to finance such need, resources can and must be provided solely from public resources, and • belief that, if necessary, such an affair can be solved by using state coercion. What is essential regarding the decision about whether the solving of a certain affair should be entrusted to an administrative organisation operating in the field of public administration is the awareness and belief that such affairs could not be solved at all, if the society as a whole did not ensure the solving thereof through public administration (Bučar, 1969: 303-306).

What an administrative organisation, which is to satisfy a certain public need, should be like depends most of all on the nature of activity that such an organisation should carry out: should the organisation only arrange certain social relationships (an administrative organisation with regulative functions) or should it deal with direct performance of services (the organisation of public services for individual fields). Should an already existing administrative organisation assume new obligations or should an entirely new

organisation be established for the satisfaction of individual new needs. In one way it depends on the judgment of how much a specific, existing organisation will be able to focus on newly allocated matters, how much the solving of new matters is complementary considering the tasks it is already carrying out, etc.; However, it is even more a political issue and, of course, an issue of an organisationally technical nature. What position an individual administrative organisation attains in the structure of public administration is, in the first line, only a political issue. This is particularly a matter of relationships between individual social communities, that is, a question whether protagonists of a certain interest have managed to ensure that a matter is solved by a broader or narrower social community (Bučar, 1969: 306-308).

The concept of administration and governance

The 21st century is a century of governance. Unimagined technological development and the related division of labour and transition to the information society have created the conditions for a high degree of interdependence of individuals in the modern society, who are able to obtain the many goods to satisfy their own needs only in a process of mutual exchange or through an organised social community. The social system is becoming increasingly complex, and the chain of medial needs (Bučar, 1969: 42), which are difficult for individuals to recognise and impossible to satisfy alone, is getting longer. In terms of the development made so far and the future development trends, spreading governance as a special integrative activity in the society is an objective necessity and, likewise, the growth in the number and scope of administrative organisations or administrative system in the global society or its parts is an objective result thereof (Šturm, 1981: 48-50).

In order to understand the process of governance and its role in the modern society, we should first clarify the concept of governance and its closely related concept of administration, whereby the number of their definitions is almost as big as there are authors dealing with this issue. The purpose of this paper is not to make a new definition nor polemicise with the existing statements. However, in order to better understand the public administration system, we must lean on certain theoretical points without analysing and explaining them in detail.

The concepts of administration and governance denote the same social phenomenon, whereby the first concept includes the organisational and the second the functional perspective. This is where the majority of authors agree, whereas they disagree regarding the content of the concept 'governance'.[5] The prevailing movement abroad, which has its representatives in Slovenia, claims that governance is a decision-making process about common goals and ways to realise them (Bučar, 1969: 42). Such activity is performed via various phases which together form the administrative process. The main phases are determining social needs (what is the social goal), collecting information (establishing the actual situation and other relevant environment), forming alternatives for decisions, and choosing between the alternatives or the decision-making

[5] Some authors consider the concept of 'administration' to include both the organisational and functional aspects, or only the functional aspect (Godec, 1977: 1). We will use the concept of 'administration' in the organisational and functional sense when discussing administration in general, unless the otherwise stipulated by the context.

process alone (Simon, 1960: 1). Governance is, thus, a very complex process, which includes not only the direct decision-making process, but also all information-gathering and alternative-creation activities, which is the essential decision-making basis. Such definition of governance is extremely broad, as it includes the entire social decision-making process in the field of social affairs, whereas organisationally speaking this activity is carried out by the entire administrative-political subsystem where 'classical' administration is only one of its parts (Bučar, 1981: 28).

Another movement represented by certain Slovenian representatives of the administrative science defines governance as the essential auxiliary activity, which enables uninterrupted flow of processes in the fundamental activity (Vavpetič, 1961: 21). This definition is slightly narrower than the first one, because it only includes the instrumental part of administration, that is, decision-making in the context of the already adopted general decisions and professional help in decision-making at all levels. Its special value is in the emphasis on the distinction between the so-called fundamental and administrative activity, whereby in the cybernetic model of administration the administrative activity would be the one carried out at the level of a transductor and in the pre-regulation and post-regulation part of the system, the fundamental activity would be the activity of an effector, whereas the activity of the selector is not included in the definition (more Mehl, 1971: 115-174).

For our analysis, both definitions of the concept ‘governance’ are acceptable. The first one illustrates the connection and dependence of administration on the entire administrative-political subsystem, meaning that administration cannot be analysed independently of this subsystem, because the majority of its influential factors lies in it or even outside of it in the global social system. Administration must, therefore, be analysed comprehensively as a system functioning in an environment that is relevant for it and which has a decisive impact on it.

The second definition points to the relationship between the fundamental and administrative activity. The definition of the administration’s role in the society depends on the correct definition of this relationship. In this field, we used to be and still often are witness to many simplified ideas and solutions, which mean misunderstanding the depth of this problem and cause significant damage. In this approach, administration is usually understood as a part of the social direction, that is, unproductive activity, which in relation to the fundamental activity means only unnecessary cost, therefore it needs to be as limited as possible at any cost. Such thinking has resulted in many public administration reform attempts, whose fundamental goal is to reduce administration, usually with non-selective and linear measures.

But the administration’s unproductivity thesis is far from the truth. Every activity that is vital for the functioning of the system is productive exactly because the system could not function or exist without it. Here, we do not mean the productivity in the simple materialistic meaning, although it could be contradicted that the administrative activity

indirectly contributes to the value of a material product. From the system functioning perspective, every activity can be productive or unproductive, depending on how much it contributes to its normal functioning. Administration is always productive when it takes proper decisions in terms of operation and development of the social system. Moreover, modern administration is strictly required not to have only the instrumental character. The environment in which it operates is explicitly dynamic, so that it has to include new components, both value as well as professional, into its decision-making premises (Bučar, 1981: 63). Such administration is even highly productive, as it uses its creative functioning to regularly adjust the system to its environment.

Similar applies for the part of administration that prepares decisions strictly in the professional terms. Here, its role in the system is almost entirely dependent on the role of the decision-making centre to which it serves. If such centre takes decisions only formally without any new contents added, then its professional-technical administration is unproductive and as such redundant. But it is not only the professional-technical administration that is redundant, it is also the formal decision-making centre, whereby the latter is the sole culprit for the incurred situation, as there would be no redundant professional-technical administration if there were no redundant decision-making centre.

It is also difficult to agree with the statement that the administrative activity is less important than the fundamental activity. If governance means making decisions about the goals and methods of their realisation, it is clear that both activities represent a unified process that should result in a certain system change (Bučar, 1969: 35). Without the administrative activity, the fundamental activity is senseless and vice versa. Therefore, the statement that the administrative activity cannot be its own purpose is correct; it must enable an uninterrupted flow of processes in the fundamental activity. But on the other hand, fundamental activity cannot be its own purpose. The purpose of every fundamental activity must be the production of material or spiritual goods, which are able to satisfy a person's needs. If it does not produce such goods, then it is unproductive in our sense, hence it is redundant. Both activities must serve the same process of producing goods necessary for people (Trpin, 2013).

1 Governance and social regulation

At the level of the global social system, governance as a decision-making process about social goals and methods of their realisation is reflected as a social regulation process. In this sense, the social regulation process represents the process of creating legal norms and the process of their realisation. The same as any governance, this process goes through the mentioned phases of social needs or social goals determination, gathering information, forming alternatives and making decisions, whereby the first phase includes political starting points for the preparation of regulations, the second phase includes professional and analytical materials for the preparation of legal norms, the third phase includes their proposals and, finally, the fourth phase their adoption. This

way, we first get a decision at the highest institutional level, which is reflected in the highest hierarchical level of an individual legal norm. Since this decision is usually not directly operative because of its generality, it needs to be operationalised with further administrative processes at a lower institutional hierarchical level. These administrative processes run through the same phases and also end with the adoption of a legal norm, which is hierarchically lower than the original norm. Since this norm is also adopted at a very high institutional level, it is often not directly realisable, therefore it may be concretised with an administrative process at an even lower institutional level, which results in the adoption of a hierarchically even lower legal norm. At this level, social regulation runs as a network of administrative processes at various institutional levels, the result of which are hierarchically different, yet in principle harmonised abstract legal norms, which as a whole constitute the legal system.

Social regulation does not only end with the creation of abstract law, but it also includes a concrete regulation. The latter occurs with the application of abstract law to a concrete life situation based on which a legal norm occurs that regulates a concrete social relationship. Even though this is a matter of governance in the sense of decision-making, the process of such decision-making does not significantly differ from the decision-making process in abstract law creation. Decision-making in concrete regulation does not run through various phases of administrative process, but through the comparison of abstract legal norm hypothesis with concrete social relationship, and if such two elements match, the decision is used to apply the disposition of abstract legal norm to a concrete social relationship, which is this way transformed into a concrete legal relationship.

The entire social regulation is thus performed as a process of creating abstract and concrete legal norms.[6] The institutional reflection of this process is represented by territorial or regulatory administrative systems. In the context of a global social system, territorial administrative systems are special subsystems, whose fundamental task is to implement social regulation. With this function they directly affect the behaviour of all other social subsystems, and they also have a very strong effect on the position and functioning of the entire social system. From the legal-organisational perspective, these administrative systems represent territorial legal entities under public law.

Social regulation is the fundamental connecting element of social system. It is not its own purpose, but it is focused on the values acknowledged by representatives of a certain social community as legitimate, hence they become social values. Since the ways to realise social values are different, and the subjective images of individuals about the methods to realise such values can also be different, this may give rise to social conflicts. Such conflicts are, at least to a certain limit, eliminated by social

[6] Here, we mean social regulation in the narrow meaning of the word, as in the broader meaning, social regulation is not implemented merely as a process of forming legal norms, but also other, especially moral norms.

regulation, which uses its norms to determine the rules of conduct or predictability of individuals' conduct in mutual interactions.

In terms of social regulation, conflicts arising from different ways to realise social values and the differences in getting to know them can be managed relatively easily. Such conflicts represent a more or less normal situation in the society which social regulation faces every day and it is also adjusted to it. The situation is different when entirely different values are encountered in the same social community. In this case, conflict is so strong that the usual social regulation can simply not rise to it, therefore suitable mechanisms to mitigate such conflict must urgently be found. These mechanisms are found particularly in politics which must function harmoniously to result in the formation of new common values or to achieve an agreement about their mutual respect. By only using regulation and coercion arising from it without previous and parallel coordination of the political process, the social system will inevitably fall apart, because it lacks the fundamental connecting element, that is, common values. Nevertheless, the importance of regulation is still extremely high, as it can, if used correctly, make a huge contribution to restoring the social system stability.

Similar situation occurs if new social values are created and they start ousting the old ones. New values start being created when the old ones turn out to be inappropriate considering the situation in the social system and its environment. Such situation can be seen in modern consumer societies where the fundamental values of consuming and producing meaningless goods have led to the situation where no way ahead is seen. At this moment, we are thus most likely in a process of revaluating our values, which must result in the formation of such values which are friendlier to an individual person, the society and the environment. Here, social regulation will again play an important role, as it will be able to form a new society with the political process of new value internalisation.

Social conflict does not only exist because of the difference in the values and their different perception, but also because of the limited goods, which are able to satisfy a person's needs. Individuals get the majority of these goods through the market exchange system, whereby their distribution runs in accordance with their economic power. The diversity of their economic power thus causes social inequality and, hence, social conflict, as based on such power certain individuals can usurp more goods than others. The diversity of the economic power is again based on social regulation or legal frameworks, which enable one individual to obtain higher economic power than another one. Property right as the fundamental socioeconomic relationship in the modern society whose fundamental economic perspective is eligibility to usurp the fruit, actually creates unequal economic positions of individuals in the society, which are reflected in uneven opportunities to usurp goods to satisfy their needs. Moreover, unequal positions are also created by differently monopolised abilities of individuals or their knowledge. These abilities have their economic value and the more they are monopolised the higher the economic power of an individual holding them. As result,

such individual can again usurp more goods than the one who does not possess such abilities.

Despite the fact that these are the main factors causing social inequality, their social role is, at least to this point, irreplaceable, as they represent the basis and motor of the modern society's development. All previous attempts to deny them in the semi-past history have failed miserably, causing a developmental lag in the large part of the world, which we are today still overcoming with immense efforts. Here, we have noticed that the importance of the property right and the entire property arising therefrom has been changing, as the latter is gaining on the social function. Senseless accumulation of material goods, which do not reflect the realistic human needs has resulted in the current crisis situation, which is reflected in degradation of spiritual and social values and in a high degree of environmental degradation. Property right as a fundamental motor of social development will continue, as we currently cannot come up with a better mechanism, but its social role, which will lead to general social welfare and not to senseless money-making of individuals will have to be much more emphasised. In addition to the political process of forming new values regarding the understanding of the new role of property, this will be greatly supported by social regulation, which will have to set new regulatory frameworks to realise such values.

On the other hand, the second developmental factor, that is, knowledge, is becoming increasingly important. Capital is not creative by itself; so far, it is just a mechanism that is supposed to give the foundations and encourage creativity, which can only be ensured by a person as the holder of knowledge. Such increased weight of knowledge as the basic motor of social development falls into the scope of new value creation, which will parallel to the process of their internalisation be reflected in new social regulation (Trpin, 2013).

2 Governance and provision of public goods and services

In addition to market goods, certain goods are not obtained through the market exchange system. These are primarily goods for general use, that is, those available in unlimited quantities so that they can be obtained by anyone without interfering in somebody else's interests or putting at risk somebody else's obtaining of such goods.[7] Owing to their principal limitlessness, these goods do not cause conflict in their obtaining. The characteristic of general use goods may arise from their nature or social regulation can define certain goods as general use goods. For example, air is general use good because of its characteristic, whereas the use of certain public areas is general use good because it was defined as such by the law. The difference between them is substantial, as in the first case, air is no longer considered as general use goods if its

[7] Limitlessness of such goods is, of course, relative and subject to change with time. For example, water used to be generally a general use good, but today this is not true for the majority of drinking water anymore because of the increasing pollution and method of its distribution.

characteristics change, whereas in the second case, the goods are no longer in general use if so determined by the law. In the latter case, it is often difficult to determine whether it is a general use good or a public good. General use goods determined by the law are always those whose usurpation is always and without any limits available to all representatives of a social community without setting any special conditions or even requiring any indirect payment.[8]

The second type of goods that cannot be properly obtained through the market exchange system is public goods[9]. Unlike general use goods, public goods are limited, although

[8] For example, street lights are not general use goods, because users have indirectly paid for it via taxes. From this perspective public use goods are those goods defined by the law as natural public good and those defined as built public good, as the latter are always indirectly paid. The concept of natural and built public good (more Virant, 1995: 353-363).

[9] Public goods are distinguished from other goods by certain properties or characteristics. For public goods, it is essential that they are provided to the broader group of population in a broader area. They are supplied jointly or collectively. They are financed jointly and severally, meaning they there is a general consensus in the society that every individual contributes finances to ensure public goods, although he does not necessarily use public goods. The latter means that they must be financed collectively and independently of an individual. They are non-competitive in the sense that their use does not exclude them from the use of other users. Their main feature is that an individual cannot renounce them in the way that he will not pay for their use (Seldon, 1977: 108-109).

In the administrative law theory, public goods are:

- goods that must be available to everyone regardless of their material or social position; in the modern society, everyone must receive basic education, basic healthcare, personal and property safety, etc.;
- goods that, due to general interest, are even mandatory in modern society; in the form of public administration services, such goods are present particularly in the field of healthcare, veterinary service, public utility service, education, etc., such as: the obligation to treat infectious diseases, mandatory hospitalisation of patients, mandatory vaccination of animals, mandatory use of public utility services (such as mandatory connections to public water system, sewage system, mandatory waste disposal at designated areas), mandatory primary schooling, etc.; such goods are mandatory and if necessary, the social community (the state) must even force them on those who would not realise that they are beneficial for them and that by not using them they would expose at risk the life, health or some other good of other people;
- goods in which it is impossible to individualise direct user; users are all people coming into contact with them, but it is not possible to identify them or charge them a service; these are, for example, collective public utility services (such as the use of roads, pavements, markets, public parks and plantations, street lights, etc.) or the functioning of marine lighthouses, public security service, nature and environmental protection, etc.;
- goods whose producers have, by nature of things, a monopoly over users; here, the principles of market economy do not apply, because competition is not possible, as only one producer may appear in a certain area by the nature of things, for example: in the field of public utility activities, in road transport, water economy, partly in the energy sector and transport system (railway transport) (Šinkovec, 1992: 274-275).

despite being limited, they cannot be the subject of market exchange, as this could lead to social system dysfunction. Such goods are not obtained limitlessly, but individuals obtain them under certain conditions determined by the law. The latter is thus replaced by the market system, replacing with its regulation the distribution of public goods, which is different than it would be in the market exchange system.[10] The reasons for such situation are different and they change from the developmental perspective. The first such reason can lie in the request for equal distribution of certain goods among all representatives of social community regardless of their economic situation. In regard of certain goods, it is impossible to determine the user and scope of his use of good, or this may be economically unreasonable. Certain goods cannot be bought, because if we ensure them for one, we ensure them for everyone else as well. In certain fields, it is not a matter of an exchange process at all, but it is a continued activity of the system whose services are used by everyone. Finally, this is a matter of monopoly relationships on the market where market mechanisms must be replaced with regulation.[11] These are, therefore, different reasons whose common denominator is that market mechanisms cannot be established at all or that in distribution of certain goods they require their substitution with social regulation.

In the narrow meaning, public goods are those that require social regulation for their production and distribution. In this sense, we narrow down the above-mentioned concept of public goods which, in addition to these goods, includes the entire field of social regulation. The latter itself, in the broadest meaning, is a public good, but we will exclude it from this concept in continuation, because social regulation and the provision of public goods in the narrow sense mean two very closely connected, yet very different activities, which have different rules and, in this framework, different functions and organisational forms. The concept of public goods determined this way can be added the concept of services, which are immaterial goods used by individuals to satisfy their own needs. In the sense of public goods, these services can be public, so that we speak entirely about public goods and public services.

Unlike market goods, public goods and public services are not ensured through the market exchange system, but through an organised social community. For this purpose, the social system needs special subsystems called functional administrative systems (more Pusić, 1985: 60-66). The fundamental task of these administrative systems is the provision of public goods and public services whereby these goods and services are not ensured through their regulation but through their direct creation. This way, in terms of their function, method of work, relationships to the environment and the organisational

[10] These conditions can be very different. Some require a lot of activity by individuals, such as in case of education, while others only grant rights, such as in health care, and some almost do not exist, such as in the use of built pubic good.

[11] An example of the first reason is a certain level of education and health care, an example of the second is the use of roads and communal facilities of common use, an example of the third is the provision of general safety and an example of the fourth is the functioning of state administration (more Bučar, 1969: 43-47).

forms, they materially differ from territorial administrative systems, whose fundamental task is social regulation. Despite this, all these systems supplement each other, as the provision of social regulation alone would not be enough to ensure the existence and development of the modern society. Great interconnectivity and dependence of representatives of the modern society requires the provision of many public goods and services, which are directly created by functional administration systems. Regulation and provision of public goods and public services serve the same purpose, that is, assurance of social system's stability and corresponding position of an individual in it. In this, the territorial administrative systems manage social conflicts with their regulation, thereby enabling social coexistence, while functional administrative systems directly ensure those goods and services which are essential to satisfy an individual person's needs which such person cannot obtain alone through the market exchange system, but through these systems. The functions of both types of administration systems thus form the entire function of social management, which on the one hand includes the entire social regulation and on the other hand also the process of direct provision of public goods and public services. From the legal organisational perspective, the entire structure of this function is located in territorial legal entities under public law (regulatory function) and specialised legal entities under public law (direct provision of public goods and services) (Trpin, 2013).

Organisation of public administration

1 Organisation of public administration as a system

If we define public administration as a decision-making process about social affairs integrated into a special system, we should also discuss the entire organisation of public administration as an organisation of the most various kinds of communities integrated into a special system. Every social community that has been recognised self-government, that is, the right to independently decide on its own affairs, has a corresponding right to independently organise the system of its representative bodies and the professional-technical administration. From this perspective, we cannot talk about a unified public administration that is equal for the entire social community and organised under identical principles and that is, organisationally speaking, a united organism. In terms of concept, there are as many different public administrations as there are social communities. The tie connecting individual social communities into a unified system always leads through an individual. All social communities have their roots in an individual person and this is why an individual is the common denominator of the entire public administration. An individual is always the same: he satisfies some of his needs in the narrow community, and others in cooperation with a much larger number of other people, but it is always and in all forms a matter of an individual. Not all broad social communities are a form of narrow social communities' cooperation, but a form through which an individual satisfies his own needs. Broad social communities thus do not represent a federation of narrow units united in it, but they draw their rights to decide on social affairs from the powers of an individual. This is the only way to achieve satisfaction of all needs in a certain suitable proportion. The narrowest unit of social community exists in order to satisfy the specific needs of the inhabitants in its area. If the social form of cooperation of such narrowest units or communities is broader, these communities will not primarily focus, through their cooperation in the broad community, on satisfying the needs that are satisfied by the broad social community, but they will most of all focus on satisfying those needs that they represent. It is always only an individual person who is the end holder of all needs. And such needs will become noticeable in the broad social community only if they represent a form of cooperation of a broader circle of individuals and not their different forms of cooperation. Since a broad or narrow social community is only a form of individuals' cooperation, because it is not narrow social communities but individuals who cooperate in a broad social community, the organisation of public administration as the entire system rests on an individual person. Compared to all other social communities, narrow or broad, every social community is entirely independent and not in superior or

subordinate relation. Unity as a system is achieved by public administration in its reliance on an individual who is represented in it (Bučar, 1969: 213-215).

2 Process of connecting social communities into a unified public administration system

Forcing an individual to satisfy his own needs, also concerning the type and method, without a doubt means interfering with his rights. What gives another person the right to such interference into the individuality of a person? Nothing else but the right to defend his own benefits, his own existence. The social community also draws its right from the same address. The broad social community has such right against not only an individual person, but also narrow social communities. This is definitely a matter of the state's strongest right. The state has the right to order all social communities in its area to satisfy their needs in a certain way and at least in a certain intensity, because it is interested in individual social communities existing and satisfying their needs in a certain intensity (Bučar, 1969: 215).

Such right is, naturally, nothing else but power to force another person to submit to your will. The state draws its highest right from its power, which can be lavishly enforced above everyone who lives on its territory. As soon as the state loses such power, it has automatically lost the right. Just like an individual person, with his needs, is the foundation of the entire public administration system, the state is its top ensuring with its highest power that its unified will is enforced on its territory in the form of an enacted legal system. It is the legal system leaning on the state's executive power that actually connects the entire public administration into a unified system. Self-governance of individual social communities as communities of interest has its space only within the limits determined by the state. For self-government of individual social communities, the state can determine only such broad frameworks that do not endanger its interests. The common state interest will then be the most general framework in which all other social communities on its territory must function; equal relationships continue to the narrowest social community in the same sequence. Individual social communities are joined into a unified system by the unity of interests which are determined so that the interest of the state or the broad social community always comes before the interest of the narrower one, while at the same time such interest of the broad social community is tied to the satisfaction of the interests of the broader community at least in some bottom limits that ensure its existence. Therefore, social communities first have the legal bond connecting them into a unified system. Such relationship and such connectivity continues to the narrowest social community and, finally, to an individual person (Bučar, 1969: 215-216).

Along with the legal bond, we should mention the financial bond. The broadest social community must provide for the basic financial resources needed by every community to satisfy its needs at least in the minimum extent without endangering the existence of the broadest social community. This creates the broader community's new right to an

insight into the narrower social community's needs and its available resources. If a broader social community is to allocate the missing resources to a narrower social community in order for it to satisfy its most urgent needs, the broad social community must first identify the basic needs that the narrow social community should cover to prevent jeopardising its own existence. This is, of course, an extraordinary reduction of such narrow social community's self-government. It must also determine the priorities of the needs to be financed by the narrow social community, as this must precede the broad social community's action with its resources. Moreover, the broad social community must not only have an accurate insight into the financial situation of the narrow social community, but also the right to determine where from and in what way it should get the missing resources before it intervenes with its own. A narrow social community can use its own resources only to cover the needs that are within its competence. How far the broadest social community goes when determining its own powers and the powers and rules of conduct for all other social communities and when determining the levels of the most urgent needs to be satisfied by every social community is an extremely complex issue, which firstly depends on the technological development, the proportion between the forces in the society and its parts, uniformity of resources disposed by an individual community, that is, all the factors that affect the formation of the public administration. State community will primarily enforce the requirement (through suitable legal norms) that all social communities within its framework must realise certain general social principles in their work, which such society considers as basic. A federatively organised state, such as a republic, will for example not allow individual federal units to be organised as monarchies (Bučar, 1969: 215-218).

2 Public administration bodies

Society as an organised community of interest is an organisation. Its internal structure is made up of a range of narrower communities of interest for individual areas or fields. All communities of interest are organisations, each pursuing its own goals in its area. All organisations are formed by their members: citizens, etc. These organisations, communities of interest, usually cannot realise their goals by involving all of their members. They are too large, thereby requiring the division of work in the field of decision-making as well as implementation. There are certain issues that involve direct decision-making of all members of such organisations, however this is usually not the case because decision-making in public matters usually requires special expert knowledge, and in addition the number of such issues is so high that this alone prevents all members of communities of interest from directly deciding on all public matters. This applies even for the narrowest local social communities. Such social communities therefore choose special bodies, their representatives, to decide on behalf and in the scope of the authorisation of such organisation's members as a special organisation. These bodies can be natural or legal entities, individuals or collectives. These persons receive the capacity of a body of a community of interest when a social community transfers to them the authorisation to decide on public matters. The bodies deciding on

public matters by social community's authorisation are public administration bodies. Such authorisation can be direct or indirect. A social community alone cannot directly choose all of its bodies. It will directly choose only those bodies that should, subject to its authorisation, decide on the most general social matters. Such bodies will transfer their received authorisations further down to the bodies under them. This creates an entire system of public administration bodies. In the formal meaning, public administration is simply equated with the system of bodies authorised to decide on public matters. Public administration bodies, however, are not the only ones deciding about public affairs as members of a community of interest can directly decide in some cases, almost always when selecting the most important bodies of a social community (Bučar, 1969: 231-232).

Externally, in the physical form, public administration is formally represented only by public administration bodies; except in cases of direct decision-making, a community of interest appears only through its bodies, that is, public administration bodies. The concept of public administration is, therefore, becoming identical with the concept of public administration bodies. This is the reason why the organic bond connecting social community members with public administration members is disappearing in everyday life. Public administration as a system of bodies is becoming an independent reality in relation to the social community as a community of interest. Communities of interest are disappearing from our concepts as organisations who independently manage their affairs through their bodies, and their membership is turning into an amorphous mass, which is shaped only by public administration. Such notion is the basis for different theories that personify the state as an independent reality, which is all included only in bodies of the state administration, which is entirely independent even in relation to its own citizens. Such concepts were often used as practical bases for various totalitarian systems. Without perceiving communities of interest as organisations forming the structure of a society, it is not possible to properly perceive public administration as a system of bodies working under the authorisation and on behalf of a social community. Such perception of public administration, however, suits the democratic organisation of a state (Bučar, 1969: 231-233).

The bodies acting directly under the authorisation of a social community are called representative bodies. These bodies, too, can be individual persons or a community of several natural entities (collegial bodies). All other bodies, which are appointed by representative bodies, are administrative or executive bodies. The criterion for such distinction is only in direct authorisation of members of a social community, and not in the functions they perform. If they decide on social matters, they manage public affairs and as such are public administration bodies. All public administration bodies are governance bodies because they decide on social affairs and because the essence of governance is decision-making. The concept of an administrative body in practice denotes only those public administration bodies that take decisions, which are necessary in the further process of implementing decisions of a representative body. For an administrative body it is then vital that it is appointed by a representative body, that it

follows its guidelines and takes decisions to execute decisions of a representative body. The latter usually takes its decisions in the form of general norms, which to be enforced require special establishment of the actual situation, comparison of the established actual situation with an example such as anticipated by the legal norm and a decision about a certain norm being applied to the established actual situation. Issuing generally mandatory, abstract norms should be the essential feature of representative body functioning, whereas issuing decisions in concrete cases for the implementation of a legal norm should be a feature of administrative body functioning. Such distinction is only approximate and it does not define the essence of individual bodies' activities. Representative bodies in no way only adopt general, abstract decisions, but a whole range of concrete, directly enforceable decisions. On the contrary, the so-called administrative bodies do not only issue decisions in concrete cases, but often also general legal norms as implementing regulations to legal norms of representative bodies. In addition to issuing general regulations, the execution activity is also not typical of an administrative body. Administrative bodies are governance bodies simply because they make decisions. The difference compared to representative bodies in this context is only quantitative, not qualitative. Representative bodies usually adopt the most general, principal and approximate decisions, while administrative bodies more concrete and direct decisions. The activity that should be triggered by a decision is separated from this process. In the majority of cases, the required activity will not be carried out by an administrative body but by the citizens who are obliged to certain conduct by the decision. The society simply could not exist if all decisions taken by public administration bodies would be enforced by public administration bodies alone. Citizens would remain completely passive. The social community cannot exist if its members do not follow the decisions of their bodies. In such case, the majority rule is that the decisions of public administration bodies are implemented by the citizens as members of a certain social community, and not administrative bodies. And even in cases when it is not expected that a decision of a public administration body will be directly enforced by members of a social community because a special creative activity is required, such activity will not necessarily be enforced by an administrative body alone. Usually, it will entrust the enforcement of such activity to a special organisation. A public administration body will only decide that such an activity must be done, check whether it was performed in accordance with its decision, and decide on the relationships that occurred between it and the organisation that conducted such an activity. The public administration body will conduct certain execution activities directly, e.g. various procurements for the needs of the social community or individual public administration bodies, various services such as road construction, water regulation, etc.). In such case, the public administration body enters into a civil-law relationship with a business organisation and all relationships between them are arranged in this context. The public administration body will entrust certain execution activities whose nature prevents them from being conducted via the rules of market economy or where social needs cannot be satisfied by applying the market economy principles to special public service organisations that operate directly under its direct control and guidelines. Relationships with these organisations will be arranged under

the principles that apply for public administration bodies in relation to authorisation relationship and responsibilities. The public administration body will alone directly conduct only certain execution activities where, for certain reasons, it achieves higher efficiency in satisfying social needs, or it will indirectly organise and manage such activities on its own terms. This applies particularly to those cases where constant uninterrupted activity is required that cannot be accurately determined and measured in advance and where such control is necessary so that this activity cannot be handed over to another organisation. This includes particularly military, police, customs affairs, etc. (Bučar, 1969: 233-235).

Finally, it is not typical of an administrative body that its activity is used in enforcing laws and other general regulations. A large part of the decisions adopted by administrative bodies is directly not dictated by regulations of representative bodies. Decisions are taken after free consideration based on what was reasonable to be done in an individual case considering to the established actual situation. Regulations of other, superior public administration bodies are not only the external framework which such body is not allowed to exceed in its decisions, and they are absolutely not a direct guide for its decisions and the activity that should be triggered by such decisions. From this perspective, it is not possible to make a statement that the main feature of an administrative body is to enforce laws. It is only a matter of decision-making gradation: from the more general to the more concrete (Bučar, 1969: 235-236).

Since a public administration body is only a representative of the state or a social community, social community organised as a state or its unit always appears in relations to people. A state administration body is only its instrument. A public administration body is not a representative of the state or social community. The state or social community is expressed and it acts through its body regardless of an individual public administration body perhaps having the character of a legal entity and bodies being interdependent. The organic holder, that is, a natural person acting as a public administration body, should be differentiated from the public administration body. This is a matter of two entities: certain special legal relationships apply between the state or social community and the organic holder. A certain natural entity always acts as a public administration body. Therefore, in legal theory, a person authorised to carry out a state function is usually defined as a state body (except in cases of a collegium body). This concept includes the concept of responsibility. A certain person is always responsible for the function entrusted to it. An administrative body is not an individual person but an organisation of a certain work collective, which has been entrusted with certain tasks, although individual regulations also know the concept of a body as a natural entity (such as an inspector). In case of authorisation transfer, authorisation is always transferred to a certain person (an officer) (or a community of several persons); only this person can forward its authorisation to others. Although a public administration body is almost always supported by a certain expert technical administration (expert technical workers), certain property and certain field (personal, property or teleological element), these elements as a whole are not always essential. A

public administration body may also not have any special property and no availability of a special expert technical administration (Bučar, 1969: 260-261).

Public administration resources

1 Public administration financing

With the above-mentioned elements of the state that underlie its existence it is important to deal with the issue of the financial foundation. As already known, in order to function every organisation and the state needs a financial foundation comprised of the social property and the current (public) receipts of the state as the source for expenditure or liabilities. To be able to ensure uninterrupted functioning of administrative organisations in the state and their existence, sufficient financial resources must be ensured for their functioning. The entire operation of the legislative, executive – administrative and judicial branch of authority is tied to financial resources ensured by the state with public revenue, that is, either by collecting taxes and other charges or by borrowing or with business activity on the market (via state owned companies or local communities). Without the mentioned resources, the state (administrative) organism would simply cease to live (Popović, 1997).

Therefore, it could be said that the state's financial function is considered one of the most important, as it ensures the financial foundation for the functioning and existence of every social community. The state's financial function is reflected through obtaining financial resources (public receipts) and their consumption (public expenditure). The financial action, thus, has two sides, namely: • the revenue side where the state and other public law bodies collect financial resources from natural and legal entities, and • the expenditure side were the state and other administrative organisations spend the collected financial resources to carry out the tasks determined with the legislation and laws.

At this point, it is important to mention that the financial functions of the state in their essence materially differ from the financial function of an individual person. Typical of the state's financial function is that:

- in carrying out the financial function, the state is not interested in generating profit such as applies for companies and individuals, but in satisfying public needs;
- in the private activity, business is (usually) performed in the *do ut des* method, while the state does not apply this principle in the context of its own financial activity (it does not offer any equivalent to persons liable for the payment of charges);
- it is typical of the state's financial function that it ensures the majority of the financial resources to satisfy public needs with taxes and other charges. Benefiting

from its *imperium*, the state imposes the payment of taxes and other charges (taxes, contributions, customs fees, etc.) on legal and natural entities under its sovereignty and obliges them to certain conduct (e.g. submit individual tax return or keep business ledgers in a determined way), it can prohibit them from carrying out a certain activity (such as those under a fiscal monopoly) and determine obligations (e.g. allowing an inspection on their premises).

- decisions about public receipts and public expenditure is made in a political way. Public receipts are generally determined with laws and the parliament approves the budget, where public expenditure as well as public receipts are specified, on the government's proposal.
- public good is the most important motive of the state's financial function. Public interest as a public good criterion requires the state to ensure the satisfaction of public needs, taking into consideration the rights of an individual person, citizen, and others (Pernek, 1997: 19-22; Popović, 1997: 10-12).

As already mentioned, the basis of the state's public finance function is to ensure financial resources for the functioning and existence of the state, which actually means that public finance is used to ensure the resources for:

- establishing legal order, which ensures uninterrupted functioning of market institutions and competition mechanisms,
- ensuring public good, which is divided in:
  - complete public good (such as for example state defence, police, administration), which cannot be achieved on the market, as it is typical of public good that it is non-competitive in use (this means that the use of public good by one person does not reduce the benefit offered to other persons) and that it is non-exclusive (meaning the use of public good cannot be prohibited to an individual person).
  - incomplete public good (such as schooling, health system, social system…), which can in principle be organised under market principles, which however increases costs and only a few citizens of a state can afford this. Therefore, the state is interested in public good (schooling, health system, social system…) being available to everyone regardless of their ability to pay (Popović, 1997).
- ensuring stability of economic trends (high employability, low inflation), etc.

As evident from the text above, the financial function of the state in the broadest context is marked with the term public finance. The concept of public finance represents the financial function of the state and other public law entities whose goal is to ensure sufficient resources to finance public expenditures. In addition to the above-mentioned financial function, that is, the provision of the needed financial resources to finance public expenditure, public finance has three functions of the economic nature:

- the allocative function, which consists of the collection of the needed public revenue and the satisfaction of public needs, which requires redirecting public resources from the private to the public sector and back to the private sector;

- the distributive function, which includes the redistribution of revenue and property in accordance with the fair redistribution model (such as approved by the society in a given moment), and
- the stabilisation function, which consists of assurance that public revenue is enough for public expenditure and that financial resources are used to ensure, as much as possible, high employment, price stability, satisfying economic growth, etc. (Jelčič, 1981: 82).

The most general question arising in relation to the above-mentioned is the one concerning the volume of public finance, that is, the volume of all financial resources disposed by the public sector, which generally includes all authority bodies and organisations at the level of the central, regional and local authorities, including public social security and only that part of the operations of public companies of all types, which represents the performance of public tasks, and not pure entrepreneurial activities (Rupnik, 1997: 80; Lovčevič, 1976: 8-11).

The volume of public finance is co-dependent on the volume of national income, which represents a newly created value of a certain state in one year. The national income is, thus, a synthetic indicator of development and achievements of every society. The development of every economy is co-dependent on the share of national income the state allocates to public finance. This share is established with fiscal burden, which is established as proportion between the total public income and gross domestic product (GDP) for an individual country in an individual year.

Typical of the financial resources obtained by the state with public revenue is that they are spent for the performance of public functions determined with the constitution and law. The mechanism to collect and spend financial resources as well as to coordinate and plan revenue and expenditure in the context of the state's financial function is based on so-called public finance institutions, which are:

- public receipts, which are broken down into:
  - derivative (public law) public receipts ensured by the state based on the empire by obtaining, in accordance with the law, resources from the inhabitants, citizens, companies, etc., which are under its sovereignty;
  - primary (private law) public receipts generated by the state with its own business activity (state property receipts, profits of state-owned public companies...);
- public expenditure;
- budget, which represents a periodic financial legal act that is confirmed either by the parliament on the proposal of the government or the municipal council at the level of a local self-government community and it includes the receipts and expenditure of the state and lower political territorial units or public receipts and expenditure of local self-government communities;
- financial equalisations, which represent a special institutional arrangement of public receipts and public expenditure division between higher and lower political

territorial units. In federative states, financial equalisations are established between the federal state and federal units, and within federal units between them and local authorities. In unitary states, financial equalisations are established between central and local authorities (Popović, 1997: 12-13).

As mentioned, the state and its territorial units (local communities) need financial resources to enforce many tasks in accordance with the constitution, laws and other regulations. The financial resources that are spent for satisfying public (state and local) needs are called public revenue. In theory and practice, public revenue differs between states and the role of an individual revenue in the structure of state or local revenue is different. Through the development of financial science, several public revenue categorisation options appear in theory and practice. For example, the modern theory categorises public revenue to:

- fiscal revenue**,** which includes fiscal charges (the theory and practice separate between three fundamental types, that is, taxes, contributions and charges), customs fees and parafiscal revenue;
- non-fiscal revenue**,** which includes public or state loan, state property and company sales revenue, revenue ensured by state bodies by rendering various economic services, administrative taxes, fines, etc. (Pernek, 1997; Perić, 1980; Jelčič, 1998)

In theory, besides the above-mentioned classification of public receipts, a range of other classifications was developed, but to understand this part only the classification to the primary and derivative public receipts (which is explained in the previous chapter) and to receipts of broader and narrower territorial units are important. The question of the distribution of public receipts between the state and local communities depends primarily on the volume of tasks performed by them, and the needs of narrow and broad social communities. This distribution is particularly sensitive in the countries where major differences exist in the extent of the satisfaction of social community's needs. The problem of which social community public revenue will belong to and in what extent is not of exclusively financial-technical nature, but in the first line it is of extremely sensitive political nature. The fundamental question appearing with this is the question of financing local communities, whose efficiency is reflected in the distribution of public revenue and its resources between the state and local communities (Jelčič, 1981, 1998).

In addition to the already mentioned fiscal and non-fiscal revenue, the theory and practice mention financial transfers, which include all grants received by local communities from the state in the form of subsidies or income equalisations, as being the most important sources of local communities' public revenue.

In order to successfully spend the collected financial resources to satisfy general social needs, they must be distributed between the holders of individual public tasks, that is, between the political territorial units and the administrative territorial units or the state

and other administrative organisations, which have been entrusted with the financing of public expenditure and satisfying public needs based on the constitution, laws and other regulations.

Effectiveness and level of decentralisation depend on the distribution of the above-mentioned resources and their use to satisfy public needs between the central and local authorities.

The mentioned distribution of financial resources, methods of collecting such resources and their amount consequently depend primarily on the distribution of functions between administrative organisations in an individual country. Similarities as well as major or minor differences in the distribution of public functions between administrative organisations can be established between countries as well as the related and certain similarity or major or minor differences in the financing of tasks and measures entrusted to them. The distribution of public functions between individual administrative organisations depends on the structure of the state, its historical, national and religious development, the size of the territory, number of population, economic development, etc. (Jelčič, 1998: 412). It could be said that the distribution of public functions and related financing of public revenue between more or less independent territorial units as well as arranging mutual fiscal relations is specific for every individual state. This distribution has an explicitly political dimension and it can lead to unwanted tensions, unrest… among the inhabitants of an individual territorial unit. The organisation of more or less independent territorial units thus gives rise to the requirement that so-called 'horizontal equality' must be ensured between them. This helps reduce or annul social and political tensions. The reasons for horizontal equality are evident primarily in the requirements of:

- equal distribution of tax burden, independent of what part of the state we live in or independent of the activity we perform;
- the existence of quantitative and qualitative differences in satisfying public needs in individual parts of the state. The request for regional and local horizontal equality of using public good has no absolute value because of the impact of demographic, geographic, socioeconomic and other reasons (e.g. public needs and related public expenditure are much higher in large cities than smaller ones, settlements or villages);
- reducing the differences of the created national income per capita. It is known that in all states there are major or minor differences in income per capita in individual local communities, which corresponds primarily to differences in economic development, productivity and other economic reasons (Jelčič and Pernek, 1997: 91).

At this point it needs to be pointed out that fiscal relationships between territorial units in individual countries are subject to various political, economic, historical and other reasons. Such relationships are legally regulated. The theory separates between horizontal or vertical, domestic or international and active or passive financial

equalisations.

The term 'horizontal financial equalisation' denotes the regulation of financial relationships between the politically territorial or administrative units of the same level (between municipalities, regions, republics, states). Vertical financial equalisation represents the regulation of financial relationships between narrow and broad administrative organisations, such as between local communities and the state. Vertical financial equalisations can be regulated in the way that horizontal financial equalisations are simultaneously ensured (e.g. by distributing public revenue by the number of inhabitants and not the revenue of local communities, which puts the 'poorer' local communities into a privileged position) (Jelčič, 1998: 430; Pernek, 1997: 92).

Under the concept of 'active financial equalisation' we understand the regulation of the distribution of public revenue between territorial units (particularly in federatively organised states), while 'passive financial equalisation' denotes distribution of competencies and tasks relating to public expenditure between territorial units or local communities. It is clear that financial resources needed to finance public expenditure depends on the extent of competencies and transferred tasks. The distribution of such competencies and tasks between different levels of authority varies between states regardless of whether it is a unitary or federative state. In none of the modern states we encounter complete centralisation or complete decentralisation of public functions. The level of centralisation or decentralisation varies between states. Both the complete centralisation and complete decentralisation have such weaknesses that the existence of one or another would not be permissible from the socioeconomic and political aspects. In individual states, the so-called optimal relationship appears as an intermediate option between two extremes. Such optimal relationship between centralisation and decentralisation of public functions is ensured in the moment when the strengths (benefits) of additional centralisation or decentralisation are at least as high as the related weaknesses (expenditure) (Pernek, 1997).

The theory and practice have developed special criteria for distribution of public expenditure between territorial units. These are:

- the self-government criterion; performing public functions must be left to local communities if they are willing and economically strong enough to perform them. The criterion of self-government, in relation to responsibility, enables and ensures better public control; it ensures public nature of the holders of decisions about public needs financing; it encourages population’s interest in effective and correct performance of public functions;
- the minimum satisfaction of public needs criterion; the division of functions between territorial units must enable the performance of at least the minimum of public functions or ensure the financing of public expenditure arising therefrom. Not all territorial units can satisfy all public needs (e.g. every local community cannot have its own hospital, secondary school, etc.). This is why a certain level of

decentralisation must be used to ensure geographical equality in the satisfaction of public needs;

- the minimum size criterion; when distributing tasks between territorial units it must be taken into consideration that satisfaction of public tasks can only be justified in case of a favourable proportion between the incurred costs and the number of public goods users. If the number of certain public goods' users (which are ensured by, for example, hospitals, educational institutions, cultural institutions, etc.) is low, costs are disproportionately high and it is logical that the provision of such public goods is either transferred under the power of a higher territorial unit or that two or more lower territorial communities assume the power to ensure public goods and finance the incurred costs.
- the importance of goal criterion; it means that we must observe national (state) and local interests. State goals (state border defence, representation of the state abroad, protection of own currency, prevention of unemployment, etc.) must be financed by the central state authority regardless of where these goals are realised (usually also in narrow territorial units). Political criteria are thus important, which however does not mean that the economic, functional or other criteria can be neglected;
- the suitable benefit to cost proportion criterion; we must take this into consideration to prevent that due to high costs, certain potential public good users would be left without them. This is why the satisfaction of certain needs must be transferred to broader territorial units, thereby ensuring that as many users cooperate in their financing as possible. This ensures a suitable proportion between benefits and costs, and hence also a more rational use of public revenue (Wittmann and Jelčič, 1998: 439-440).

Competencies of narrow territorial (local) communities are determined with the constitution, the law and other regulations. While coverage of public expenditure for state security, protection and uninterrupted functioning of political and economic systems is in the power of central bodies, the satisfaction of the needs that are closer to the interests of the population is in the power of local communities. In theory and practice, we meet the financial resources centralisation tendency, yet modern national tax (fiscal) resources as the basic instrument to obtain financial resources are distributed between political territorial units. Such distribution of resources (distribution of tax sovereignty) is marked with the aforementioned concept of active financial equalisation, which can be horizontal or vertical. Horizontal active financial equalisation represents direct distribution of tax revenue between territorial units of the same level, which reduces differences in tax power between them. Such differences can be reduced in two ways. The first way is with direct transfers of resources to those territorial units whose tax power is insufficient to be able to collect sufficient resources to satisfy public needs to a certain level. The second way is to transfer certain financial resources to narrow territorial units within the vertical financial equalisation in order to decrease differences in tax power in an individual territorial unit. In this case, we speak about the vertical active equalisation with a horizontal effect (Jelčič, 1981, 1989).

The economic effects are the same in both cases, which is why we can talk about the horizontal active financial equalisation. This financial equalisation is aimed to reduce differences at the level of social expenditure in individual parts of the state. This enforces the solidarity principle, which corresponds to economic and political interests of the state (Jelčič, 1998: 436).

As mentioned, the term 'active financial equalisation' denotes regulating the distribution of public revenue between broad and narrow territorial units (between the state and local communities). Theoretically speaking, there are three options of vertical active distribution of tax revenue between territorial units (Jelčič, 1998: 432-435):

1. The system of own original revenue, which is often mentioned in financial literature as a separation system. In theory, we know two diametrically opposed types of separation system, namely:
   - the system of bound separation: this is a type of public revenue separation, under which only the highest territorial unit (the state) is entitled to collect and distribute public revenue. In this system, it is not possible to talk about the financial and political autonomy of narrow territorial units. Only the broad territorial unit distributes tax revenue to narrow territorial units of the local community in accordance with predetermined criteria (e.g. the number of inhabitants, the amount of the national product per capita, etc.). The joint separation system has its strengths and weaknesses. The strengths are that tax resource, tax form and policy can be established in one place, thereby enabling, ensuring and alleviating the realisation of the set tax resources. The weakness of this system is shortage of narrow territorial units' financial autonomy, which is inacceptable from the political point of view. Therefore, this system constantly sees conflict situations in relation to the criteria for the distribution of revenue between broad and narrow territorial communities. In the bound separation system, all revenues arising from a certain tax belong to narrow territorial units, but they can independently determine only the amount of tax rates for the tax that belongs to them. Broad territorial units, on the other hand, can determine tax types, which belong to narrow territorial units, as well as the amount of tax rates.
   - the system of free or parallel separation: this is a type of separation where every territorial unit has its own tax autonomy. In this system, every territorial unit alone (broad or narrow) simultaneously levies the same tax subject and uses its collected resources to finance the tasks from its competencies. This system is thus reasoned from the political aspect because it strongly emphasizes independence or autonomy of all territorial units (local communities) of a certain country. But this system cannot be positively assessed from the socioeconomic aspect. In this system, major or minor local or regional differences occur in tax burden of taxpayers – natural or legal entities, which is contrary to the horizontal equality. Utilization of tax as the most effective instrument of economic policy is limited, tax burden is unevenly distributed, which may lead to unequal operating conditions, tax oases, etc. In

the free separation system, every unit collects and spends resources independently of others. Azfar has also warned about the negative consequences from the socioeconomic aspect in case of tax sovereignty distribution to different levels of authority (central and local); he calls this 'vertical imbalance'. The latter appears as a consequence of tax competition between two levels of authority. The mentioned tax competition is reflected in the right to determine tax resources and the type of tax charges, when, for example, two levels of authority share the same right or enjoy their fiscal autonomy. This may lead to higher tax burdens or overburdened population (Azfar, 1999).

2. The system of joint revenue; typical of this system is that individual territorial units have no financial autonomy. The right to regulate fiscal charges and collect taxes is only given to one unit, while the other units (e.g. local communities) only participate in such revenue. This system distinguishes between two types of financing, namely:
   - narrow units (local communities) have tax sovereignty; they earmark a part of their revenue for financing expenditures of broad territorial units (the state). This can be called upward financing;
   - only the broad territorial community, which gives away a part of revenue to narrow territorial units, has tax sovereignty. This is a system of downward financing.
3. Mixed system of tax revenue distribution, which is a sort of a combination with the elements we encounter in the systems of own revenue and joint revenue. Using the mixed revenue distribution system means that individual territorial units finance expenditure from their powers partly with their own revenue, while they ensure another part of revenue with revenue participation from other territorial units. Tax sovereignty is distributed between several territorial units. The mixed system is broken down into two types:
   - the quota system – the right to regulate taxation belongs to only one (the broadest) territorial unit, while the other territorial units cooperate (participate) in tax revenue only in a certain percentage;
   - the supplementary taxation system – in this system, only the broadest territorial unit has the right to regulate fiscal charges, whereas the narrow territorial units have the right of supplementary taxation with one or more taxes. The system of supplementary taxation ensures unity of the tax system, but it does not exclude the possibility of certain differences in tax burden. If supplementary taxation is unlimited, it is called free supplementary taxation. Supplementary taxation is bound where the range of taxation or the maximum or minimum taxation is determined.

1.2 Problems of public administration's economic and overall efficiency

Public administration's functioning is a cost for the society, hence the inevitable endeavours to minimise the costs for public administration. In order to realise such endeavours, we must clearly determine their goal and the direct holder as well as give the direct holder the chance to enforce his endeavours and, finally, find the way for the direct holder to realise his endeavours. The goal in itself in clear in this case, at least in its principle: to achieve the necessary volume of public administration's work with minimum costs. Such clarity is quickly blurred in practice, because the volume of public administration's work is a notion that cannot be accurately determined. The volume and costs depend on each other. The smaller the volume of public administration's work, the lower its costs. The volume of public administration's work must be such as is objectively needed. Since objective necessity usually cannot be determined or it is very difficult to determine it, public administration's cost reduction endeavours are usually done to the detriment of the functions it should perform. When discussing public administration's cost reduction, we derive from two assumptions: • that we are familiar with the necessary volume of public administration's work, that it is completely accurately determined what public administration must do, and; • that public administration does things which are not urgently necessary with too high costs. Special risk for the essence of public administration's work is represented by the attempt to cut down the costs for public administration by directly subduing the entire functioning of public administration to market rules, the same as commodity economy is exposed to such rules. With this, an instrument would be incorporated into public administration and public administration would become the holder of the interest in cutting down its own costs, similar to a company being the holder of an interest in cutting down the costs of its production. If we succeed in this, we will actually save one of the major problems of the present time (Bučar, 1969: 731-733, 744).

2 Budget system

Budget's position and role are the most closely connected with the occurrence and function of the modern state. In addition to arms forces and the police, budget has become the basic element through which the state is enforced. Therefore, the budget is connected with all advantages the modern state has compared to the state forms from the past, and it is also connected with almost all negative aspects of a modern state. With development, budget has become one of the basic instruments of modern democracy. It is used primarily to ensure cooperation of the public in the regulation of general social issues, as all are related to financial resources; it should be used to ensure the responsibility of the state administration bodies, so that they do only what and in the extent as is permitted by the approved financial resources; it should be particularly used to prevent arbitrariness of individual highest bodies. Whoever holds power over resources can largely affect the events in the state. A state where representatives of voters do not have direct authority over state finances, the budget, cannot be considered a democracy. Enforcement of the majority of political rights is also related to financial

resources. An individual citizen can hardly make any use of declared rights and constitutionally guaranteed freedoms, if they are not covered with financial resources. Moreover, the budget guarantees an overview of the entirety of resources earmarked for the consumption of a public need. This is one of the best instruments of public control over the public administration's work and whom public administration actually serves under the slogan of working for general public needs. This is the origin of the requirement that all expenditures intended to finance any administrative area must be included in the budget, as this is the only way for public to have control over the public administration's work. The budget is also the only instrument through which various areas of public administration's activities can be coordinated. Since public administration has no automaticity, which would ensure internal balance and interdependence of the quantity and type of goods created or delivered by public administration – similar to the commodity economy – the budget with its complexity of presenting all expenditures and possibility of resources flowing from one area to another is the only instrument available to public administration to achieve such internal balance. As soon as we eliminate individual fields from the general budget and enable them to be financed independently from other social needs, we would enter a state where certain fields would satisfy their own needs outside of the general possibilities of the society and vice versa. It is also completely understandable that such fields are taken away from public control and that a special organism must be set up for such fields to operate parallel to the general representative bodies. The budget thus enables reaching the needed balance between individual narrower fields with the needs and possibilities of the society as a whole. We should note that expenditures are also stated in the budget. This shows who contributed resources for general needs, and how much. The budget also enables immediate insight into whether individual areas or groups of citizens are favoured or, on the opposite, too heavily burdened. For this reason, it is sometimes attempted to blur the situation as much as possible in this context. Hence, various political battles between holders of different interests in the state usually occur in the field of the budget (Bučar, 1969: 757-758).

In relation to the above-mentioned, we should mention that the theory has always dealt with the question of the budget's legal nature which the state uses to regulate its expenses on the one hand and on the other its revenue which serves to cover the anticipated public expenses. Theorists' aspects about this issue were different, while the solution to this issue alone does not have a major practical importance for the legal regulation of the budget and the management of the budget policy. Nevertheless, these aspects can be classified into three groups, namely: (1) the budget is the law – in both the formal and material sense. This means it is adopted in a special procedure, which is typical of the adoption of laws and it includes legal norms that regulate an individual's issues relating to the budget and conduct of competent bodies and individuals in the framework of a determined national budget system. Budget is usually divided into the general and special part. The general part of the budget includes measures for the implementation of the budget. Accordingly, the general part of the budget includes norms in the formal and material sense. Unlike the general part of the budget, the

special part of the budget includes norms which, of course, does not mean that budgetary resource users can exceed the amount granted to them with the budget or that they use the approved resources for the purpose not anticipated in the budget; (2) the second aspect claims that the budget is a law only from the formal legal perspective because it can only be implemented after it is confirmed by the highest legislative body – the parliament; (3) according to the third aspect, the budget contains only administrative norms, and even this only in the part where the allocation of the planned budgetary resources is arranged for individual purposes. According to this aspect, the revenue side of the budget is only the financial plan which does not bind the state bodies to actually realise the planned revenue, of course if it is not a matter of iscal charges, which are rare in modern budgets. Regarding today's budget, it needs to be added that it only applies when it is adopted by the parliament in a special procedure – therefore, from the procedural aspect, the budget is the law, but by its content it is an administrative act *sui generis* – it contains norms that determine the behaviour of state bodies in collecting and spending public revenue (Pernek et al, 2001: 19-20).

In regard to the budget system, we should mention the modern budgeting principles, which are a reflection of the continuous battle between citizens and the state and constant endeavours of the parliament to limit the right of the state or rulers in both the introduction of various charges as well as the determination of the purpose of using such public revenue, which was collected based on public charges, that is, in the determination of public expenditure. The purpose of budgeting principles is to enable the representative body (parliament), citizens and state bodies who spend such budget resources, an overview over the budget use – because of this, the modern budget must be structured using certain principles. Such principles are important for the structure as well as adoption and implementation of the budget, and of course, for the budget control. Today, we distinguish between classical and modern budgeting principles, which have supplemented the classical principles or entirely replaced them. Classical budgeting principles are broken down into formal static principles and dynamic material principles. Formal static principles include:

- the budget unity principle must be separated in the formal and material sense. In the formal sense, this principle means that all revenue and expenditure of public law bodies is included in a single public consumption act, such as the budget. In practice, the budget unity principle is not realised or entirely performed anywhere, because in addition to the state budget there is also earmarked financing of certain functions through funds and financial plans of local communities and communities of interest. Here, another material aspect of the principle arises, which can be discussed in practice whenever all public sector's resources by their socioeconomic function and effects represent a unified fund of resources. The use of this principle assumes that all public revenue and expenditure of a certain politically territorial community are presented in one budget. This way, a maximally comprehensive insight of the parliament into public finance is attempted to be enabled in order to ensure parliament's influence on financial activities of individual states. The downside of this principle is that it creates

centralistic tendencies in a certain state or that it does not help to spread the financial autonomy of narrow territorial units. In accordance with the unity principle, budget monism has occurred and formed. Unlike budget monism, pragmatism has led to the appearance or use of several budgets – budget pluralism, as well as to the need to finance certain public needs not only based on the budget but also using other financial instruments – funds, financial programs, special accounts, etc.

- the budget completeness principle, which is used primarily to control budget resource users. This principle requires that all public revenue and expenditure be determined in gross amounts. A budget prepared this way is called the gross budget. Its opposite is the net budget, where revenue of individual public services is equalised with expenditure, hence only the net difference is presented. The use of the budget completeness principle assumes that all public revenue as well as public expenditure is presented in the budget. Both can be presented in several ways in an individual budget: • in the full amount, i.e. when speaking about so-called gross budget; • or by being previously deducted, so that only the excess of revenue over expenditure or the excess of expenditure over revenue of an individual budget resource user is presented – in this case we speak about the net budget. The downside of the net budget is that it does not enable the parliament with a complete and comprehensive insight into the financial activity of the state, while the use of the gross budget is more appropriate in this respect, as it gives the parliament control over the use of public revenue or makes spending more difficult. In theory and practice, gross budget nowadays has advantage over net budget.
- the budget transparency principle requires that budget resources be specified to a certain degree. The realisation of this principle is ensured by presenting revenue and expenditure in the budget in a unique way, namely revenue based on its origin, while expenditure based on its purpose. In the context of budget revenue and expenditure classification, so-called classification numbers are used, which are uniform for all budgets of the state or its individual units (of course only in case of budget pluralism). The classification of public revenue of a certain budget can be performed based on various criteria: • based on the entities from whom such taxes are collected; • based on the financial instruments used in their collection (taxes, charges, fines...), and • based on the tax form that was used in a concrete case (personal income tax, corporate tax...). The classification of public expenditure in a certain budget can be made, for example, based on users (the resource principle); within this classification, it is possible to make classification according to individual purposes (the real principle), and of course, classification can also be carried out by individual types of expenses – in such cases we speak about the so-called functional principle (Pernek et al, 2001: 21-22).

Dynamic budgeting principles are the following:

- the prior budget confirmation principle, which means that the budget may start being implemented only after it is adopted by a competent state body – the

parliament. This way, the parliament is enabled and ensured with the decision-making about the type and amount of expenditure, which will be covered based on budget revenue in a certain period of time. The purpose of this principle is to ensure prudent financing of a certain political territorial unit's (the state's) or narrower local community's activities. Based on this principle, the possibility of improvisation and arbitrariness in disposing of budget revenue is disabled or minimised. The budget can start being implemented only after it is confirmed and adopted by the parliament. The state cannot function normally before the parliament has confirmed the budget, because it has no financial resources needed for its existence. This is also the reason why the discussed principle is one of the most important budgeting principles and why it is included in constitutions of many states. Since a shortage or failure to adopt the budget would cause a deadlock in the functioning of the state, which would jeopardise the implementation of its functions or the functions of its bodies with the purpose of achieving the general social benefit, it is vital to adopt the budget in time. In the opposite case, the so-called interim financing system is used which is most usually ensured in practice with the use of the preliminary (past) budget.

- the budget transparency principle is realised in several ways in the practice: • with the obligation to publish the general part of the budget which has the nature of a law, and budget balances or overview of receipts and their allocation, as well as the closing account of the budget in the way as legal acts are published, and • the citizens' right to monitor budgetary discussion in the parliament. The use of this principle enables and ensures taxpayers and all citizens to meet types and the size of budget revenue and the purpose of its use or to become familiar with the financial activity of the state.
- the budget balance principle requires that the state expenditure, which is anticipated in the budget, is covered with suitable budget revenue or that revenue and expenditure is balanced in a certain budget. According to this, the principle is limited if budget revenue is higher than budget expenditure (budget excess), or if budget revenue is lower than budget expenditure (budget deficit). If budget deficit or excess occurs while the budget is being implemented, suitable measures need to be taken to establish budgetary balance, which can be formal or material. Formal budgetary balance occurs when budget revenue and expenditure is balanced and we are not interested in the way such balance was established, from what sources and using which instruments budget revenue was selected. Material balance is created in the way that budget expenditure is covered from regular public revenue. If regular revenue is not sufficient to cover it, the missing resources must be collected based on extraordinary fiscal charges or by hiring loans, with primary money emission resources, etc. – this is the so-called deficit financing.
- in theory and practice the budget periodicity principle appears under the term budgetary annuality. Budget is a plan of state revenue and expenditure, adopted by the legislative body for a certain period of time, usually one year. The one-year time period is favourable primarily because the national revenue created in a certain period of time, that is, one year, in a certain state is distributed (allocated)

with the budget. A shorter period of time (one year) for which the budget is adopted, makes planning budget revenue and expenditure easier. It is namely easier to establish the needs of the state and its bodies and in what way they need to be covered, if this is done over a period of one year than in a longer period of time.

- The budget reality principle; based on this principle, the requirement is set that the budget revenue and expenditure is as accurately determined as possible without creating major deviations between the budget and plan of public revenue and expenditure and the realisation of such plan. The fact alone that budget revenue and expenditure is determined based on a predetermined development for a budget validity period points to the problems we encounter when trying to accurately set for a certain time period, usually one year, every individual element that determines budget revenue and expenditure. If such period is even longer, it is that more difficult to accurately determine the total necessary revenue to cover expenditure in the time period. To realise the budget reality principle certain budget revenue and expenditure planning methods are used, namely: • the automatic method where the previous year's budget is used as the basis to determine the amount of the budget revenue and expenditure; • the budget revenue and expenditure increasing (exceptionally decreasing) method in relation to last year's budget; • the budget revenue and expenditure direct assessment method for every budget year separately – as part of this method, competent bodies determine the needed revenue and in what amount they can be collected in a certain budget year in order to be used to cover the anticipated budget expenditure (Pernek et al, 2001: 23-26).

Modern countries' financial activity is not only focused on the realisation of the fiscal goal, that is, collecting public revenues to satisfy a social community's needs, but in addition to the social community, the budget is also used to realise certain non-fiscal goals, particularly goals in the field of economic and social policy. This way the budget always receives new tasks. Today, it is widely believed that budgeting principles are not static – invariable, but that they are variable institutes that are subject to constant development, change and supplements (Pernek et al, 2001: 27-28).

Budget implementation starts at the moment when it is enforced and lasts until the end of the budget year when the implementation of the budget must be reported and the closing account of the budget prepared for this purpose. The implementation of the budget includes all procedures and actions, which must be taken in order to realise the adopted budget at the level of the budget as a whole as well as at the level of an individual financial plan of a direct user. It is a phase in which budgetary resources are used for certain purposes adopted in the budget as well as for its timely and flexible adaptation. The implementation of the budget is closely connected with the planning phase, as the use of a well-planned budget may follow the goals of the realisation of programmes and policies which were determined by the legislator by adopting the budget. The implementation of the budget must ensure that all resources are spent

correctly and reasonably in accordance with the purposes determined in the budget. Therefore, the implementation of the budget must be constantly monitored using the financial, physical and other indicators of effect. Despite good planning, changes may occur during the budget year, affecting the macroeconomic development and budget spending. The implementation of the budget must adapt to such change with the budget harmonisation instruments, which are determined in the law and which arise from the aforementioned budgeting principles (Cvikl & Korpič-Horvat, 2007: 153).

The same as preparation, adoption and implementation of the budget, the last but not least phase of budget operations is reporting by individual budget users and the government about the implementation of the budget and programmes. This is followed by the audit of budget spending. At this point, it should be noted that in developed democratic states, three types of budgetary control have been established:

- political control, which by its content is external control and is performed by the legislative body at the state level. The government is responsible for the implementation of the budget; the parliament controls its work. In addition to the political and constitutional control, it implements financial control. Since it is not qualified for the financial control, it receives support from the highest control audit body, that is the supreme audit institution. Today, supreme audit institutions are independent and autonomous; their important role is to give credible information about public money consumption to the parliament.
- internal control; in democratic states, controlling the use of public resources is an important task of not only the external supervisors but also the supervisors at public resource users. Internal financial control at a budgetary user usually includes: • internal audit conducted and ensured by users alone through internal audit departments, joint audit departments or by hiring external auditors qualified for internal auditing, and • inspection control performed by auditors.
- external control of public resource consumption, implemented by supreme audit institutions. Taxpayers want to receive credible information about how their money is spent. Moreover, the parliament wants to receive expert reports from an independent body about the enforcement of the laws that it adopts and based on which public resources are used, and how the budget receipts and expenditure have been realised. Public resource users are, therefore, obliged to justify the correct use (use in accordance with the law and other regulations) as well as reasonable handling of the resources (economic, efficient and effective) and, most of all, whether their operations have reached the goals and produced results. Auditors of supreme audit institutions check the operations of public resource users as independent, supreme and professional supervision bodies (Cvikl & Korpič-Horvat, 2007: 191, 196-212).

Law of public administration

1 Administrative law

The legal norms regulating the field of public administration belong to the legal branch called administrative law. This way it can be said that administrative law is the law of legal administration. Legal norms and legal regulations are classified into unities – legal branches or disciplines, which include and regulate comprehensive fields of social relationships, by individual criteria and rules which are not always accurately determined and generally accepted in terms of the content. Among traditional legal branches, it is typical of the administrative law that there is no unified approach to its definition, meaning that important differences exist in definitions produced by individual authors. Administrative law is a 'subsystem' of legal norms and an independent legal branch included in the context of public law (which is comprised primarily of legal norms that regulate the foundations of state regulation, the position, organisation and functioning of the state and other public-law organisations and communities and relationships between the holders of power and individuals) – that is the law whose fundamental distinguishing mark is regulating the implementation of state power and focusing on public interest regulation and protection. Administrative law, as a special legal discipline, is based on the finding that there is a comprehensive group of legal norms in a given legal system, which differ from others and can be considered as norms of a special legal discipline – administrative law. Regardless, there are several approaches to and perspectives of the content and scope of administrative law (especially regarding individual areas of legal regulation and norms considered as administrative law norms by individual authors) (Grafenauer & Brezovnik, 2006: 57).

A glance into the history of the creation and breakdown of law to individual legal branches shows that, primarily in the German theory, the administrative law, together with the constitutional law was defined as state law, namely the part of the state law that refers to the executive branch. Initially, administrative law was mostly comprised of the norms whose fundamental distinguishing mark was the regulation of the authoritative conduct of the state and its bodies, that is, where in relation to other entities the state acted (exclusively) *ex imperio*, authoritatively, by way of stronger will. The emergence of administrative law is, actually, one of the results of the middle class' battle against feudal lords and absolutism, as the introduction of legal norms started limiting the state apparatus, gradually subduing it to legal norms. In the initial period of administrative law emergence, it was primarily made up of norms that regulated the organisation and functioning of the state administration bodies with the (sole) aim to protect the ruler.

After the French revolution (1789), the development of the rule of law concept made state administration bodies in relation to citizens more bound by legal regulations, which were used to start regulating the functioning and conduct of state administration bodies, thereby also limiting their arbitrary conduct. Eventually, the state got involved in the field of public services, that is, new activities under the aegis of the state where initially, authoritative instruments had to be used often, although their essence was nevertheless to ensure and offer public services and public goods. With the emergence of the norms that started regulating the work of local self-government, these legal norms were included in the administrative law and they were used to regulate and carry out public affairs of local importance. It can be concluded that norms relating to the fields of: • state administration, • local self-government, and • public services; were included in administrative law throughout the development (Grafenauer & Brezovnik, 2006: 57-58).

The issue of what exactly falls into (both in terms of entire areas as well as individual norms from certain fields) the administrative law can be interpreted from various aspects. According to some experts, administrative law includes all norms that regulate or refer to state administration, local self-government and public services, whereas some believe that the administrative law is only consisted of some of the indicated norms that have certain specificities. Moreover, some claim that administrative law, more narrowly, includes only the norms that regulate the executive branch of state authority or even only some norms that regulate the field of state administration's organisation and functioning (e.g. only the norms that regulate administrative relationships). Nevertheless, what the majority of perspectives and definitions of administrative law have in common is that administrative law includes certain norms that can be considered 'typical' administrative norms. These are the norms that regulate the enforcement of power in the field of the executive branch, and the norms that regulate public affairs or in the context of which public interest is realised. Here, we should point out the legal norms that regulate a special type of legal relationships, that is, administrative relationships. These are actually the clearest and most typical distinguishing mark and the basis to categorise a regulation or norm into administrative law. Administrative relationship hence has the central role in the administrative law. It can be said that the (undisputable) firm core of administrative law is made up of norms that regulate the executive branch of state authority, and among these norms, the 'expressive' norms of administrative law are those that refer to the enforcement of powers in individual and concrete cases – most of all, when rights, obligations and legal benefits of citizens and other entities are decided about by way of 'authority'. With this said, the majority of authors include in administrative law also those norms that otherwise do not represent a direct enforcement of authority, but they regulate the satisfaction of certain vital needs of citizens – that is, norms that ensure the functioning of public services and norms that regulate the performance of public affairs of local character in self-governing local communities. These norms are used to regulate a specific position of organisations and communities, which ensure the realisation of public interests, and in this framework, particularly the realisation of citizens' rights and

obligations in the field of public affairs. In order to ensure the realisation of public (general, common, social) interests even in case of disagreement and 'resistance' of individuals who protect and endeavour to ensure their own (narrow) private interests, it is necessary to ensure, with a special legal regime, a suitable stronger position to the entities (especially the state and its bodies) who are in charge of public interest realisation. At the same time, a suitable position also needs to be ensured (especially protection mechanisms against the arbitrariness of authorities) to the individuals for whom or to the benefit of whom an affair is defined as public affair. In the modern society, the state appears as the basic creator and guarantor ensuring the realisation of public interests, even in cases where organisations and communities, for example, in which such interests are actually realised are not direct integral parts of the state organism (Grafenauer & Brezovnik, 2006: 59).

2 The concept and content of administrative law

Typical of administrative law is that it is a dynamic legal branch whose norms are often changed and adapted to the social development and the varying conditions. Moreover, this is also the reason why many different approaches can be found in defining administrative law and why there is no theoretical concept of administrative law that would be acceptable for everyone. All authors agree that administrative law is a part of the legal system in a given state and an independent legal branch that has its specific subject and method of regulation, but there are important differences in the definition of its content. Since the legal branch whose regulations and norms refer to the most various of fields is very extensive, it is very difficult to define administrative law by stating, for example, all regulations (or even general legal norms) that fall within the context of administrative law. This is why certain authors state that administrative law as a part of the legal system is represented by a unity of legal norms used to regulate certain social relationships. Here, it is most commonly stated that administrative law includes regulations that cover the organisation and functioning of the state and general public administration and their relationships to individuals and organisations (Grafenauer & Brezovnik, 2006: 60).

The concept and content of administrative law can be defined with a material or positive approach where the concept is defined in terms of content characteristics, and with a formal approach where the definition is made based on certain formal characteristics. By firstly pointing out the so-called formal definitions, we can say that there are particularly two types thereof. The first are definitions that include the concept of administrative law as a law of bodies considered as being administrative, meaning that administrative law represents a unity of norms relating to the activities carried out by administrative bodies (so-called 'organic' definitions). In this case, administrative law is determined as 'law of administrative bodies', that is, in accordance with the formal criterion of the body or, more accurately, administrative bodies, for which these norms apply; what is not stated is which these norms are in terms of the content. In the organic definition, a question arises as to whether these are only regulations and norms that have one thing in common, i.e. that they are used by certain bodies (it needs to be determined which these bodies are), or whether

this is a unity of legal norms which nonetheless have a certain 'internal' or substantial link with certain characteristics they have in common. The second type of formal definitions is the so-called 'negative' definitions. According to the proponents of this definition, administrative law can be defined only in a negative way, meaning that administrative law is a unity of legal norms referring to the regulation of relationships and activities of public administration (the administrative activity), but not falling into any other legal branch (Grafenauer & Brezovnik, 2006: 61).

The majority of authors derive from material (positive) definitions of administrative law, meaning that they define it by stating comprehensive sets of contents, which make up administrative law. Here, a distinction can be made to the broad and the narrow approach according to the broadness of the fields and the content extent of the norms that fall into administrative law, that is, in listing (enumerating) the content of administrative law. According to the first, the broad one, administrative law is comprised of all the legal regulations that refer to public administration, all the norms used by the administration regardless of the nature of relationships regulated by such regulations and without taking into consideration the method and way of regulation. According to this approach, administrative law includes the norms that regulate (public) authoritative functions (which include primarily the activities to enforce power and realise public interests whose realisation is, in extreme cases, also ensured with 'authoritative measures'), as well as norms that refer to so-called 'non-authoritative' functions or activities. Here, in needs to be pointed out that authoritative and non-authoritative functions are necessarily intertwined and conditioned, therefore the line separating them is not always clear. In the broadest sense, the administrative law framework would include the norms that not predominantly regulate administrative relationships in the context of the enforcement of powers and realisation of public interests, but also norms that entirely regulate a competence or field (e.g. the entire arrangement of individual fields – defence, education system… – and not primarily the norms that regulate the foundations of the organisation of implementing such activities and the realisation of citizens' and other entities' rights and obligations), and even norms that are used in cases where public administration bodies enter into business relationships (e.g. when concluding business contracts, etc.). Nevertheless, it is most commonly stated when defining administrative law in the broadest sense that administrative law is a unit of legal norms regulating the organisation and functioning of public administration, whereby the framework of public administration (in the sense of its bodies) includes executive branch bodies, bodies of self-governing local communities, public power holders and public service performers (Grafenauer & Brezovnik, 2006: 61).

According to the second, narrower concept, administrative law is consisted of only those legal norms that refer to the organisation of public administration and, in this context, those activities where it acts authoritatively or where special (specific) legal norms, giving enforcers a specific, usually 'stronger' position, apply for it due to the realisation of public interest. Here, administrative law is defined as a unit of

administrative norms, which regulate the realisation of the executive-administrative power (organisation, enforcement and control) as one of state authority types. The most typical of these norms are those that refer to the organisation, authority, position, role, activities… of organisations in the field of public administration in cases where these act from the position of authority (ex imperio) – 'with a stronger will', thereby in relation to other legal entities creating a specific type of legal relationships called administrative relations. Typical of an administrative relation is that one of the entities of such relation is always the state body or organisation outside of the state organism, which has a 'public authorisation' and which acts on behalf of the state as the 'authority executor'. In general, it could be said that the norms regulating administrative relations are norms which in their essence ensure inequality of entities in legal relationships occurring, changing or terminating in relation to the realisation of general (public) interests. Authoritative conduct of a public administrative body or acting with 'stronger will' also means that this ensures the prevalence of public interest in case of the collision between private (personal) and public interests (Grafenauer & Brezovnik, 2006: 62).

In the context of our approach, we will derive from the assumption that administrative law includes the regulations that regulate or refer to:

- the organisation, field of activity and powers of the state and, especially, public administration (particularly state administration bodies, bodies of self-governing local communities and organisations with public mandates),
- the functioning of bodies and organisations in the field of public administration and the content of relationships between them and individuals and other organisations in cases of administrative relations,
- legal position and relationships between public administration bodies in the system of power,
- the procedure (administrative), based on which public administration bodies must act when deciding about the rights, obligations and legal benefits of individuals and other clients in administrative affairs,
- judicial and other types of control over the work performed by bodies, and responsibility of bodies and organisations in the field of public administration,
- the foundations of the regulation of legal position of employees in bodies and organisations in the field of public administration,
- the resources disposed or used by the bodies and organisations when performing their administration tasks and activities (Grafenauer & Brezovnik, 2006: 62).

The stated definition shows that administrative law includes the organisational, material (functional) and process parts (Grafenauer & Brezovnik, 2006: 62).

3 The administrative law system

In terms of certain legal matter's comprehensiveness, the administrative law system is represented by two parts, namely the general and special part of the administrative law. The general part discusses the issues fundamental for the entire field of administrative law, and

also the basic principles of the organisation, the functioning and performance of tasks and control over a part of state and public administration, as well as regulations, institutions, principles and concepts that are common to all or several fields of public administration. The special part of administrative law covers legal norms used to regulate individual administrative fields: internal affairs, defence, land use planning, environmental protection, customs, finance and tax, craft, educational system, health system, etc. This matter is often discussed by individual institutions (administrative law institutions are groups of legal norms of administrative law used to regulate the same type of social relationships), such as name, citizenship, associations, expropriation… According to the content of norms, administrative law can be categorised as material and formal. Administrative material law includes legal norms that regulate the content (rights and obligations, legal position, relationships) of administrative functioning and relationships between public administration bodies and individuals and organisations at various administrative fields. Administrative formal law, on the other hand, is comprised of two groups of legal norms, that is organisational law, which includes provisions on the organisation of state and public administrations, and process law that includes the rules about procedures taken by competent bodies and other stakeholders when deciding about the rights, obligations and legal benefits of individuals and organisations in administrative affairs. Moreover, individual regulations often include norms that fall within various groups, while often, individual regulations and norms include various perspectives as to what group they should be categorised (such as, for example, in regulations governing the field of public employees, regulations regulating control over the work of public administration bodies, etc.) (Grafenauer & Brezovnik, 2006: 63-64).

4 Administrative relationship

Administrative law primarily represents a unit of legal norms regulating the implementation and 'realisation' of the administrative branch of authority and the functioning and organisation of the field of public services and local self-government. In the context of this, we are particularly interested in the norms that include the provisions on the conduct and actions of people and organisations, primarily their rights and obligations, and relationships arising in the process of the realisation of such norms. We are, thus, interested in administrative relationships, which are a typical institute of administrative law, and which represent one of the types of legal relationships (Grafenauer & Brezovnik, 2006: 64).

Legal norms are rules of conduct and actions of people. Based on these norms, various legal relationships are established, that is, legally regulated social relationships. The most common types of legal relationships are the civil law relationship and the administrative relationship. The latter is a type of legal relationship with its own specific features and which, in terms of legal regulation, is important for the functioning of the society as a whole. The administrative relationship occurs in the process of implementing public administration tasks (tasks in thepublic interest realisation context), particularly in the context of implementing administrative governing functions. It can be said that

administrative relationship is a type of a legal relationship involving state administration bodies and other bodies, which enforce public authorisations in the process of their work, that is, when based on administrative law norms they decide on the rights, obligations and legal benefits of entities (natural and legal entities) in individual administrative affairs. Typical of this relationship is that it involves unequal entities. Moreover, a characteristic of this relationship which is decided about in the administrative procedure (administrative procedure may start on request by a client or ex officio) is that its result is an administrative decision. A decision issued in an administrative procedure is a concrete administrative act used by a competent body to decide about a right, obligation or legal benefit of an individual or a legal person or another person who can be a client in an administrative procedure. An existing general material regulation (abstract norm) is thus used with an administrative decision in a concrete, individual case. With a decision, a body authoritatively (with stronger will) and unilaterally (that is, without negotiations) decides about a concrete right, obligation or legal benefit of an individual client. A decision means an act of using the law, an act creating a concrete and individual administrative decision (norm). The administrative relationship has all the characteristics of a legal relationship, but it also has some specific features that are evident particularly regarding: entities engaged in such relationship, method of occurrence (functioning), content and procedure, and protection of rights (Grafenauer & Brezovnik, 2006: 64-65).

One of the parties to an administrative relationship is always a state body or organisation or an individual who has a relevant special public authorisation. This means that one of the parties to such relationship is actually 'mandatorily' predetermined. Most commonly, the party to such relationship is a state administration body, but often also other administrative organisations which carry out public service affairs, and other organisations and communities enforcing public powers. A public authorisation is a power vested in certain entities to perform various rights and obligations of public power holders. A public authorisation is not a special type of power but only its form, which is carried out by those entities who are not in the structure of state authority bodies. The content of a public authorisation is, among other: • the possibility to regulate (with general legal acts – regulations) certain relationships of a broad social importance, • deciding on administrative affairs, and • carrying out administrative actions, issuing certificates and other public documents, as well as keeping public (official) records. It is a matter of the (public) authority being executed by organisations or entities who are not part of the state apparatus. Individual organisations can be authorised to enforce public powers by means of the law or another act based on the law authorising them to carry out individual actions in the administrative procedure and decide on certain types of administrative affairs (Grafenauer & Brezovnik, 2006: 66-67).

The method of a decision-making body's establishment and, primarily, functioning is the next important characteristic of an administrative relationship. Such relationship occurs based on the 'stronger will' of a state body or a body holding public authorisation (it is thus not created based on an agreement, consent of wills between entities involved

in such relationship), which acts authoritatively and unilaterally. This applies for both the cases where a procedure is introduced or initiated in accordance with the law (ipso lege) as well as when the procedure is initiated on the client's request. Therefore, the administrative relationship is a relationship of two unequal entities in which one makes decisions about the rights and obligations of the other one and ensures the enforcement of its decision with authoritative conduct. Naturally, this entity is also bound by legal provisions and determined conditions regarding its conduct and decision-making, and its will is usually expressed in the form of an administrative act – a decision, used to decide about a right, obligation or legal benefit (Grafenauer & Brezovnik, 2006: 67).

In terms of the content, the administrative relationship means making decisions about the rights, obligations or legal benefits of individual entities in administrative matters in individual administrative fields. Here, it is typical that administrative relationships represent concrete administrative affairs where the public (general social) interest or public benefit, which should, if necessary, be realised also with instruments of power is more or less expressed. Perhaps, it should be added that categorical (cogent, *ius cogens*, imperative) legal norms typically apply for the administrative relationship, meaning voluntarism is excluded – when predetermined facts are provided, the competent body must use accurately determined norms and issue the determined (administrative) act (Grafenauer & Brezovnik, 2006: 68).

The rights and obligations arising from administrative relationships have a 'legal validity' only if they were established in a determined (administrative) procedure. In the administrative procedure, the protection of the rights from this relationship is ensured with regular and extraordinary legal remedies, whereas in all modern legal systems, judicial control of the rules of concrete administrative decisions is also established and hence also judicial protection from illegal administrative decisions – this is ensured in the context of an administrative dispute (Grafenauer & Brezovnik, 2006: 69).

5 Public administration acts

The bodies and organisations which in the context of their work and powers use and realise administrative law norms in the field of public administration (state administration, implementation of public powers, public services, local self-government), issue and adopt various legal acts and carry out a range of other tasks and actions. The entire activity or tasks of administration (particularly state administration bodies) are in theory also categorised according to their acts, which are broken down into: • legal acts, • material acts (actions), and • operational acts (Grafenauer & Brezovnik, 2006: 71).

Legal acts are types in which legal norms are expressed (created, included). Their essence and content is in the creation of legal rules. Legal acts are also defined as statements of wills creating legal effects. In public administration activity, legal acts issued by public administration bodies and organisations in the context of realising their

functions and tasks have the central position. According to the type of the included legal norms or the kind of legal rules that are created with them, legal acts are divided in two large groups: • general (abstract) legal acts, and • individual (concrete) legal acts (Grafenauer & Brezovnik, 2006: 71).

General and abstract administrative acts include general and abstract legal rules, whereas the content of concrete (individual) acts of others are individual and concrete legal rules. General (abstract) legal acts, which are also called regulatory acts, are also divided in terms of who issues them. The most important for our discussion is the distinction between the general legal acts issued by legislative bodies and the general legal acts issued by bodies of the executive-administrative branch, and in the latter also the distinction between the general legal acts issued by the government and general legal acts issued by ministries (Grafenauer & Brezovnik, 2006: 71-72).

Individual (concrete) administrative acts are a result of using abstract and general legal rule in a concrete and isolated case. With these acts, a right, obligation or legal benefit of an individual, organisation or another party to an administrative affair is decided in an authoritative way in a concrete administrative affair. These are typical acts issued by the administration in the context of its law implementation activity. It is generally typical of administrative law that a concrete and individual legal act – in accordance with the legislation, these are usually called 'decisions' or, for example, permits, passports, etc. – must often be issued in order to realise its general and abstract rules. Concrete and individual administrative acts are authoritative acts, where administration appears in relationship to another entity (in an administrative relationship) with a stronger will, meaning it 'commands and not communicates'. Unlike this, contracts as operational acts are of non-authoritative nature, as in such case both entities act with equal will, and the conclusion requires the consent of wills (Grafenauer & Brezovnik, 2006: 71-72).

Material acts – actions (the expressions 'act' and 'action' are synonyms in this case) are those actions, activities, conducts, tasks… of public (primarily state) administration bodies, which do not have the nature of legal acts and (usually) do not have direct legal effects. In the broadest sense, these are tasks with organisational, analytical, study, technical and professional character. Material actions are very diverse: keeping records (registers, civil registers…), preparing analyses, elaborations, reports, draft laws, etc. Among these, special attention need to be paid to those (real) actions, used by state bodies to directly act against the affected persons, thus interfering in the rights and freedoms of individuals, for example by means of detention, use of individual coercive measures and means (detention, truncheons, firearms, etc.), removal of an object, etc. (Grafenauer & Brezovnik, 2006: 72).

Material acts or more precisely material actions, which represents an important part of every administrative body's tasks, can be classified into individual comprehensive units by various criteria, namely:

- documenting, which includes acts (actions) used by public administration bodies to establish the existence, register, record and monitor various phenomena, personal

traits and other facts, and offer related data. This is an activity whose purpose is to ensure legal security, as documentation achieves an overview of the real situation of facts. This includes:

- keeping records, which includes recording or keeping track of phenomena, characteristics and other facts. The most important records and registers are determined with laws: e.g. those of citizens, births, weddings, deaths, private cars, ships, persons subject to compulsory military service, foreigners, craftsmen, taxpayers, companies, voters, land, etc. In the context of state administration activities, records of personal situations – statuses (births, weddings, deaths) kept by administration bodies for internal affairs are especially important, but these are recorded in civil registers. Based on entries in civil registers (birth, wedding and civil registers of the deceased), personal situations (statuses) of natural entities are established and proven. In addition to the basic entries, all changes of the personal situation are recorded. Entries in civil registers are usually declarative – they are only used to determine and prove certain personal status, but not also to constitute or create;
- issuing certificates, which actually means giving information about phenomena, characteristics and facts about which official record is kept (record established with a regulation). A certificate alone does not cause legal effects, but it is merely a confirmation of a certain event, property or fact. According to the General Administrative Procedure Act (ZUP), certificates about which an official record is kept must be issued on clients' request; an official record is kept for such certificates and they are considered a public document. Special types of certificates are cards (identity, health care…), which represent a confirmation of a situation or status and rights arising therefrom.

- notification represents material acts (actions) used by the administration to notify the 'addressees' about various facts or legal acts, and it is performed in various forms. For example, laws and other regulations are published in the official gazette and other newsletters; administration acts are served on those they refer to; statistical and other data are published in official bulletins, etc. In theory, special types of notification acts are various reminders and warnings that are used to remind those who have failed to meet their obligations to do so (e.g. they have not cleared snow from a sidewalk, paid taxes, etc.), and often a 'threat' is added about what will happen in case the reminder is not complied with.
- taking statements from the 'interested' or 'bound' persons which may have very different meanings and legal consequences – e.g. they can serve as the basis for an activity done by the administration (e.g. in case of reporting pollution to inspection services, reporting births…) or for an issue of and administrative act (e.g. accepting customs declarations, filing tax returns, etc.).
- other material acts of administration, which includes various organisational, analytical, study, pedagogical, technical and other professional tasks, preparation of elaborations, reports, analyses, working drafts and draft regulations, performance of various executive activities, etc. From the professional perspective, administrative bodies must professionally justify their proposals, points of view, regulations and

other acts that they prepare and accept, as well as the performance of all other tasks. This is why they often cooperate with scientific and professional organisations, especially if this requires complex research, specialised expertise or special professional and scientific methods that cannot be ensured by an administrative body alone (Grafenauer & Brezovnik, 2006: 72-73).

Operational acts are those acts used by public administration bodies when entering private-law relationships with other entities, whereby the rules that otherwise regulate contractual relationships and other legal transactions apply – here, specificities determined by the law apply for public law entities in certain cases. Operational acts are thus non-authoritative legal acts of administration, which acts in relationship to individuals and organisations based on the equality of wills (it therefore does not command, but it communicates) (Grafenauer & Brezovnik, 2006: 73-74).

Open public administration

The principle of open public administration includes several elements (Curtin & Meijers v Bugarič, 2005: 7). The most important are citizen's access to all public information relating to public administration's work; the possibility of public's involvement (consultation) in preparing and adopting public administration's decisions; the possibility to co-decide on certain issues from public administration's competence; and last but not least, access to forums or bodies where decisions are made (Bugarič, 2005: 7).

The principle of public administration represents negation of the tradition of mysteriousness and closeness typical of public administration in the European continental area. The openness principle may even strengthen the position of an individual – citizen in administrative law, as it contributes to the constitutionalisation of certain rights of an individual in administrative law. The rights of an individual are judicially protected and often an integral part of the fundamental legal principles in a certain regulation. The strengthening of an individual person's role is not necessarily legally formalised. Certain regulations are based on a long-term practice of public's involvement in the preparation of regulations, which is not legally regulated. Due to the fact that rights are not formalised, the role of public's involvement in such regulations is not decreased. The role of an individual person is increased primarily in the process of adopting implementing regulations and regular legislation, which consequently helps increase the public administration's work transparency. The said principle has firm foundations in legal rules, principles and judicial doctrines of European Union's law as well as in legal orders of European Union member states (Craig & de Burca v Bugarič, 2005: 8). This principle enables stronger and stricter control over the work of public authorities. Greater role of the public in adopting regulations has an increasingly important role in public administration's modern reforms (Bugarič, 2005: 8).

Open public administration is a relatively new phenomenon in the European area. Notwithstanding, it needs to be mentioned that it has a long tradition in certain parts, the longest in the Scandinavian countries. For example, Sweden adopted the Freedom of Press Act, which includes the transparency principle, already in 1766. The Swedish example was followed by Denmark after World War II, and later by other Scandinavian countries (Gronbech-Jensen in Bugarič, 1998). The culture of open public administration is particularly strong in Finland. In the Swedish legal tradition, the openness principle does not only mean access to public information but also the right of public employees to communicate with the press already in the regulations or decisions preparation phase. The

fact that the openness principle is a constitutional principle and more than two hundred years of tradition and political and moral support to the openness principle in the Swedish society have formed a deeply rooted culture of openness, which has distinctively marked the Scandinavian countries (Ziller in Bugarič, 2005: 8-9).

The reforms that introduce various types of open public administration to public administration are importantly supported by various factors, such as globalisation, information revolution and, in the European area, an increasingly stronger impact of the European law on the law of member states (Wright in Bugarič, 2005: 9). In Europe, important changes occurred in the 90s of the previous century when states started introducing various types of open public administration into their legal orders. The strengthening importance of open public administration in Europe was also importantly influenced by the accession of Scandinavian countries to the European Union. Another important reason for such change is the emergence of the European regulatory state, which strongly affects the structure of public administration in European countries (Majone in Bugarič, 2005: 9).

A comparative study about various types of public administration introduction points out that involving the public in the public administration's decision-making process represents not only democratisation and better openness of public administration, but also improves the quality and introduction of public administration's decisions (OECD in Bugarič, 2005: 9).

1 Access to public information

The right to access public information has become internationally recognised under the expression freedom of information (Rovšek in Prepeluh, 2005: 33). As a fundamental right, it traditionally involves the freedom of expression, which has been recognised in international and comparative-law regulations for a long time and systematically analysed in both the theory and practice. In last decades, law and philosophy have largely focused on freedom of communication, whereby they have slightly neglected the other dimension, which is equally important for its realisation, that is, the public's right to receive information and ideas. In every society, public discussion only makes sense if it is supported with relevant information. Therefore, the public's right to obtain information – including from public authority bodies – is a prerequisite for the true realisation of the freedom of expression (Dienes et al. in Prepeluh; 2005: 34). At the international level, both rights discuss Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights, which recognise the freedom to seek information and ideas as a part of the right to freedom of expression (Prepeluh, 2005: 33).

When discussing freedom of information, it needs to be taken into consideration that this is a broader concept than the concept of the right to access. The right to access public information enables an individual to obtain, on request, the desired information

in possession, in a special procedure. This right is the first and fundamental part of the information freedom. The second part of information freedom is the duty of public-law entities to mandatorily publish certain types of information they dispose with without receiving any special request for it. Both elements of information freedom are today considered generally adopted standards of democratic society. Some international non-governmental organisations have recently attributed the third aspect to information freedom, which is the state's positive duty to ensure certain categories of information, meaning that it creates them even if it has no interest in their collection and structuring. This aspect of information freedom has not been established yet in positive law regulations, as it would impose on the state the duty to create new information, while the first two elements (the right to access and the duty to publish) only refer to the information that the state already disposes with and only needs to disclose or make it available to the entire public (Prepeluh, 2005: 34-35).

A slightly broader concept than information freedom is 'transparency', which has been established primarily in the European Union law and which some authors even define as its principle. Although transparency is, in the first line, a political concept and in legal terms its content is not strictly defined anywhere, its legal contours are becoming increasingly clear (Sobotta in Prepeluh, 2005: 35). The majority of authors agree that in addition to the right to access documents in possession of European institutions, transparency includes at least the obligation of the liable entities to independently publish certain information and the public nature of sessions or the public nature of decision-making procedures. The latter category substantially separates the transparency principle from information freedom and represents the next step in the development of the possibilities that the public has to control the work of public-law authorities. In Anglo-Saxon countries, such regulations are called 'government in the sunshine laws', as their purpose is to ensure the work of public administration in 'sunlight', that is, before the public and not in darkness (Prepeluh 2005: 35).

EU's official explanation defines transparency as a 'concept that is often used in the language of European communities and represents the openness of community institutions' work. It is connected with various requirements for broader access to information and documents of the European Union, greater inclusion in decision-making processes, and easy-to-read texts (that is, simplification of fundamental contracts, consolidation and better planning of legislation)'. The last element is especially interesting, as it has become an understandable requirement in the complex and non-transparent legal system of the EU. It addresses the request for simple and understandable legal rules and clarity or uniformity of a certain concept or rule to the European institutions (Sobotta in Prepeluh, 2005: 36).

In the European context, the term transparency is being widely used as a synonym for 'openness', which has its roots in the Swedish or Scandinavian principle of openness that does not know the concept of transparency. It seems that 'openness' is a concept preferred by freethinking academicians and politicians, as the expression 'open system'

is figuratively broader than ‘transparent system’. Transparency in its most basic form merely enables ‘seeing more clearly through the window of institution’. It enables an insight, but (if the window is closed) unlike the open system it does not offer the possibility of exchange in all directions or two-way communication (Berge, Moser in Prepeluh, 2005: 36). If transparency and openness can often be understood as synonyms in the European context, they must not be confused with the concept 'publicity'. ‘Publicity’ is already included in elements of openness and availability as their subtype (Sobotta in Prepeluh, 2005: 36).

The concept 'open administration' is differently understood in the USA where it includes three fundamental areas: • access to public information or freedom of information; • protection of privacy or personal data, and • publicity of collective administration bodies’ work and the public’s right to participate in their sessions. From the perspective of a European lawyer, the inclusion of privacy protection is particularly unusual, as in Europe it is discussed primarily as an opposite of or exception from the principle of free access to public information (Prepeluh, 2005: 36).

According to the above-mentioned starting points, the right of access to public information can be defined as one of the three material integral parts of information freedom, and at the same time as a fundamental and minimum requirement of the concepts of transparency and openness. The right of access to public information must be separated from the right of access to documents (Prepeluh, 2005: 37).

In the majority of international legal systems and national legal orders the concept ‘access to information’ as been established, whilst in the European area, particularly the EU law, the concept ‘access to documents’ of European institutions has been traditionally used. These concepts are not identical already from the semantic point of view, as information usually represents an abstract message or data, while ‘document’ is something concrete or otherwise materialised data. Differences in the content show that the concepts are like two concentric circles that overlap to a certain degree, and differ in other parts. On the one hand, the information can be a narrower concept when it represents only a part of a document, that is, only one piece or part of data from a longer document. On the other hand, the information can be a broader concept when it is spread across a larger number of documents or when it consists of several documents or even non-written resources (Berge in Prepeluh, 2005: 38).

Freedom of information, transparency or openness, right of access and duty to publish, access to information or access to documents are thus concepts that have over time obtained quite clear contents in the field of law and they include certain rights and obligations. Such concepts were, sometimes with minor modalities, used to pave the way to positive law. This, however, cannot be claimed for the so-called ‘right to know’, to which it is difficult to attribute a certain meaning from the legal perspective. In Europe and internationally, it has become a more or less political and rhetorical phrase for freedom of information or laws about the freedom of information. In the USA, it has

in certain places even been establishing as a synonym for the rights of individuals to be properly informed of certain environmental information (especially about environmental pollution) and certain issues in the medical field (especially with the content of health insurance) (Prepeluh, 2005: 39).

We must emphasise that there are many reasons for the right of access to public information. By far the most important reason lies in the increasing level of democracy and democratic society. The majority of international regulations are based on the belief that (parliamentary) democracy only works properly if the general public and its elected representatives are completely informed. Representatives of democratic society can make their political decisions only based on critical consideration, especially when deciding about the state of the society they live in and about what political option or what government policy they will support. Their judgment can only be correct when they have all the suitable information available about a certain issue and when the government's actions are transparent and known to the broad public (Dienes et al. in Prepeluh, 2005: 41). Here, they cannot rely on the government to always give them all the relevant information, especially not that which is not to its benefit. The right to access public information therefore does not represent an effective mechanism that ensures citizens to be better informed about the issues of public interest and consequently better cooperation in the society and the matters of joint interest (Prepeluh, 2005: 41-42).

The said arguments are so convincing that the reason for democracy is emphasised by legal resources throughout the world. The importance of access to public information has been stressed by the European Union, the Council of Europe and the UN. The UN Human Rights Committee also pointed out the comprehensive right to take part in the conduct of public affairs stated in Article 25 of the International Covenant on Civil and Political Rights. In relation to the right of access to public information, this means that citizens must have, especially through the media, broad access to information about the activities of the elected bodies and their members (Prepeluh, 2005: 43).

The right to access information improves the efficiency, success and responsibility of administration's or public-law entities' work by enabling the public to have general control of their work (Berge in Prepeluh, 2005: 47). Every official works more professionally and effectively if he is aware that his actions are or can be the subject of control (the reason for control and effective functioning). Control over the correctness of its decisions, the observation of legal and other rights and legal order contributes to the confirmation of the legitimacy of administration as the public service (Mendel in Prepeluh, 2005: 47). Such insight enables political control and, therefore, prevents abuse and inconsistencies in the work of bodies (Feik in Prepeluh, 2005: 47). This way public authority keeps its integrity. Public's access to information is in the interest of public authorities, as it enables establishing communication and closer relationship between the state and an individual person, which will likely improve public's trust in it (the reason for trust). Only bad countries need secrets to survive, because this enables

their inefficiency, lavishness and corruption. The psychological factor is especially important here – the more individuals are familiar with the work of state bodies, the better they understand the decisions taken, thereby accepting them to a higher extent (reason for acceptance) (Feik in Prepeluh, 2005: 43)

Alongside political control, publicity of all information enables financial control and decreases corruption, thereby enhancing the effectiveness of the state's functioning also from this perspective. Corruption decreases not only because of the way how state bodies handle information they possess, but their actions, which are the subject to such information, cannot be hidden from the vigilant eye of the public. By disclosing the work of bodies, possible corruption and irrational use or poor management of public resources is disclosed, resulting in less lavish spending and more honest work of the responsible persons. Since taxpayers or public as a whole are those who contribute resources to public finance, they must be enables to control the public resource spending – or abusing (Prepeluh, 2005: 44).

2 Public's involvement in the adoption of regulations

Public's involvement in the preparation and adoption of regulations includes either the right or actual possibility of citizens to express their opinions or perspectives about a proposed regulation (Ziamou in Bugarič, 2005: 9). Significant differences regarding legal (un-)soundness of such procedure exist between comparative regulations. Sometimes, a procedure is legally or legislatively regulated, while elsewhere it is regulated only with internal acts of administration or it is even completely informal and not laid down with the existing legislation or other legal acts. Even though the question of the type of legal regulation is not material for the cooperation procedure, this question is more important in those countries where the level of general legal and political culture is lower and which are facing the problem of (non-)implementation of the adopted regulations or implementation deficit. In the countries where consultation between the executive branch of authority with the public is conditio sine qua non for the regulations preparation procedure, the importance of the general political culture is evident, as in come countries, such as Great Britain, the procedure of adopting regulations without the proper consultation with the public cannot be imagined, although such involvement of the public is not directly determined in legal acts (Bugarič, 2005: 10).

Such type of public cooperation means a significant change in the way regulations are prepared in the European continental legal space. The classical regulations preparation model in Europe usually does not include the public prior to the phase when the law is already in the parliament. Citizens can impact the content of laws either via their representatives in the parliament or directly through various types of direct democracy. The prior laws and regulations preparation procedure is more or less left to internal rules of state administration, which at its own discretion either includes the public or not. Even less important seems the inclusion of the public in the adoption of implementing

regulations and other provisions. This is almost entirely left to state administration's internal rules or its discretion (Bugarič, 2005: 10).

In the majority of European countries, such regulation arises from the assumption that the public is included in the regulation preparation procedure with the principles of representative democracy. In practice, such assumption is often unrealistic. The public is not sufficiently included in the regulation preparation procedure, hence the need for a different regulation of such issue (Bugarič, 2005: 10).

The majority of European countries have differently regulated public's involvement in the adoption of regulations. Emphasis is put on the material or substantive rules controlled by the courts. Although the public's consultation procedure is usually not legally regulated, a rich actual consultation practice has developed in both the adoption of laws as well as other regulations. This is a matter of the state's discretion right to consult with the public, which is very commonly and intensively used in practice. This applies particularly for states with a rich tradition of social dialogue and in general with the tradition of possible civil society that is the state's partner in its tasks. The Scandinavian countries, Ireland, and the Netherlands stand out the most. Great Britain, which is the common law cradle, has an entirely different tradition here than, for example, the American model. An important factor explaining the difference is a different type of authority division or difference in the type of authority organisation. The British parliamentary system gives much higher and concentrated power to the executive authority than the American presidential system. But it is worth mentioning that in practice, even though it is not regulated with regulations, cooperation is extremely important in Great Britain too. The situation is different in European continental countries where consultation is not legally regulated and it has never been frequently used in practice. If it was used, then organised interest groups or expert groups (corporatism), and not the public as a whole, were usually included in discussion. The interest groups or profession consultation procedure is not legally regulated and it is almost entirely left to the discretion judgment of the executive branch of authority. Regardless of the described differences and existence of two main models of legal (non-)regulation of public's consultation, we should add that in recent years, this image has changed quite a lot. European continental countries have been preparing new solutions in this field. It is worth mentioning that in the countries that have no general regulation governing public's consultation, this procedure is very frequently regulated by individual field laws, namely only for the fields that are regulated in the field legislation. Such cases are most frequent in the field of environmental protection law, law regulating spatial planning and land development and in some other cases. In such cases, the procedure is usually quite formalised. It seems important to emphasise that regardless of which consultation model prevails, public administration is not legally tied to the opinions or comments of citizens in any of the two cases. This, of course, applies that more for the regulations where consultation is left to the internal rules of administration or to the so-called 'soft law', which regulates consultation through various codes, standards or customs of conduct in state administration. In the model

(American) where administration is legally obliged to consult the public when preparing regulations, it is the state's duty to use arguments to answer the opinion submitted this way. The process nature of the right to cooperate is clear already at this point. The right is structured as a right to a procedure where everyone can express their opinion, but it does not mean the right to co-decide in the decision-making procedure. This is why another expression is often used for the right to cooperate, i.e. the right to consultation. The process nature arises from the emphasis on the right of the public to express its opinion in the determined deadline and to get a substantiated answer to such opinion from the public authority. Such aspect is also very important in the regulation where consultation is not governed by regulations. This way, the British Code of Practice on Written Consultation, for example, very clearly defines that a body must clearly answer the proposed solutions with arguments (Bugarič, 2005: 11-12).

Inclusion the public in the regulation adoption procedure enables public authorities to obtain a wider range of information, perspectives and potential solutions when making decisions, thereby improving the quality of the adopted decisions. It is becoming clear that administration cannot be familiar with all the details of the content of regulation. Very often, the entities that are the subject of regulation have more information about the contents being regulated than the state administration itself. Economic studies prove that open administration can help to improve governance and leadership (Islam in Bugarič, 2005: 12-13). At the same time, such right also improves public trust in institutions of authority, increases the level of democracy in the society and improves the role and importance of the civil society. By regularly including itself in the preparation of a regulation, the public can better identify itself with state administration and authority than if regulations are drawn up without the cooperation with the broad public. Moreover, cooperation even increases the adopted regulations implementation effectiveness as those who can participate in the preparation of a regulation can implement such regulation more quickly and effectively. Being included in the preparation of a regulation substantially decreases the chances of implementation deficit as a peculiar problem of the modern state administration. Various countries in the world have found that there is a huge gap between normative regulations, their goals and principles, and their actual implementation in practice. Consultation can greatly contribute to the elimination of such problems. Cooperation in the preparation of regulations is becoming a common practice in the preparation of regulations in various countries and regimes in the world. Important differences between countries exist even inside the European legal area. Typical of the British, Irish, Scandinavian and Dutch state administration work models is the traditionally big role of consultation with the civil society, even though this type is not statutorily or otherwise legally regulated. To be more precise, continental countries in Europe, such as Germany, France, Austria, Spain, etc., are primarily those where consultation has not played a major role in the preparation of regulations. In these countries, the 'corporatist' style of consultation prevailed. Typical of such model is that it does not enable everyone to cooperate in the regulations preparation procedures. The content of the cooperation procedure is, as mentioned before, differently regulated in different countries, or sometimes not

regulated at all. In certain countries, cooperation includes cooperation of citizens in adopting implementing regulations, while elsewhere it also includes cooperation in the preparation of laws and other fundamental political decisions, such as strategies, national plans, etc. Cooperation in the adoption of legislation is nothing new in Europe. On the contrary, this field has a highly developed practice in Europe. Such cooperation is realised either in the form of consultative referendums, other types of referendums, right to petition and presentation of public opinion in the adoption of the constitution or laws. What is quite new to the European continental space is cooperation of citizens in the preliminary phase of the preparation of regulations, either laws or implementing regulations while a regulation is still in the phase of preparation. The greatest new development is the inclusion of the public in the process of preparing implementing regulations (Bugarič, 2005: 13).

Regardless of its legal regulation, the cooperation procedure must include all acts of the executive authority, i.e. implementing regulations issued by the government and those issued by ministers. The cooperation procedure must be excluded in certain acts where cooperation does not come into consideration, either because it is a matter of the state's classified information (e.g. state security) or a field where the introduction of consultation would unnecessarily burden the state administration's work. This is thus a matter of exceptions. We should add that exceptions can be regulated in the law, another regulation or a code or another type of soft law. This usually includes the fields of defence and state security, which include fields related to the preparation and issue of various classified and other confidential documents. Furthermore, this includes the fields relating to internal governance in an administration body and property transactions of the state, such as public property, loans, contracts, etc. In addition to these exceptions, the general exception is important and it applies in cases where cooperation would not be reasonable or it would be contrary to public interest. Another field where such exception is required is the field of external state policy and the field of internal organisation of state administration. Consultation is very important in improving the work of state administration, but at the same time potential impacts of cooperation on regulations adoption speed must be assessed in the fields that require state's swift reaction or in the fields where administration deals with its own internal organisation where cooperation of the public is not needed. Special regulation is also required by other 'special cases', when the nature of a regulation requires it to be issued immediately as the state's immediate intervention is necessary or in case when the purpose of regulation would be double-crossed, if the public was informed with the regulation before its issue. In the states where the procedure is legally regulated it is important that exceptions are as accurately defined in the law as possible. Provisions that are too loose may quickly annul the importance of cooperation, as the cooperation procedure can be excluded by referring to state's 'defence' or 'security' even though this might not be necessary (Bugarič, 2005: 18-19).

The main reason dictating a certain level of scepticism in introducing public's cooperation to public administration's work is unnecessary and irrational burdening of

public administration's work. This is why even the US law has a special provision enabling the US administration to avoid the use of consultation in cases when it explains that public's cooperation would be unsound, unnecessary or contrary to public interest. Such provision enables a quite flexible use of the cooperation procedure, which eliminates it in the cases when cooperation is senseless or unnecessary. If the cooperation procedure is less formalised, other exceptions are possible, such as the importance of the field being regulated or financial consequences of the law or regulation. In case of politically unquestionable content of regulation or in case of a regulation with negligible financial consequences, an administrative body may propose not to carry out the cooperation procedure. The more a procedure is informal, the more discretion is left to the administrative body in respect of the judgment about the necessity and soundness of cooperation. Such informality has its strengths and weaknesses. A strength is primarily in that it enables administrative bodies to focus only on the material issues and implement the cooperation procedure only in such cases. An additional strength is that it enables administrative bodies to adapt the type of cooperation to the discussed content, which is impossible with the formalised cooperation procedure (de Vries in Bugarič, 2005: 19). A weakness is that it enables a country where dialogue with citizens and civil society is not particularly highly socially valued evading such a commitment (Bugarič, 2005: 19).

The second category of regulations where cooperation procedure could be used includes all other general legal acts. First of all, there are legal acts where it is especially important to enable the public to cooperate early enough, that is, already in the process of their preparation. Once a law is formally submitted for the procedure, the public can cooperate via the existing democratic mechanisms: political parties, various legal forms of direct democracy and other informal types of consultation, such as the presentation of opinions in the parliament. In laws, it is important to foresee the possibility to cooperate in the law preparation phase when the public does not have the possibility to cooperate yet. In this part, the cooperation procedure overlaps with another procedure, that is, the Regulatory Impact Analysis (RIA). In addition to proposals of legislative regulations, this category includes especially various strategic documents of the state (programmes, resolutions, declarations) for which it is also important to enable cooperation of the public in the context of a special procedure that would apply for their adoption. Similar problems to those described in relation to laws apply for the category of regulations (Bugarič, 2005: 19-20).

The essential part of the cooperation regulation is the cooperation procedure. Public cooperation is actually a process right or possibility, which, of course, has important content consequences on state administration's and other state bodies' work. The procedure can be regulated very accurately or not regulated at all. Here, it is vital that the state administration openness principle and the economic efficiency principle are balanced. The procedure should be as simple as possible, but at the same time also legally or politically binding for all participants. It is important that the procedure is very transparent and realistic. It needs to be defined which regulations a body should

submit for consultation and in what way and how the public should submit its comments in the consultation procedure. The regulation determining the method how the administration should collect public's comments and respond to them is very important (Bugarič, 2005: 20).

Public administration system

Public administration is a subsystem in the entire social system, whereby it itself is a social system. Just like every social system, it is relatively difficult to set the limits to public administration, as they depend primarily on the fundamental starting points used to define it. For this reason, its definitions stated by various authors are quite different. The definitions reach from relatively narrow concepts of public administration as a system to enforce executive authority to a very broad understanding of public administration as a system that arranges and implements all social matters in a certain society.

Our definition of public administration will be based on relationships and the position that every social system enters or holds. First of all, these are relationships to its relevant environment, followed by relationships inside the system and, finally, its elements or the structure and functions. Relationships to the environment of public administration system in the first line include relationships to individuals and their organisations, relationships inside the system refer to the people working in public administration, and elements and functions of the public administration system include its structural and functional side, that is, its institutions and their functions (Trpin, 2013).

1 Public administration's relationship to its environment

In one of its fundamental functions, public administration is the performer of authority and in this role it enters special relationships with its environment consisting of individuals and their organisations. In these relationships, individuals have a dual role. In their first role, they are the holders of authority, which they transfer via the authorizing relationship to the political part of the administration system for implementation to public administration. The questions arising here are particularly those about how to ensure the impact of individuals on public administration's work in enforcing authority and, moreover, how to ensure control over its work. A large part of such questions falls into the field of constitutional law or state organisation's where democratic states have determined paths that individuals can use to enforce their influence and control over authority performers.[12] Moreover, this field includes

[12] In modern states, the largest part of individuals' impact and control over authority performers is still implemented via the electoral system. Moreover, there are other means of political control

questions about how to enable an individual to better communicate with administration, which is reflected in his right to information and modern principles of administration's organisation and work, such as the principle of openness, transparency, impartiality, etc.

In their second role, they have the opposite relationship where administration acts as a direct authority performer with its entire coercion apparatus. The existence of such apparatus and the possibility of its use directly expose an individual person at risk, therefore in this relationship, the question is primarily raised as to how to protect an individual against the possibility of authority abuse. In this relationship, an individual does not have an active role as he did in the previous relationship, but the essence of such relationship is only to keep and protect his position. This relationship falls into the field of human rights and fundamental freedoms protection, a large part of which also belongs to the field of constitutional law, and lately increasingly to the field of international law.

Moreover, individuals in this role enter relationships with the administration as direct holders of rights or addressees of certain obligations about which the administration decides as the authority performer unilaterally and authoritatively. Unlike in the previous one, in this relationship an individual has an active role, as he demands certain benefit or position from the administration or protects himself from the troubles that could be imposed by the administration. The essence of such relationship lies in the question of how to protect the weaker party of such relationship in such decision-making process, i.e. individuals or their organisations. This question falls into the scope of protection and enforcement of individuals' rights in relation to the administration, which together with the enforcement of influence and control over the administration's work and the protection of human rights and fundamental freedoms represents material relationships of public administration to its environment.

From the normative aspect, the first relationship is primarily regulated by the constitution and legislation in the field of the electoral system and other types of direct democracy. Lately, this field is also strongly marked by the role of the EU law, which has formed a special intersectoral policy titled 'better regulation' for this purpose. In this relationship, an individual enforces his active status rights or political rights that enable him to have a decisive influence on public administration's work with his political activity and direct decision-making in certain time intervals or relating to certain issues. The possibility of such decision-making at the same time provides him with the control over its work, as his decision may influence which group of interest will hold the lever of authority and, hence, the entire administrative apparatus, which will have to follow its goals that, more or less, match the goals of an individual person. The regulation of such field is considered one of the classical regulations that have developed with the occurrence and development of modern democratic states.

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over the authority performer available, such as referendum, decentralisation, authority division and other constitutional principles of administration's functioning (Pusić, 1986: 88-106).

Recently, this field has been developing in the direction of increasingly better and closer communication between individuals and the administration. The condition for successful communication between an individual and the administration is that he is properly informed about administration's tasks and work, which is the condition for successful enforcement of the mentioned active status rights. This goal is primarily served by the constitutional right of information, which, at the statutory level, is concretised by legislation in the field of public information access. This regulation regulates the conditions and procedures based on which an individual can get information that is important for the realisation of his discussed role in relation to the administration, and control mechanisms to realise such right.

This regulation is supplemented by the fundamental standards of public administration's work in relation to clients, which were prepared by the European Civil Service Forum at is session in autumn of 1998 in Vienna. These standards or principles are the foundation for the preparation of EU member states' national legislations. Although there is no direct *aquis communitaire* in the EU in this field, all member states are obliged to unify the starting points of their regulations, so that here we can speak about indirect takeover of European law. This entire regulation is rounded off by the fundamental principles of modern public administration's work.

A special feature of the mentioned principles is their width. This way they are not limited only to state administration, but they reach to all relationships between individuals and public authority bodies. This includes the fields of economic and non-economic public services, where those ensuring public goods and services and those using them come into direct contact. Absence of market mechanisms in this area dictates special legal frameworks whose purpose is primarily to improve the position of users, that is, those who prepay certain goods or services without having any real possibility to choose between different performers because of the opposite party's monopoly. The difference between state administration and public services is practically blurred in this field, because in this case there is no enforcement of authority in either field, but rather the enforcement of users' material and non-material rights. In enforcing their rights, users expect proper conduct of state administration's as well as public service performers' institutions.

The fundamental principle of public administration's work in relation to clients is to establish the so-called user-friendly administration in the broadest sense. Here, some principles are already old and merely indirect in relation to clients, as they directly refer to state administration or public service employees, that is, the performers. Such are, for example, the principle of equal access to a job in public administration and the principle of non-political employment in administration. Even though these two principles do not regulate direct relationship between the administration and clients, they are extremely important as they ensure stability and correct functioning of the entire administrative system, which definitely impacts the position of clients in the enforcement of their rights in relation to the administration.

Other principles are more direct and can be divided into classical, better established, and new principles that are only finding their way into the theory and practice of developed countries. Such classical principle is the principle of the rules relating to administration's work, which is the foundation of every legal state. At this point, we will only mention the administration's transparency and openness principles among new principles. The realisation of the first principle is particularly aimed to prevent all types of corruption, whereby its content at the normative level is particularly the preparation of transparent and easily available procedures for access to goods and services offered by public administration. These procedures must ensure non-discriminatory availability of public goods and services under equal conditions for everyone who meets these conditions. The essential part of this principle's realisation is informing clients about their rights and ways to realise them, and the decision-making transparency. The latter enables controlling everyone affected to ensure that no discrimination has occurred in the decision-making process, whereby legal ways and resources must again be ensured at the normative level to enable the affected individuals to use them in such case.

The principle of administration's transparency is very closely connected to the principle of administration's impartiality. The principle of impartiality is basically another part of this principle, and it directly refers to the subjective conduct of administration employees. If the first case, more or less, involves transparency of structures and procedures, the second case relates to direct request for certain conduct. Here, the goal is the same, that is, prevention of corruption, which should be enabled by these procedures and the obligation of such conduct.

The principle of public administration's openness is much broader than the transparency principle, as it is focused on direct active communication between the administration and the user. Its content could be divided in five different levels, which differ among each other based on the intensity of their communication. These levels refer to notifying the users, consulting with users, partnership between the administration and users, delegation of decision-making competencies to users and users' control over administration's work. Each of these levels has its special mechanisms, which ensure effective communication between individuals and administration at all levels.[13]

Recently, the EU law has been very engaged in this issue, especially relating to the regulation preparation process, which is essentially an administrative process composed of policy guidelines, collection of relevant information, preparation of alternatives and the decision or formation of legal regulation. The new European intersectoral policy called 'better regulation' has included new elements or documents into this process. This

[13] This way, public administration's work quality standards have developed, for example, at the level of information as well as various civil documents, various questionnaires and other forms to obtain individual's opinions in the field of consultation, while the fields of consultation, delegation of competencies and control are most commonly realised via the formal inclusion of individuals in individual administrative organisations' administration bodies. More about this Trpin, 2000: 409-417.

way, the fundamental policy guidelines are included in policy papers, which is followed by information gathering (analysis) and preparation of alternatives, whereby this entire process is closely related to consultations with the interested public. Furthermore, the regulatory impact assessment (RIA) is included in this process prior to the issue of a regulation and during its effective period. This way, the European law very strongly and directly involves the interested public in the creation of an individual regulation, thereby substantially contributing to the elimination of the so-called 'democracy lack' (more Bugarič, 2005).

In the context of their second role in relationship to administration, that is, in the field of the protection and enforcement of their rights, individuals are first in the position of direct threat by administration as the direct holder of the entire state's coercion apparatus. In this relationship, they first enforce the rights of the negative status or the fundamental human rights and freedoms. These rights and freedoms represent direct limitation of authority, as they regulate special legal positions of individuals where nobody is allowed to interfere, not even the authority itself. They have occurred as a result of long-time battle of individuals with authority holders and finally been realised in modern democratic societies where their respect is the condition to enter the circle of civilised societies. This is an achievement of modern civilisation, which is the basis for all constitutional regulations of modern democratic countries.

Such relationship is entirely regulated in the constitution and it represents its material part, as the status of an individual person in a certain society depends on it. Since these are such important rights, their protection is usually ensured in judicial proceedings. Intervening in many of these rights even means a criminal offence, so that these rights also have criminal-law protection.

The second relationship in the context of this role of individuals in relationship to the administration is represented by positive status rights. As part of these rights, an individual demands certain goods, services or legal position from the administration. A corollary of these rights is thus administration's duty to give certain goods or services to an individual person or recognise certain legal position to him. In doing so, it establishes the conditions that an individual must fulfil in order to obtain goods, services or legal position, whereby these conditions are determined by the legal order. It determines in the context of the legal institute of an administrative affair, which is, as a realistic social relationship, reflected in the existing or anticipated opposite between the individual and public interest, which the administration must solve with its decision. In case where such opposite exists or can be anticipated, this situation is determined in the abstract legal norm as an administrative affair and it is entrusted, as competence, to the administration for solving or decision-making. For example, in case of a building permit, the content of administrative affair is an anticipated opposite between individual and public interest regarding the use of space, which is solved by administration with its decision in the form of a building permit.

When deciding in administrative affairs, the administration decides about the rights or obligations of individuals. The concept of a right in this case is directly connected with the concept of an administrative affair, as a right can, at the abstract level, be defined as a certain typical interest determined by the legal order. If an individual or another person wants to enforce his individual interest, he must subdue it to the typical interest determined in the abstract law. The administration decides if he has actually done this or not, and if it finds that he did not, it rejects his request for the enforcement of the right. If, however, it finds that the individual or another person has subdued his individual interest to the typical interest determined with legal rules, then it also protects such interest with its decision. This is where concrete legal relationship is formed, the content of which is a legally protected interest of an individual or his right. This means that the administration solves the contrast between the individual and public interest (administrative affair) and legally protects the interest of an individual (right) if the latter has subdued his interest to a public interest determined with the law.

Administration also decides about the obligations of individuals or other persons. The position is similar to that where it is decided about rights, as obligations are only abstractly defined in the material law as well and they need to be made concrete in an individual case. Here, such concretisation is not performed based on a party's request, such as is the case with decisions about rights, but based on the occurrence and identification of law-making facts that require concretisation of a certain obligation in relation to a concrete person. Such law-making facts are again identified by the administration which, based on this finding, makes its decision.

From the presented relationships, we can see that this is a special situation where administration unilaterally and authoritatively decides on the rights or obligations of individuals. When deciding about the rights, there is no direct enforcement of authority or coercion, because the only possible sanction in this relationship is that administration does not recognise a certain right to an individual. Therefore, the protection of these rights is different from other rights, as positive status rights are not a matter of administration interfering in them, but a matter of the possibility of them being enforced in relation to administration. Such situation requires special process protection, which is in this case ensured in an administrative procedure. In this sense, administrative procedure is a sequence of legally regulated actions, which should ensure administration's correct use of material law, thereby enabling the enforcement of an individual's right. Since the administration unilaterally and authoritatively decides about the right of an individual person, the main purpose of the administrative procedure is to protect the status of the weaker party in such relationship, that is, an individual, thereby enabling him to enforce his right.

The situation is similar in case of imposing obligations on individuals. In this case, they are again the weaker party in the relationship, therefore their rights are again protected in the administrative procedure. The entire protection of individuals' rights in both relationships upgrades the judicial protection system over the administration's decisions

about the rights or obligations of individuals. The system of judicial control over the decisions of administration is made up of the legal institutes of administrative dispute and constitutional complaint.

The described relationship is not limited only to administration's decision-making process about the rights or obligations with concrete legal acts issued by the administration in the context of its regulatory function. A similar situation exists in the field of the administration's service function in the context of which the latter directly ensures public goods and services to individuals. Obtaining such goods and services is also the right of an individual person, only that it is not realised with the issue of a concrete legal act but with direct allocation of goods or the performance of services. In this case, an individual person is again in the weaker position in relation to the producer of public goods or services, therefore the need for his special process protection is equally evident here. With the new regulation, such protection is, the same as in the issue of concrete regulations, ensured in the administrative procedure and equally rewarded with the same system of judicial control over administration.

The presented field of public administration thus includes all relationships between individuals or their associations and administration. In terms of its importance, it belongs to the first place because suitable regulation of all these relationships enables an individual to normally live in the modern society. These relationships essentially give meaning to the administration's existence and work. Administration cannot be its own purpose and just like any other social system it cannot exist and function outside of the circle of individuals who make up such a system. The purpose and goals of administration's work are the satisfaction of their needs, whereby the effectiveness of such work again depends on the proper regulation of the relationships arising between an individual and the administration.

The above-mentioned definition, which includes all relationships between individuals and the administration, strongly affects the approach to public administration analysis. In such a broad definition, the subject of public administration in this field strongly intertwines with the subject of other disciplines, particularly the constitutional law. The latter is often not just a matter of intertwining, but of the same subject, whereby we must give advantage to the constitutional law in such cases. This points to the fact that in certain issues, constitutional law and public administration are inseparably connected, whereby particularly the latter cannot be analysed without the use of constitutional law findings. This is a matter of a new comprehensive approach to analysing public administration, which analyses the latter as different types of administrative systems that include the structure and course of the administrative process at all levels of social governance. Likewise, administrative systems as a whole enter into relationships to their environments, therefore we have included them into the field of public administration in

our definition, even though they belong to the field of many other social disciplines, both normative as well as empirical ones (Trpin, 2013).[14]

2 People in public administration

Public administration is a social system and, as such, it is also an organisation. The material substrate of every organisation is made up of people and material resources, while its structure is represented by a network of mutual relationships of the people working in an organisation, thereby mutually interacting. They create such interactions in the context of their organisational roles, which can be determined as standardised patterns of conduct defined by norms and values. Such conduct is focused on a certain goal pursued by an organisation, which gives meaning to the functioning of the organisation. From this perspective, an organisation is a network of organisational roles of organisation members or their standardised work focused on the goal of an individual organisation. Here, standardisation of conduct should not be understood absolutely but only in the sense of the standardisation of organisational roles that form the structure of organisation. An organisational role defines the position of an individual in the organisation and his relationship to other holders of organisational roles or positions, and in such mutual interaction of organisational roles, conduct of people is more or less standardised. This is therefore a matter of mutual relationships of organisation members based on their positions, whereby in these relationships the material question is how much and how an individual holder of an organisational role can, based on it, influence and decide about the conduct of another organisational role holder.[15] In such relationships, conduct must be standardised, as this gives stability to the organisation, while such high level of standardisation is not required for conducts focused on reaching the organisation's goal. The latter depends primarily on the ways leading to the goal. If the ways are already steady and routine-like, conduct standardisation will be relatively high in terms of the purpose of achieving the goal, but if we must find new ways, it will be very low or even non-existing.[16]

Relationships between organisational roles in administrative organisations and conducts of people focused on their goals are the next field or subject of public administration. It

[14] In addition to the constitutional-law science, normative sciences include administrative-law science, and empirical sciences include especially sociology, political sciences, economic sciences and organisational sciences (Pusić, 1986: 29-34).

[15] This relationship is very closely connected with the hierarchical relationship and in the majority of cases, it even completely overlaps with it. However, this is not necessary in all cases, because such relationship may also occur as a hierarchical relationship, so it basically refers primarily to a management authorisation.

[16] Organisational roles are determined by norms, which are relatively difficult to change. Therefore, it often happens that the mandatory standardised conduct in the context of an organisational role hinders the conduct that is necessary to achieve a goal, and from this perspective, conduct is hindering and irrational in the context of the organisational role (Bučar, 1981: 99).

is interesting to find out that in organisational roles as elements of every organisational system, there are not only relationships between these elements but also between people as their holders. An individual person enters a certain organisational role as a comprehensive personality with all of his awareness that usually far exceeds the awareness that is directly included in the organisational role. Therefore, the subject of public administration's analysis in this field is not only relationship between organisational roles, which are elements of an individual organisation and which form its structure in mutual relationships, but also the conduct of people in administrative organisations.[17] In this respect, public administration in this field covers issues of the organisation of administrative organisations, and additionally also issues of the position of administrative organisation's members, such as issues of their affiliation to the organisation, issues of motivation and other issues discussed by the modern science about human resource management.

From the normative perspective, this field is regulated particularly with regulations governing the internal organisation of administrative organisations and the system of public employees. The macro-organisation of administrative organisations is not a part of this field, because it belongs to the field of public administration institutions. At the level of public administration's macro-organisation, the question about the method of organisation and the method of administrative organisation work is not of primary relevance; more relevant is the question of what institutions will public administration have available to carry out its functions. Deriving from the fact that public administration's fundamental functions are the enforcement of authority and the provision of public goods and services, it is clear that the formation of public administration's macro-organisational level is an immanent value issue or a political issue that cannot be solved with the micro-organisational approach of suitable formation of organisational roles and their mutual relationships. In internal organisational structure formation, the issue of its effectiveness and rationality is of paramount importance, whilst the formation of public administration's macro-organisational level is most of all a matter of interest issues, therefore this field belongs to the field of public administration institutions' formation.

This field, therefore, includes the issues of administrative organisations' organisational structure formation. Here, public administration science strongly relies on the findings of organisational sciences, as their findings are largely applicable to administrative organisations. Moreover, this field covers the entire public employee system which defines the position of administrative organisation employees. This system is comprised

[17] Every organisation has both a relationship between organisational roles as well as direct relationship between people, whereby the scope of individual relationships depends on the type of organisation. In organisations that are primarily based on mutual personal relationship between people (e.g. associations), the scope of such relationships will be significantly broader than the relationships between organisational roles. The opposite will be the position in modern administrative organisations, as they are mostly based on impersonal relationships between organisational roles (Pusić, 1985: 43).

of various subsystems, such as the employment system, the classification system, the promotion system, the education system and the public employees' remuneration system and, moreover, their rights and obligations in administrative organisations' work. In this last part, the public employee system is very closely connected with labour law, as these rights and obligations are practically equal to the rights and obligations arising from employment relationships in the economy. Finally, this field includes all findings about the methods of planning in administrative organisations, managing people and coordinating and guiding their work, control as a process of feedback flow about the organisation's situation and its environment, and assessment as a process of comparison between the given and the desired situation. Unlike the internal organisation and the public employee system, which are primarily focused on the structure and positions, this field is particularly dynamic, as it discusses primarily the issues of different activities oriented towards the goal of an individual administrative organisation.[18]

The third part of this field is comprised of the public administration work methods. This is particularly a question of how to increase the effectiveness of public administration's work, which also includes the question about how to measure such effectiveness and what the most suitable measures to increase it should be. This field includes the questions of the administrative work's computerisation, the models and methods to measure its scope and quality, the question of its rational organisation, the work process modelling, etc.[19] Lately, this field has seen a significant increase in the method of using organisational approaches of the economic sector in public administration, which is jointly called the 'new public management' (Lane, 2000). Such management, which represents a new approach towards public administration's organisation, endeavours particularly to increase its decentralisation, introduce new heterarchical organisational types and competition between administrative organisations and between them and other organisations, give greater emphasis on work results than its procedures, transfer work to the private sector, etc.[20]

Finally, this field also includes public administration resources and financing. Public administration is financed differently than the private sector which receives its income and generates its resources in the market exchange system. Unlike this sector, it obtains its income and resources via the public finance system, meaning legally regulated cash

[18] This is a matter of the questions of activities used to carry out the administrative process, such as planning, coordination, guidance, control and assessment. This is a circular process which cyclically repeats, as the last phase usually triggers a new administrative cycle used by an organisation to adapt to changes in its environment (Bučar, 1981: 60).

[19] In relation to this, various models to determine the quality of the administrative work have developed (more Grey & Jenkins, 1995: 75-99).

[20] In relation to the transfer of work to the private sector, it is required that public administration deals primarily with governance, that is, decision-making and control, and not direct performance of work. This context includes the transfer of public service performance to private-law entities via the legal institute of concession.

flows which public administration draws from. That is particularly a matter of issues regarding the legal position of public administration resources, methods of its financing and disposal of resources and questions of types of their consumption control.

At this point, we can establish that the fields included in this point are by far the least of legal nature. Of course, it is impossible to entirely avoid the law in this case because public administration always works in the conditions of guided or regulated system interactions.[21] Nevertheless, legal issues in this field are of secondary importance, as this part of public administration primarily deals with the questions such as human resource management, preparation of administrative organisations' organisational structures, methods of work and the introduction of their new types into public administration and public administration resources. These are the questions that are not a subject of legal science, but primarily administrative science and related sciences such as human resource management science, organisational sciences and economic sciences (Trpin, 2013).

2.1 System of public employees

Professionalization of administration is one of the modern state's characteristics – both in terms of the transition of carrying out the administrative activity from laymen to experts and professional performers as well as regarding the gradual stabilisation of the tasks and their holders in the context of an administrative organisation. It means the start of establishing modern relationships which an individual person enters while carrying out the administrative activity as its profession. This is where a new figure is produced – a professional officer, a state employee. By taking into consideration the broader concept of public administration, which in addition to the state administration system includes local self-government and public services (Bučar in Haček, 2015: 43), a more suitable expression for this category of workers is public employees or in foreign theory commonly used expression public sector employees (Brezovšek & Kukovič, 2015: 247).

The term state employee is used to denote those employees whose fundamental function is to manage the policies prepared or approved by national governments (Boganor in Haček, 2015: 43). Evolutionally speaking, the concept of state employee developed before the concept of public employee, as it originates from the time of the British administration in the colonial India where it referred to all government employees who were employed neither in the army nor the judicial system. The roots of the concept of state employee can be traced back to the time when officials were monarch's or ruler's

[21] The economic system works in the conditions of spontaneous system interactions, where the system exchange between parts of the system on the market is carried out spontaneously, while in the field of public administration there are no such spontaneous interactions, therefore they are replaced by their conscious guidance through the system of social regulation (compare Bučar, 1980: 20-23).

personal servants or representatives of the crown. In the 19th century, the use of the concept of public employee in Great Britain was limited to only those civil servants who were employed in government ministries. In the majority of modern countries, the concept of state employee nowadays includes not only officials in government ministries but also all employees in armed forces, judicial system, local self-government, public corporations, schools, health system, universities, and the like. For the latter, very different categories of public sector employees, the majority of modern states generally use the concept public employee, while the concept of state employee has kept a special and limited meaning, which closely relates to the properties of an individual national political system (Bogdanor in Haček, 2015: 43; Brezovšek & Kukovič, 2015: 248).

The public-law nature of a public employee or the tasks he performs as his profession was in previous regulations the fundamental element for its elimination into a special category and it justified the emergence of a special theoretical concept. The fundamental element defining a professional officer is that he carries out work in an administrative organisation as his regular and basic profession. In terms of the most general definition, a public employee can be defined as 'an employee who carries out executive and administrative tasks in the administrative system as his profession' (Trpin, 1996: 397-398). The definitions of a professional officer, both doctrinated as well normative, differ primarily in terms of the broadness of the concept's scope, as all persons who carry out their profession in an administrative organisation are not equal in terms of their position, competencies and tasks that they carry out, which is why they are categorised into special categories under various criteria, and moreover, their position differs according to the type of an administrative organisation (state administration, local community, public services) (Haček, 2015: 41).

The fundamental element of every organisation is a person or a job position, which also applies for public administration organisations. In ministries or bodies in the structure of ministries, the functions of social and state importance can only be carried out by the people employed in these organisations. The theory calls the persons working in public administration public employees. The most general definition defines a public employee as one whose job is to carry out executive and administrative tasks in the administrative system, which naturally differs from carrying out political tasks. The second type of definitions defines a public employee in the functional and organic sense (Bučar in Haček, 2015: 41). In the organic sense, public employees can be the persons who work for a body, therefore their activity is considered an activity of a state body. In the functional meaning, a public employee is anyone carrying out any public function (Haček, 2015: 41).

Employees are professional employees to whom public service represents the basic source of existence, and opportunity employees who carry out public service merely as a parallel activity. In many countries, carrying out a public service is incompatible with carrying out any other job, therefore it is specifically defined that public employees

cannot simultaneously carry out two permanent jobs. The theory distinguishes between pragmatic employees who voluntarily enter a public service (their relationships with the state are regulated unilaterally with the regulations issued by the state), and compulsory employees who are forced to enter a public service independent of their will, therefore the content of employment relationship is not dependent on them. Professional employees are always pragmatic employees, while on the contrary, opportunistic employees can be pragmatic or compulsory. Various concrete obligations must be distinguished from compulsory service (Haček, 2015: 45-46).

In the broadest functional meaning, a public employee could be anyone performing any public function. In organic sense, public employees are only those persons who work for a body and whose activity is considered an activity of a public sector body (Haček, 2015: 46). Public employees usually work in the system of public employees, which could be most easily defined as a special administrative system within public administration, in the context of which public employees work. The concept of system refers primarily to the formal structures of authoritative rules, which govern the work of public employees within the set goals, programmes or activities (Thomson in Brezovšek & Kukovič, 2015: 249). The system of public employees encompasses the central level (the level of a unitary or federal state) and the local level of authority (the level of local self-government). It is probably not necessary to emphasise the importance of the public employee system in the state structure, which many reformists who contributed to today's images of public employee systems were aware of. The expert system of public employees, whose basic features reminded of today's expert systems of public employees, first appeared on 16 January 1883, when the US Senate adopted the Pendleton Civil Service Reform Act. Based on this document, the USA founded the US Civil Service Commission, whose goal was to assess all public service candidates based on non-political criteria. The Pendleton Act thus served as the foundation, enabling the expansion of the expert system of public employees whose starting points were expertise and suitable competences of all employees (so-called merit system). The Pendleton Act had two fundamental goals: the first one was to remove the majority of the political influence from administration, and the second to ensure more competent and professionally qualified public employees. The Act put an end to the previously enforced spoils (patronage) system, under which public employees were employed primarily in accordance with political criteria. Consistent use of the spoils system could in the final phase reduce administrative work expertise, cause a range of instabilities within administrative bodies and, additionally, disable the continuity of the administrative work, as this is largely affected by the dynamic of political change. The merit system is the opposite of the spoils system and it is much more suitable for the administrative field, as it ensures a selection of professionally trained persons, employment secrecy and continued work of the administrative system even alongside political change (Haček 2015: 47; Brezovšek & Kukovič, 2015: 250).

In the public employee system, management is carried out primarily on three levels or in three subsystems. In accordance with the starting points of the cyber-information

theory, the levels that include plenty of information are at the top of the hierarchy (so-called decision-making levels), while the levels including predominantly energy potential are at the bottom. In the public employee system, the governance process starts with the setting of the goals at its highest level, which will be called the institutional level or institutional subsystem. The institutional level is based on external sources of bureaucratic power (Meier in Haček, 2015: 44) and it represents the upper part of the organisational structure; its central role is to mediate between the public employee system as a social system on the one side and the political environment on the other. The public employee system draws from the political environment the support urgently needed by public employees as performers and creators of policies for effective and successful work. An important source of bureaucratic power of public employees at the institutional level is also public opinion or public support. It will be difficult for the political elite to oppose a system of public employees that is set on expert grounds and that has a clearly expressed public support. The governance rules are also essential within the institutional level of the public employee system. This is primarily a matter of setting goals and starting points for the entire public employee system and the role of public employees in this process. Namely, public employees do not and cannot have only a side role as performers, but they must be more actively involved in the setting up of goals and the consequent policymaking process (Haček, 2015: 44).

Scheme: Public employee system breakdown to levels or subsystems

Public employee system		
Institutional level (governance rules)	**Operational level** (personal or HR system)	**Symbolic level** (symbolic system)
• rights and obligations of public employees • system of responsibilities • public opinion • policy role of public employees • public employees' political orientation	• classification system of public employees • HR management • public employee employment system	• ethics in the public employee system • administrative culture

Source: Haček, 2015: 45.

From the first level of governance in the public employee system, the governance process flows to a lower level where the principal policy is operationalised, which is why this level is called the operational level or operational subsystem. The operational subsystem is based on internal sources of bureaucratic power and it represents the lower part of the organisational pyramid, a strongly branched expert level of governance where the governance process runs in individual fields where individual issues are concretised, expertly processed and prepared for direct implementation. This is the most extensive subsystem of the public employee system, as effective and successful performance of tasks at this level requires establishing the entire HR or personal system, which will be able to operationalise the aforementioned tasks. The public employee

system is an open system, which is why it must not only respond to pressure from the environment, but it must also interact with the environment and actively shape such pressures. For this purpose, it requires setting up a quality HR or personal system, which can contribute to further strengthening of the positive power of public employees. In recent decades, a subsystem whose existence Parsons barely noticed (Šmidovnik, 1985) and did not make any in-depth analysis of it, has been gaining on importance within the public employee system. This is a symbolic level of governance in the public employee system. The symbolic level is just as important as the other two levels of administrative work, although it is, of course, less visible and tangible. By defining what is good and what is bad in the public employee system and the administrative work, this level can actually encourage certain activity and prohibit another. This is well seen in the content of policies and the style of administration's work, whereby both are important for successful governance (Haček, 2015: 45).

2.2 Position and types of public employees

The subject of analysing public administration employees is the reason for their employment, decision-making and reasons for making decisions, implementation of general administration regulations, their relationship to public service users and their satisfaction with work and work conditions. The social position of public employees was and in certain aspects still is substantially different from the position of persons employed in the private sector. According to the modern definition, public administration job is a socially beneficial function. The work of a public employee has a strong influence, as public administration decides about the issues that concern the entire community. Employees in private organisations, on the other hand, carry out the tasks that concern only such private organisations. Here, it needs to be pointed out that different countries define the concept of public employee very differently, most commonly very broadly. In Austria, the concept of public employee is very broadly defined, as in addition to officials with classical administrative tasks, judges and prosecutors, police officers and professional soldiers and teachers and professors, it includes employees at railroad and post offices, and in large cities also employees in public utility services and public transportation. French public employees include teachers at all levels of educational institutions, officials in local communities, employees in the state health sector, the post and telephone offices, armed forces and employees in public state institutions. In Great Britain, public employees handle all sorts of activities, from factory inspection to diplomacy, including education and science. Public employees are employed by both government offices as well as local authorities, state companies' administrations and various other organisations (Davies in Haček, 2015: 46). In Germany, the public employee status also differs from the state employee status. While public-law rules and commitments apply for state employees, the same regulation applies for other public sector employees as for private sector employees (Keller in Haček, 2015: 46; Haček, 2015: 46).

Within their legal regimes, states categorise public employees in different categories and, consequently, they do not treat all employees equally. Such categorisation is a result of separating the public-law and private-law spheres. The use of one or another type of norms in a concrete case must depend on the status given to employees by legal entities in the public-law sphere. In individual activities, public-law as well as private-law norms come into consideration, depending on the status given to a concrete employee. In Europe, public employees are categorised to several levels. Most commonly, public employees differ according to the method of obtaining the status – for example, based on elections, by way of appointments or under a contract. The elected public employees (political officials) are most often employed in representative bodies and in the judicial system, while the appointed public employees are most often employed based on an employment relationship act. Employees under employment contract are those public employees who conclude the employment relationship with an employment contract; most frequently, these are experts that are not employed for a long period of time, but only for the time necessary to complete a certain task determined in the contract. The material difference between political officials and public employees is, therefore, that the first ones come to the position in administration with direct or indirect election or appointment based on political criteria, while the latter carry out their work in administration permanently as their profession based on the conclusion of an employment relationship. The position of an official is not permanent but it is tied to a term of office for which he was elected or appointed. An official may also carry out his function professionally, but this is not assurance for permanent employment, as he can be dismissed from his position even before the end of the term of office. Officials are a part of the state authority system and they have authorisation to decide on public affairs. Their financial situation is also usually more favourable than that of public employees (Haček, 2015: 46-49).

1.3 Development of the main features of employee relationships

A person usually receives the status of public employee with a unilateral authoritative act on appointment, and in some cases with a contractual act of public-law or private-law nature. Employment relationship establishes between the performer of administrative activity and his employer; this is a legal relationship based on which mutual rights and obligations arise. The content of such rights and obligations and the nature of such relationship develop in the context of general social development, whereby Pusić points out as the main guideline the combination or rule of one out of three aspects of administrative service definition in a concrete social situation, namely administrative service as social authority, benefit or public-administration social function, whereby these three aspects of administrative job are said to have been present in periods in history with different intensities and interconnectedness (Pusić in Haček, 2015: 49-50). The modern concept of public service derives (in comparison with equating administration service with political authority or benefits) from its definition as being a public-administration social function, a part of the executive authority, which independently performs administrative tasks in the context of the given regulations. The

modern concept of administration service is based on the principles of modern state – principles that should ensure that the administration service reaches objectivity for which it has been established, thereby serving the public interest. Constant, professional and esteemed administration service should be based on public service ethics, political neutralism of employment relationships, legal obligation and responsibility of public employees to users and the criterion of ability as the decisive criterion for the adoption and promotion in administration service. With the emergence of state intervention and institute of public services, the doctrine has seen the establishment of the following public service principles: continuity, variability and equality (Dadomo & Farran in Haček, 2015: 51). The continuity principle means that public service must be available and accessible in a way that community's requirements are satisfactorily realised. A community reasonably expects public service to be performed correctly and accurately. In accordance with the continuity principle, the performance of public service can be disturbed only in cases determined in the normative regulation and in case of force majeure. This has specific consequences on the position of public service concessionaire and the enforcement of public employees' right to strike. The principle of variability includes public authority's obligation to adapt public service to the current circumstances and changes in general interest demand. This principle, too, marks the status of a public service concessionaire and the status of public employees so that they cannot expect their status and obtained rights to stay the same. The principle of equality and equity of public service ensures equal access to public service and equal treatment of its users. In general, this means that public service must be neutral in terms of the political, religious and other beliefs by both its staff and users alike (Haček, 2015: 49-51).

With the development of the modern state system, the administration professionalization has emerged. The performance of administrative activity has become steady both in terms of the work field as well as individual performers who are no longer laymen but educated experts carrying out work against payment as their permanent job. A result of modern tendencies in the development of administrative systems is that the classical type of administrative organisation and professional officer has been developing into modern types of hierarchical organisation with new management mechanisms (so called new public management), while the status of professional officer is actually approaching the status of private sector employees (Haček, 2015: 51-52).

2.4 Types of public employee systems

In the world, two fundamental types of public employee systems have emerged, namely the 'career' and 'position' systems. Both actually represent extremes, which are only rarely entirely used when building a public service system in a concrete environment of the public sector; often, states combine individual elements of both systems when searching for optimal solutions inside the public employee system. The career system is based on special educational institutions or programmes that open the way to

administration. An individual person decides for career in administration at a relatively young age and when he enters the employment relationship, he is already guaranteed the way to retirement. In such system, new jobs are usually only possible at entry points in individual career classes. Career titles are separated from the system of job positions. The system is rigid and closed, but it enables positive selection and motivates people to stay in the administration. The position system is the opposite of the career system. It only knows the classification of official jobs. An administrative job can be entered from the private sector, including in later years of career and to higher positions. The position system is much more open and it usually actively encourages transitions from the public sector to private one and vice versa. Also, the position system puts greater emphasis on public employee remuneration via the use of the work performance assessment system (Brezovšek & Kukovič, 2015: 250-251). The public employee systems that are based on career systems include systems of public employees in Austria, Belgium, Bulgaria, Cyprus, France, the Czech Republic, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovakia, Spain and EU institutions. The public employee systems that are closer to position systems are those in Denmark, Estonia, Finland, Malta, the Netherlands, Sweden, and Great Britain. The public employee systems in Italy, Slovenia and Poland are considered a special, mixed category (Hammerschmid in Brezovšek & Kukovič, 2015: 251).

In Slovenia and many other European countries, employment relationships are regulated by public law or special employment legislation. This naturally does not mean that public employees are subject to a completely different regulation than private sector employees: only some specificities are separately regulated, whereas in the remaining part, the status of public employees is regulated with general regulations that also apply for the private sector. However, in some European countries, public employee systems are governed by regulation under which the status of public employees practically does not differ from the status of private sector employees. In these systems, the state and the local community as employers are in equal position as employers in the private sector (Brezovšek & Kukovič, 2015: 251).

3 Institutions and functions of public administration

Public administration also includes the field of its institutions and functions which form the third large area in the field of public administration. This context includes issues of public administration organisations and their features and system functions. The concept of public administration in this field is intertwined with the concept of public sector and the concept of legal entities under public law; therefore, we must first define these two concepts and their relationship to the entire field of public administration.

The Slovenian legal regime is neither familiar with the unified and system definition of the public sector nor the unified and system definition of legal entities under public law. It solves this deficiency by individual field laws defining, from their perspectives and in order to regulate their narrow fields, circumstances based on which individual

organisations and activities are included in the public sector. In some cases, this is not enough, therefore the legislator defines individual types of organisations or legal entities that belong to the public sector, and in the last case scenario the competent administrative body even prepares a name classification of legal entities, which represent the public sector from the perspective of a specific field law. Such a method of regulation introduces confusion and non-transparency into the legal system and it has far-reaching consequences for organisations and their members, which it classifies into the public sector based on relatively vague criteria. Classification into the public sector directly impacts the position of individual organisations, as it establishes a special public-law regime for them, which is restrictive in comparison to the private-law regime. These limitations refer primarily to their actual and financial operations, asset management, the position of their employees and various types of control, which substantially narrows down the freedom of their functioning.

The restrictive nature of the public-law regime, which applies for the public sector, requires it to be more accurately defined and very clearly structured. This is because limitations do not apply in equal intensity for the entire public sector, but individual limitations refer only to its individual parts. Therefore, the definition of the public sector's structural parts is as important as the general definition of the public sector, as different legal consequences arise from this definition for them. Here, regulation must be extremely clear and defining, as the public sector's essential element is its legal definition. The public sector can emerge based only on legal definition and not based on certain actual characteristics that would be developed by the theory without direct legal foundation. In the sense of a legal regime, the public sector means absence of freedom and it is permissible only as much as determined by the law in accordance with the fundamental social values.

As regards the relationship between the concept of public sector and the concept of public administration, we can establish that the concept of public sector is broader than the concept of public administration. The public sector includes all activities and institutions that work under the public-law regime, while public administration only includes the regulatory function of the executive authority and its servicing and accelerating functions. From the organisational perspective, the concept of public administration includes all organisations that perform the indicated three functions.[22] Public administration is, therefore, entirely included in the public sector, which also includes the holders of the legislative and judicial authority, and, in terms of property, also legal entities under private law owned by the state or self-governing local communities.

[22] This includes the entire state administration system, the local self-government system, non-economic and economic public service performers and accelerating function performers, such as public funds and public agencies.

A similar structure applies to legal entities under public law. As in the public sector, they do not have a unified system definition, but are marked either as an individual type of legal entity (public institution, public company) or a concrete legal entity, or as an entirely undefined legal concept of 'other entity under public law'[23]. The latter are particularly problematic, as with the absence of the typology of legal entities under public law it is not clear in many cases whether an individual legal entity is considered a legal entity under public law. This is extremely important for an individual legal entity, as its definition as an entity under public law causes many limitations not known to legal entities under private law. As in the public sector, this is a special restrictive public-law regime, which must be explicitly established and defined. The indefinite legal concept of 'other entity under public law' does not meet this condition, thus it is very difficult to establish on its basis whether an individual legal entity is considered as another entity under public law and, as such, is liable to a special public-law regime that applies to these entities.

Based on the text above, the definitions of public administration and legal entity under public law in the Slovenian legal regime must first be clarified. Both concepts must be discussed together, as public administration in its organisational aspect is strongly intertwined with the concept of legal entity under public law because the latter represents its legal-organisational basis. Our aim is not to provide a universal definition of both concepts, but we will focus particularly on the issues arising from their vagueness and, moreover, we will try to provide certain theoretical findings that could help solve the related complex issues arising in practice (Trpin, 2013).

3.1 Functional and organisational definition of public administration

Public administration can be analysed from two perspectives, namely the functional and organisational ones. The first one includes all of its system functions, and the second its organisational structure. Its functional definition can be based on three fundamental functions of administrative systems, namely the regulatory, servicing and accelerating functions[24]. The organisational aspect of public administration is represented by the organisations that carry out these functions (Trpin, 2013).

3.1.1 Regulatory function and its organisations

In the context of this function, administrative systems implement the entire social regulation, which includes issuing primary and derivative abstract legal rules and their application to concrete life situations by issuing concrete legal acts. From the functional

[23] Legal entities under pubic law do not have a unified typology such as legal entities under private law have in the context of the 'numerus clausus' principle (more Trstenjak, 2003: 177-179).

[24] At this point, we use the concept of administrative systems, which is broader than the concept of public administration, as it includes the entire field of social management and not only its executive and servicing part.

perspective, the entire social regulation process belongs to public administration at all levels, including direct decision-making in issuing abstract and concrete legal rules and all auxiliary and support activities to such decision-making. The latter are reflected particularly in the gathering of the necessary information and preparing decision-making alternatives and, moreover, in the pure expert-technical activity, which is directly linked to the decision-making process[25]. These activities belong to public administration only if they are implemented by the administrative system, or the parts thereof which are organisationally linked to the holder of the decision-making process. If such activities are performed by other systems or if administrative systems simply use their results, these activities are not included in the functional definition of public administration.

From this, we can see that the functional definition of public administration is not simple in the context of the regulatory function. It definitely includes the entire decision-making process while the inclusion of the auxiliary and support function into public administration is not related only to the nature of activity but to its holder. Recently, such a functional part of public administration has been visibly decreasing because of the emergence of strong tendency to eliminate such activity from it as much as possible and carry it out outside of the administrative system's structure[26]. Moreover, the division to these two types of activity also affects the legal positions of various entities inside the administrative system[27].

From the organisational perspective, the regulatory part of public administration primarily includes all state bodies. In addition to all executive authority or state administration bodies, this includes the holder of the legislative authority and the entire judicial system[28]. Here, we should point out the fact that some of these bodies do not directly implement regulation, but they are tied to it or its creation or implementation with their activity.[29]

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[25] This activity is related to the first two phases of the administrative process, that is, gathering information and preparing alternatives, and it also includes the entire activity of so-called expert-technical administration (more Bučar, 1969: 274-303).

[26] This is the so-called outsourcing process where all activities that are not directly and urgently linked to the decision-making process are excluded from the administrative system (Lacity & Willcocks, 2009).

[27] This is its influence on the position of employees in administration who subject to whether they carry out the tasks that are directly linked to decision-making process or are simply auxiliary tasks, are divided into employees and substitutes, which is particularly accurately developed by the German law (Becke & Van Der Meer, 2000).

[28] According to the current regulation, the state bodies include the National Assembly, Government, ministries and their bodies, the territorial structure of state administration (administrative units and branch offices of ministries or their bodies) and all courts and other judicial bodies.

[29] For example, the police force usually does not implement regulation in its work, but it ensures its implementation.

In relation to this broadest definition of public administration, it needs to be pointed out that social regulation is implemented in the context of the legislative, executive and judicial authorities in accordance with the authority division principle. In relation to this principle, the functional definition of public administration can be narrowed down to the regulatory function, which is implemented by the executive authority bodies, that is, especially the entire state administration system. Such a definition is the most common, whereby it has a practical meaning, as in its framework the entire analysis of public administration in the field of its regulatory function is focused on the organisation and functioning of executive authority bodies. This makes sense, as the organisation and the work methods of executive authority bodies materially differ from the organisation and work of legislative and judicial bodies. Therefore, when speaking about the regulatory function of public administration, we mean primarily this function of executive authority bodies. But this function cannot be exempt from the entire system of social regulation, which is in addition to the executive authority represented by the legislative and judicial authority, because such a regulation is a matter of one single interconnected and interdependent process. Based on this, we can speak about public administration in the broadest sense in this function when it includes the entire system of social regulations and about public administration in a narrow sense when it only includes the regulatory function of executive authority bodies.[30]

The regulatory part of public administration also includes all local administration systems. Local administration systems make up the entire local self-government system, which implements the primary regulation on a certain narrow territory. Its organisational structure depends on the constitutional and legislative regulation of such a field, whereby it is essential that these structural elements have direct authorisation for their own regulation.[31]

Recently, new organisations have appeared in the field of the regulatory function as independent regulatory bodies under the strong influence of the European law. In Slovenia, these are regulatory public agencies, which were established primarily in the field of privatised economic public services.[32] The basic idea of these agencies is that due to their importance and close connection in the European area, certain fields require regulation, which is largely independent of the executive authority and usually only under a legislator's control.

Finally, the regulatory part of public administration includes public authorisations, whereby these can, as a part of the public sector, be defined only from their functional

[30] Public administration in the broader sense is thus equated with the entire authority mechanism, thereby closely approaching the concept of the state as an institution for authority implementation.
[31] In the current regulation, structural elements of the local self-government system are municipalities and all types of their connections, and additionally also regions, which are still in the phase of creation.
[32] Such fields are, for example, the field of telecommunications and the field of energy supply.

perspective. Public authorisation means a legally determined transfer of state administration's tasks to, usually, non-state entities. Such tasks are usually of a regulatory nature, as in their context, holders of public authorisations can issue abstract and concrete legal acts and, moreover, they can perform material actions that are usually linked to the implementation of the regulatory function. In the case when public authorisation is implemented by a non-state entity or an entity that is not included in the public sector under any criterion, public authorisation is included in public administration only by its function and not only with its holder or performer, because the latter, despite implementing public authorisation, does not belong organisationally to public administration. This does not mean that in implementing public authorisation it is not obliged to act by the rules applicable to the public administration, but acting by these rules alone does not affect its legal position as an organisation.[33] In implementing public authorisation, a public authorisation holder is included in public administration only functionally, and not also organisationally. A public authorisation holder can be included in public administration only if it is determined as such by other criteria and not the public authorisation implementation alone (Trpin, 2013).

3.1.2 Servicing function and its organisations

The second function is the servicing function, which includes the provision of public goods and services, that is, those goods and services that for various reasons we cannot get via the market exchange system, but they are vital for the functioning of the entire social system[34]. Even though these goods or services directly satisfy the needs of individuals, their provision is in the general interest, which is shown in that their absence could destroy the social balance. They are ensured via the system of public services, which in functional terms represent direct production of such goods and services performed entirely in the public interest.

In order to define public administration or public sector in the context of this administrative system function, the concept of public service and the general or public interest must first be clarified. The public service concept is very extensively discussed in literature where quite different definitions of it are provided, in terms of both its scope and content. In addition, some authors even believe that the concept of public service is undefinable on the one hand, and useless on the other. It is said to be undefinable because it is impossible to include all diversities of the public service concept into a unified conceptual frame, and useless because it supposedly has no practical meaning (Braibant, 2002: 131). These authors, however, represent a minority,

[33] In managing the administrative procedure, a public authorisation holder has a completely equal position and authorisations (except in execution) as the state administration body, whereby this in no event affects its legal position. If a public authorisation holder is a company, this does not affect its status in any way.

[34] The reasons can be very different, from social, economic, organisational and other, whereby the importance of an individual reason changes according to the social system's development level (more Bučar, 1969: 40-48).

as most others nevertheless believe that it is possible to conceptually define public services more or less uniformly and that such conceptual definition can also have a practical value in the arrangement of individual fields.

The first conceptual definition of public services is found in French theory, which perceives this definition as the basis to delineate administrative law from other legal branches. Its starting point lies in the definition of the state as an institutional framework of a collection of public services, which in the functional sense mean public services, and in organisational sense these are organisations that carry out such activities. In this sense, *Duguit* defines public service as every activity that is vital for the existence of society and which is ensured by public authority, if necessary even with means of coercion. This definition therefore includes the entire functioning of the state and all of its state institutions and, moreover, all other organisations what are more or less tied to it in the performance of this activity.

Such a broadly set definition of public service does not give the right answer to the question about the concept of public service. Moreover, it does not even give the right answer to the question about the conceptual definition of the state, because it defines it too basically as an organisational mechanism for the performance of public services. In doing so, it does not focus enough on the fundamental question of the state as an institution to implement political authority and, hence, on the interest side of the performance of public services. From this perspective, such a definition of the state can be marked as an idealised institution, which under the conditions of non-conflicting interests realises the goals and interests common to all members of an individual social community.

To define the concept of public service, the second function of public administration is particularly important, that is, the provision of public goods and services. As already mentioned, the essence of these goods and services is that it is impossible to obtain them via the market exchange system. This does not mean that market mechanisms cannot be established in these activities, as every activity can be performed in a market way. The absence of market mechanisms here means that their establishment in an individual activity could result in malfunctions in the social system or its individual subsystems. For this reason, the state replaces these mechanisms by ensuring their implementation via its administration systems in the context of their fundamental function, that is, social regulation.

The reasons for such regulation can be very different. One of them lies in distribution, because certain goods must be evenly distributed between all members of a certain social community, if we want to ensure its balanced development, an example of such a good is a certain level of knowledge that in the modern society information must be ensured to everyone, as this is the only way they can realise their position in the society. Similar to health, meaning that health care or health safety must, to a certain degree, be distributed among the entire population. To a certain degree, healthcare or health safety

and education are social needs that the state must satisfy in the public interest via its mechanisms.

The state replaces the absence of market mechanisms in the above-mentioned and other similar activities with its regulation. This means that it establishes a special legal regime in their implementation and the allocation of goods or services arising from such activities. Such a regime regulates relationships between the state and the direct performer of such an activity and the method of its implementation on the one hand, and conditions and procedures for user- access to such goods or services on the other. The legal regime that regulates the entirety of these relationships in relation to such activities is called the legal regime of public service.

Public service is thus not an activity by itself, but it is a legal regime or a legal institute established by the state for an individual activity whose performance it ensures. From this perspective, the health or educational activities are not public services by themselves, as in terms of their content they can be equally implemented under market criteria or in the context of a legal regime of public service. None of the regimes of such activity's implementation affects its content. They do, however, materially differ in terms of the relationships that arise, primarily in the field of public goods or public service distribution. While in the market system, access to such goods or services runs through the exchange mechanism that is based on the law of offer and demand and on the economic power of individual entities, access to such goods or services in the public service regime is legally defined by the procedure of access and with the conditions that a user must fulfil for such access. The fundamental motive for the establishment of such a legal regime is the realisation of public interest, which is finally reflected in the satisfaction of individuals' needs that could not be properly satisfied in the ordinary market system.

Public service is thus not an actual, but normative phenomenon. Such a normative phenomenon is subject to real social relationships which it regulates, but it is its normative part that is nevertheless essential for the public service concept. No public service exists without its normative part, as without legal regulation there is no special legal regime in an individual activity that materially differentiates the legal position of such an activity in relation to an entirely equal activity that is implemented in the context of private-law regime.

With that being said, only the state can decide upon the establishment or abolishment of public service. It depends on the state's will if and to what extent it will form a legal regime of public service for an individual activity. Also, the duration depends on the state's will, as it can abolish it at any time and transfer the activity for implementation to the market system. In this respect, the Slovenian constitutional system is slightly limited by the constitutional right of free entrepreneurial initiative protection, meaning it can be constitutionally decided whether the state's establishment of the legal regime of public service in a certain activity is justified based on the objective situation and needs.

Public service is thus not only objectively conditional on the fact that it pursues the satisfaction of a certain social need, but it is also subjectively conditional on the will of the governing interest coalition, which can pursue its political or value goals by increasing or decreasing the system of public services or public goods and services. A social state will thus have a higher number and bigger extent of public services than the liberal state, as it can realise its social goals through them. In this sense, the state defines the content of public interest in this field, which is shown in the provision of a higher or lower volume of public goods and services.

The legal regime of public services does not materially influence only the users of their services, but also their performers. The state rarely alone performs public service activities, because such activities are usually complex expert activities, for the performance of which the state as an institution to enforce political authority cannot be suitable. The state therefore only ensures such activities by regulating and organising their implementation, whereby it has a prevailing impact in decision-making in this field. For this purpose, it establishes special organisations whose position significantly differs from the organisations that render market activities. They differ because the state, due to the importance of public services or other activities in public interest maintains a prevailing influence on the management of the organisations that carry out such activities. The differentiation between legal entities under private law that carry out market activities and legal entities under public law that are established to perform public services and other activities in public interest is based on this influence.

From this we can conclude that this field of public administration is comprised of all activities that are implemented under a special legal regime of public service or other activities in public interest and all legal entities under public law that are established for the performance of such activities. This is a similar situation to the regulatory function, since individual performers are included in this field only functionally and not also organisationally. This applies to so-called concessional public services where the state or a self-governing local community transfers the performance of a public service to an entity under private law via the legal institute of concession or another type of public-private partnership. In this case, such an entity is, similar to a public authorisation holder, organisationally not included in the public administration system, but it is included in it by performing public service activities. This means that the performer of a concessional public service is included in its special legal regime only regarding the performance of such an activity and not also regarding its legal-organisational position or the performance of other activities (Trpin, 2013).

3.1.3 Accelerating function and its organisations

This function includes a set of different measures focused on accelerating the development of certain fields or areas. In the first line, this function is implemented with various financial measures and incentives that should lead to faster development of these areas and fields in accordance with the state's long-term policy. These measures

and incentives can be direct or indirect. Direct measures include direct allocation of financial resources or directing cash flows to certain activities or undeveloped areas, while indirect ones mean various normative and organisational measures that should lead to this goal. The mechanisms implementing this function are primarily the same mechanisms that implement the regulatory function, as direct financial simulative measures are largely implemented via the budget of the state and budgets of self-governing local communities. Moreover, these administration systems can, by performing their regulatory function, simultaneously implement accelerating measures, which are usually of indirect nature. This includes particularly various tax reliefs, states of self-governing communities' renouncement of payment for the use of its/their property, award of special or exclusive rights, etc. Based on this we can establish that the administrative organisations that carry out this function are usually the same as those implementing the regulatory function.

Moreover, this field includes special administrative organisations whose fundamental function is the implementation of the accelerating function. Initially, these are public funds, which are established as excluded property of the state or self-governing local community for the performance of this function. Public funds are special legal entities under public law established by the state or self-governing local community whose basic purpose is giving loans and sureties under more favourable conditions than beneficiaries would get on the financial market. Moreover, such funds are also established to manage the state's or self-governing local communities' assets, which they give for use to certain beneficiaries. With this activity, they carry out the accelerating activity in various areas, such as environmental protection, housing, regional development, etc.

In addition to public funds, the accelerating function is implemented by public agencies, which as special legal entities under public law also carry out an important part of the regulatory function based on public authorisation, especially in the fields where they implement this function more effectively than state administration bodies or in the fields where constant political control over the implementation of its tasks is not necessary or it is even improper (Pirnat, 2004). In addition, they can establish so-called development agencies whose fundamental tasks are particularly consulting, carrying out expert development tasks for state bodies, local communities and natural or legal entities, and moreover adopting other accelerating measures and allocation and distribution of financial incentives and other assets. Such types of public agencies, therefore, contribute with their functioning directly to the development of a specific field or area.

This public sector field is more unified and less structured than the fields of the regulatory and servicing function. Nevertheless, we cannot claim that this field is less important than the other two, as, equally to them, it ensures the stability and balance of the social system with its measures (Trpin, 2013).

3.2 Institutions and functions of public administration in relation to the public sector

Public administration's institutions and functions are strongly intertwined with public institutions and functions, which is why the expressions public sector and public administration are often used as synonyms. Despite this, there is a certain difference between them, whereby the concept of public sector is broader than the concept of public administration. Institutions and functions of public administration are entirely located within the conceptual definition of public sector, therefore they completely overlap with institutions and functions presented in the functional and organisational definitions of the public sector. From the functional perspective, public administration is that part of the public sector which carries out its regulatory, servicing and accelerating functions and, likewise, from the organisational perspective it is the set of organisations that implement such functions. Public administration is thus related to the implementation of social management, which is reflected in its three mentioned system functions. The public sector, however, extends more broadly to other fields, which is particularly seen in the field of economy. The public sector includes those economic and other organisations over which public authority bodies have a prevailing influence and they do not carry out any of the indicated public administration functions. The most typical situation exists in companies owned by the state or self-governing local communities. These companies do not carry out any administrative activity, but simply economic activity, yet they are nevertheless included in the public sector (and not public administration) because the state or self-governing local communities have a decisive influence on its operation through the structure of capital.

Public administration, therefore, is entirely included in the public sector, but the public sector is not public administration because it exceeds its conceptual framework. Nevertheless, we can establish that the large majority of the public sector is made up of administration, which thus strongly prevails in relation to the other part of the public sector. The size of the latter initially depends on the state's will as to how much it will use its capital or other types of prevailing influence to manage also other parts of the social system that do not belong to public administration. Here, the delineation between public administration and the other part of public sector is not always simple, as there are many borderline situations where it is not always clear whether an individual organisation falls into public administration, another part of the public sector or even the private sector. For an individual organisation, such a question is usually solved through the question of its legal status, that is, whether it is a legal entity of public or private law. Therefore, public sector and public administration can, in addition to the functional and organisational definitions that arise from their actual function and its structural reflection, also be defined legally. The legal definition of the public sector and public administration regarding their delineation from the private sector is focused on the central question as to whether a certain organisation is a legal entity under public law

and, as such, falls into the public sector or public administration, or it is a legal entity under private law and, as such, belongs to the private sector (Trpin, 2013).[35]

[35] Of course, the functional and organisational definitions have their legal element, because the law determines both the functions as well as the organisational structure. The legal definition of public sector or public administration relating to legal entities under public law involves something more, as a legal entity is fiction. As such, it is the direct creation of the law and in this sense we can speak about the legal definition of public sector or public administration.

Legal entities under public law

A characteristic of a legal entity under public law generally arises from the performance of the administration's individual function, which was defined in the previous part. In the continuation, we will try to answer the question as to what extent such a position is absolute and how much individual legal entities that do not carry out any administrative function can be involved in the circle of legal entities under public law.

A legal entity is an organisational type which is awarded certain rights and obligations by law, thereby transforming it into a legal form. The entire situation of legal entities depends on their functions in the global social system, which generally categorises them into the field of the public or private sector. In the previous part, we therefore very accurately defined the fields of public administration and public sector, which we will now use as the basis to categorise individual types of legal entities in legal entities under public or legal entities under private law.

Regarding the legal definition of legal entities under public law, the situation is similar to the public sector or public administration. In this field, there is no systemic legal definition, leaving the definition of the concept of legal entity under public law more or less to the theory. This concept is equally intertwined with the concept of public administration or, as in the public sector, overlaps with it in its majority.

The first theoretical definitions of legal entities under public law in newer Slovenian legal theory are based on the basic theory of legal entities. Authors in this field mostly discuss them in the context of general typology of legal entities and in the first classification, similarly to legal entities under private law, categorise them in corporations and institutions, and additionally to institutes, which is supposedly typical only of legal entities under public law. Corporations are legal entities, which have a membership structure and are based on the gathering of people (universitas personarum), while institutions are legal entities that are based on property (universitas rerum). The first category further includes public regional or territorial corporations, which include the state and self-governing local communities, followed by personal corporations, primarily chambers and other legal forms of professional or interest-based association, real corporations where membership is tied to property of a certain thing or some other property-law right, and other public corporations, especially the church and other religious communities with a public-law status. The second category of legal entities under public law initially includes public law funds, which represent public assets earmarked for the performance of special public tasks. The third category is

represented by public law institutes, which are legal entities with personal and material substrate, carrying out administrative tasks. Institutes do not have any members, but only users who have no membership rights in relation to the legal entity. Finally, the fourth category is represented by other legal entities under public law, such as public agencies and public companies (Trstenjak, 2003: 99-125).

From this brief presentation we can see that such a classification is not very useful when trying to define a legal entity under public law. This arises from its very basis, where it manages to form only two general categories, such as public corporation and public institution, while all other categories are of an individual nature. Moreover, in the first general category, that is corporation, it is difficult to define the state as a simple corporation and citizens as holders of corporation rights in relation to the state. The state as an institution to implement political authority by far exceeds the concept of corporation, even from its narrowest perspective of the state as only a legal entity. The state is a much more complex institution and its legal personality is only one of its legal aspects, which it needs to enter legal relationships in a well-regulated legal state. The majority of the state's basic functions are not related to the state as a legal entity, but it carries them out as an institution for political authority implementation and it could implement them even without the characteristic of a legal entity. It needs the latter especially in order to enter legal relationships with other entities and to form and maintain legal order, a part of which it is itself.

Based on the above-mentioned, the classification of legal entities under public law arising from the described system functions of public administration is much more useful. This way, the regulatory function field includes territorial legal entities under public law, while the field of the servicing function includes functional or specialised legal entities under public law.[36] This classification must be extended to the accelerating function of public administration where the type of a legal entity under public law is not yet defined. These public entities could be called developmental legal entities under public law, as this name best reflects their function.

Despite this classification, the typology of legal entities under public law has not been completed yet. Unlike the typology of legal entities under private law where the *numerus clausus* principle applies, the typology of public entities under public law is open. This means that the founder can establish an individual legal entity under public law also outside such typology, thereby becoming a legal entity under public law *sui generis*. This is understandable, as the majority of legal entities under public law are founded by the state and self-governing local communities, which can establish an

[36] These two expressions arise from the concepts of territorial and functional administrative system, whereby it should be pointed out that the latter two concepts are broader than the concepts of territorial entity under public law and functional entity under public law, as in addition to these legal entities, they can at least functionally include other entities, such as public authorisation holders or concessionaires. More about the concept of administrative systems: Pusić, 1985: 63-67.

individual legal entity under public law for other purposes and in this they cannot be limited by their predetermined typology.

Openness of the typology of legal entities under public law in real life often causes problems. The first problem is in the use of individual types of such legal entities, which are included in their typology, for other purposes or other functions than determined by the typology. A typical example of such incorrect use is public institutes, which are in the typology determined as functional legal entities under public law carrying out non-economic public services in the context of the servicing function. In practice, such a type of legal entity under public law is often used for entirely different purposes. This introduces confusion into the legal system, as in general, legally occupied concepts, such as a public institute in this case, should not be used for other purposes, and moreover, this is even not necessary (Testen, U-I-242/96).

A special problem is represented by the identification of legal entities under public law *sui generis*, which in normative texts are found as 'other entities under public law'. Since these are abstract regulations this concept refers to individual existing and future legal entities under public law, whereby the legislator does not determine any criteria under which it would be possible to determine whether a concrete case involves a legal entity under public law *sui generis* or a legal entity under private law. The criteria to determine legal entities under public law were prepared by the legal theory, but not in order to establish the position of a concrete legal entity, but primarily in order to build a system of legal entities of public law, which should serve the legislator or another founder in determining individual entities of public law *sui generis*.[37] Since there are no legislative criteria to determine a legal entity under public law *sui generis*, the only possible conclusion is that an individual organisation is a legal entity under public law *sui generis* only if this is explicitly determined by the law or another regulation. A legal entity under public law *sui generis* thus cannot be established using the criteria developed by the legal theory, because the characteristic of a legal entity under public law can mean a whole range of limitations for an individual organisation, which can only be based on the law or another regulation. Despite this fundamental basis, we will also present the criteria under which individual legal entities can be theoretically defined as legal entities under public law and compare such criteria with the situation of certain legal entities regarding which a special question is raised as to whether they should be considered as legal entities under private or public law. Here, we will no longer discuss territorial legal entities under public law, such as the state or self-governing local communities, as their position is clear in terms of legal personality, but we will specifically focus on indefinitely determined 'other entities under public law'. Moreover, we will pay attention to specialised or functional legal entities under public

[37] Such criteria are especially: establishment with the public-law act, work in the public interest, financing from public resources, use of public law for external and internal relationships. More about this Pirnat, 1995: 477-492.

law, whose status is clear, but the activities that they can carry out in the context of their status are unclear (Trpin, 2013).[38]

1 Criteria to determine legal entities under public law

In the absence of the systemic regulation of legal entities under public law, the legal theory has formed the criteria for their definition.[39] In Slovene legal theory, this has occurred over the last twenty years, because the classification to legal entities under public and legal entities under private law did not exist in self-governing socialism, as all legal forms were based on social property. In recent years, six fundamental criteria have been formed, namely:

- establishment with public-law act,
- working in the public interest,
- special management eligibilities of public authority bodies,
- mandatory membership,
- financing from public resources,
- implementing public authorisations,
- use of public law in external and internal relationships.

In addition to these criteria, the judicial practice in the justification of its decision introduced the attempts to define another legal entity under public law with *a contrario* argumentation (judgment of the Supreme Court of the RS I Up 1126/2006-16) (Trpin, 2013).

2 Establishment method criterion

Unlike legal entities under private law, which are usually established with a legal transaction or another private-law action, legal entities are established with a public-law act. The form of such act can vary; it can be established with the law, implementing regulations, instruments of incorporation of public-law nature or even a concrete legal act. Since this establishment is subject to a public-law act, which is in principle of the authoritative nature, a legal entity under public law can be established only by public authority bodies or exceptionally by other organisations based on a special authorisation by public authority body.

At first glance, this criterion seems very simple, as it is usually clear which act of a public authority body is of a public-law and which is of a private-law nature. Public authority bodies can establish legal entities with private-law acts; in this case, these are

[38] This refers particularly to the question of the admissibility of public institutes' market activity implementation.

[39] The French theory has hugely dealt with this issue, whereby its classification of legal entities under public law is different than we know it in our regime; therefore, the definition criteria are also slightly different; more about this: Braibant, 1992: 39-114.

legal entities under private law. The government or a competent body of a self-governing local community can always adopt, for example, a social contract to establish a company, whereby it is clear that such a company is a legal entity under private law, although the state or self-governing local community have an exclusive capital investment in it. Problems arise when a public authority body with a public-law act establishes one of legal entities from the range of legal entities under private law.[40] In this case, doubt arises as to whether such a legal form is a legal entity under public or private law. Although the judicial practice of Slovenian courts in their reasoning of certain judgments (Judgment of the Supreme Court I Up 1126/2006-16, Judgment of the Supreme Court X Ips 131/2009) is in favour of the position that a legal entity under public law can also be established with a public-law act in the legal form of a legal entity under private law, we believe that a clearer position needs to be taken regarding this issue. There is no doubt that, for example, a legislator can establish by way of law a legal entity under public law in the status form of a company, but such a will must be explicitly expressed. This means that in this case, the legislator must explicitly determine in law that such a legal entity, which has been established in the legal form of a legal entity under private law, is a legal entity under public law. If this is not done, such a legal form is a legal entity under private law, as by selecting the legal form from the range of legal entities under private law, the legislator has expressed the will to establish a legal entity under private law by way of a public-law act. An objection that such a legal entity could thus be established with a private-law act, thereby even more precisely express its will that it is a legal entity under private law, is not true, because the legislator as the legislative authority holder cannot adopt acts of private-law nature (e.g. the social contract) to establish legal entities under private law at all.[41] Therefore, we can never deny it the right to establish, at its own discretion, legal entities under public or private law with a public-law act, which is the only act available to it. Here, we further enhance the point of view claiming that when using legally occupied concepts, such as a stock company or a limited liability company, etc., such legal entities must be explicitly determined in the law as legal entities under public law, if this of course is the aim. If this is not done, such a legal entity is considered a legal entity under private law. Of course, the legislator can at any time with a legislative provision transform such a legal entity into a legal entity under public law with all the consequences arising from such a position.

[40] There are many such examples in practice, as very important companies such as DARS, d.d., SOD d.d., KAD, d.d. and other are established with the law, that is, the public-law act.

[41] The legislator does not have the same position as the government which can establish legal entities with a public-law act, such as a regulation or another constitutional document, or with a private-law act, such as a social contract. In governmental establishment of legal entities, the criterion of establishment with a public-law act could be considered as absolute even if a legal entity is established in a legal form of a legal entity under private law, as the government can always use a private-law act of establishment, which unambiguously expresses its will to establish a concrete legal entity as a legal entity under private law. The National Assembly does not have such a position, as its external acts are always of public-law nature (Šturm, 2002: 770-771).

The question of determining legal entities under public or private law, which are established by the legislator, must also be discussed from the perspective of the constitutional principle of authority division. Regulating the legal position of such legal entities is in the legislator's competence, whereby the executive authority only has as many competences relating to this as it has received them from the legislator and the competences arising from systemic relationships between the legislative and executive authorities in the enforcement of laws. This means that the executive authority could determine one or another position to such an organisation only if it had a special legislative authorisation for this. In Slovenian legal order, the executive authority has a general authorisation to issue spontaneous implementing regulations to individual legal provisions, but in terms of its content, such authorisation does not reach far enough to enable, for example, the government to give, at its own discretion, its acts the legal position of a legal entity established and regulated by the legislative authority.

A similar principle applies to the judicial authority. In implementing its function, the judicial authority can interpret the law, but such interpretation cannot go as far as to disfigure the legislator's will. A typical example of exceeding such interpretation, thereby violating the authority division principle, is cases where the judicial authority tries, in cases where the legislator has established (of course with the public-law act, because no other is available) a legal entity in a legal form of a legal entity under private law, failing to explicitly determine its position, to define such legal entities using theoretical criteria (which are by far not absolute) as legal entities under public law. Such attempts without a doubt represent a violation of the authority division principle, because the law is interpreted in a way contrary to the legislator's intention or which the legislator itself could define if this was its intention. This question will be separately discussed in the continuation where we will provide an analysis of certain concrete practical examples which will make it clear that such interpretations go too far, as they spread the public-law regime to the fields not determined as such by the legislator. In principle, spreading of the public-law regime should be interpreted restrictively, because the public-law regime is always restrictive and must be used very cautiously.

We can conclude that establishment with a public-law act as a criterion to determine a legal entity under public law is not absolute, because a public-law act can also be used to establish a legal entity under private law. On the other hand, there is no constitutional obstacle preventing the establishment of a legal entity under public law with the private-law act. Both of these cases depend on the will of the legislator who is sovereign regarding this issue. To eliminate doubts about when such cases are considered a legal entity under private and when under public law, a position should be taken that in the case the legislator establishes a legal entity in the legal form of a legal entity under private law, it is a legal entity under private law, except if the legislator explicitly defines it as a legal entity of public law. The same applies for the cases where a public authority body establishes a legal entity with a private-law act, which is then considered a legal entity under private law, except if it is with a public-law act explicitly determined as a legal entity under public law (Trpin, 2013).

3 Criterion of working in the public interest

The next criterion to determine a legal entity under public law is its work in the public interest. We have already defined the concept of public interest and found that it is a normative phenomenon where the law defines a certain general interest as public interest. For this reason, a specific range of legal entities under public law that carry out the activities to realise public interest is relatively easily definable. All territorial legal entities under public law which implement the administration's regulatory function, all legal entities implementing the administration's servicing function or economic and non-economic activities of general importance and all legal entities implementing the administration's accelerating function work in the public interest. Legal entities under public law are thus without a doubt the state, municipalities, public institutes, public economic institutes, public agencies and public funds. For the public companies carrying out economic activities of general importance it has until recently not been entirely clear whether they belong to legal entities under public or private law, because they did not have their own status form, but they drew such form from the range of legal entities under private law and, moreover, such companies might even have been in mixed ownership.

In the concept of the 'in house' doctrine of awarding special and exclusive rights for the performance of certain economic activities in the general interest, this dilemma was solved by the European law, which set the basis that such a special or exclusive right is directly awarded only to a legal entity which is in exclusive ownership of the state or a self-governing local community. The legal entities whose structure of capital includes any share of private law can obtain such a right only via a special competitive procedure. This means that directly obtaining a special or exclusive right does not depend on whether a certain legal entity is a legal entity under public or private law, but on the structure of its capital. In terms of the European law, such a question of a legal entity under public or private law in this field is not as important anymore; what is important is only the capital structure of an individual legal entity from which it depends whether an individual legal entity will directly obtain a certain special or exclusive right to carry out a certain economic activity of general importance or it will only obtain it in a special competitive procedure.

This European position requires a new definition of a public company in the Slovene law. In the Slovene legal regime, a public company is regulated as a special legal form for the implementation of economic public services, whereby such a legal form does not have its own status, but it entirely draws it from the Companies Act, that is, from the regulation of legal entities under private law. A public company differs from these legal entities only in terms of the special establishment rights used by the state or self-governing local communities to exert their influence on the management of such companies.

From the new European regulation's perspective of this issue, such a legal form is actually excessive. It had its meaning when economic public services were usually implemented via public companies, whereby the latter could also be in mixed ownership. In the case of mixed ownership, dual management via the structure of capital and via the founding rights was reasonable, as this way the state and self-governing local communities had the leading role in the management of such companies, to which they would otherwise not be entitled, based on the structure of the invested capital. With the current European requirement that only legal entities in exclusive ownership of the state or self-governing local communities can have direct special or exclusive right to perform economic activities of general importance, the need for the duality of public company management has been entirely eliminated because the founders fully manage them through the invested capital. This way the concept of a public company as a special legal form for the implementation of economic public services is dying out, as these activities can now be implemented by any legal form, provided that it is in exclusive ownership of the state or a self-governing local community.

With the new concept of a public company defined in such a way, the question arises as to whether these legal entities (still) belong to legal entities under public law as regards the founder's special managerial eligibilities or his founding rights. We can see that these are not necessary anymore, so that in terms of the management method these companies are completely equated with 'ordinary' companies that have the same status form as them. From the managerial perspective, public companies no longer exist as a special legal form and as such are no longer legal entities under public law. Nevertheless, they may have certain restrictions in carrying out the economic activities in the general interest, which are very similar to the restrictions of legal entities under public law. Such restrictions are, for example, overseeing the court of auditors, the duty to observe the public procurement regulations, the duty to act in accordance with the public information access regulations, etc. The stated restrictions and duties are actually equal to the duties and restrictions of the concessionaire in carrying out such activities. A public company and a concessionaire therefore have completely equal status in the performance of the same activity, meaning that these restrictions and obligations do not arise from the regulation of legal entities but from the regulation of economic activities in the general interest. Restrictions and duties are thus not tied to a public company as a legal entity under public law, but to the performance of a certain regulated activity and they do not depend on the legal position of its performer or they do not affect this position. Here, such restrictions are duties referring only to the activity that is implemented under a special legal regime, while they do not refer to other activities that are possibly carried out in a public company or at a concessionaire in addition to this one.

We can conclude that a public company as a legal entity under public law does not exist anymore or that its existence is no longer necessary. It makes sense to keep a public company as a special designation for a certain legal form only in order to designate

legal entities under private law whose exclusive owner is the state or a self-governing local community, which based on directly awarded special or exclusive rights, perform a certain economic activity in the general interest.

Furthermore, we can conclude that a legal entity working in the public interest or performing activities of general importance is not necessarily a legal entity under public law. Even more, in the field of economic activities of general importance or economic public services, such activities, which are performed in the public interest, are usually carried out by public entities under private law. As established above, these are former public companies which in the context of their 'in house' position as public entities under private law implement economic public services, or such activities are performed by concessionaries who are also usually legal entities under private law.

Public services as activities of general importance, which are performed in public interest, are a clear and definable category as they are determined as such by the law. According to this, the question of whether or not the legal entities that perform such activities act in the public interest is not problematic here. This question arises with other legal entities where the nature of their activity does not make it clear if such activities are implemented in the public or private interest or some other interest. In particular, there are many legal entities that do not realise public, but group interest and are established in order to realise such interest. Group interest is an interest of a specific social group, which is defined by the law as legitimate and usually also determines organisational frameworks and methods of its realisation. Based on this, it is quite similar to public interest in terms of the forms of its realisation, but it cannot be equated with it, and the legal entities realising such interests can be equated even less. Group interest is usually represented by special interests of individual professional groups, interest groupings, interests of individual social groups regarding their position in relation to other social groups, etc. The organisational reflection of group interests can thus be found in various chambers, political parties, syndicates, student organisations and others. These legal entities can be established with a public-law act, but in the majority of cases, the law only lays down normative frameworks within which such legal entities are established under the self-organisation procedure.[42] Some of these legal entities, such as certain chambers, were awarded the status of a legal entity under public law by the legislator, which however does not mean that they realise public interest because of this, but only that the legislator has put them under greater control by public authority bodies, as they perform many of their tasks based on public authorisation.

From the above presentation of working in the public interest, we can conclude that this criterion to determine a public entity under public law is, similar to the criterion of

[42] The public-law act is used to establish chambers who are awarded certain public authorisations by the law, while political parties, syndicates, student organisations, and the like, are established through self-organisation.

establishment with a public-law act, not absolute. Legal entities under private law can work in the public interest or they already work in a very broad field of economic public services, and they can even be established with a public-law act. Moreover, when using this criterion, special attention needs to be paid to the legal entities that are established in order to realise joint interests and, as such, they cannot be legal entities under public law within this criterion, except if the legislator has explicitly awarded them such a position (Trpin, 2013).

4 Criterion of special managerial eligibilities of public authority bodies

Of all criteria to define legal entities under public law, this criterion is probably the most decisive, as it actually reflects the meaning and purpose of legal entities under public law. Legal entities under public law usually carry out one of the public administration functions, therefore public authority bodies have special managerial eligibilities to them. Territorial legal entities under public law, which are the state and self-governing local communities, are public authority bodies by themselves and they are already legal entities under public law under this criterion, which is also absolute for this type of legal entities.[43] Territorial legal entities are thus 'real' legal entities under public law that have no problems concerning their legal position, therefore they will not be discussed. This means that in the sense of the status of legal organisation, the regulatory function of public administration is not problematic, which of course does not exclude other problems in the field of its management.[44]

The organisations implementing the servicing and accelerating function of public administration and so-called other legal entities under public law have a different or less clear position. The organisations implementing the servicing function of public administration directly produce public goods and services, that is, those goods and services that we, for various reasons, cannot obtain through the market exchange system, but through a special legal regime of public services. Since the provision of such goods and services represents a special legal regime determined by public authority bodies (the state and self-governing local communities) through their regulatory function, these bodies are also responsible for providing these goods and services, even though they do not produce them directly. Because they do not produce these goods and services but are responsible for their provision, they must have certain special managerial eligibilities to the organisations which are direct producers of such

[43] Territorial legal entities under public law as public authority bodies include all elements of legal entities under public law: they are established with the public-law act, work in the public interest, their membership is compulsory, their management is political, they are financed from public resources, the implementation of public authorisations is their fundamental function and public law is used regarding their external and internal work.

[44] The field of managing territorial legal entities under public law, that is the state and self-governing local communities, represent the entire political system and the system of the mechanism of authority, therefore there is an infinite number of problems here, which are of an entirely different nature than the issues discussed in this part.

goods and services. Through these special managerial eligibilities, public authority bodies exert direct influence on the organisations that carry out these activities, whereby the latter become legal entities under public law precisely because of such managerial eligibilities. The relationship between the regulatory function performers on the one side and the servicing function on the other requires a special legal form, which enables regulation holders to exert special influence on public service performers, and the means to enable such an impact is represented by the legal entities under public law which are established to carry out such activities. The same applies to the organisations carrying out the public administration's accelerating function, on which public authority bodies have similar influence through their position of legal entities under public law.

The criterion of public authority bodies' special managerial eligibilities is the clearest criterion to determine legal entities under public law. Such managerial eligibilities are reflected in so-called founding rights, in the context of which public authority bodies or founders of such legal entities adopt their work programmes, appoint their management bodies, adopt their annual accounts, give consents to their statutes, etc. The point of founding rights is thus that the bodies of legal entities under public law do not decide their most important decisions, but it is the bodies of their founders that do so. Such a position undoubtedly defines a certain legal entity as a legal entity under public law, as public authority bodies never have these founding rights in relation to legal entities under private law. At the moment, legal entities under public law that are managed based on founding rights, are primarily public institutes, public funds, development agencies, and to a quite limited extent even regulatory public agencies.[45] According to the currently applicable legal regime, public authority bodies can implement founding rights even in relation to public companies, but as we have established above, these founding rights are unnecessary in the system of 'in house' implementation of public services alongside full ownership management of an implementing organisation by public authority bodies. Based on this, public companies are not categorised as legal entities under public law, or are only classified conditionally.

The founding rights are, therefore, the only absolute criterion for determination, as every organisation that is managed through founding rights is a legal entity under public law. Under this criterion, legal entities under public law are not those legal entities that are managed by public authority bodies through ordinary capital investments or eligibilities arising therefrom. These legal entities, which are usually established in the status form of companies, are ordinary legal entities under private law whose owner is the state or self-governing local communities. Such is the current position of public companies, which can, by the abolition of founding rights, simply become legal entities under private law in exclusive ownership of the state or a self-governing local community (Trpin, 2013).

[45] Under the influence of European law, regulatory agencies strongly increase their autonomy, leaving the founding rights more or less to the appointment of their management bodies by public authority bodies.

5 Criterion of mandatory membership

The next criterion pointing to a certain legal form being a legal entity under public law is mandatory membership. This criterion is self-evident for territorial legal entities under public law, such as the state and self-governing local communities, as these legal entities are public-law communities where people enter with a certain law-making fact and from which it is impossible to exit (more about the concept of public-law community Bučar, 1969: 128-131). It is true that a certain public-law community can be changed on its own will, but in doing so you necessarily enter another public-law community. Such entry is not tied to the scope of rights which are recognised by the new public-law community, as such a scope is usually related to citizenship as a legal bond between the state and an individual person and the legal position of a citizen as a legal bond between an individual and self-governing local community. This way, a member of a certain public-law community can also be a person without citizenship and foreigners who differ, more or less, from other members of public-law community only in that they have fewer rights in such a public-law community than its other members.

This criterion is not so pronounced in the case of other legal entities under public law, or it does not exist at all. For legal entities under public law that implement public services, this criterion does not exist at all, because the users of their services are not their members, and likewise, their employees are not their mandatory members because they can freely choose their employment. This way, this criterion only comes into consideration especially for those legal entities that, without mandatory membership, would not belong to legal entities under public law. These are particularly individual interest associations, such as individual chambers which have difficulty realising the interests of their members without mandatory membership, particularly because of the method of their work and financing. Such interest associations work to the benefit of all their members or holders of the same interests, whereby the scope and results of such work cannot be directly linked to an individual member or interest holder. The group interest is more or less realised in the same way for everyone, so that the effects of such a realisation cannot be directly individualised and, in this sense, directly charged.[46] According to this, mandatory membership with these legal entities is introduced primarily because of proportionate financing of their work, which is more or less implemented to the benefit of all their members who must contribute their proportionate share to such work.

Typical representatives of such legal entities who finance their activity through mandatory membership are various economic and peer chambers. These actually work in the interest of their entire membership, therefore it is fair that all members finance such activity in line with their criteria. However, it has lately turned out that even by

[46] It is true that this interest can in individual cases be realised selectively, so that in an individual case it can be more to the benefit of one group inside an interest association, although in the long run, this selectivity is equalised.

abolishing mandatory membership, such organisations do not stop operating, but they are merely transformed so that they become as closely connected with direct interests of their membership as possible. The activities that are more aimed at a direct satisfaction of needs of individual members or their groups are developing in this direction; this way they can also directly charge them. To a certain extent, these organisations are becoming even more effective, because the connection between their work and membership interests is even closer than in the financing of their services from mandatory membership contributions.

In addition to these legal entities, there are organisations where membership is automatically tied to another legal position. An example of such organisations is student organisations, where an individual automatically becomes a member of a student organisation by enrolling in a university or another higher education institute. Such membership, which to a certain degree resembles mandatory membership, materially differs from it in that by automatically obtaining membership in such an organisation an individual obtains only rights and no obligations.[47] Based on such a situation, in these organisations we cannot talk about mandatory membership that imposes obligations on members, but about automatic membership whose aim is to make the realisation of their rights easier.

We can conclude that mandatory membership is a very strong argument in defining an individual legal entity as a legal entity under public law. In some organisations, such as chambers, mandatory membership is even the decisive element, as, without it, chambers would be legal entities under private law just by the nature of their activity. Nevertheless, we believe that even in the case of mandatory membership, the legislator should explicitly define such a chamber as a legal entity under public law where it considers this to be sound and useful, as a chamber cannot automatically become a legal entity under public law only based on the fulfilment of this criterion. This is particularly because the determination of mandatory membership in an individual chamber is not determined in the public interest but primarily in order to realise certain legitimate joint interests for which mandatory membership serves only as a means for fair and effective financing of organisations that carry out such activities (Trpin, 2013).

6 Criterion of financing from public resources

The next criterion to determine legal entities under public law is the criterion of financing public resources, where there are again no problems with territorial legal entities under public law, which are directly financed from the budget. This criterion is

[47] Automatic membership in a student organisation does not incur any obligation on students, but rather gives them certain rights related to the student status, which are enforced by the student organisation, such as food vouchers.

quite simple in public institutes as performers of non-economic public services, which are mostly financed as indirect budget users.[48]

A more complex situation occurs in public agencies which have different resources to finance their activity. This specifically applies to regulatory agencies, which usually have their own financing resources, which are independent of the budget. Such resources can have a public-law nature when they are financed from taxes determined specifically for them, or a private-law nature in cases of payment of their services. This means that legal forms whose status law defines them as legal entities under public law are not necessarily financed from public financial resources. This criterion is also not absolute, because legal entities under public law can exist without being financed from public resources. On the other hand, it is true that this criterion is very strong for those legal entities that are financed, directly or indirectly, from the budget. In this case, their method of financing depends on the nature of their activity, which for various reasons cannot be performed on the market. This is a matter of direct dependency of the performance of such activities on public resources, as otherwise these activities would not be performed at all or they would be performed dysfunctionally, even though they are essential from the social perspective. On the other hand, their nature alone justifies such method of their financing, so that this is a closed circle of mutual influencing and dependency. This criterion is, therefore, practically absolute for such legal entities under public law, whereby this method of their financing depends on the nature of their activity, which is continuously performed in the public interest under special legal regime, and this is their additional absolute criterion. Without this additional criterion, the criterion of financing from public resources would be senseless or even in contradiction with the applicable legal order, as public resources would be used to finance legal entities performing their activities on the market, which would lead to the distortion of competition.[49]

The category of legal entities that are, or could under certain criteria, be so-called other entities under public law, are usually not financed from public resources. Such legal entities are primarily legal entities founded by the state with a public-law act, but with the purpose to carry out a certain economic activity. The reason why such legal entities are founded with a public-law act probably derives from the state using them to implement the most important long-term national projects. These projects and their implementation are obviously extremely important for the state, and they also involve political interests that are reflected in the public-law establishment of such projects' performers, which consequently enables political influence on their management.

[48] Public institutes can also be financed from selling their services on the market, but this is not the primary way of their financing. Additionally, this supplementary market financing is only limited to individual public institutes which are engaged in the activity that is interesting in terms of the market. Regarding the issue of market activity of public institutes, (more: Mulec & Trpin, 2012: 49-63).

[49] This would mean that individual market companies would be financed from public resources, which would be in contradiction with the fundamental principles of European law.

In addition, there are legal entities whose financial resources are a result of various state or fiscal measures. Such examples include disability organisations that are financed based on special legal regulation of the allocation of resources from the lottery, followed by various charity organisations that obtain their resources from citizens' income-tax allowances, student organisations obtaining their resources from lower taxes on student work, etc. This is a matter of a whole range of very different legal entities that are, to a certain limit, 'indirectly' financed from public resources although they do not meet any criterion for legal entities under public law.

Based on this, we can conclude that financing from public resources is a very strong criterion to determine legal entities under public law, yet it is only important for those legal entities who also otherwise meet other criteria of legal entities under public law. It is very relative in case of other legal entities, as the state through its accelerating and fiscal measures can enable the operation of certain legal entities that operate in the context of a certain group, or even in the public interest, without having to be legal entities under public law (Trpin, 2013).

7 Criterion of implementing public authorisations

The criterion of implementing public authorisations is probably the weakest link in determining legal entities under public law. The purpose of the constitutional institute of public authorisation based on which a certain function of state administration can be transferred to other entities in accordance with or based on a law is primarily rationalisation and optimisation of the implementation of state administration tasks. This means that an individual task of state administration is transferred to another entity (public-law or private-law) primarily because the latter is better qualified for the implementation of such a task or such a division of work is more rational. Here, the holder of public authorisation enters the functional (but not the organisational) system of state administration, meaning it implements an individual task from public authorisation the same and in equal ability as a state administration body would. Based on public authorisation, its holder primarily implements the regulatory function of state administration, meaning it issues abstract and concrete administrative acts with equal regulatory power as if it were issued by state administration bodies.

Recently, the most important public authorisations are implemented by legal entities of public law, which are such entities by their own status law. These are regulatory public agencies, which are usually established for the performance of public authorisations, in the context of which they implement a very large part of abstract and concrete regulation in a certain field. The reason for such a large scope of public authorisations implemented by such agencies is in the privatisation and liberalisation of certain economic public services where the need for new regulation of such fields has arisen, especially from the perspective of market organisation and protection of service users, because of the abandonment of the legal regime of public services. Such regulation should to a certain degree be independent of the executive authority, therefore it has

been awarded, by way of public authorisation, to these agencies as relatively independent and autonomous entities under public law.

Public authorisations are otherwise often implemented by legal entities under private law, as there is no doubt that they belong to this type of legal entities. In this relation, the implementation of public authorisations has nothing to do with the criteria to determine legal entities under public law, as the implementation of public authorisations in this case is entirely separated from the issue of legal entities' categorisation. As mentioned before, the purpose of public authorisation is primarily rationalisation and optimisation of state functions implementation and in this respect public authorisation is given to legal entities under private law because they can implement certain functions of state administration more rationally and optimally than the state administration. It clearly follows that the implementation of public authorisations alone cannot influence the legal position of its performer at all, because this is merely a matter of the transfer of a certain function that any legal form or even natural entity can carry out.

We can conclude that in determining so-called other legal entities under public law, this criterion is virtually useless. The implementation of public authorisation is completely independent of the legal form of its performer and as such cannot be the criterion to determine the legal position of individual legal entities. Such a criterion would be useful only when the state or a self-governing local community would establish a certain legal entity exclusively in order to carry out public authorisations. In this case, this would be a very strong criterion to determine an individual legal entity as a legal entity under public law, whereby this criterion would primarily not be the implementation of public authorisations, but especially the purpose of its establishment (Trpin, 2013).

8 Criterion of using public law in external and internal relationships

One of the characteristics of legal entities under public law is also the use of public law in external and internal relationships. For so-called other legal entities under public law, particularly the regulation of financial control over their operations, the use of public procurement rules and the use of public information access rules come into consideration in the field of public law application in external relationships. As regards financial control of their financial operations, the main issue revolves around competencies and the scope of the court of auditors' control over such operations. In the Slovenian legal regime, the court of auditors audits operations of public resource users, whereby the users of public resources are primarily legal entities under public law and their units. Here, the law does not list legal entities under public law nor specifically defines them with any legally relevant criteria. Hence, in relation to this law, the issue of other legal entities under public law, that is, those legal entities which are not specifically defined as such by individual law, has stayed entirely open, as the law does not even attempt to regulate it.

More useful for the definition of other legal entities under public law is the part of the law where it extends the court of auditors' control to legal entities under private law. The court of auditors thus also audits operations of legal entities under private law, which:

- have received aid from EU funds, state budget or budget of a local community;
- implement public service or ensure public goods based on concession;
- are companies, banks or insurance companies in which the state or a self-governing local community hold a majority interest.

The court of auditors thus also exerts control over legal entities under private law which meet the aforementioned conditions, therefore this control again cannot be an absolute criterion to determine other entities under public law. Moreover, the law does not define the concept of a legal entity under public law, so that in the case of legal entities whose legal position is statutorily undefined, the question arises particularly regarding the competence of such a control. In this question, we get trapped in a spiral regarding these legal entities where, because of the vagueness in the definition of legal entities under public law in accordance with this law, we cannot determine that in a certain case a legal entity under public law is such because of the court of auditors' control, as the same vagueness prevents us from establishing whether or not such control is justified. Based on this, we cannot independently use this criterion at all, especially because, in addition to the ambiguity of the concept of legal entity under public law, this criterion also refers to legal entities under private law (Trpin, 2013).

9 Assessment of the applicability of criteria in determining other legal entities under public law

Initially, we can establish that the indicated criteria are definitely useful in determining 'classical' legal entities under public law, as they reflect the majority of their fundamental characteristics. However, only a few legal entities meet all criteria. The first to meet all the criteria are territorial legal entities under public law (the state and self-governing local communities) established with a public-law act (the constitution) and working in the public interest, which is their basic purpose, as they implement the necessary regulatory in society. Since these are public-law communities, membership in them is mandatory; they are financed from public resources and in their work they use public law in external and internal relationships. As regards special eligibilities of public authority bodies and the implementation of public authorisations, these entities are public authority bodies and, as such, the implementation of public authorisations is their fundamental function.

In relation to specialised legal entities under public law, the majority of these criteria are met by public agencies, especially regulatory agencies. These can also be established only with a public-law act (the law) and they also work in the public interest, as they are established for the implementation of social regulation in a certain narrow or specialised field. Public authority bodies have special managerial eligibilities, as they appoint

members of the agency's board as well as the director. Membership in a public agency cannot be mandatory, because it is not direct, but since they implement regulation in a certain field, individuals and their associations are in an equal position in relation to them as they are to the state, or a self-governing local community. They can be financed from the budget or payments for their services can be based on taxes or a tariff, which means that they are mostly, at least indirectly, financed from public resources. The regulatory public agency always implements public authorisations, as this is the fundamental purpose of its establishment. Under special provisions of various laws, it applies public-law rules in its external and internal relationships.

The situation is similar with public funds and public institutes. These two specialised legal entities under public law are also established with a public-law act and they work in the public interest. Likewise, their public authority bodies have special managerial eligibilities, both are financed from public resources[50] and both use public-law rules in their external and internal relationships.[51] They only differ in the mandatory membership and the implementation of public authorisations. As in public agencies, they do not have direct membership, but only users of their services, whereby unlike a public agency they do not have such a broad regulatory authorisation through which they can directly influence all entities within a certain administrative system. A similar situation applies to the implementation of public authorisations, which can be implemented based on a special statutory authorisation; but such authorisations are relatively narrow and usually related to the implementation of their fundamental activity.

These criteria are fulfilled to a lesser degree by public companies, if they can still be ranked nowadays among specialised legal entities under public law at all. In fact, these companies are established today in the legal form of a company, whereby the only two criteria are that they are exclusively owned by the state or a self-governing local community and that they implement any of the economic public services (activity in general interest). All other criteria are relative, as some public companies meet them and others not. This way, certain public companies are established with a public-law act (the constitutional document of the state or municipality) or with a social contract adopted by the founder. They can be financed entirely from public resources or entirely from payments for their services, depending on what type of economic public service they carry out.[52] They can implement public authorisations under equal conditions as

[50] The founder ensures the earmarked assets and resources for work to public funds, while public institutes are indirect budget users, whereby they can also generate revenue from the market activity, but such revenue usually does not represent the majority.
[51] The same laws as those for public agencies also impose the use of their pubic-law rules in their external and internal relationships on public funds and public institutes.
[52] The method of financing an individual economic public service depends primarily on how many users of its services are defined or definable. In this way, an economic public service of municipal road maintenance is entirely financed from the budget, because its direct users are not

any other public-law or private-law entity. The use of public-law rules in their internal relationships is explicitly excluded with the Public Employees Act, while the use of these rules in external relationships depends on an individual field regulation.

We can conclude that even legal entities under public law, which are explicitly defined as such, do not have all of the properties required by the criteria to define legal entities under public law. Based on this, a specific question arises as to how much their use is applicable in defining the legal position of those legal forms, for which it is not entirely clear if they belong to legal entities under public law or to legal entities under private law. We can answer this question only by accurately analysing the legal position of the selected certain legal forms, which will be presented in the next chapter. We will also try to answer the question of how much the unspecified legal concept of 'other entities under public law' is suitable for use in our legal order at all, or in what connection it could be used (Trpin, 2013).

10 Definition of other legal entity under public law with the *a contrario* argumentation

We have already established that there is no general definition of legal entities under public law in Slovenian law and that, therefore, a concrete classification of an individual legal entity to this group can be problematic. Their partial typology exists, under which the state and self-governing local communities are considered territorial legal entities under public law, whereas specialised legal entities under public law include various organisational forms of public service implementation, such as public institutes, public economic institutes and, to a certain degree, also public companies, as well as two organisational forms for implementing the accelerating function of public administration, such as public funds and public agencies. In addition to them, the legislator can establish another legal form as an entity under public law, thus granting it the position of a legal entity under public law *sui generis*.

This legal position of legal entities under public law must first be compared with the legal position of legal entities under private law. In legal entities under private law, the established principle *numerus clausus* usually applies, meaning the typology of these entities is comprehensive, so that a legal entity under private law can be established only in one of the legally predetermined status forms. When solving the concrete question of whether a certain legal entity belongs to public entities under public or private law, the *a contrario* argumentation often incorrectly appears in relation to the use of this principle, based on which it is claimed that every legal entity which is established outside of the circle of legal entities under private law defined with the *numerus clausus* principle, is a legal entity under public law.

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definable, while the economic public service of drinking water supply is financed from the payment for the service, because direct users are exactly defined.

It is naturally impossible to agree with such a point of view. A legal entity under public law means establishing a special public-law regime in a certain organisation, whereby such a regime, as well as the entire public law, is restrictive. With the *a contrario* argumentation, we can conclude that in all organisations, which are accidentally not directly established in one of the comprehensive status forms of legal entities under private law, a special restrictive public-law regime is established. In Slovenian constitutional order, restrictions can only be imposed by the law, therefore the *a contrario* argumentation in the indicated case is not only unsustainable, but also constitutionally inadmissible. This argumentation can only be used in the reverse direction, meaning legal entities under public law are only those entities that are explicitly determined as such by the law, while, in the opposite case, they are entities under private law.

Unsustainability of such a point of view is also shown by the practical consequences that would arise therefrom. Under the *a contrario* argumentation, legal entities under public law would, in addition to all *sui generis* organisations, include all political parties and all trade unions, as all have their special legal forms, which are not included in the typology of legal entities under private law.

In addition to this, this point of view shows unfamiliarity of the sense and purpose of the *numerus clausus* principle with entities under private law. This principle only applies when legal entities under private law are established by natural entities or other legal entities under private law, and the legislator, for the purpose of legal safety, only provides them with predetermined types of legal entities, so that they do not have any other option available. Of course, this principle cannot be binding for the legislator or the state, which can at any time establish a legal entity under private law outside of the scope of the *numerus clausus*. The state or legislator is sovereign and limited only by the constitution and not a principle that it has set for natural entities and legal entities under private law.

From this, it is clear that even the *numerus clausus* principle for legal entities under private law is also not so absolute that it could not be adapted to new or special legal forms. In no case can we rely on it and establish with the *a contrario* argumentation a special public-law regime in all organisational types that directly do not belong to the scope of the current typology of legal entities under private law (Trpin, 2013).

State administration

State administration is an integral part of state organisation performing certain tasks that need to be realised in a country and are naturally, the tasks of a state. The type of state administration in a specific country and its tasks depend primarily on the concept of the state and its role in the society (Rakočevič & Bekeš, 1994: 156).

Every organisation requires administrative activity to realise its goals and tasks. An organisation lacking an administrative activity cannot realise its tasks and goals. The same is true for the state. Even in the state as the most general social organisation, certain goals and tasks have to be realised one way or another in order to maintain and develop it. For that reason, the state needs administrative activity. In a state, such activity is pursued by the state administration. Like any other administration, the state administration may perform its tasks only in relation and mutual interdependence with the parties pursuing other tasks of the state, i.e. in cooperation and integration with other state bodies. Since tasks that need to be realised in a state are not only performed by state bodies, but also by various other organisations in the state and individuals, the state administration may realise its tasks in relation and mutual interdependence with them as well. The state as the most general social organisation is responsible for realising tasks that ensure the normal existence and development of the society, irrespective of who executes them directly. Importantly, the state must see to it that such tasks are executed in a manner that will ensure the normal existence and development of the society and individuals. The state must ensure that certain tasks are executed in the general interest. Notably, throughout its development, the state assumed a series of tasks that the classic state had never dealt with. While the classic state typically involved mostly authoritative functions carried out by its bodies that were trained to execute such tasks only, the modern state typically involves the performance of a large number of tasks of no authoritative character. Due to a growing number of such tasks, the role of the state in a modern society has changed substantially. The changed role of the state in modern society resulting from the assumption of different tasks inevitably reflected in its administration to the largest extent. Since the classic state never dealt with production and other similar work that created various directly usable goods, that also directly reflected in the tasks pursued by its administration. Most goods used to be provided over a market, with market mechanisms in operation (Rakočevič & Bekeš, 1994: 156).

Various organisations and individuals used to be involved in the design and production of different goods with no special interference of the state and its bodies. Social needs

and social development, however, resulted in the state's assumption of the responsibility for producing various goods in order to ensure the normal functioning of the society and its development. A modern society cannot exist without certain goods that are regularly provided in an adequate scope and with due quality. The provision of such goods simply cannot be left to spontaneous management over the market, but is vital as it is in the general interest. The state has to ensure the enforcement of such interest in all areas (Rakočevič & Bekeš, 1994: 156). Hence, the modern state had to assume a series of new activities, by nature very different from its classic tasks. Many activities were included in administration, which made the latter grow, while changing the content and method of work. Initially a predominantly police-oriented administration that operated merely with authoritative control measures gradually evolved into the largest producer of directly used goods intended for the public. Therefore, the name state administration gradually became interchangeable with the term public administration, i.e. an administration working mostly for the public and not only for the system itself (Šmidovnik, 1981: 67).

The state administration was for long considered solely as an instrument of state authority. In other words, the sole function of the state administration was to enforce the state authority. With the state assuming new tasks, new tasks were also given to state bodies, i.e. those that were related with new, mostly production tasks of the state. In the course of development, the state's provision of newly assumed tasks differed. Some were directly included in the state apparatus and were rendered directly by state bodies, mostly state administrative bodies and special administrative organisations that became an integral part of the state administration. The state established special so-called parastatal organisations for other tasks that were more or less related with the state apparatus, but no doubt largely depended on it in various ways (through funding, supervision, management, etc.). Naturally, the state with its bodies influenced and interfered with all other activities and areas, including those it had not assumed itself in the mentioned manners, particularly by laying down general terms of operations to be followed. In short, the state started regulating and influencing the pursuit of practically all activities in a society with its bodies and in certain ways. All that inevitably affected the content and diversity of state administration tasks. All, though different methods that were used by the state to provide and ensure the realisation of individual tasks and activities also caused changes to state administration tasks. The latter changed in content and structure. Naturally, they also changed in terms of volume. In light of the above, the state was no longer able to perform all, but very different tasks with its authoritative means. New tasks of the state administration called for a different approach and the use of different means and methods. The state administration in a modern, developed and democratic state simply cannot appear solely as an instrument of authority in the numerous relations in which it enters and participates in various ways. Naturally, that does not imply that state administration entirely lost the attributes of a state authoritative function. Quite contrary, a series of state administration tasks still holds an exclusively authoritative character. Furthermore, many tasks may be

provided by force or at least under the threat of using authoritative coercion (Rakočevič & Bekeš, 1994: 156-157).

1 State administration tasks

A modern state administration is not merely authoritative and, hence, a modern society includes an 'authoritative' and 'non-authoritative' administration at the same time. An authoritative administration would relate to 'administrative law activity', while a non-authoritative administration would relate to 'extra-legal administrative activity'. The changed tasks of the state administration and their diversity has led to a division between the so-called 'indirect' and 'direct' administration. A direct administration is deemed to be an administration in which state and administrative bodies alone produce various goods and services that are directly usable and required by individuals and different organisations. Direct administration is identified as 'the urgent organisational and technical manipulative activity that enables the competent bodies to manage or even perform production and other creative work as their fundamental tasks' (Vavpetič, 1961: 213). An indirect administration is deemed to an administration that 'ensures the realisation of general social benefits protected by law in various areas of human activity' (Vavpetič, 1961: 214-215). Accordingly, a state administration that has the character of an indirect administration merely ensures that certain tasks or activities in a state are realised in an appropriate legally and otherwise prescribed manner. The logic in this division is that an indirect administration is mostly authoritative, which, however, does not mean that it could not execute its tasks in a non-authoritative manner, i.e. by applying extra-legal remedies and not applying authoritative coercion. In fact it is quite contrary. In every event, a modern state must endeavour to have individuals and organisations carry out activities pursuant to regulations voluntarily and without coercion, thus realising general social interests. That naturally requires evidence-based and comprehensively evaluated actions and measures by the state administration. Notwithstanding the above, it is vital that the administration can ultimately, if there is no other way, achieve that with authoritative coercion. If no appropriate, prescribed conduct and performance of certain activities is achieved, the state administration has the possibility to ensure it through coercion (Rakočevič & Bekeš, 1994: 158).

The state can or, in certain cases, must alone ensure the performance of certain production and other service activities. The state may do it in a manner in which such activities are performed by its bodies, i.e. bodies and organisations comprising the state apparatus. However, that alone does not make such activities of the state and state administration an administrative activity. That would otherwise imply that state administration is everything performed by state administrative bodies, which cannot be used to define the gist of administrative activity. Administration as a special activity with all its characteristics and properties involves more than the direct pursuit of certain activities with which the goals set are directly achieved. Administration, therefore, cannot be the activity described for production – an activity in which certain goods or services are directly rendered. Administration is a special activity that ensures the

realisation of goals or tasks of a certain organisation or community in relation and mutual interdependence with other activities and through the pursuit of its tasks. In that respect, it is not important whether, for example, production or service activity and management activity are pursued together in the same organisational unit or in the same body. All that also applies to the state administration. In a state, an administrative activity is only the activity of state administrative bodies that is used to ensure the realisation of state tasks in relation and mutual interdependence with other activities (irrespective of how they are organised). The state administration, too, holds all characteristics of an administration, including all particularities resulting from the peculiarities of the state organisation. Hence, not all activities pursued by the state administration bodies can be deemed as administrative. In particular, administration cannot be deemed to be various production and service activities pursued by such bodies. That means that the state administration performs tasks of an administrative character and tasks of no such character. The reasons may differ. Sometimes, it is not possible or makes no sense to perform certain tasks separately. Sometimes, it is difficult to demarcate direct performance of tasks from administration. On the other hand, certain tasks, though not administrative, cannot be performed outside the scope of the state administration for different reasons (Rakočevič & Bekeš, 1994: 158-169).

The state administration performs a series of tasks that are not administrative by content and nature, but involve various expert tasks that fall within the scope of different areas of expertise and could be in that respect performed by various expert non-state organisations. However, some of such tasks must be performed for the benefit of all and are generally necessary both for individuals and the society as a whole. Such tasks could hardly be considered administrative tasks, although they are performed by organisations that form an integral part of the state administration. For that reason, it is necessary to draw a line between the administrative activity of the state administration and other activities of the state administration that hold no administrative character by content and nature. The administrative activity of the state administration includes only an activity that ensures the realisation of the goals and tasks of the state in relation and mutual interdependence with others. The administrative activity of the state administration, therefore, does not include various other activities that may be performed by state administration bodies and which directly provide certain production and other service activities. The state administration is only one of the activities with which the state realises the tasks entrusted to it by the society. Tasks that need to be realised in a state one way or another are not performed by state bodies alone. Such tasks are mostly performed by various other non-state organisations and individuals. The state with its bodies, particularly its state administration, is primarily responsible for ensuring that certain activities are realised and that they are executed in a certain manner, within a certain scope and with due quality. Within the scope of executing tasks that need to be realised in a state, the state administration directly performs certain tasks alone in addition to pursuing the administrative activity with which it contributes to and participates in the realisation of such tasks, e.g. in defence, the police in internal security affairs, in foreign relations with other countries, etc. In other areas, the state

administration does not perform tasks implying direct execution, but sees to it that such tasks are executed in line with the general interests of the society. In such cases, we speak of the administrative activity of the state administration. Particularly distinct is the role of the state and its bodies in the provision of activities of general interest, such as education, health care, social security, culture, science, etc. In many of such areas, the state administration ensures that the activities are organised and function in line with social needs and the possibilities of a specific society. Hence, the state administration appears in many areas as the holder of activities for the general benefit of all (Rakočevič & Bekeš, 1994: 160).

Pursuant to the changed tasks of the state, the tasks of state bodies, particularly the state administration, have also changed and so have administrative functions. Areas in which the state started to intervene one way or another with its bodies inevitably affected the content of administrative work. In turn, that had to reflect in the establishment of suitable administrative organisations that were qualified to manage new tasks in all areas of social life and work. Naturally, that did not happen at once, but gradually. Areas in which the state administration had to operate gradually broke down and expanded, which required adequate adaptation of the organisation of the state administration (Rakočevič & Bekeš, 1994: 160). The changed role of the state administration resulting from various new tasks that it had started to perform and mostly the reducing element of authoritative coercion in the pursuit of its functions resulted in the use of the term 'public administration' to indicate all such tasks provided by the state in various ways (Pusić, 1968: 47). Notably, state administration tasks change in relation to the role and concept held by the state in a certain society. The tasks of the state in relation to such concept that are largely performed by its administration fall within the scope of the state organisation irrespective of whether the administration is called a public or state administration. In theory, attempts have been made to demarcate the state administration in narrow and broad terms, whereby the notion of state administration in broader terms could rightly be called public administration. Accordingly, the notion of public administration would, in terms of organisation, also include organisations that are not directly an integral part of the state organism, but perform tasks, the normal and regular execution of which falls within the responsibility of the state. Such organisations are formally not state organisations or an integral part of the state administration, but are required to ensure general social interests in the pursuit of tasks. On one hand, that means that they are in special relations with state bodies or that such bodies have special, as a rule, much greater rights vis-a-vis such organisations than vis-a-vis others. On the other hand, such organisations hold powers and a position that in certain respects draws closer to the position and powers held by state bodies, so that they can ensure the pursuit of their activity of general interest in reality. Non-state organisations performing tasks and activities that fall within the responsibility of the state usually hold the so-called 'public powers'. A public power means that the one who has been granted such a power may perform its tasks in an authoritative manner, i.e. in a way and with the means typical for the enforcement of state authority. A public power means that certain organisations may regulate different issues of social significance

within the scope of performing certain tasks in their activity and have the right to decide on rights and obligations in individual matters. Those are powers that in many respects equate such organisations with state bodies, particularly state administrative bodies. Organisations that have been granted such powers in fact perform the tasks of state bodies, primarily state administrative bodies, and have all characteristics of administrative matters. Such organisations may realise their tasks by issuing authoritative administrative acts, managing an administrative procedure, deciding on rights and obligations, performing different administrative actions and so on – in short, they perform their tasks in the same manner as state bodies. Like state bodies, such organisations should also ensure the public interest in the pursuit of their tasks with which the enforcement of public powers is related. When non-state organisations perform tasks that imply the enforcement of public powers, they are normally subject to the same rules of conduct as state administrative bodies. Naturally, such powers may be granted to a certain organisation only by the holder of such rights, which may be used to regulate certain relations and ensure the performance of certain tasks of general interest in an authoritative manner. That is no doubt the state or its competent bodies. A public power is, therefore, granted with a suitable legal document, normally an act adopted by the legislative body (Rakočevič & Bekeš, 1984: 162, 163). In line with the above, one may conclude that public powers may be enforced in three manners as is usual for the execution of administrative functions, i.e.: • by issuing general acts, • by issuing individual acts or making decisions on individual matters and • by performing material actions. Power for issuing general acts includes the right of a holder of a public power to regulate certain issues or relations with its general (abstract) act in a mandatory manner, hence as mandatory law. Power for decision-making in individual matters is otherwise the most common form of a power, within the scope of which a holder of public power may decide on the rights, obligations or legal benefits of legal entities or natural persons with an individual act. The content of a public power for the pursuit of material actions is an administrative function that is executed with real actions, such as record-keeping, provision of administrative control, etc. (Šturm, 2011: 1273-1276). In theory, some believe that the transfer of public powers to non-state organisations implies a reduced scope of state administration functions. Hence, distinctions started to be made between the state administration and non-state public administration. The development of a non-state administration was believed to be the result of a changed role of the state. Increasing tasks that at one time used to be performed directly by the state with its bodies are now performed by various organisations. However, such tasks also include tasks of authoritative character irrespective of who performs them. Notably, such tasks involve merely a change of the provider, while the content and other characteristics remain unchanged. The administrative activity in a state, which is largely performed by state bodies and non-state organisations, ensures the performance tasks that need to be realised in a state one way or another. The state administration as a special activity in a state, therefore, makes sure that the tasks of the state are executed. For that reason, it is vital for the state administration what the tasks that need to be realised in a state are. In general, the state administration, like any administration, does not lay down its own tasks. It is equally important for the state administration who and

in what way lays down tasks that need to be realised in a state (Rakočevič & Bekeš, 1994: 163).

2 State administration and legal system

Tasks that need to be realised one way or another in a state and the method of their execution to achieve the goals of the state and to ensure the normal functioning and development of a society are laid down in the legal system of a particular state (Rakočevič & Bekeš, 1984: 164). Notably, a state is established on the idea of order and strives to put order into practice. To achieve that, a state, which not only represents the source of law, but is also in its essence legal matter, must form its own law. The relation between the state and law is that of an organism and organisation. The state is law as an activity that sets standards, while law is the state as a standardised condition. Distinctions may be drawn between them, but they cannot be disassociated (Radbruh, 1973). The law established and existing in a state is called a legal system. A legal system comprises individual elements that are related so as to create a coerced mandatory social order of life. The notion of a legal system comprises two fundamental components. The first has a normative character and comprises legal norms or legal rules. The other has a factual character that is shown in the actual conduct and behaviour of people. Since the function of law is to protect, strengthen and develop the historically enduring social order, it is its task to achieve such behaviour and conduct of people that will re-create and restore social order. To make a legal system endure, it is vital that it is socially efficient. The normative component comprises legal norms based on which legal entities as the holders of rights and duties enter into certain legal relations. All that set of actually enduring legal norms, documents and relations that are continuously and dynamically renewed and developed in line with life in a society is called a legal system (Kušej, Pavčnik & Perenič, 1996). A legal system is generally mandatory for everyone in a state, hence also state bodies. A legal system is particularly important for the state administration, also because it represents the main basis for its role and position as well as for its operations. The state administration must have the basis for all of its operations in the applicable legal system. That in particular applies to the administrative law activities of the state administration. The legality and legal bond of administrative operations are the fundamental principles of the operations of every modern and democratic administration. State administration may perform its functions solely on the basis of the constitution and acts, and only within their boundaries. In any administrative operation, it is necessary to consistently enforce the obligations deriving from the legal system (legality of administrative operations) and prevent the use of contradicting methods and means in any case (Rakočevič & Bekeš, 1984: 164).

3 State administration functions

Different authors systematise and classify the functions of the state administration differently with respect to the nature and content, although the prevailing theoretical breakdown of state administration functions is into ‘executive’, ‘remedial’ and ‘service’

functions. The executive function includes policy implementation and enforcement of abstract norms in the widest sense of the word, including a general concern for the enforcement of legal regulations, meaning that it includes the issue of executive acts as general administrative acts, decision-making on administrative matters and administrative supervision. The remedial function encompasses everything that is used to enforce responsibility for the condition in an area for which a particular administrative body was established. That function is at least in one part essentially related with the notion of administrative operations, which is in its essence permanent, systematic and initiative. The service function covers all those tasks that are performed by administrative bodies for other, mostly representative bodies and the government. Such tasks mostly involve various expert tasks, also including the preparation of abstract legal documents, particularly the acts and regulations issued by the government (Godec, 1979: 71).

3.1 Executive activity of the state administration

The state administration is often indicated as the executive activity of administration, since it is expected to ensure that the tasks and goals of the state are properly executed. As already indicated, the state administration rarely executes tasks that need to be realised in a state directly by itself; such tasks are mostly performed by various organisations rendering production and other service activities in various areas of expertise that directly ensure the execution of such tasks, and individuals with their conduct and activities. The state administration participates in the process of executing the tasks of the state in line with its role, position and the functions necessary to have the process run smoothly and to have tasks directly executed in the manner in which the goals set will be achieved. Tasks that need to be realised in a state are laid down with acts, other general legal documents and other decisions adopted by the legislative bodies established for that purpose. The enforcement of acts and other decisions of such bodies is ordinarily a composite and complex process involving numerous entities with different roles and tasks. It is a process that goes from the general to the specific. The executive activity of administration is particularly important in that process. Considering the classic breakdown of state functions to legislative, judicial and administrative, the legislative function involves decision-making on goals and tasks that need to be realised in a state, while the judicial and administrative functions involve the enforcement of such decisions, whereby each of the two does it in a special manner characteristic of judicial or administrative activity. Since the enforcement of decisions is always a process conducted in different stages from the general to the specific, it is understandable that the complexity and composition of the process determines what is to be done to have it directly executed in real life. The enforcement of acts and other decisions adopted by the legislative bodies of a state is, as a rule, a complex and composite process entailing a series of interim decisions and activities that are, although in interconnection and interdependence at different levels or in different stages, performed by different bodies (Rakočevič & Bekeš, 1994: 164-165).

Hence, stage 1 of the process of enforcing the decisions of legislative bodies involves the cooperation of political executive bodies, which adopt more specific decisions, while stage 2 involves the cooperation of administrative bodies with even more specific decisions and actions. Each consecutive body enforces the decisions of the previous one by giving them further concrete form with the addition of new premises (Bučar, 1981: 70). These matters may be regulated differently in different states, although the special executive function is normally more or less clearly isolated from the administrative, while being related with it in a certain way. Members of a government who perform a political executive function in a state are ordinarily the ruling class in an administrative apparatus. Political executive bodies appear as an intermediate link between legislative bodies (decision-making bodies) and administrative bodies that, within the scope of the state structure, adopt basically final decisions before their direct execution (in certain cases, they themselves directly execute such decisions) (Rakočevič & Bekeš, 1994: 164-165).

As already indicated, the execution and enforcement of acts is a complex process comprising a number of different and interrelated actions and activities. That complex and yet indivisible process involves political executive and administrative bodies, whereby the division of labour between them is based on transition from the general to the specific. That raises a question whether it is relevant and reasonable to have certain functions performed by bodies with not only different positions in the system of state authority, but also different roles and methods of operations, while being in specific mutual relations, combined into a uniform notion. Different approaches may be used. Considering the realisation of the roles of the state as a comprehensive process (which it no doubt is), all governing bodies are executive bodies – including the representative body enforcing the will of the social community it represents (Rakočevič & Bekeš, 1994: 167).

On the other hand, one cannot go past the fact that different functions have to be performed in such a process requiring differently established and organised bodies that are interrelated, but have different roles, rights and responsibilities. The functions of (government) organisations, therefore, cannot be equated with the functions of administrative bodies and, furthermore, cannot be considered separately. To understand the functions of both, particularly their interrelation, it is necessary to know and consider the mutual relations behind them. Every relation, including the relation between executive and administrative bodies, is defined by certain characteristics. The most important issue for such relations is the rights and duties held by participating entities, their content and the manner in which they are realised. The level of reciprocity and equality of relations depends on the scope and content of a right on one hand and on the content and scope of duties on the other hand. Relations that are formed between different entities may be based on different principles. Equal and mutual relations will ordinarily be based mostly on the principle of mutual co-operation; a relationship between two bodies may also be based on inferiority or superiority. Normally, such relations are called hierarchical relations, which are typically based on the right of one

entity to give orders, tasks, guidelines and instructions to some other entity, while the latter is required to comply with them (Rakočevič & Bekeš, 1994: 167-168).

The specific regulation of relations between political executive and administrative bodies naturally depends on the state regulation. Bodies that perform one function or another differ from one another and so do their position and role in the management of public affairs. Although the position and role of governments in parliamentary systems and executive bodies in an assembly-based system are not the same, relations between the government and administrative bodies or relations between executive bodies and administration are at least in essence the same; namely, they involve the politically steering activity towards the administration both for the government and executive bodies. The political executive activity of the state or executive bodies is executive with respect to legislative or representative bodies and mostly steering, supervisory and largely also managerial with respect to the administration. In that respect, the political executive or governmental activity cannot be part of administrative activity, but is nevertheless of extreme importance, as it has decisive influence on it (Rakočevič & Bekeš, 1994: 168).

It is characteristic of the position of the administration or for relations between administrative bodies and the government that administrative bodies ordinarily report to the government about their work. The government has at its disposal various powers and actions that can be used to influence administrative bodies. The specific regulation and execution of such responsibility is another issue, again depending on the specific state regulation. As a rule, there is a personal link between the government and the most important administrative bodies – the heads of such bodies are ordinarily also members of the government. Practically in all parliamentary and assembly-based systems, administrative bodies (ministries, secretariats, etc.) report to the government or the executive body. The government enforces the control and coordination of administrative bodies. Administrative bodies are the most important means to realise the government policy, which must first be adopted by the representative body. The state administration holds a special and specific role and tasks in the process of realising state tasks, i.e. in a process that may also be characterised as an executive process. Notwithstanding the relation of such role and tasks with the role and tasks of other entities in such process, one may rightly speak of a personal administrative function and special administrative tasks as one of the state or social functions. In the state or, more specifically, in the process of executing the tasks of the state, it is necessary to have a special activity that will properly ensure in an organised, continuous and professionally appropriate manner that such tasks be realised in real life pursuant to the general social interests. It is necessary to have an activity that ensures the realisation of such tasks in line with the content of adopted decisions in all specific social situations and events concerning the realisation of state tasks. Such function must be specially organised and professionally qualified, while being close enough to real social developments. It is understandable that it must also hold appropriate means and powers to intervene and influence such developments in a certain way. Concern for the execution of state tasks at the level of an

executive process (which usually does not yet involve the direct execution of adopted decisions) requires special organisation, special methods of work, special procedures and methods, and a professionally qualified apparatus of experts. All that brings administrative activity closer to other expert activities, while supporting the claim that administration involves a special expert activity that needs to have its own characteristics like other expert activities, while being extremely diverse, as is appears and intervenes in all practically all areas of human activity (Rakočevič & Bekeš, 1994: 168-169).

3.2 Expert activity of the state administration

The tasks of the state administration are in essence special expert tasks. The pursuit of administrative function in a state largely entails the pursuit of purely expert tasks. The state administration must systematically and continuously monitor the way in which the government policy, acts and other decisions are executed in real life. It must monitor and identify the effects and results brought about by the decisions adopted. All that çalls for systematic collection and regulation of a great deal of data and information, its processing and, based on that, thorough analytical work. Furthermore, the administrative function is related with an extensive supervisory activity that needs to establish how and if at all the decisions adopted are realised in a proper manner in real life. The administrative function includes numerous organisational, steering, coordinating, planning and managerial functions and similar. In simple terms, one might say that every state, regardless of the specific political and state regulation, in any case needs an administrative activity that ensures the realisation of state tasks with its specific role and operations. Such activity or function of the state, which is an indispensable and irreplaceable integral part of the execution of tasks in a state, comprises a series of very different tasks and activities. All such tasks and activities are in the function of the executive activity of state administration. Execution implies decision-making on how others should act, unless it involves direct execution (Rakočevič & Bekeš, 1994: 169). Executive activity is not typical of an administrative body. Administrative bodies are governing bodies only because they make decisions (Bučar, 1969: 234). Execution, therefore, implies decision-making; administrative bodies participate in the process of executing the adopted decisions mostly by adopting suitable decisions that are much more specific than the decisions adopted at previous levels (Rakočevič & Bekeš, 1994: 169).

The state administration with its activity enables the operations of representative and political executive or government bodies. The executive activity not only ensures the execution of their decisions; equally, the expert activity of the administration is the main basis on which representative and government bodies adopt their decisions and make policies. That includes the preparation of different analyses of expert materials, information, studies, assessments, etc. The state administration is the state body that puts forth initiatives and proposals for the adoption of various decisions and actions. The state administration deals with and is related with all government activities that

refer to the entire community, from the making and formulation of the government policy to daily operational tasks related with its implementation. A major part of the work performed by the state administration is no doubt the preparation of acts and other legal documents adopted by the government or representative body. In that extensive work, the state administration appears basically in a double role. It enforces the acts, regulations and other decisions adopted by government and representative bodies in its unique manner and also largely co-shapes them. Initiatives for the adoption of such decisions largely come from the state administration. Hence, the state administration in fact steers the legislative process and the decision-making process in representative bodies and the government. The state administration thus assumes an extremely important role, although not formally, but in reality in the process of policy-making and identification of tasks. In light of that, the claim that an administration does not lay down its own tasks could be brought into question. Formally, that is indeed not true. Bodies that adopt different acts and decisions that have to be enforced by the administration are others bodies (parliament, government); however, the state administration puts forth initiatives and proposals for the adoption of such decisions and, furthermore, prepares content and expert bases that enable their adoption. Hence, the state administration is by far not only an expert service shop for representative bodies and the government, but has in fact become the most stable and one of the most important decision-making factors in public affairs. Such a role of the state administration in decision-making is a logical one and inevitably the result of the structure and course of the decision-making process. To adopt any decision, it is necessary to have information on the actual state of affairs and developments, i.e. expert information on the actual state of affairs and developments along with expert bases and expertise – and only the administration practically has all that. The state administration has suitable organisation and the necessary and properly qualified experts. Other state bodies, primarily representative, do not have all that at their disposal and are for that reason bound in their decision-making by the bases and proposals prepared and submitted by the administration. Although the administration formally holds no monopoly here, as others may also put forth initiatives and proposals, while a representative body could also obtain expert bases for decision-making from elsewhere, that is not the case in reality (Rakočevič & Bekeš, 1994: 169-170).

3.3 Normative activity of the state administration

State administrative bodies are obliged to ensure that acts and other adopted regulations and policies are expressed in the actions of individuals and organisations and executed in the content and manner foreseen in such legal documents. Since these involve general and abstract legal norms, they are often required to issue special ‘implementing regulations for the enforcement of acts’ laying down in detail the manner in which an act is to be enforced. Like acts, implementing regulations that are issued by administrative bodies may be general or abstract administrative acts. The mentioned issue of implementing regulations implies the ‘normative activity’ of the state administration. In relation to the normative activity of the administration, the issue of

the legal nature of such activity or general legal documents issued by administrative bodies is often put at the forefront. Namely, it is argued whether normative activity is the 'original activity of the administration' or merely a 'delegated activity'. General legal acts that are issued by administrative bodies are not original legal norms, but derivative norms. That means that administrative bodies need to have the basis for the issue of such regulations in an act. Hence, the activity surely involves a derivative and delegated activity that must be based in the decisions adopted by representative bodies. In parallel, the activity is a logical and natural function of administrative bodies and urgent for the enforcement of acts. The powers granted to the state administration by acts or representative bodies in that respect may be so wide that they largely imply independent regulation of the relevant issues in reality, whereby acts are merely the most general frameworks and guidelines for actions in certain social positions. The specific regulation of certain relations through the normative activity of the state administration may also imply a great deal of discretion for autonomous operations of the administration. The regulations issued by the administration may take different forms. Some general acts may only be issued by certain administrative bodies. The legal documents adopted by executive and administrative bodies are legally inferior and dependent on acts, which are original legal norms. That means that they need to be based on an act. An act lays down which bodies can adopt certain legal documents and which documents. In principle, such regulations should not lay down certain issues and positions anew, but should be inferior to original legal norms, i.e. acts, in terms of content. For that reason, such regulations must be assessed in terms of their compliance with an act. Executive bodies have the right to repeal the regulations of administrative bodies contradicting an act or other regulations. The legality of implementing regulations and their compliance with the constitution and acts is ultimately assessed by courts. Notwithstanding the legal dependence and inferiority of implementing regulations to acts, such normative activity of the government and administrative bodies implies a vital tool to regulate issues of general importance. In particular, the so-called 'delegated legislation' is widely spread in some systems. That means that it is transferred from representative bodies, which are in principle the only ones authorised to regulate general issues, to executive and administrative bodies. That also substantially increases the formal power of such bodies (Rakočevič & Bekeš, 1994: 176-177).

Administrative bodies, however, ensure the enforcement of acts by not only issuing administrative regulations, i.e. general abstract legal documents. They also enforce acts and other regulations in various ways directly by themselves. Hence, administrative bodies enforce acts in specific cases through their direct application. In specific cases, administrative bodies make decisions on administrative matters by issuing administrative acts – decisions. With such documents, administrative bodies apply an act directly and issue specific administrative documents on its basis, while being bound by the act in the process. Administrative decisions are issued by administrative bodies in a special administrative procedure laid down by an act. In that procedure, administrative bodies issue administrative decisions with which they decide on the

rights, duties and legal interests of individuals or organisations by directly applying acts and other regulations. Some individual specific administrative acts may also be issued by administrative bodies outside the administrative procedure. Such acts may be adopted in cases when they are especially authorised to do so with individual acts or other regulations (Rakočevič & Bekeš, 1994: 178).

The administrative procedure and its legal regulation is vital for the work of each state administration; it is also extremely important to protect the rights and interests of citizens and organisations. Regulations on an administrative procedure contain rules and forms of conduct that state administrative bodies need to take into account when deciding on administrative matters; they also lay down the rights and duties of the parties involved in such procedures. The codification of the rules of administrative conduct is a powerful tool and mechanism against the arbitrariness of the state administration. In light of the above, it is particularly important to have in place judicial control over the legality of final administrative acts with which state bodies decide on the rights and obligations of individuals, legal entities and other parties (Rakočevič & Bekeš, 1994: 178).

Unlike other state bodies, administrative bodies issue general and specific legal documents. Representative bodies (other than a few exceptions) adopt mostly general acts, such as acts, ordinances, declarations and resolutions. Courts do not adopt general acts, but issue specific administrative acts – judgements and orders. Furthermore, the activity of representative and court bodies ordinarily starts on the basis of a certain initiative or proposal, while administrative activity is instituted on initiative or at proposal and also at own initiative. Administrative bodies are often obliged to carry out their operations at own initiative (Rakočevič & Bekeš, 1994: 178).

3.4 Supervisory function of the state administration

Special note should be taken of the supervisory function of the state administration, within the scope of which the state administration carries out administrative supervision. The most important and far-reaching form of administrative supervision is no doubt inspection. The latter is a special form of administrative supervision, within the scope of which administrative bodies supervise whether citizens and organisations observe and implement acts and other regulations, whereby holding a series of important rights and interventions. This function of administrative bodies has an expressly authoritative character. Pursuant to the mentioned types of administrative functions, it could be classified under the police tasks of the state administration and tasks aimed at maintaining the system, while also being the executive function of the state administration. Furthermore, it is indicated as the curative function of the state administration (Rakočevič & Bekeš, 1994: (178-179).

The need for inspection is not disputed in any state regulation. Inspection is a logical and urgent component of the decision-making process or the process used to execute adopted decisions. The adoption of an act does not conclude a decision-making process. The

purpose of adopting an act or any decision is to make it real in real life, thus achieving a set or desired goal. In addition to a series of activities and acts of execution by administrative bodies, it is also necessary to have a special activity aimed at dealing with the way or if at all the acts and other regulations adopted are put into practice in real-life social processes. In short, it is necessary to ensure supervision over the implementation of acts and other regulations, while providing those performing such a function with the relevant powers and instruments to make everyone not observing or inadequately implementing the law to do so. Inspection is in essence supervision over the legality of the work performed by individuals and various organisations. Naturally, supervision over legality is not provided by state administration bodies alone, which is why a distinction must be made between inspection and supervision over legality as performed by other bodies, particularly courts (Rakočevič & Bekeš, 1994: 179). Another question is what should fall within the competence of general administrative bodies in respect of supervision over legality and what should fall within the competence of courts. The right answer to that question is important in the consideration of administrative supervision. Administrative activity, also including inspection, differs from judicial activity in that it may deal solely with public issues, i.e. resolving particularly conflicts of interests that directly involve a general social or public benefit (Vavpetič, 1972: 106). Courts also carry out supervision over the legality of the work performed by administrative bodies, meaning that the legality of any administrative action must be subject to judicial control, which naturally also applies to inspection. Administrative bodies cannot judge the regularity of their own actions, since they have no appropriate organisation nor appropriate instruments and because that is not their social function. Courts would have legal importance had they not had the task to be the ones judging whether a specific legal action is legally correct or not. The final and irreversible decision-making on whether a certain action is legally correct or not and, in particular, whether a certain legal action is legally admissible and legally correct or not falls within the exclusive competence of a court (Vavpetič, 172: 107; Rakočevič & Bekeš, 1994: 179-180).

Since inspection is a far-reaching and important authoritative function of administrative bodies enabling the latter to intervene in various ways against individuals and organisations, they themselves have to be subject to supervision and at the same time limited in various ways. In particular, such actions of administrative bodies need to have an explicit basis in the law. Furthermore, the law must lay down measures that may be adopted by such bodies during inspection. The issue of the responsibility of such bodies and the responsibility of inspectors carrying out inspection must be separately regulated. During inspection, inspecting bodies must establish the actual state of affairs in a particular area or position and assess whether or not it is in line with regulations. The goal of inspection is not merely establishing whether the actual state of affairs is in line with the law or not, but also to achieve compliance and eliminate all obstacles and deficiencies causing a situation of illegality. Inspecting bodies may order that any irregularities found be eliminated within a certain period. To that end, they may issue the relevant administrative decisions and impose other measures. Furthermore, they have the right to impose on-the-spot fines, propose the initiation of proceedings for an offence, procedure

or criminal offence, etc. Inspection is a special and important function of administrative bodies, which is why it must be properly organised and legally regulated (Rakočevič & Bekeš, 1994: 180).

4 Organisation of the state administration

Each state has different types of state bodies through which the state realises its tasks. Such bodies should be tailored to different types of state functions. If one of the criteria for making distinctions between various types of state bodies is the principal function performed by such bodies, then it is possible to distinguish between three types of state bodies, i.e. legislative, judicial and administrative. However, in theory and practice, the governmental or political executive function is more and more frequently indicated as the fourth function of the state. The latter is performed by political executive bodies or governments. Such a classification of state bodies is no doubt very practical, but is in theory very much dependent on a specific approach to the consideration of such issues. Here, only issues of the organisation of administrative bodies will be dealt with. In practice, the notion of an administrative body is used to indicate those bodies of the public administration adopting decisions that are required in the subsequent process of implementing the decisions of a representative body. At that point, it is relevant for the notion of an administrative body that it appoints a representative body, acts according to its guidelines and makes decisions to implement the decisions of a representative body. The notion also includes executive and administrative bodies. The organisational issues and characteristics of administrative bodies are in general vital and may significantly influence the realisation of their functions. In any case, the organisation of administrative bodies must be adjusted to functions that need to be pursued. For that reason, the specific organisation of administrative bodies in a particular state will depend on the type of tasks performed by such bodies, while the latter will depend on the concept of the role of the state in a particular social community. The relevant issues in that relation are primarily issues concerning the establishment of administrative bodies and the principles providing the basis for such establishment, the issue of different types of administrative bodies, the issue of the organisational structure of administrative bodies, which includes an extensive set of internal organisation issues, and so on (Bučar, 1969: 233-234; Rakočevič & Bekeš, 1994: 181-182).

4.1 Government

As already indicated, in theory and practice, the governmental or political executive function is more and more frequently indicated as the fourth function of the state. The latter is pursued by political executive bodies or governments. In different organisation systems of the state authority, the holders of executive authority are different state bodies. They also hold different positions in the organisation system of state authority and relations to other authority bodies, particularly their relation to the legislative authority. Which bodies perform the political executive function will depend on the organisation system of the state authority. In a presidential system, the operations of the

state administration are run and steered by the head of state as an individual (monocratic) body, in a parliamentary system the government as a collegiate body and in an assembly-based system a collegiate executive body of an assembly that may have different names. The most powerful position is held by the president of the state as the head of executive authority in a presidential system, which is politically unaccountable and independent of the legislative body. The weakest is the position of the executive body in an assembly-based system in which it is fully dependent and inferior to the assembly as the highest body of the state authority. Somewhere in between in a parliamentary system is the government, which is politically accountable to the representative body, while the parliamentary system provides some sort of balance between the executive and legislative authority (Grad, Kaučič & Zagorc, 2016: 487-488).

In a parliamentary system, the executive authority is exercised by the head of state and government together, while the administrative part of the executive authority is exercised by administrative bodies. However, the fundamental holder of executive authority is the government as a collegiate body comprising ministers as the heads of ministries. In terms of government position, a distinction is usually made between two models of parliamentary system operations, which is often used to distinguish between two forms of a parliamentary system, i.e. the dualistic and monistic parliamentary systems. A dualistic parliamentary system is a form of parliamentarianism in which the government reports to two state bodies, i.e. the parliament and head of state. In a monistic system, the government reports to only one body, i.e. the parliament. Notwithstanding the equality of both branches of authority, the real power of the government is that it is at the top of a large administrative apparatus of the state. The government is at the same time the holder of the executive function and the highest body of the state administration. In the former respect, the government faces the parliament and, in the latter, the state administration. Therefore, the government has a dual function; on one hand, it performs the political executive function and, on the other, the administrative function. In each case, the government is a political body that implements the policy of a party or a coalition of parties forming the government by translating it into its own authoritative actions. The government enforces its adopted policy through its legislative and other proposals put forth to the parliament and within the scope of its executive function. The outcome of government proposals in the parliament not only governs the enforcement of the government policy, but also its existence, since the rejection of its proposals implies a lack of support in the parliament (Grad, Kaučič & Zagorc, 2016: 488-489).

4.2 Establishment of state bodies

The competence for the establishment of administrative bodies is as a rule attributed to representative bodies. Representative bodies establish administrative bodies with their legal documents, typically acts. Considering the position and functions of executive bodies or the government in the state structure, the latter holds an important role in the

establishment. Ordinarily, a representative body will establish or abolish a certain administrative body at the proposal of an executive body or it will establish and set up the entire organisation of administrative bodies in the state. In theory and practice, various principles have been enforced as the basis for the establishment of administrative bodies. The most widely known – and used in practice – principle for the establishment of administrative bodies is the so-called 'departmental principle'. Much rarer is the so-called 'functional principle'. Furthermore, there is the 'territorial principle' for the establishment of administrative bodies, which is mostly typical of poorly developed and poorly structured regulations. According to the departmental principle, administrative bodies are established with respect to the type of work to be performed, i.e. by establishing one administrative body for one or more administrative branches (department) or merely for a group related matters in the same field. The departmental organisation of administrative bodies also implies that all bodies operating in a particular area are some way or another related with one another. A consistent outcome of the principle implies that there is a departmental administrative body for a certain area that is the highest in that area, while all others are included in it in various ways. The highest administrative departmental body is authorised to manage affairs in its field within the scope of the instructions and guidelines provided by the representative body or the government. The principle of labour division, however, requires that the highest departmental body delegates its powers further to bodies that dispose with more expertise or knowledge about the actual state of affairs in a particular, more narrow field. In that respect, the departmental body also grants its authorised bodies increased or reduced autonomy (Godec, 1977: 28; Bučar, 1969: 252; Rakočevič & Bekeš, 1994: 182).

The issue of the areas of social life in which administrative bodies will be established or areas that will be put together in a certain administrative department is a matter of specific assessment by each social community. The number of departments depends on various objective and subjective factors. Several social areas related with one another in some way (whereby the relation must be taken very relatively) may be combined in a single administrative department. Objective factors affecting whether a special independent service would be established for a particular area no doubt include the scope of tasks and the importance attributed to a particular area in a certain society. The latter cannot be judged solely by using objective criteria. The decision to establish a special department or to include a department in a wider department is a matter of specific assessment. In general, a tendency may be observed for increasing the number of departments for various reasons. One of the reasons is no doubt the necessary division and specialisation of labour (Rakočevič & Bekeš, 1994: 183). There are also cases where departments are established not only to satisfy certain needs, but also for the sole purpose to ensure the necessary places for certain political figures and for a growing expert and technical administration (Bučar, 1969: 248).

The departmental organisation of administrative bodies must be harmonised to the maximum possible degree; matters that fall within the area of work of a particular

department must be rounded off so as not to interfere or interfere as little as possible with the area of work of some other department. If that is not executed in sufficient detail, it may lead (and it also often does in practice) to a conflict of jurisdiction, i.e. a dispute about which department should undertake a certain matter. That allows two positions. It may happen that two departments both claim a certain matter and, contrary, that they both disclaim it. Such conflicts are usually resolved by the government or the executive body coordinating the work of departmental administrative bodies. For that reason, it is vital that the departmental organisation of administrative bodies ensures their coordinated activities and at the same time the comprehensive, effective and efficient pursuit of all matters of the state administration. A growing number of administrative departments is the result of a growing number and breakdown of state tasks. The latter is shown in a tendency to differentiate administrative organisations. The definition involves a horizontal differentiation, meaning the differentiation of administrative bodies at the same level – e.g. at the level of central administrative bodies (Pusić, 1968: 46-51). The other differentiation is vertical and increases the number of levels at which administrative bodies are established and operate. In the vertical breakdown process, the number of levels within a uniform administrative system is increased, so that units at the same level in principle perform the same tasks, but each for some other territory or some other group of users. A typical case of a vertical breakdown is the establishment of new types of territorial units within a uniform system of state administration – the introduction of provincial, regional, district and other administrations as territorial interim levels between the central and local administration. Obviously, the main cause of such a process is an increased area in which administrative activity is performed. However, that is not the only reason. There is also another factor, i.e. the intensification of administrative activity. Local branches, regional levels and the interim levels of administrative organisations will be all the more necessary when more issues are managed and more layers of social life and activities are covered by administrative organisations (Pusić, 1968: 48-49; Rakočevič & Bekeš, 1994: 183-184).

The functional principle, which is relatively rarely used to establish administrative bodies, means that a particular administrative body is established for the pursuit of a certain administrative function and performs such a function for different areas. The principle is used to establish, for instance, certain inspection services, so that one administrative body performs inspections in various administrative areas. The territorial principle is used to establish administrative bodies in a manner where an administrative body is established for a certain area and manages certain administrative matters from different areas, but only for the relevant area. An example of district establishment is a local office. Administrative bodies are established for the pursuit of tasks in a certain social community and are the bodies of such community. At state level, there are administrative bodies performing administrative tasks on the territory of the entire state. States are ordinarily broken down to different units that altogether compose the state and, in such units, administrative bodies are also established (Rakočevič & Bekeš, 1994: 183-184).

The breakdown of administrative bodies to central and local is quite common. Central bodies operate on the entire territory of the state, while local bodies operate merely within the scope of a local community (e.g. municipalities). In unitary states, one deals with only one type of central bodies, while in composite federal states one deals with two types of bodies, i.e. federal bodies and members' bodies. In that respect, federalism in broader terms creates several levels of central administrative bodies with divided areas of work and a possible low-level right to participate in the establishment of central high-level organisations or in their decision-making process (Pusić, 1968: 81). Local bodies may be more or less dependent on central bodies, depending on the scope and concept of local self-government in a certain social arrangement. Here, the level of autonomy of local bodies vis-a-vis central bodies is extremely important. If such bodies are largely dependent on or even inferior to central bodies, one could hardly speak of decentralisation. When local bodies perform tasks under the instructions of central bodies or instead of them, one could merely speak of the deconcentration of administrative tasks. The deconcentration of administrative tasks, unlike decentralisation, implies the strengthening of central bodies and central authority (Rakočevič & Bekeš, 1994: 184).

4.3 Types of administrative bodies

Administrative bodies differ in many respects. When making distinctions between central and local administrative bodies, administrative bodies differ in the level of their autonomy. That does not imply any dependence of, for instance, local bodies on central bodies, but involves the issue of different levels of autonomy of administrative bodies within the same social community. Central administrative bodies also differ in the level of their autonomy. With respect to the latter, there are autonomous administrative bodies and affiliated bodies or bodies under supervision. Naturally, one must see the autonomy of independent administrative bodies as relative; such bodies are autonomous only within the scope of the powers laid down by the law and their autonomy is limited by the rights held by the executive and representative body (Rakočevič & Bekeš, 1994: 185).

The autonomy or limited autonomy revealed in the form of bodies affiliated to an autonomous administrative body or of bodies under the supervision of such an administrative body is an issue here only in terms of the position and status of individual administrative bodies at the same social level and in terms of mutual relations emerging in the process. In a consistent departmental organisation, only one administrative body is in fact autonomous in a certain administrative area (the highest departmental body, e.g. a ministry, secretariat, department, etc.), while all others are related or dependent on it in various ways. The highest administrative departmental body is authorised and responsible for the pursuit of matters in its area, which, however, does not necessarily mean that all tasks and matters in such area are performed by that body directly. It will often be necessary to establish for a certain part of such an area

special, more specialised and qualified bodies that are related with it due to the expediency and special nature of affairs. Special administrative bodies affiliated to an autonomous administrative body or under its supervision are ordinarily established when the nature of certain tasks from the relevant department is such that it calls for the organisation of a special and, in a certain respect, specialist service. It goes without saying that the area of an affiliated body or a body under supervision must fall within the area of work of the autonomous body. The content and nature of tasks must be such that they call for the use of special instruments and methods of work, special expertise and special organisation, making it reasonable and necessary to establish a special affiliated administrative body or a body under supervision. In relation to their establishment, it is primarily necessary to identify when and under what conditions it is necessary to establish such a body, and when and under what conditions it involves an internal organisational regulation of an autonomous body. The position and level of autonomy of affiliated bodies differ from the position and autonomy of internal organisational units. In particular, their autonomy and hence responsibility reflect differently. The autonomy of internal organisational units is in every case smaller than the autonomy of affiliated bodies. The responsibility of internal organisational units is limited only internally and, therefore, cannot be compared to the responsibility of affiliated bodies or bodies under supervision. An affiliated body is also not fully accountable externally and its relations vis-a-vis the executive and representative body go through an autonomous departmental body (Rakočevič & Bekeš, 1994: 185). The internal organisational unit of a department involves powers that are ordinarily limited to a narrow field of expertise or to a narrow field of individual cases involving very direct and continuous or ongoing supervision over the exercise of powers. Such authorised body mostly does not perform its activity as a special body of the public administration that makes autonomous decisions, but largely as support to the expert and technical administration for the purposes of the department. An autonomous body affiliated with a department holds wider powers and acts as an autonomous body to a much larger or even predominant extent, since it makes autonomous decisions on matters in a particular specialist area, while acting as an expert and technical administration for the purposes of the department supervised and giving instructions for work (Bučar, 1969: 252; Rakočevič & Bekeš, 1994: 185). The work of an affiliated body is supervised by the administrative body within which the former exists. An autonomous administrative body may lay down individual tasks to an affiliated body and may in certain cases also give mandatory instructions. All those and other rights held by an autonomous body vis-a-vis an affiliated body restrict the autonomy of an affiliated body to a large extent, thus substantially changing its position, particularly if compared to the position of an autonomous body. There are hierarchical relations established, at least to a certain extent, between an autonomous administrative body and an affiliated body or a body under supervision (Rakočevič & Bekeš, 1994: 186).

Administrative bodies also differ from one another in respect of the composition and method of management and decision-making. Hence, there are individually managed or individual bodies and collegiate bodies. Individual bodies should be the ones led by the

head of a body (an official) who manages the work of such a body as an individual and is also held responsible for its work. It is characteristic of an individually managed body that the person managing such a body is fully responsible for the work of such body. Such method of management, decision-making and enforcement of responsibility is in principle the most suitable for state administrative bodies, which is why individually managed administrative bodies are the most common in a state. Unlike individually managed state bodies, collegiate bodies are more an exception than the rule in the administration. A collegiate body is a body comprising a large number of persons who altogether and equally make decisions. In general, there are many collegiate bodies. These are, for instance, the parliament, government, various boards, commissions, etc. Both, the collegiate and individual forms have their own strengths and weaknesses. In a collegiate body, opinions and positions are exchanged that need to be harmonised. Collegiate bodies are places where different interests meet, which is why the decisions adopted are no doubt more universally substantiated. A weakness of the collegiate method of work is mostly small operability and efficacy; the speed of decision-making is smaller than in individual bodies (Rakočevič & Bekeš, 1994: 186).

The organisation of administrative bodies in a particular state is more or less branched. The scope and structure of administrative bodies depend on a number of different factors. The number and types of administrative bodies that are established by a certain society is a matter of specific assessment by every society. In some states, the organisation of the state administration is relatively stable. The number and form of administrative bodies changes relatively slowly and to a minor extent. Elsewhere, such changes are more frequent and, at least seemingly, more radical, which is why we are witness to continuous reorganisations and changes to administrative structures. A characteristic of a state administrative organisation is shown not only in its scope or the number of administrative bodies in it, but also in various forms and types of such bodies. Everywhere, i.e. in any state regulation, there are different forms of administrative bodies with different statuses and positions within the state administrative structure. The organisation of the state administration must take into account a detailed division of labour between different areas and within individual administrative areas. The number of administrative areas for which administrative bodies are formed reflects the division of labour at the level of social community. Administrative bodies are formed for several more or less interrelated areas. A decision about that ordinarily depends on the scope and number of matters in a particular area and the complexity of matters. However, several different administrative bodies may be established in a particular area, all of which perform certain tasks from such area. Naturally, the legal status of different bodies in the same area cannot be the same (Rakočevič & Bekeš, 1994: 186). Some authors hence speak of and distinguish between the fundamental administrative bodies and special administrative bodies in a particular area (Godec, 1977: 23-24). According to this differentiation, fundamental administrative bodies are the ones performing all matters in a certain area, while special administrative bodies perform certain administrative matter in such an area. Fundamental administrative bodies are the highest bodies in a particular department and their status

within the administrative structure is always autonomous. The autonomy of special administrative bodies is as a rule smaller than the autonomy of fundamental bodies. Differences between fundamental and special bodies are usually expressed with titles or naming of individual bodies. Fundamental or the highest departmental bodies are usually ministries or state secretariats. In some countries, there are also different names (e.g. department, etc.), but the most common and widespread name is no doubt a ministry. The difference between fundamental and special bodies in a particular department is typically that the official running such a body is at the same a member of the government or executive body. Such a position of the minister naturally also affects the position of the entire body. Forms of special administrative bodies differ widely as do the names used in individual administrative arrangements. Ordinarily, these are: administrations, institutes, directorates, inspectorates, commissions, departments, agencies, etc. A certain title or form should express the fundamental substantive characteristics of such bodies and their legal position in the administrative structure. Individual arrangements typically also lay down when and why a certain form of organisation of an administrative body can be used. Hence, each of the various forms is given important legal characteristics (Rakočevič & Bekeš, 1994: 187).

4.4 Internal organisation of administrative bodies

When discussing the organisation of administrative bodies in broader terms, the conditions and forms of their establishment, and the specific forms of the organisation of such bodies, questions remain concerning their internal organisation, i.e. questions calling for an internal division of labour in individual administrative bodies that is necessary to realise the tasks of an administrative body. In addition to internal forms of organisation established for that purpose in administrative bodies and their relations, this also includes questions concerning objective and subjective conditions for their operations. That implies primarily questions relating to the work methods used by administrative bodies, material, technical and other instruments necessary for their work, and questions related with persons who may work at such bodies (Rakočevič & Bekeš, 1994: 187). Organisation (in terms of organising) is a process of labour division and simultaneous systematic integration of work operations that are distributed among different persons who have been furnished with material instruments to execute certain tasks. The organisational structure is a relatively permanent plan of task allocation and a system of mutual relations of people in an organisation in the execution of joint tasks (Pusić, 1968: 131).

The organisation of work in an administrative body, which gets its formal expression in the formation of appropriate organisational units, must be based on proper criteria for the executed division of labour, while the basis for the latter is the scope and type of tasks that must be performed by an administrative body. An administrative body must be organised so as to be able to fully, effectively and efficiently perform all of its functions in the area for which it was established, which is why tasks have to be divided to individual groups and distributed across organisational units. The main criterion for

the division of tasks at an administrative body into individual groups of tasks and jobs is their nature and content and the method of their performance. The division of tasks at an administrative body into individual tasks and jobs, into individual groups of such tasks and jobs, and their distribution to suitable organisational units must naturally be such that enables not only their effective and efficient completion, but also successful management of the body, coordination of work among organisational units and individual groups of tasks and jobs, and finally as efficient cooperation of the administrative body with other administrative bodies as possible. The organisation of work in an administrative body, therefore, calls for maximally efficient division of labour, which must at the same time be such that it allows equally efficient integration and coordination of work. The tasks and jobs of an administrative body are performed within the scope of organisational units, which are formed with the required number of workers. The type and number of organisational units and the number of necessary workers is determined with respect to the type, complexity and scope of tasks necessary for their performance. If the nature of jobs and tasks is such that there is no requirement or need for the formation of organisational units to perform them, their pursuit may also be organised outside such units. Notably, administration is a special expert activity that must be performed by special and duly qualified experts. In particular, such workers must have suitable professional education and proficiency for work in administrative bodies. The activity of administrative bodies takes place in various areas of social life, which is why its diverse content is one of the characteristics of administration as a professional activity. That naturally requires that administrative bodies not only adjust in terms of organisation to the different features of individual areas, but also that the workers executing administrative tasks have the knowledge and skills that match different contents. In addition to other special administrative knowledge, they must also be aware of the specific features of individual administrative areas. For that reason, proper education and, in particular, systematic concern for continuous training of workers in the administration are vital (Rakočevič & Bekeš, 1994: 192).

Efficient, economical, complete, legal, professional, rational and hence also socially compliant performance of the functions of administrative bodies calls for a series of objective conditions necessary for the work of administrative bodies in addition to an internal organisation and proper experts. Within the scope of that, it is particularly important to regulate issues relating to the rationalisation and modernisation of administrative operations. The goal of rationalisation and modernisation of administrative work is to achieve in every respect satisfactory operations of administrative bodies. The rationalisation and modernisation of administrative operations are also objective conditions for the socially compliant work of the state administration. The scope of administrative tasks keeps growing. The phenomenon is well known in any modern society. The pursuit of a constantly growing volume of administrative tasks in a satisfactory manner in every mentioned respect, however, cannot be achieved without rationalisation and modernisation. In particular, it cannot be achieved by increasing the number of administrative workers, which frequently implies

increased social costs and is most often inefficient (Rakočevič & Bekeš, 1994: 192-193).

Although the rationalisation and modernisation of administrative work share goals and tasks and are closely related with one another, it should be mentioned that they refer to different measures and concern different activities and procedures. The rationalisation of administrative work concerns the rationalisation of regulations, numerous procedures, methods of work and internal organisation in the administration. The rationalisation of administrative work is possible in most administrative functions. In short, the rationalisation of administrative work must deal with questions concerning various objective and subjective conditions under which administrative bodies are required to operate. The modernisation of administrative work implies mostly the introduction of modern technical instruments in the state administration, particularly with the introduction of modern information technology (Rakočevič & Bekeš, 1994: 1993).

5 Territorial organisation of the state administration

All tasks of the public administration cannot be executed centrally, which is why the public administration must inevitably be organised under the territorial principle. With a growing number of administrative tasks, vertical differentiation of the administrative system strengthens, leading to administrative territorialisation, i.e. the formation of territorial units in which public administration bodies are established that perform administrative tasks in a certain section of the state territory. European continental administrative systems distinguish between two forms of administrative territorialisation – political decentralisation and administrative decentralisation (also called administrative deconcentration). The former implies the delegation of decision-making on public affairs to local communities, their residents or their representative bodies, the result being the formation of local self-government. The latter implies merely the delegation of the execution of administrative tasks of the state to territorial bodies with no element of political self-government. The result of such a process is hence deconcentration, i.e. the delegation of the execution of state tasks to lower levels of the administrative system while maintaining centralised supervision over the tasks executed in that manner. Administrative decentralisation is carried out with the sole purpose to increase the rationality and efficiency of the administrative system. Since it involves only execution tasks (hence, the instrumental segment of the administrative process), the aspect of interests must be excluded. Properly executed deconcentration brings the administration closer to the object or subject of a particular administrative tasks not only in spatial terms, but also in terms of a better understanding of specific local conditions and issues. Therefore, deconcentration increases the efficiency and economy of the execution of tasks. With rational organisation, tasks are carried out faster and with higher quality and lower costs. The other purpose of deconcentration is to make access to the state administration easier. The more the administration moves closer, in spatial terms, to a citizen by executing its tasks, the smaller are the loss of

time and the costs incurred by an individual or a legal entity to which the execution of a task refers. Alongside the mentioned advantages, deconcentration also has certain negative effects. It makes supervision difficult and brings about certain new organisational requirements (coordination, supervision, guidance and professional assistance to deconcentrated bodies or units). A downside of deconcentration is that it increases the influence of local factors on administrative activity even when unnecessary or ineffective or even illegal (Virant, 1998: 101-102).

6 Supervision over the work of the (state) administration

Administrative organisations carry out their functions with different forms of operations: they issue general and individual authoritative legal documents and issue or conclude legal business documents, issue internal legal documents and perform material actions. All mentioned forms are subject to the principle of legality, which is one of the fundamental principles of a legal state (Virant, 1998: 213). Although a legal regulation must be the basis and assumption of administrative activity and although administrative bodies may issue their legal documents solely on the basis and within the scope of the enforcement of acts and other regulations, the principle is breached in many ways in practice. Public administration bodies realise diverse tasks, issue various legal documents and are active in various areas of social life. The mere scope of their activity objectively creates different opportunities for various irregularities and errors at work. Since positive law regulations are often breached in practice by administrative bodies, it is vital that measures to protect the legality and regularity of the work performed by administration bodies are foreseen and put into practice. That goal is achieved with the establishment of a system of supervision or control over administrative operations. In general, supervision is a permanent activity of prudent and systematic observation, monitoring and assessment of others' actions. The one supervising has the possibility to influence the work of the entity supervised. Praise will be expressed if work is carried out well, note will be given of any irregularities, a warning will be given if any errors are found, advice will be given to improve work and eliminate errors, and a penalty will be given or initiated where necessary. Hence, the notion of supervision is also closely related to the notion of the accountability of the party under supervision when the latter is found to deviate from the expected and prescribed operations or actions (Cijan & Grafenauer, 2002: 111).

Supervision (control) is in fact a relation between two persons, one acting as the supervising entity and the other as the supervised entity, hence the former has an active role and the latter a passive one. The former is hence the supervisor or controller, while the other is a party whose operations or actions are supervised. In the public administration system, it is otherwise more fitting to speak of bodies rather than of persons, meaning that one body supervises (controls) the work performed by some other body. The passive (supervised) body is bound by legal regulations to allow such supervision and subject to the supervision of the supervising (active) body, adjusting its operations to the latter's instructions, comments, decisions, orders, etc. If the mentioned

is not done, it will suffer the consequences laid down by regulations. It is possible to monitor both work and failure to perform work. Failure to perform work is also the cause and subject of control when it is expected to be performed (e.g. in a silence procedure or tacit acceptance procedure). The goal of supervising the work performed by the administration is to establish whether the work of an administrative body is correct (sometimes only legality is supervised, other times also adequacy) and to prevent or rectify or eliminate any irregularity, and to sanction violators in cases of serious irregularities. The task of such supervision is, therefore, to ensure the realisation of administrative goals as laid down and regulated by individual legal norms. Just like types of administrative activity are diverse, so are the instruments and types of their supervision. There is no uniform control institution in any modern state that would perform overall supervision (control) over the work performed by the public administration. In light of the above, there are several types or forms of supervision over the work performed by administrative bodies, i.e. political and legal supervision, formal and informal supervision, supervision of the legality of work, supervision over work results, supervision over the method of work, supervision of the content of work, supervision of the economy of operations, preliminary and follow-up supervision, financial supervision, supervision of the efficiency and performance in the execution of some task, etc. In general, one may say that the supervisory function is put into practice by authoritative or state bodies in a prescribed procedure with pre-determined measures and sanctions (in that case formal supervision) and also by non-authoritative entities, which include mass media, various associations of citizens or civil society entities, etc. (in that case informal supervision). In the continuation, there will be some consideration primarily of supervision over the operations of the state administration, with focus placed on the administrative supervision performed by higher administrative bodies over lower administrative bodies. Since such supervision cannot in every respect ensure compliance with legalities in the work of the administration, various other forms of supervision have also developed. Hence, the work performed by the administration is supervised by representative bodies, the government, state prosecution services and courts as well (speaking of judicial control of the work performed by the administration), where supervision is particularly important as it is conducted by a special (second) branch of authority. Furthermore, several other forms of supervision have developed which are laid down by regulations (e.g. ombudsman, public procurement audit), along with public scrutiny via media and other forms of activities and organisation of the civil society (Cijan & Grafenauer, 2002: 111-112).

6.1 Administrative supervision and its forms

Administrative supervision is chronologically the oldest form of supervision over the work performed by the public administration. In past, it was long acknowledged that other forms of supervision were not possible. Administrative supervision developed as the first form of supervision of the administration and has been present for the longest. In 1887, Lorenz von Stein defined ‘administrative control’ as state operations that are aimed at maintaining unity between the will expressed in the law and all associated

actions and decisions made by officials. In theory, it is indicated that the need for administrative supervision appears due to a triple threat that may be caused by an administrative body: 1. due to its lack of competence and diligence or intention to violate regulations; 2. due to the issue of any illegal or inappropriate legal document as a result of an unintentional error; 3. due to inertia when it fails to issue an administrative act or perform the administrative action it was supposed to. Administrative supervision is, therefore, considered to be supervision in which bodies of the administration are both the subjects and objects of supervision or where one administrative body performs supervision, while another administrative body is subject to it. Administrative supervision is broken down to internal and external supervision (Cijan & Grafenauer, 2002: 112-113).

Historically speaking, internal supervision appeared and initially developed with no special legal regulations and norms. It was particularly developed in a police state in which it was also the only control of administrative operations. Later on when the 'right of supervision' over the work performed by administrative bodies started to be delegated to other bodies (outside the administration) as well, the 'self-control' of the administration somewhat lost its significance, but was never cancelled or terminated in full. The need for such control stems not only from the requirement for the provision of legal operations in relation to other bodies, organisations and citizens, but also from the need for coordinated administrative operations in terms of uniformity and compliance with respect to understanding and implementing regulations, administrative goals and the method to achieve them. Notwithstanding the way a series of new forms of control occurred, modern law kept this form of internal supervision of the administration, but merely set it up on a more adequate legal basis and legally regulated it in detail. Within the scope of legal regulations, there are two types of internal administrative supervision, i.e. 'instance supervision' and 'hierarchical supervision'. The former is typically performed on the basis of dissatisfaction expressed by a party in an appeal. An appeal is used to 'attack' or challenge a particular administrative act of a lower (first instance) administrative body before a higher (second instance) administrative body. An appeal is one of the oldest institutes of administrative law appearing upon the origination of modern public administration organisation in the practice of absolutist states where all public functions were attributed to the ruler, who either carried them out himself or delegated them to his delegates, but nevertheless kept 'supreme' supervision and the right to a final decision in such cases. A subordinate who was dissatisfied with the decision of the ruler's official was able to turn to the official with a request to reconsider the matter and resolve it more favourably, and also pleaded the ruler 'for mercy' several times. At the time, an appeal was not legally provided, but was a spontaneous form of another request or objection and later on evolved into a legally prescribed instance appeal. Hierarchical supervision is performed on the basis of a hierarchically higher position and often also on the basis of express provisions of individual organisational regulations, under which higher administrative bodies have the right and duty of supervision over the work performed by lower administrative bodies and regardless of whether the incentive comes from elsewhere or from within. Hierarchical supervision

may be conducted in different ways and forms. Hence, such supervision may refer to individual specific legal documents of a lower administrative body or, for instance, to all administrative decisions in a certain area or to the overall work performed by one or more lower administrative bodies (Cijan & Grafenauer, 2002: 113-114).

External supervision over the operations of the administration is most frequently conducted by special administrative bodies – inspectorates or inspection services. Although such form of supervisory activity focuses mostly on other parties (individuals and legal entities) rather than on administrative bodies, it may also be used 'over' an administrative body. Such supervision involves supervision that is conducted over an administrative body by some other administrative body that is otherwise not hierarchically superior to such body. The supervision is conducted by specially authorised inspection bodies within the scope of legally prescribed competences. In such relations, an administrative law relationship is established and the supervisory body acts with a stronger will. External administrative supervision may also include some special types of supervision laid down in relation to the implementation of individual acts. Since the public administration disposes with public funds, there are special forms of external supervision in place over the use of funds (Cijan & Grafenauer, 2002: 115).

6.2 Representative body's supervision over the work of the (state) administration

In theory, a representative body's supervision over the work performed by the (state) administration is also indicated as political supervision, since it is conducted by 'political' bodies and with respect to the political assessment of the administration's work. In supervision, it is important what performance criteria are set by a supervising body and what 'normal' expected results of work or activities are. In general, a legislator's supervision over the work performed by the government is expressed within the scope of: a vote of no confidence in the government, vote of confidence in the government, interpellation, impeachment, parliamentary inquiry and parliamentary questions (Cijan & Grafenauer, 2002: 115).

The government as a collegiate body can only be politically responsible, while its members (ministers) also hold legal responsibility in addition to political responsibility for their actions. The government is unable to function when it has no support in the parliament, to which it reports about its work. The political responsibility of the government is shown in whether or not it still has support in the parliament (whereby it is completely irrelevant whether the government works well or not). That is shown in two ways, i.e. with a vote of confidence or no confidence in the government that is conducted in the parliament. The result of a positive vote of no confidence and negative vote of confidence is that the government is to resign due to the loss of support in the parliament resulting in the formation of a new government or to negotiate the dissolution of the parliament and early elections, whereby its function is also

terminated. In the case of a constructive vote of no confidence as enforced in the German constitutional regulation, a vote of no confidence may only be expressed with the election of a new head of government. In such case, the resignation of the previous government is unnecessary. The termination of the function due to a vote of no confidence may also result from a submitted interpellation that evolves into a vote of no confidence in the government. The vote of confidence or no confidence institute developed in the British parliamentary system as a constitutional custom emerging in mid-19th century. The interpellation institute evolved in the French constitutional development (Grad, Kaučič & Zagorc, 2016: 509-510).

Methods to enforce the political responsibility of the government before the parliament are as a rule legally regulated, usually in the constitution, and procedurally broken down in detail in a parliamentary procedure. The most important methods to realise the political responsibility of the government are the vote of no confidence and confidence, which differ from one another in who initiates a vote of support for the government in the parliament. A request for a vote of no confidence comes from the parliament, whereby the necessary number of MPs who can request a vote of no confidence is ordinarily laid down. Members of parliament may ordinarily initiate a vote of no confidence when it is shown that the government has lost support in the parliament and new coalition links for the formation of a government are indicated. Along with a direct proposal, a vote of no confidence may also be initiated indirectly based on an interpellation. An interpellation on the work performed by the government or a particular minister may be filed by a specified number of MPs. A discussion on interpellation may conclude with a resolution assessing the work performed by the government or a particular minister or it may continue with a vote of no confidence in the government as a whole or in a particular minister. In the constructive vote of no confidence system, however, it is possible to pass a vote of no confidence in the government only if a new head of the government is elected as at the same time. A vote of no confidence in a particular minister may be conducted separately. If a vote of no confidence is passed, it is deemed that such a minister is thereby dismissed (Grad, Kaučič & Zagorc, 2016: 511-512).

Unlike in a vote of no confidence, a vote of confidence is requested by the head of the government. The difference between the two is that a vote of no confidence directly refers to the establishment of parliamentary support to the government, while a vote of confidence may also be set aside a vote on some matter (ordinarily an act), in which the government puts up its position by tying the results of the vote to the results of the vote of confidence. A vote of confidence may already take place upon the formation of the government, when it is necessary to pass a vote of confidence for the start of its work in the parliament (investiture). Most often, a vote of confidence takes place during the government's term of office, when the latter wishes to establish what support it has in the parliament. A vote of confidence as the basis for the start of pursuing the function of the government is a typical institute of the parliamentary system and is known in constitutional regulations that are considered as classic parliamentary systems (e.g.

Italy). In some other variants of the parliamentary system, it is unnecessary, since investiture has been replaced by other instruments for ensuring the parliament's support for the government. Such is the German regulation, where the parliament elects the chancellor, thus making investiture unnecessary. A vote of confidence during the government's pursuit of its function is initiated by the head of government to check whether the government still has the support of the parliament. The question on a vote of confidence may be set separately, but it is more usual to tie it to an act or some other decision of the parliament that the government sees vital for its operations. A vote of confidence is ordinarily requested if the government has lost support in the parliament, which is revealed in insufficient support for government proposals, particularly proposed acts, making its work difficult. A passed vote of confidence in such case means that the internal relation and solidity of the government majority in the parliament is again reinforced (Grad, Kaučič & Zagorc, 2016: 512).

Along with those, a special form of enforcing the responsibility of the government or individual ministers is the interpellation, which is ordinarily considered in theory as a special form of a parliamentary question. Parliamentary questions are questions that are raised by members of parliament to the government or individual ministers in relation to the work performed by executive and administrative bodies. Both forms of enforcing ministerial responsibility serve to enforce the responsibility of the government as a whole and the individual responsibility of a minister. In practice, the interpellation is mostly an instrument of the opposition that can be used to ultimately achieve the resignation of the government and dissolution of the parliament along with early parliamentary elections. In any case, the interpellation is used by the opposition to test the stability of the government's position in the parliament and, hence, the stability of the government coalition in a procedurally the easiest way and with the lowest risks. In public, the interpellation usually gets high publicity and implies unique political pressure on the government and governing party or coalition of parties. In that it resembles parliamentary questions, which ordinarily stir up the political public sphere more than other parliamentary work, but are kept within that frame unlike the interpellation. Parliamentary questions are raised by members of parliament to the government or individual ministers in relation to the work performed by executive and administrative bodies. A parliamentary question is a method with which a member of parliament (MP) receives information on some matter or wishes to demonstrate the incompetence of a minister or errors in their work. The MPs' right to pose questions to the government or an individual minister is an important way to conduct supervision over the work performed by the government and individual ministries and, hence, the accountability of the government to the parliament. In that respect, parliamentary questions imply some sort of political public scrutiny over the work performed by individual ministers and the government as a whole. A parliamentary question differs from other instruments that are used to establish the responsibility of the government in that it does not lead to a vote of no confidence in the government, as it involves merely a dialogue between a member of parliament and the government or a particular minister. Nevertheless, since a certain position on the work performed by the government or a

particular minister may be formed in the parliament upon a parliamentary question, the latter is an important instrument for the enforcement of the government's accountability to the parliament. The interpellation and a parliamentary question are alike in many respects and both serve the same purpose, but also differ significantly from one another. Parliamentary questions imply permanent political supervision over the work performed by the government and individual ministers, which, however, poses no direct threat to the government's position. On the contrary, the purpose of interpellation is to initiate a discussion on the political responsibility of the government as a whole or of a particular minister, and to vote on their responsibility. It is not necessary that a vote will result in a vote of no confidence, but merely in a statement by the parliament that will not result in the collapse of the government (Grad, Kaučič & Zagorc, 2016: 513-515).

Since ministers hold a double function – the function of a member of the government and the function of the head of a ministry – their responsibility is also double, i.e. collective and individual. Their collective responsibility is demonstrated in the political responsibility of the government as a whole, which is at the same time the collective responsibility of its members. Nevertheless, each minister is also held politically responsible for his or her actions. Individual responsibility is bound to the person and does not (at least formally) extend to the entire government. The individual responsibility of a minister is shown in that each minister is fully responsible for the work of the ministry they run and for their own work. Within that scope, a minister is responsible both for the policy of the ministry and for its implementation in individual cases. That means that they are not held responsible solely for their own work, but also for the work performed by their subordinates, naturally within the scope of the ministry's competence. Such responsibility includes not only third party liability for the operations of a ministry, but also responsibility for quality management and organisation of work at the ministry. A minister is held personally responsible for their own actions in the parliament, particularly for their answers to parliamentary questions. In countries with parliamentary tradition, different customs have formed in that respect, but it is a general rule that responsibility depends primarily on a minister's ability to influence the relation within their department – and that differs substantially from one ministry to another. The individual responsibility of a minister is enforced primarily with an interpellation on the work performed by a minister, with parliamentary questions and, ultimately, with the minister's right to resign, whereby enforcing their own political accountability for their actions, but avoiding political responsibility for further work in the government, since their function is terminated upon resignation. Notably, an initiative to enforce the political responsibility of a minister stems from the parliament or the government or, more precisely, from the head of the government. Members of parliament may request a vote of no confidence in the government, initiate an interpellation on the work performed by the government or a particular minister, and pose parliamentary questions to a minister (Grad, Kaučič & Zagorc, 2016: 516-518).

In addition to the political responsibility of a minister, it is also necessary to mention the legal responsibility of a minister. This involves two, increasingly rare types of

responsibility of a minister, i.e. criminal liability and civil liability. The two types of responsibility are naturally only individual, hence related to the minister as a person. Importantly, neither type of responsibility is the same as the responsibility of ordinary citizens. The criminal liability of a minister first developed in England, where the House of Commons impeached a royal minister for the criminal offences committed in the pursuit of his function, while the House of Lords tried the minister and imposed an adequate penalty upon him. During the subsequent development of the parliamentary system, the responsibility was replaced by the political responsibility of a minister. Despite that, some states kept that constitutional institute, although it is almost never used in practice. Special criminal liability of a minister refers merely to the acts committed in the pursuit of their ministerial functions and within the scope of that function. That applies to the service of prohibited and to the omission of prescribed actions. In respect of other criminal offences, their responsibility is the same as the responsibility of every other person. That responsibility differs from political responsibility in that a minister is held responsible only for their own actions, but not for the actions of their subordinates. Special criminal liability of a minister differs in many respects from the usual criminal liability. On one hand, the procedure to establish responsibility is not run by courts, but representative bodies, sometimes with the cooperation of the constitutional court. Most often, a minister is accused by the parliament (or one of its houses) and tried by the other house or the constitutional court, the highest regular court, sometimes also a special court (e.g. in France). On the other hand, the difference compared to the usual criminal liability is revealed in that actions for which a minister is held responsible most often are not prescribed in the penal or some other act and are, therefore, not criminalised. Ordinarily, ministerial responsibility is defined merely as responsibility for the violations of the constitution and the law. Furthermore, the sanction is frequently not specially prescribed, but most often involves (and is sometimes specially prescribed) the removal of ministerial function (Grad, Kaučič & Zagorc, 2016: 521-522).

The other form of legal responsibility is the civil liability of a minister, which involves a minister's tort liability for damages. That too differs from the tort liability borne by other persons. This type of responsibility also refers to the damages incurred with the pursuit of a ministerial function. The civil liability of a minister means that a minister is required to settle the damages incurred due to their illegal actions. In that respect, responsibility is in principle the same as with other persons serving a state body, which is why it may be considered as part of the civil responsibility of state employees in the pursuit of their job. In this type of responsibility, a minister (or a state employee) and the state act together. Sometimes, they may sue the state (which has a recourse claim against a minister) as the injured party, whereas in other cases a minister may be sued, while the state is obliged to reimburse the damage merely in subsidiary terms. In principle, a minister is obliged to reimburse the damage incurred in the pursuit of their function, including to the state (Grad, Kaučič & Zagorc, 2016: 522-523).

6.3 Judicial supervision over the work of the (state) administration

In general, it may be found that administrative supervision is not an adequate guarantee that the principle of legality in the work performed by the public administration will be realised and ensured. Administrative bodies, regardless of their hierarchical level, have predominantly well harmonised positions and understanding of administrative goals. Ultimately, lower administrative bodies in certain terms depend on higher administrative bodies and ordinarily work and resolve matters as advised and recommended by the latter. For those reasons, ideas have prevailed that administrative supervision was insufficient and that enhanced protection needed to be ensured in other bodies of authority. When assessing the adequacy of an administrative act or action, such protection is not entrusted to other bodies outside the public administration and, hence, supervision of the adequacy of administrative activities remained within the domain of higher administrative bodies. As regards the assessment and decision-making about the legality of administrative acts, a position has prevailed that the delegation of such tasks exclusively to higher administrative bodies fails to provide an adequate guarantee for objective, autonomous and legal actions. For that reason, the assessment of the legality of administrative acts and actions of the administration has been assigned to the competence of the judicial branch of authority, i.e. courts. In modern legal systems of states, judicial supervision over the work performed by the executive branch of authority derives from the fundamental constitutional principle of the breakdown of authority to legislative, executive and judicial. In narrow terms, judicial supervision over the work of the administration, particularly in cases of decision-making on specific rights, obligations and legal benefits, derives from the finding that internal administrative supervision (hierarchical, instance) is an inadequate guarantee for the realisation and provision of the principle of legality in the work performed by the administration. Some states entrusted the tasks to existing ordinary courts (Anglo-Saxon system) and some to special administrative courts, the main tasks of which is the legal supervision of administrative acts. In modern legal systems, a special role in the supervision of the work performed by the administration is held by administrative courts conducting the constitutional and legislative assessment of the general legal documents issued by public administration bodies. Within the scope of the constitutional appeal institute, the constitutional court provides a special legal remedy (constitutional appeal) against a violation of the constitutional rights of individuals (Cijan & Grafenauer, 2002: 118-119).

Non-state public administration

The expression non-state public administration is based on the changed status of entities that execute the tasks of the public administration, which is why the notion of non-state public administration needs to be considered from two aspects, i.e.: • organisational and • functional. While the tasks of public administration are in the first place executed by state administration bodies, the tasks of the non-state public administration are executed by legal entities governed by public and private law (outside the state administration system) and individuals based on public powers. In terms of organisation, the non-state public administration may be understood as legal entities governed by public and private law (outside the system of state administration) and individuals who have been conferred public powers to perform the administrative tasks of the state with an act or on its basis. In functional terms, the non-state public administration is understood as the activity of the mentioned entities (outside the system of state administration) performing the (administrative) tasks of the state administration (Popović, 1982: 54).

1 Public power

A public power is a phenomenon that may be described from almost an infinite number of aspects, although its social determination and administrative law regulation prevail. The definitions of a public power found in expert literature contain different emphases of a public power. Several definitions of a public power are currently inadequate due to changed social conditions, although, scientifically- speaking, they provide an important insight into the development of a public power (e.g. mention of self-governing social or interest communities). All definitions, however, share the consideration of a public power as the delegation of state administration tasks. Constituent marks of a public power are: • conferral with an act or on its basis; • conferral to a non-state organisation (or individual) and • the delegation of state administration tasks in various forms, i.e. the issue of general acts, decision-making in individual affairs or other powers. The definition of a public power hence lacks focus on the content of a public power other than a general clause stating that it involves the tasks of the state administration, which implies a reference to individual systemic and extensive areas of regulations. It is vital that the holders of public powers enter into the same relationships as state administration bodies, particularly in relation to individual parties to a procedure (Kovač, 2006: 19).

A public power always appears in a certain social context that is based on a changing role of the state and, hence, the role, competence and organisation of the state

administration. Ever since the French public services (Deguit) emerged, a public administration in functional terms, hence an administration that performs public tasks can be defined as having two parts according to the subject of implementation. For different reasons, the state has decided to delegate certain competences to non-state entities with public powers, meaning that the tasks of the public administration are today executed by the state and non-state public administration. In social terms, the non-state administration is a coherent group of entities that is further broken down to local self-government organisations, autonomous legal entities governed by public law, legal entities governed by private law and individuals. With respect to the narrow definition of authoritative or non-authoritative tasks as the subject of a public power, the latter implies the exercise of authority, which is why it falls within the scope of constitutional matter that in general regulates relations between authoritative (primarily state) bodies and individuals. Through the exercise of public powers, whether they are exclusive like in autonomous administrative institutions, or accessory with respect to the fundamental activity, the holders of public powers fall within the scope of the administration in functional terms (Kovač, 2006: 19-20).

A public power is a phenomenon of modern society and has to be regulated, since the holders of public powers carry out administrative tasks, which in turn have to be substantiated in the rule of law. Holders of public powers or, rather, the enforcement of public powers by functional definition falls within the scope of an administrative social system. The exercise of public powers constitutes the specification of the rights and obligations of persons or decision-making in relation to them. Since it involves the delegation of state administration tasks, regulation is mostly that of administrative law. Despite the static nature of norms with which it operates, administrative law must take into account the dynamic nature of social relations in which public powers appear and operate. A question of the definition of the terms 'administrative system of a society' and 'state administration matter/task' is raised here. The principal unanswered, and among experts disputed, question is whether the content of public powers is merely the performance of authoritative tasks or whether it spreads to the area of non-authoritative tasks of the state administration or which authoritative tasks can and which cannot be entrusted to entities outside the state administration. In linguistic (etymological) terms, the expression 'public power' indicates authority; hence the right and duty of the party empowered to enforce public authority. Most authors believe that the content of a public power is hence the enforcement of public authority, which as a result means that the holders of public powers act in an authoritative manner towards other entities, although there is no basis for it according to the analysis of the provisions laid down in the constitution, acts and other regulations. Public powers can be used to check the issuance of individual abstract administrative acts, decision-making in administrative matters and the pursuit of material actions, which shows the authoritative nature of the legal position of the holders of public powers. The only restriction is inspection, which cannot be delegated with such power, except for individual actions in a procedure and the pursuit of expert works for the implementation of inspection (Kovač, 2006: 20-21).

Due to the state's mission as the defender of the public interest, public powers cannot be awarded indiscriminately, but are 'entrusted' or 'conferred' (faith in good work is demonstrated). There must be the substantiation and legitimacy of the reason to entrust public powers, which is formally expressed with a constitutional requirement to delegate state administration tasks only with an act. Since the state has monopoly over the enforcement of authority, it is possible to entrust authoritative tasks as public powers only when urgent, in respect of autonomy or the need for self-regulation by establishing an entity governed by public law that would carry out such tasks in full or as the execution of the fundamental tasks of an empowered entity. In other terms, an authoritative task, which is the content of a public power, must be so closely related with the fundamental tasks of a holder of public power that it cannot be executed without a public power. We speak of the principle of connexity of public powers. In non-authoritative tasks, there is no need for such close relations, but it is customary and at the same time necessary to delegate the relevant tasks, so that the empowered organisation carries them out more effectively and economically, both for the administration as a whole and for the users of public services. In relation to that, it is necessary to mention that some authors (Pirnat in Kovač, 2006: 21) speak of the 'right' of non-state organisations and individuals to execute the function of the administration (Kovač, 2006: 21).

Administrative law considers a public power from material, organisational and procedural aspects. The organisational aspect deals with the adequate status form of the holders of public powers and with the optimal organisational structure to provide efficacy or autonomy or the need for self-regulation. Material administrative law lays down rights and obligations that constitute the essence of an administrative law relationship between authoritative organisations and individual persons. Procedural law, both in general as well as in a special administrative procedure with an administrative dispute, lays down in what manner citizens and legal entities should optimally protect their rights and legal benefits or in what manner an authoritative body or organisation can enforce an obligation in relation to clients in order to protect the public interest (Kovač, 2006: 22).

Strictly speaking, a public power must be distinguished from a concession, which is also a type of power and falls within administrative law institutes. Some authors (Krivic in Kovač, 2006: 22) believe that a public power is a form of concession, while most authors (Virant, Pirnat in Kovač, 2006: 22) indicate that a public power implies the pursuit of classic functions of the state administration, while a concession covers the pursuit of public services (which, however, does not fall within the classic functions of the state administration, but merely within the scope of the provision of public services). In classic terms, the content of a concession is typically the provision of (economic or non-economic) public services or the management, use or exploitation of natural resources (Kovač, 2006: 22).

An overview of system legislation reveals changes to the types of tasks that may be entrusted as public powers, so that the latter do not refer solely to authoritative tasks, and there is a certain lack of clarity in the definition of public powers. In general, it is possible to sum up the material and formal definition of a public power. The material definition formally, which emphasises the delegation of powers with an act to non-state entities, upgrades authoritative and non-authoritative tasks of the state administration in terms of connexity (Kovač, 2006: 22).

Throughout its social manifestation, a public power is sociologically defined as the institutionalisation and legal regulation of the state, which has become less and less focused on interventions and more and more on services. A public power is an instrument of the state with which the latter waives a part of its authority by delegating classic legal tasks from a hierarchically subordinate state administration to non-state entities. It maintains merely the fundamental regulatory role, absolute at the level of the law, and supervision over the implementation of public powers (Kovač, 2006: 22).

The modernisation of the public sector and public administration is perceived very differently in European countries and OECD member states, but common elements include privatisation, decentralisation and deregulation, outsourcing, actions under the principles of efficacy and efficiency, customer-driven orientation, openness, transparency and apoliticism in the performance of expert tasks. A public power puts into effect all mentioned trends, but is manifested very differently in the legal systems of individual states, i.e. primarily through the establishment and operations of various executive and non-governmental agencies. Due to the state and administration's focus on services, the state has delegated more and more non-authoritative tasks to service users that in the first place imply the implementation of public services or the pursuit of expert work as the basis for the implementation of public services (Kovač, 2006: 23).

1.1 Subject of a public power

A public power must have its subject, object and content defined. To learn about the subject of a public power, it is necessary to define the term 'tasks of the state administration' or 'administrative tasks'. Those can be delegated to non-state entities with public powers. Tasks are merely the perception of a goal within a group of people, as defined by the management theory, while implying the clearance of a public power, since a public power is not something that is handed over to execution and is not defined as a public task or the task of the state administration. In particular, it is important to differentiate between the notions public vs. state (particularly in terms of making a distinction between the state and civil society) and state vs. administrative, and to distinguish between public tasks, state tasks and administrative tasks (Wiesel in Kovač, 2006: 189) as discussed in the previous chapters of this part.

The theory is predominantly focused on the dilemma whether it is possible to delegate only authoritative or other tasks as well. Authoritative tasks are the ones realised with

authoritative instruments and may also be provided with the use of coercion (Rakočević in Kovač, 2006: 194). In that relation, it is particularly important to stress the authoritative nature of a public power and administration in general, since the ones granted a public power perform their tasks in an authoritative manner, which stems from the classic administration as an exclusively authoritative administration. The holders of public powers are, therefore, equivalent to state administrative bodies. The holder of a public power: • enforces a public power in the manner and with the instruments typical for the enforcement of state authority; • may regulate various issues of general social interest within the scope of executing certain tasks; • has the right to decide on rights and duties in individual matters (Kovač 2006: 194). While examining the nature of the tasks performed by the state administration, it is necessary to keep in mind that the administration also performs non-administrative tasks, e.g. production and certain service activities, as it makes sense by way of content or for reasons of rationality. Furthermore, state administration tasks are not always the same, but tend to change over time as a result of the basic orientation of the role of the state along with normative and actual relations of administration sections in the social environment. In respect of the type of administrative tasks, it seems there is no obstacle to entrust any administrative task, be it authoritative or non-authoritative, as a public power. Several reasons indicate that, although the expression 'public power' etymologically indicates authority; with such mechanical arguments, it is often forgotten that a power or authorisation is a well-established expression for an entitlement or a mandate as a generic term, which is why the etymological rationale under the exclusive authoritative nature of the subject of a public power may be rejected with the same kind of logic. That raises the issue of defining legal business documents and their distinction from general legal documents for the enforcement of public powers. The general position is that if the state alone and its administration perform authoritative and other, particularly service, development, promotional and expert tasks, then such tasks may also be delegated with public powers (Kovač, 2006: 194-200).

The answer to the question whether public powers can be used to delegate merely authoritative or also non-authoritative tasks is related to goals or the purpose of delegation, but the subject of a public power can be both. Non-authoritative tasks will be the subject of a public power mostly for the reason of increased efficiency and expertise, while they appear as an auxiliary activity in the area of activity of those holders of public powers that operate as autonomous regulatory administrative institutions. Considering the broadest definition of a public power, the state cannot lack criteria when delegating public powers. The first – constitutional – sieve is public interest and after that the connexity of the tasks delegated. The tasks of connexity must be interpreted three ways: • the relation of non-authoritative tasks as the subject of a public power to the otherwise authoritative tasks of a holder of public powers; • the relation of non-authoritative tasks as the subject of a public power to the otherwise fundamental (private) activity of a holder of public powers; • the relation of any tasks with the reason for conferring a public power. Furthermore, stress may also be placed on the form of public powers in relation to the nature of the subject of public powers –

that is to say, authoritative tasks are executed as the issuance of general legal documents for the enforcement of public powers, of administrative decisions and as the pursuit of authoritative material actions (Kovač, 2006: 201).

The exercise of public powers is shown in various forms. It includes legal actions and material actions. The legal documents used to enforce authoritative public powers (de iure imperii) are typically laid down with the legal system and inherently and directly cause legal effects, while the latter do not necessarily derive from material actions (both authoritative and non-authoritative). An administrative act essentially derives from the will of an administrative body that directly results in legal consequences, as it creates new legal rules or constitutionally regulates a legal relationship. Administrative legal documents have unilateral authoritative character and are broken down to general (abstract) and individual (specific) administrative acts and material actions (Kovač, 2006: 204).

1.2 Holders of public powers

Roughly three groups of entities or participants participate in public powers: • the state or state administration or a local community as the party conferring or delegating a public power and supervising the exercise of a public power (in simple terms, the actual holder of a public power is in fact a line ministry); • the holder of a public power, a non-state organisation/individual which has been awarded a public power, an agent, • the users of public services as rendered by the holder of a public power for the state administration. An analysis of the emanations of organisational or status forms as performers of public tasks outside the state administration leads to the conclusion that decisions in individual states are the result of a combination of circumstances that may be called administrative tradition and the current ruling political and legal system. Applying a system approach, one would have to take into account a series of principles and pursued goals deriving from the concept of a democratic state: • legal certainty or predictability; • accountability (of public organisations); • organisational transparency for the users of public services; • judicial supervision (accessibility and efficiency); • professionalism (of employees); • consolidation of public funds or their allocation; • financial transparency; • performance and efficiency; in procedural rules. When selecting a specific status form, it is also necessary to take into account the balance between democratic principles and standards that should be observed in the state administration by definition alone, but not necessarily beyond it, and the efficiency and autonomy of the performance of tasks outside the state administration. The status form is related with the type of regulation or its intensity and with the relation of a public power with the state. The status of a holder of public powers is often related to the reason for the delegation of public powers. Hence, the need for the autonomy of management from politics results mostly in the establishment of public agencies, while the need for self-regulation results in the establishment of chambers. Public funds and public institutions that are supposed to be established primarily for the management of state assets are frequent. Furthermore, the same group may include forms of association,

e.g. charitable associations. Also, public institutes and public enterprises are common and are empowered to carry out certain activities and, in parallel with the principle of connexity, to perform administrative tasks (Kovač, 2006: 253-255).

Non-state forms of management that are grouped under the phrase 'holders of public powers' differ widely in their form of status. Holders of public powers may be broken down under two criteria that appear in expert literature and positive regulations: • legal entities and natural persons, hence organisations and individuals; • entities governed by public law and entities governed by private law (Kovač, 2006: 256).

Local self-government

Throughout history, there has been a regular tendency to regulate the state and society, which would lead to the provision of personal freedom and restriction of state authority. Hence, various attempts to restrict authority have been made, which have been realised primarily through various methods to 'separate the enforced authority' (which, however, do not differ only historically, but seem to follow quite different logical reflections) in order to contradict or prevent any autocracy. To define the term 'restriction of authority', it is primarily necessary to agree to a value that can be presented as the defence of the rights of a person, individual and citizen (Matteuci, 1991: 250-267).

The need to restrict authority (which cannot be absolute) was discussed by ancient philosophers, particularly *Aristotle*, *Plato* and *Cicero*. The first serious attempts to restrict authority took place in the Middle Ages. In 1215, English barons, gathered at Runnymede water-meadow near London, forced King John Lackland to declare and sign the Great Charter (Magna Carta Libertatum). This is the oldest constitutional document of feudal England and constitutes a restriction on the current absolute authority to the benefit of feudal lords and the cities and free farmers associated with them. Despite the fact that the mentioned text is an express product of feudal conditions, it holds historically universal significance, as it clearly opens up a demand for the authority to act within the limits of the law (more in Rupnik et al, 1996: 177-188).

Historically, that attempt to restrict authority is followed by a period of the Glorious English *Bloodless* Revolution of 1688, which led to a compromise between the feudal aristocracy headed by a monarch and the ever more assertive bourgeoisie. That period was a transitional period in which the mentioned sides shared authority and in which aristocracy gradually became the bourgeoisie. Such conditions gave ground to the institutions of the English parliamentary system, which were ideologically substantiated as the theory on the separation of powers by *John Locke*.

The mentioned English structure of authority also influenced *Montesquieu*, who accepted the principle of the separation of powers as an instrument against absolute monarchy. Separate implementation of legislative, executive and judicial activities suited the social forces and holders of economic (political) power at the time. In parallel to the separation of powers, he believed there had to be an adequate system of checks and balances (Kušej, 1992: 42-43).

Montesquieu also warned that (an individual's) freedom may only exist where it is not abused, but is distributed in a well-thought equilibrium in line with the constitutional system. It does not derive from any organisational structure defined for all eternity, but stresses the need for a set of state functions and their holders that provide the control and inhibition of authoritative power with the help of the given potential opposing forces. According to that doctrine, authoritative power is broken down to three state authorities, i.e. representative, executive and judicial, and each of those is awarded a state function (legislative, executive and jurisdiction). The division of state authority and state functions to three holders is by itself insufficient to provide the ideal of individual freedom and prevent despotism. Therefore, it is necessary to establish an additional sophisticated system of mutual control, restriction, inhibition, intertwined interdependence and balance or in the words of Montesquieu: 'to prevent the abuse of power, affairs need to be regulated, so that one authority does not hold back another authority.'

The modern doctrine, according to *Šturm,* does not see the segregation of powers as a rigid concept to separate powers, but as a flexible model that accepts a finding that each branch of authority performs several state functions, provided that a balance between different state bodies is ensured. In the search to answer the question how to ensure an effective distribution of political power in modern democratic states, new forms of the distribution of powers have shown as effective in theory and in legal regulations in a state, pursuant to the finding that the separation of powers has its own content that is neither eternal not absolute in any period of time.

The mentioned principle of the separation of powers typically involves the 'horizontal' restriction of authority. Throughout evolution, the so-called 'vertical' separation of powers was affirmed in the USA and Germany in particular. Vertical separation is mostly expressed in federal states, particularly modern interstate forms, such as the emerging European Union. In the EU, special significance is attributed to the 'principle of subsidiarity' as the principle of vertical restriction of authority. The fundamental significance of the latter is that each territorial unit performs the part of authoritative tasks for which it is the most qualified.

The mentioned vertical separation of powers also holds great significance in states with no federal regulation, since an important share of the vertical separation of powers belongs to the local self-government. In constitutional regulations where local self-government is expressly defined as a constitutional category, it involves a specific form of the vertical separation powers, stressing the autonomy of the local self-government and minimum requirements for autonomy (legal personality, right to ownership, and the competence and entitlement to the execution of public tasks at local level). Modern constitutional regulations consolidate the mentioned autonomy by expressly declaring it in the constitution and ensuring its effective protection by attributing it the status of a fundamental freedom. On one side, it involves the political self-government of the local

community and, on the other, the executive authority of the local self-government (Šturm, 1998: 13, 18-19).

1 Local communities

Deriving from the previous chapter, which speaks of decentralisation and particularly its emanations, i.e. territorial, administrative, political and fiscal decentralisation, it may be concluded that the condition and foundation for the existence of local self-government is an adequate level of: political decentralisation, which results in the decentralisation of authority through the elected representatives of local communities; territorial decentralisation, which is used to form coherent units in terms of territory and population; and administrative decentralisation, through which decision-making functions (on interests) are delegated to local communities, which is logically followed by the delegation of the function to execute such decisions and also a part of the supervisory function.

Notably, much like the mentioned notion of the state, the notion of a local community, too, has several dimensions. It is one of the central social phenomena, which is why it is not surprising that it stimulates a rich mental response, just like the state. Theorists have tried to shed light on the essence and social function of that social phenomenon from various philosophical and political aspects. It is the subject of philosophical, sociological and legal research, which leads to different argumentations of the fundamental characteristics of a local community and its position in the wider social community.

A local community exists when close cooperation and integration is established among people living in a coherent area (territory). Hence, the notion of a local community indicates a territorial community of people who fulfil their needs with joint activities. A local community thus represents people in a coherent territory where they are interrelated due to common interests in the fulfilment of needs. In light of the above, it should be noted that there is no uniform definition of a local community in theory that would define the notion completely accurately and unambiguously (Grafenauer, 2000: 15).

An attempt to standardise the definition was made by *Šmidovnik* summing up the findings of *Hillery*, who collected 94 definitions of a local community from just the English-speaking territory, and classified them according to different elements. Based on his classification, the essential elements of a local community are (Šmidovnik, 1994: 9): • a specified territory, • people inhabiting the territory, • the needs of such people, • activities to fulfil such needs and • people's sense of belonging to the community.

It is a fact that a local community is the lowest in the hierarchy of territorial communities, which appear at higher levels either as wider local communities or as state territorial communities. As in the perception of the state, it is indisputable that territory

is an essential element to define the notion of a local community, while it should also be considered that a territory merely indicates the physical components of a person's residence and is important only in relation to people's settlement there. In that relation, it should be noted that local communities, like the state, are not formed on the basis of certain criteria of rationality, under which it should be assessed in advance whether they are capable of fulfilling the needs and interests of their inhabitants. Territorial local communities are mostly the result of historical development, traditions, political compromises, geographical and other facts that have little to do with criteria of rationality considering the tasks and needs they have to perform or fulfil. Although modern local communities have been transformed in the process of territorial reorganisation several times and included attempts to introduce certain criteria of rationality, territorial transformation can never balance the economic and financial potential of a country.

The settlement of people in a certain territory gives rise to interactions (mutual relations and integration) among people, resulting in the co-existence of an individual and community in a certain territory. Although it is possible to indicate a number of exceptions and restrictions, it is regarded that the closer together individuals reside in a territory, the more possibilities and needs there are for mutual approach and cooperation. This leads to closer ties among the residents of a local community due to the fulfilment of common needs and interests. The fulfilment of numerous interests and needs can only be satisfied on the basis of joint action. The decisive factor is the needs that are shared by all individuals, that motivate people to engage in a coordinated joint activity and are so indispensable in everyday life that they are inherently related to their provision to people living a certain area. In addition to needs, an important factor of integration is also an individual sense of belonging to a local community (Grafenauer, 2000: 11-12).

Note should also be taken here of wider local communities as social communities, which emerge in a wider territory and bring together the residents of several local communities, primarily due to the fulfilment of wider needs and interests. In such a case, one may speak of a regional community, which is the sphere between the local community and the state. The sphere is on one hand the interest sphere of the state and, on the other, an interest sphere that meets the requirements for the institutionalisation of local self-government in the modern world, hence for a local self-governing community, i.e. a wider local self-governing community that may be denoted in a specific case as a region, province or any other way (Šmidovnik, 1995).

Deriving from the introductory part, which dealt with decentralisation and its emanations, i.e. territorial, administrative, political and fiscal decentralisation, one may conclude that a condition and foundation for the existence of local self-government is an adequate level of: • political decentralisation, which results in the decentralisation of authority through the elected representatives of local communities; • territorial decentralisation, which is used to form coherent units in terms of territory and

population; • administrative decentralisation, through which decision-making functions (on interests) are delegated to local communities, which is logically followed by the delegation of the function to execute such decisions and also a part of the supervisory function; and • fiscal decentralisation, which is used to transfer means to local communities for the execution of their competences and tasks.

2.1 Notion of a local community

Much like the mentioned notion of the state, the notion of a local community, too, has several dimensions. It is one of central social phenomena, which is why it is not surprising that it stimulates a rich emotional response, just like the state. Theorists try to shed light on the essence and social function of that social phenomenon from various philosophical and political aspects. It is the subject of philosophical, sociological and legal research, which leads to different argumentations of the fundamental characteristics of a local community and its position in the wider social community.

A local community is when close cooperation and integration is established among people living in a coherent area (territory). Hence, the notion of a local community indicates a territorial community of people who fulfil their needs with joint activities. A local community thus represents people in a coherent territory where they are interrelated due to common interests in the fulfilment of needs. In light of the above, it should be noted that there is no uniform definition of a local community in theory that would define the notion completely accurately and unambiguously (Grafenauer, 2000: 15). Essential elements of a local community are: • a specified territory, • people inhabiting the territory, • the needs of such people, • activities to fulfil such needs and • people's sense of belonging to the community (Šmidovnik, 1994: 9).

It is a fact that a local community is the lowest in the hierarchy of territorial communities, which appear at higher levels either as wider local communities or as state territorial communities.

As in the perception of the state, it is indisputable that a territory is an essential element to define the notion of a local community, while it should also be considered that a territory merely indicates the physical components of a person's residence and is important only in relation to people's settlement there. It should be noted that local communities (municipalities), like the state, are not formed on the basis of certain criteria of rationality, under which it would be assessed in advance whether they are capable of fulfilling the needs and interests of their inhabitants, but that territorial local communities (including in Slovenia) are the result of historical development, traditions, political compromises, geographical and other factors that have little to do with criteria of rationality considering the tasks and needs they have to perform or fulfil. Although modern local communities have transformed in the process of territorial reorganisation several times and included attempts to introduce certain criteria of rationality, territorial

transformation can never balance the economic and financial potential of a country (Brezovnik, Finžgar & Oplotnik, 2014: 18).

The settlement of people in a certain territory gives rise to interactions (mutual relations and integration) among people, resulting in the co-existence of an individual and community in a certain territory. Although it is possible to indicate a number of exceptions and restrictions, it is regarded that the closer together individuals reside in a territory, the more possibilities and needs there are for mutual approach and cooperation. This leads to closer ties among the residents of a local community due to the fulfilment of common needs and interests. The fulfilment of numerous interests and needs can only be satisfied on the basis of joint action. The decisive factor is the needs that are shared by all individuals, that motivate people to engage in a coordinated joint activity and are so indispensable in everyday life that they are inherently related to their provision to people living a certain area. In addition to needs, an important factor of integration is also an individual sense of belonging to a local community (Grafenauer, 2000: 11).

Legally speaking, the territorial belonging of inhabitants to a local community (municipality) is determined according to permanent residence. Hence, persons with permanent residence in the territory of a particular municipality are deemed to be its members. In turn, members have the right to decide on affairs in a local community through councils (representative bodies) comprising members who have been freely elected by secret ballot based on direct, equal and universal suffrage. Furthermore, members may also decide on the affairs of self-governing communities directly at their assemblies, referendums and through a popular initiative.

2.2 Wider local communities

Note should also be taken of wider local communities as social communities emerging on a wider territory and bringing together the residents of several local communities, primarily due to the fulfilment of wider needs and interests. In such a case, one may speak of a regional community, which is the sphere between the local community and the state. The sphere is on one hand the interest sphere of the state and, on the other, an interest sphere that meets the requirements for the institutionalisation of local self-government in the modern world, hence for a local self-governing community, i.e. a wider local self-governing community that may be denoted in a specific case as a region, province or any other way (Šmidovnik, 1995).

3 Notion of local self-government

The notion of local self-government implies more than merely the notion of local community; it implies a local community with the status of self-government. A local community is merely the holder of (local) self-government or rather its subject, while local self-government is an institution based on a legal system that defines the position

of a local community. The latter is reflected in its autonomy from the state and any other organisation (Šmidovnik, 1995: 22).

To understand the mentioned notion, it is necessary to identify the meaning of self-government, which is explained by *Pitamic* in the following words: 'Self-government exists in that some scope of work is made through people in an organisation that has a direct interest in such work rather than through the central government or its inferior administration' (Pitamic, 1927: 396). Naturally, that points to the local interests of a local community.

In any case, the most self-governing is a state that is independent of any party and holds the power alone to enforce its decisions upon any party within it. Like all other social communities in a state, they draw their rights to local self-government from the state. The state may, therefore, grant them the right to take autonomous decisions on certain affairs. Importantly, no territorial community can occur against the will of the state (Vlaj, 2001: 23-33).

In an attempt to define the notion of self-government, it is necessary to take into account the following conditions required for local self-government: • local population must have the right to elect their representative bodies, whereby such bodies have certain decision-making rights that are exercised directly or through their executive bodies; • such bodies must have material and territorial jurisdiction, i.e. to perform a certain scope of tasks in their territory as their authority; • the competence of local bodies in its content and under the powers for execution represents such issues that may in fact and formally influence life and development in a local community (Šmidovnik, 1995: 10).

Such and other theoretical definitions may lead to the conclusion that the essential elements of a local self-government institution are:

- that precisely territorially specified local communities are established as local self-government entities (municipalities, regions, provinces),
- that such communities have been granted a field of work with tasks demonstrating the interests of their residents (functional element of self-governance),
- that such tasks are performed by members of a community under their own responsibility, i.e. either directly or through their elected bodies (organisational element of self-governance),
- that a community has its own material and financial means to perform its own tasks (material and financial element of self-governance),
- that a community has the attribute of a legal entity (the legal element of self-governance) (Šmidovnik, 1995: 11).

To interpret and define the notion of local self-government, the modern theory is based on the European Charter of Local Self-Government, which lays down: 'Local self-government denotes the right and 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 interests of the local population.' The goal of the mentioned Charter, which was ratified by all Member States of the Council of Europe, is to provide European standards to define and protect the rights of local authorities that constitute the nearest level of government for all citizens and allow them effective participation in the development of decisions concerning their environment. The Charter imposes that all signatories fulfil the fundamental rules providing political, administrative and financial autonomy of local communities. Since the Charter came into force, it has made a decisive contribution to the protection and increase of general European values (Vlaj, 2001: 101). To sum up, the fundamental objective of the European Charter of Local Self-Government is the harmonisation of local self-government systems in Europe.

4 Harmonisation of local self-government systems

In Europe, there are two fundamental conceptions of local self-government; one is continental and based on the principle of decentralisation, while the other is British and sees local self-government as an original institution. In the modern world, the functions of the state and local self-government are getting more and more equal and so therefore, are the relations between them. Regardless of whether the mentioned relations are founded on the principle of decentralisation (continental conception) or on the principle of originality (British) of local self-government, the state cannot be excluded from local self-government anywhere in the world today. All states regulate their local self-government systems with the constitution and laws, regulating essentially the same issues in such laws. The harmonisation of systems is increasing, particularly in EU Member States (Šmidovnik, 1995: 35).

Notably, the Council of Europe contributed the most to the development of local self-government, focusing its activities in local self-government on: • the promotion of local and regional government; • the analysis of administrative and legal bodies and services, and on the financial operations of local and regional communities; • the enforcement of democratic membership; • the promotion of cross-border cooperation between local and regional communities, and • the promotion of regional cultural diversity. The most important document adopted by the Council of Europe in that field is the European Charter of Local Self-Government, which draws from the origins of Europe's development. The mentioned Charter is only the peak in a series of initiatives and long-standing consultations within the Council of Europe. The protection and enhancement of local autonomy in Europe with the help of a document that explains the principles acknowledged by all democratic European states is a long-lasting ambition of local authorities. As an ombudsman and defender of the principle of democratic governance, the Council of Europe represented an understandable framework within which the Charter was prepared and adopted. The Charter imposes an obligation on European states that ratified it to observe certain conditions, principles and rules. It laid down common European rules to protect and develop the rights and liberties of local authorities. According to the Charter, the right to local self-government is one of the key democratic principles. The right of citizens to participate in the handling of public

affairs can be most directly realised at a local level. According to the Charter, local self-government denotes the right and 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 interests of the local population. The right is put into practice by councils or assemblies comprising members who are freely elected by secret ballot on the basis of direct, equal and universal suffrage. Council or assemblies may have executive bodies responsible to them. Those provisions in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute (Vlaj, 2006: 68-71).

The Charter also stresses that the existence of local communities with actual competences may provide an administration that is efficient and at the same time accessible to citizens. The Charter advocates the protection and reaffirmation of local self-government, which contributed importantly in various European states to the development of Europe and is based on the principles of democracy and decentralisation of authority. In addition to the above, the Charter advocates the acknowledgement of the principle of local self-government in national legislations and, where possible, in constitutions. The Charter demands that the fundamental powers and competences of local authorities be laid down in the constitution or an act. Powers delegated to local authorities must often be full and exclusive. They cannot be undermined or restricted by some other central or regional authority, unless laid down otherwise by statute. The goal of the Charter is to provide common European standards for the definition and protection of the rights of local authorities, which constitute the nearest level of administration to citizens, and allow them to participate in the development of decisions concerning their everyday environment (Vlaj, 2006: 71-72).

The Charter imposes that all signatories fulfil the fundamental rules providing political, administrative and financial autonomy of local communities. The level of autonomy enjoyed by local communities is the touchstone of true democracy. For that reason, the Charter is the European expression of political will, giving content to the principles advocated by the Council of Europe since it was established at the level of local and regional communities. Naturally, it includes a belief that the level of autonomy enjoyed by local communities would be respected as the touchstone of true democracy (Vlaj, 2006: 72).

Local self-government is a continuous struggle, even in states where it has existed for a long time, which is why the bodies of the Council of Europe continuously stress the need for the reaffirmation of the fundamental principles of the Charter, particularly due to the present financial difficulties and growing number of local community tasks (Vlaj, 2006: 72).

The fundamental principle of the Charter is the principle of subsidiarity, which places an individual at the centre of social organisation. The principle of subsidiarity is an invitation to rethink social relations within the context of increased autonomy and

searches for a continuous balance between individual freedom and various existing authorities (local and regional authorities and nation state, states and international community). It is a general principle of institutional organisation that tends to give priority to the base rather than to the peak. The Charter anticipated the provisions of the Maastricht Treaty, which speaks in its introduction of a close relationship between the people of Europe in which decisions are made as relevant to citizens as possible. The EU believes that adherence to local self-government is the essential core of local authorities, that it constitutes the authentic application of the principle of subsidiarity and that local authorities are a level of political participation that is the closest to citizens. However, there is a major difference in the approaches taken by the Council of Europe and EU. The latter must find a balance between the political goals of the union and state powers, while the Council of Europe has the priority to spread the ideas of local and regional self-government, possibly with no conflicts in the internal organisation of its members (Vlaj, 2006: 72-73).

Due to the diversity of interpretations attributed to the word, its philosophical rather than legal nature and different and deficient ways in which it was already included in existing legal traditions, it is very difficult to accurately define the principle of subsidiarity that would suit everyone. No doubt, one of the advantages of the concept is that it enables development and may adjust to conditions in individual states in comparison to more formal solutions, such as rigid and probably extensive definitions of the tasks attributed to central, regional and local authorities. The Charter hence lays down several criteria to distribute powers among levels of authority. They are: the nature of an affair, its width (idea of size), efficiency and economy. The Charter also favours decentralised management, which can be adjusted to the real needs of citizens and also supervised more easily. Furthermore, the Charter defines the other aspect of the principle of subsidiarity more clearly than other documents, stating that higher authorities have the obligation to help lower authorities to perform their tasks. The idea to delegate everything to the lower level that would be realised less effectively at the level immediately above it, must be confronted with other principles before it is adopted. It involves four principles that always overlap: • solidarity; • unity of action; • efficacy and • uniformity of application (Vlaj, 2006: 73).

5 Narrow and wide local self-governing communities

5.1 Municipality – the fundamental local self-governing community

The most frequent definition of a municipality, both in theory and practice, is that a municipality is the fundamental local self-governing community. The definition covers three components typical of a municipality: 1. that a municipality is the main and most important type (form) of local self-government; 2. that it is formed within the scope of a natural, historically developed local community, such as a settlement – individual or several settlements related with common interests; 3. that it has the position of self-governance – with the content laid down by system legislation on local self-government

in a particular state. In short, it involves a natural type of local self-governing community that evolved from a 'bare' local community and obtained a certain legal position in the wider (national) community during its development. A local community is a natural community that exists and functions irrespective of whether or not it has an organisational status. Nevertheless, it is extremely important that a local community has a certain status of autonomy that makes it easier to carry out its functions. The natural tendency for increased functional mobility and efficacy led to a municipality in medieval towns as the first form of local self-government. Its occurrence and development have been monitored in Europe since the 12th century, when cities obtained medieval rights. Legally institutionalised municipalities in modern terms appeared in Europe much later, i.e. at the beginning of the 19th century, and were based on ideas of state decentralisation and a uniform national plan that was enforced at the will of the state, i.e. with its legislation. Local self-government was expected to supplement the network of state authority in the lowest territorial units, since it was obvious at the time that it would be more effective on site than the distant and impersonal central state authority. Irrespective of the fact that European continental local self-government owes its existence to the state – based on a concept of state decentralisation – *Šmidovnik* finds that a municipality has preserved the natural essence of a local community, both in territorial and functional terms. The state made its mark and set it within its framework. It typically based the network of municipalities on the network of church parishes, which were formed according to (natural) local communities. That is why a municipality must be considered a natural unit that is placed on the individual-family-nation-state line between a family and nation. A municipality is not only the product of planned human or state actions, but has evolved throughout a long period of history. According to *Djordjević* (1965: 631), a municipality is considered in all developed parts of the world – regardless the political status and form – as the fundamental social community. Similarly, according to *Vavpetič* (1963: 21), a municipality is the closest political territorial unit to people and, therefore, has to deal with all tasks concerning everyday co-existence of people (Šmidovnik, 1995: 63-64).

5.2 Wider local self-governing communities

Along with municipalities, which are fundamental local self-governing communities, most European states also have wider local self-governing communities, e.g. German districts; Spanish, Italian, Belgian and Dutch provinces; French departments, Portuguese districts; British and Hungarian counties; Czech and Swedish districts, and so on. Those are self-governing local communities operating in a wider territory that covers several municipalities and typically represents a geographically coherent whole with related social and economic issues. Such an area is usually denoted here as a province or region. Wider self-governing local communities perform tasks that are, considering the level of the state, of local importance, while considering the level of a municipality the tasks surpass the abilities of individual municipalities and can only be rationally performed on a wider territory due to technical, organisational or financial reasons. That is also the level where local self-government and state administration

meet and integrate. In the decentralisation process, the state delegates a series of its administrative tasks to such communities (e.g. to municipalities) that it performed itself until then at its centre, or its deconcentrated units, or even within the scope of its territorial units that are covered by wider local self-governing communities. Wider local self-governing communities are the main pit stop towards the decentralisation process, where authority in European countries moves from the top down and is more and more integrated with local self-government (Šmidovnik, 1995: 77-78).

Since wider local self-government falls within the (generic) notion of local self-governing communities like a municipality, its legal system issues resemble those of a municipality. Notwithstanding the differences in various European regulations, such communities are always defined as territorial communities *sui generis* within the scope of the generic sense of local communities with their own legal personality, own territory, own funds, own competences and own directly elected bodies. They are in the same relationship to the state as municipalities. Vis-a-vis municipalities, they have no hierarchical rights; they are not in a hierarchical, but in an equal, relationship with them. The mentioned attributes may only be awarded by the state or by statute; the state establishes them and specifies their territory; the state defines their area of work and roughly regulates their operations, as with a municipality. That means that a wider local self-governing community is not an alliance, association or community of municipalities resulting from inter-municipal integration or cooperation; its legal origin is based on the constitution and an act, the same as that of a municipality (Šmidovnik, 1995: 82-83).

In general, wider local self-governing communities deal with local affairs that surpass the abilities of municipalities; hence, they deal with the same kind of tasks as municipalities, but such that cannot be performed by municipalities due to financial capacities, complex staff requirements or their technical integration, although they are affairs of local and, therefore, municipal importance. It derives that wider local self-governing communities are in fact enlarged municipalities and, as such, functionally closely related with municipalities. Tasks within that scope are laid down by wider local communities themselves with respect to the needs of inhabitants and the economy and with respect to their financial capacities – based on their presumptive universal competence to deal with local affairs. The other type of tasks of wider local communities are mandatory tasks that are delegated to such communities by the state in the decentralisation process or are laid down by the state as the original tasks of wider local communities. That naturally involves the intensity of the decentralisation process in a particular country (Šmidovnik, 1995: 86).

6 Bodies of self-governing local communities

In addition to a certain territory and defined tasks of local self-governing communities, the method of governing local communities is also of vital importance to local self-government. It has to demonstrate a special relationship of inhabitants in local

communities to the pursuit of tasks, which has to be more direct than in state governance. An element of local self-governance is that members of local communities alone – with their own responsibility – perform the tasks of local communities either directly – in the form of direct decision-making or actions – or through their elected bodies, which is the organisational element of self-governance. Hence, it includes forms and bodies that are used by local communities to make decisions related with the pursuit of their tasks, and the administration and services with which they carry out their tasks. In relation to that, note should again be taken of the definition of the difference between local self-government and state administration: local and any other self-government is the opposite of state administration: in a state administration, the citizen is the object of management, while in self-government is the subject of management (Merkl in Šmidovnik, 1995: 110). In practice, that means that the state decides on citizens' affairs through its administration; the latter acts in an authoritative manner like the authority; citizens are the subject of administrative decision-making in an administrative procedure and have the status of a party in it. In areas of local self-government, citizens or residents of municipalities decide on their own (local) affairs alone – as the subject of decision-making. Therefore, the state acts as an impersonal bureaucratic organisation in relation to citizens; in local communities, residents of municipalities act as masters in their organisations, through which they resolve their problems (Šmidovnik, 1995: 110).

That is the fundamental and principled difference between the citizen's position in state affairs and the position of a citizen or resident of a municipality in a local community. In practice, the difference is obscured to a certain extent, when the bodies of local communities make decisions on affairs concerning residents of a municipality while carrying out delegated state tasks. In such a case, there is also a certain difference between the state administration and local self-government; the body or official making decisions on a matter in a local community is responsible to that local community, which in turn is managed by residents of a municipality, while a state body is responsible to the distant state over which citizens have no direct influence. In local affairs, such decision-making (in an administrative procedure) is rare, since the essence of local affairs is typically not in authoritative decision-making on affairs concerning residents of a municipality, but in direct resolution of their (local) issues (Šmidovnik, 1995: 110-111).

It derives that: • the centre of decision-making in local communities cannot be in the administration of local communities, but in their representative and other bodies elected at democratic elections, unless individual affairs are subject to direct governance (e.g. at referendums, assemblies of municipal residents, etc.); • relations between the bodies of local communities cannot be based on the principle of the separation of powers to legislative, executive and judicial, which is one of the fundamental principles of a democratic state, but on the principle of direct democracy, which is put into practice in combination with the principle of the division of labour. That means that a local community may have other bodies along with the elected representative body for the performance of tasks that cannot be executed by the elected representative body alone,

due to the scope of works or professional or technical complexity (Šmidovnik, 1995: 111).

In line with the purpose of local self-government, direct management or management that would constitute direct decision-making by residents of a municipality should be considered as the most ideal form of management in local communities – at least in fundamental ones, i.e. municipalities. However, such form of management can be realised in modern conditions only exceptionally. Technically speaking, it can be realised in only very small territorial units with a small number of residents and simple management problems that could be understood and voted on by every average municipality resident (Šmidovnik, 1995: 112).

Naturally, the aforementioned conditions call for adequate participation of municipality residents in political decision-making. Participation is an activity in which an individual participates with others in certain social processes, while political participation is participation in the ruling process and the opportunity for it is the opportunity for private individuals to participate in policy-making compared to just official and elected representatives. The authority must respond to the wishes of its citizens in modern democratic societies. For that reason, participation is in the first place a communication process, since people tell the authorities what they want. It is an attempt, tendency, effort of ordinary people in any political system to influence the actions of the ruling parties. Authors warn that it is neutral in normative terms; it may be good or bad and can range from discussions and ordinary voting to uncontrolled revolts and riots. The criteria used to define an activity as participation are: • participants are individuals, • it is a voluntary activity, • it refers to a certain activity and • the activity is aimed at influencing authorities (Lavtar, 2007: 12-13).

When classifying and defining forms of participation, they could be broken down into two large groups: formal and informal participation. The former involves forms that are laid down by the law and are mandatory for the authorities. The latter involves forms that are not specified, but are subject to a decision made by residents alone as to what specific form they would use (Nagy in Lavtar, 2007: 13). Different occasions call for different forms of the participation of citizens or municipality residents. Furthermore, types of political participation may be broken down to conventional and non-conventional forms (Brezovšek, Makarovič in Lavtar, 2007: 13). Non-conventional forms are used by citizens when the election procedure is unable to forward conflicting wishes (aspirations), which is why groups in a poor position may resort to powerful actions, such as protests, demonstrations, riots, murders or armed revolutions. Non-conventional participation, therefore, differs from conventional, in the use of force and coercion. Also taking into account the working documents of the Council of Europe, it is also possible to break down participation to electoral and non-electoral. In such a breakdown, non-electoral participation includes formal and informal forms or participation. The most widespread method of participation is voting at elections and voting at referendums. Furthermore, it involves a group of methods that are related to

activities in political parties, e.g. participation in election campaigns, active membership in a political party or a pressure group. There is also participation in political demonstrations, various forms of civil disobedience and so on. In addition to the mentioned types of political participation, there are also other forms of participation with no political colour, e.g. participation in a public presentation or display or participation in a public debate. Due to new, changed social circumstances, these have lately been joined by new informal forms, which are frequently the result of the introduction of new information and communication technologies: • organised groups of citizens (environmentalists, the dispossessed in denationalisation, etc.), • groups of citizens who propose or comment on proposed acts, • grass-root lobbying and • the use of new technologies, primarily the Internet, to develop proposals and to debate (Brezovšek, Lukšič & Haček in Lavtar, 2007: 14).

6.2 Representative body of a self-governing local community

The gravity of decision-making or governance in a local self-governing community is placed on its representative body, such as the municipal council or a differently named representative body of a local community. Notably, that body is not analogue to the state parliament, although they are similar in certain respects. One similarity is that it is a representative body that is, like the parliament, elected on the basis of universal and equal suffrage and by secret ballot in a local community. There is, however, no similarity in functions. The representative body of a local community is not a legislative body, such as the parliament, but is predominantly an executive body deciding on all of the most important specific affairs of a local community. There are no legislative competences in the legal sense of the word in local self-government; if generally important issues are regulated with regulations, such regulations have a local character and must be in line with the law. They are, therefore, at the level of implementing regulations as, for instance, the regulations of state administrative bodies. Furthermore, members of a local community representative body have no privileges, such as parliamentary immunity or the right to a permanent financial compensation for work in a representative body, as granted to members of parliament. Considering those aspects, the representative body of a local community is less than a parliament. That naturally reflects different positions of the state and local community. On the other hand, the representative body of a local community holds a stronger position within that community than the parliament within the scope of state bodies; the representative body of a local community in principle holds all authority and powers of the local community, while the parliament is merely the legislative body of the state in the separation of powers system (Šmidovnik, 1995: 114-115).

6.3 Mayorship

Although all regulations of local self-government have a representative body, many of them also have another body with great autonomous powers and authority. Such a body is known as the mayor in countries that tailored their local self-government under the

French model. The mentioned body is not only the executive body of the representative body, but holds a part of their powers directly under the law. The most classic case of such an organisation is the French mayorship model, which set an example to a large number of other countries (Waline in Šmidovnik, 1995: 118). The French mayorship model features two bodies, i.e. along with the municipal council (Fr. conseil municipal), there is also the mayor (Fr. maire), who is elected by the municipal council (in some other models, the mayor is elected at direct elections) from among its members for a 4-year term of office. According to the rule, the mayor is the first candidate on the list who won an election. The municipal council also elects deputy mayors (Fr. adjoints), i.e. one to twelve, depending on the size of the municipality; deputies have no autonomous powers, but exercise a part of the mayor's powers as delegated to them by the mayor. Together with the mayor, they represent the mayoralty. The French mayor's powers are triple: • they chair the municipal council and are the executive body of a municipal council and, as such, responsible for the preparation of and execution of their decisions; • they are the joint chief of municipal administration; in that role, they appoint employees, sign all legal documents and issue police orders of a general character: they represent the municipality as a legal entity and manage all current affairs of the municipality; they are personally responsible for providing law and order, security and public sanitation in a municipality; • they are a state official; as such, they are responsible for the execution of certain services that are rendered by the municipal administration for the state (Šmidovnik, 1995: 118-119).

The mayor of a French municipality is, therefore, not only the executive body of a municipal council, but is also the autonomous body of a municipality with special tasks; the municipal council has no influence over such tasks and the latter are performed by the mayor under direct supervision of state bodies. These are in fact state tasks that are delegated to the mayor *ad personam* as a state official. The municipal council cannot recall the mayor; furthermore, it cannot repeal the mayor's decisions, but can criticise them to the supervisory authority. The mayor's position is extremely powerful in relation to the municipal council, but can be restricted by the municipal council, particularly with the budget. In practice, a certain balance is established between both bodies. Due to major irregularities in the execution of state tasks, the mayor may be suspended or, in extreme cases, recalled by the prime minister. All such disciplinary measures of state bodies are under the judicial supervision of administrative courts (Šmidovnik, 1995: 119).

A municipal council is the elected representative body of the French municipality whose (limited) number of members depends on the number of residents in a municipality and is elected for a 6-year term of office. Like in other regulations, the municipal council decides on the municipal budget, loans, municipal services and other activities of a municipality, organisation of municipal administration, municipal employees and on similar issues in a municipality. A municipal council may be dismissed by the government; the reason for dismissal under the applicable administrative judicature is a circumstance preventing the municipal council to execute its tasks; that may happen due

to ongoing disagreement between the mayor and municipal council or for any other reason. In such a case, the government appoints a special delegation that manages a municipality until a new municipal council is elected. The municipal council of a French municipality is much weaker than representative bodies in other systems; that is the result of mayorship regulation – with a powerful mayor (Šmidovnik, 1995: 120).

6.4 Administration of self-governing local communities

In the same way the representative body of a local community has no status of a parliament, the administration of a local community, which is represented by employees, has no status of the state administration; on the other hand, it also has no role as a pure executor of the resolutions adopted by the representative body. Each administration must have so much autonomy as to enforce its professional autonomy. Every average municipality needs a team of experts to perform expert tasks that cannot be performed by elected members of a representative body (e.g. a municipal council) who are predominantly amateurs. Representative bodies must obtain the materials based on which decisions are made on the affairs of a local community, and such materials must be processed and prepared with expertise that will provide various options of solutions and indicate the consequences of individual solutions. The larger is a local community, the larger is the number of experts needed for the preparation of materials on affairs that are decided upon by local community bodies. Such are experts for administrative, legal, economic, civil engineering, technical and other issues that are subject to decision-making by local community bodies with respect to the activities and services rendered within a local community. It is typical of local communities that they need not only administrative experts – in the narrow sense of the word – but also expert staff for their municipal technical, cultural and social institutions rendering services which are, rather than mere administrative operations, typical of the operations of local communities (Šmidovnik, 1995: 121).

The organisation of administration is the matter of the representative body or the mayor – both as regards the number of jobs and any powers for autonomous decision-making by heads in the administration. The organisation of administration in a local community will not be implemented under the model of departmental state organisations, but must be tailored to the tasks or activities of a local community. It is ordinarily laid down by the statute which runs the administration of a local community. A municipal administration is managed by the mayor in systems that are modelled after the French local self-government or the secretary of a local community in systems based on the British model; it may also be managed directly by a (city) director, who is as a hired manager responsible for the work of the administration to the secretary or mayor. The head of administration makes decisions within the scope of the powers held by the administration. The power to make decisions in certain affairs may also be awarded to some other managerial administrative official, particularly in special, e.g. technical, areas of activity in local self-government. Minor municipalities may have a joint

administration or may share only individual administrative services (Šmidovnik, 1995: 121-122).

7 The funding of self-governing local communities

The issue of the material basis is an essential issue of local and any other self-government; it is a major item of its position in the system. Financial autonomy is an element of self-governance. Deficient funds change local communities into the executive bodies of the central state administration. The most general feature of financing self-governing local communities is that the funding of local communities is the gravest problem of local self-government. It involves not only a generally known and universally present circumstance that funds to finance public needs are never sufficient, both at state and local community level; in relation to local community funding, there is a series of circumstances that by themselves constitute an objective obstacle to establishing a funding method that would comply with all diverse forms, needs and capacities of local communities within a particular country. It should first be taken into account that local communities (municipalities and wider local self-governing communities), like the state, are not formed on the basis of certain criteria of rationality under which it could be assessed in advance whether they are capable of performing the tasks they are required to perform. They are mostly the result of historical development, traditions, political compromises, geographical and other factors that have little to do with criteria of rationality with respect to the tasks they have to perform. Although modern local communities have been transformed in the process of territorial reorganisation several times and always included attempts to introduce certain criteria of rationality, territorial transformation can never balance the economic and financial potential of a country. Hence, it is not possible to provide the same economic and financial basis to all local communities, i.e. such that would suffice for needs in local communities. The universal diversity of the world and individual countries is shown in the diversity of local communities. Although the mandatory tasks of local communities are laid down and in that respect equal, the costs for their implementation differ. However, the tasks of local communities include not only mandatory or prescribed tasks, but also non-obligatory tasks of local communities in a local area; the latter have no limits other than financial or, rather, the tasks are selected and prioritised by a local community with respect to its economic and financial capacities and needs (Šmidovnik, 1995: 130-131).

Hence, local community funding cannot be regulated without redistributing and stabilising public funds, which is carried out by the central state authorities (Musgrave in Šmidovnik, 1995: 131). The state authorities must put in place a system of local community funding with elements that comply with and provide for the functioning of local communities to the largest possible extent. Such a system must rely on its own local community resources (fiscal and others) and state grants, with which the state continuously balances unequal capabilities of local communities, thus preventing unequal tax burdens on the population or unequal supply of public goods. Hence, state

grants to the benefit of local communities are an important and permanent element of local public funding in any regulation. That may endanger the self-governance of local communities, since it is difficult to prevent the state from trying to enforce its policy in local communities by way of grants (Šmidovnik, 1995: 131-132).

Public services

Today, the availability of most goods is provided through operations on a commercial basis; however, certain goods cannot be provided through the system of market production, since they would otherwise be inaccessible to a wide circle of users due to high prices. In light of the above, some goods are provided by the society (state) in the public interest outside a system functioning on a commercial basis (Green Paper on Services of General Interest, 2003: 7-8; Krajewski, 2003: 343). Such so-called public goods may be either certain products, services, social relations or the social situation.

Notably, no goods are by their nature such that would fall within the area of public affairs due to their own characteristics. Any goods can, under certain conditions, also be supplied on a commercial basis. Due to interdependence, which is conditional in the present-day production mode, society needs the integrity of all goods that are vital for the society to exist as an organised community of individuals and that individuals produce goods and satisfy their needs through it and in it. The question raised here is basically the question of an adequate division of labour; hence an issue of expertise and technology, i.e. what division of labour achieves the optimum in the fulfilment of the needs of the society and its members. It involves a decision as to who should produce what and in what way. Firstly, there is the question of whether it is possible to produce or supply individual goods on the basis of commercial processes or on the basis of directly organised production that is not exposed to operations on a commercial basis. That does not necessarily mean every production or supply and division of goods is affected by commercial legalities.

By deciding to produce or supply one type of goods through the production of marketable commodities and some other type of goods through processes that are directly organised by society and managed without the inference of the market, we have drawn a line between the so-called private and public interest or private and public sphere. The identification of needs, supply and disposal with goods, where society directly organises the process of production and division or the supply and disposal with goods beyond the commercial basis, is the sphere of special general interest and hence general social public affairs.

That raises the question as to what can and cannot be produced in a commercially based process in respect of the optimum fulfilment of all social needs. Such division is dictated primarily by the method of production itself and, secondarily to a very limited

extent, by the free assessment of members of the society or those who are empowered by the society to make decisions concerning its interests (Bučar, 1969: 44).

In certain conditions in the past, the market economy system mostly enabled the optimum fulfilment of the needs of society members for centuries. In those conditions, public affairs were quite narrow. The state restricted its activities more or less to the protection of the legal system and public security; however, its role has changed substantially throughout centuries (more in Barker, 1966). Hence, the scope of state tasks and consequently the offer of public goods produced by the state have expanded throughout development, which was naturally conditioned on the state welfare. Growing interventions by the state in social events were at least partially caused by pressures exerted by various social groups (Della Porta, 2003: 277).

The development of production forces has shown that it is not possible to achieve such an optimum on the basis of predominantly a market economy that would, upon the lack of certain goods that cannot be supplied through a market process, demolish the foundations of production that is otherwise possible on a commercial basis. In such areas, operations on a commercial basis needed to be restricted[1] and, in other areas, the

[1] Reasons to restrict market relations include:

- some goods must be available to all persons and not just to those who can afford them, because the method of production requires that they be available to everyone. For example, a certain level of education is necessary to provide the current mode of production, which requires that every worker possesses certain general knowledge. The same applies to a certain level of health care, culture, general order and security, and so on;
- some services or products must be enforced upon a consumer if they do not wish to procure them in the process of market exchange (e.g. vaccination against infectious diseases, mandatory treatment of infectious diseases, mandatory schooling, etc.). Some services that are provided by society to certain persons are also rendered by coercion against the will of persons for whom they are intended (e.g. treatment of alcoholics) and some services against certain persons imply direct coercion over them (e.g. detention of persons that pose a threat to the society). In such cases, services serve the society as a whole. Some goods are such that individuals cannot buy themselves. If they are supplied, they have to be supplied equally to everyone or it is not possible to supply them; at the same time, they are vital for all members of the society and the society as a whole, e.g. general security, adequate regulation of social relations, etc.;
- some goods cannot be subject to market exchange, since it is impossible to identify an individual user nor is it possible to measure the scope of the use of such a product or service, e.g. in roads, parks, squares or goods in general use. They have to be available to everyone under equal conditions;
- in some areas, operations on commercial basis cannot be noticed, because the producer or consumer or both hold monopoly (e.g. various utility services);
- some areas involve not only individual services or products that would be exchanged in a market process, but also continuing operations that must simultaneously benefit everyone, e.g. regulation of certain social relations (operations of the state administration, etc.) (Bučar, 1969: 44-45).

state even had to directly take over the supply of goods that a market economy could not supply or properly distribute among its residents.

In the modern mode of production, the share of goods that must be provided by society is increasing and so is the area of special public affairs and public benefits. Hence, a modern society typically spreads the area of the state and the state is required to intervene with its measures in areas where relations used to be regulated solely on a commercial basis (Bučar, 1969: 46).

Society frequently subjects activities, with which goods important for the existence of a society or important merely for its social, economic or cultural development are provided, to a special 'public service' legal regime. The provision of goods that provide a life of independence and are worthy of human dignity is the basis of public service (Fisher, 1998: 1, 5). When the state decides on which goods are of such importance for society to be taken out of the commercial system, it also has to decide on their allocation and distribution among users. That means that the state must decide who should receive a public goods item or a certain service and under what conditions and who should render a public service activity and ensure the production, allocation and distribution of goods to users.

It is a fact that as e society develops, the scope of (public) goods important for society increases and logically results in society (state) spreading the scope of public services in line with the development. The development of public service has changed the role of public authorities (the state, local communities, etc.) in the implementation of public service activities, which continuously adjust to social, economic and technological development (Communication from the Commission – A Methodological Note for the Horizontal Evaluation of Services of General Economic Interest (COM (2001) 598, 17.10.2001), 4). Since the nature and purpose of public goods that are provided with public services differ, and so does the intensity of general interest, various forms of public service provision have been put into practice, which will be the subject of examination in the continuation of this part (Brezovnik, 2008).

1 Historical, linguistic and legal review of the use of the 'public service' concept

The concept of 'public service' emerged at the end of the 19th century in the practice of the French Council of State (Conseil d'Etat), which denoted a public service as 'an activity of the administration under the principles of public law' (Borković, 1997: 12), but that does not mean that public services started developing at that time. From classical antiquity to the present day, one can detect a series of activities that used to be carried out by the social community to pursue a wider general interest and provide inhabitants with goods. For instance, the Chinese already managed irrigation systems and channels and protected public storage facilities for cereals in classical antiquity; the Incas built roads and ensured the supply of water, and the Romans managed theatres

and boarding houses. In medieval Europe, states, for instance, provided defence, public order and a judicial system; bridges, ports and lighthouses; drainage and irrigation of farmland; social care, health care, education, etc. In the 18th and 19th centuries, new activities developed that were provided by the state, such as the management of channels, railway, gas pipelines, water distribution systems and power grids, which was initially carried out in the private and later in the public sphere.

In the 18th century, infrastructure was built and activities of general interest were largely provided with the award of concessions to private undertakings, which led to the emergence of monopolies, which were soon abolished by states due to increasing corruption and uncontrolled exploitation and activities were delegated to public authorities. In the century that followed, states almost entirely replaced the old and inefficient private system of rendering activities of general interest with a new public-law system. That was also partly the result of the establishment of narrow (self-governing) local communities with democratically elected representatives, which took over the infrastructure and implementation of activities of general interest, thus establishing an own public-law system with effective supervision over the implementation of activities. The successful development of own public-law local systems partly resulted from the possibility of additional borrowing by local communities and their investments in public infrastructure (Wickwar, H. W., 1938: 66).

Since the end of the 19th century, the development of public services has gone hand in hand with the development of a bourgeois state (more in Vilfan, 1993) and has been the subject of legislation.[2] In the initial stage of the development of a bourgeois state, i.e. in its liberal era, in which the state had primarily the role of a 'night watchman', the number of activities rendered in the general interest was very limited. That was in line with the requirement of the growing capitalism and class interests of the bourgeoisie, which was setting free from absolutist regimes and at the time deemed it appropriate that the state interfere as little as possible in economic and social relations. At that time, the state mostly dealt with defence against foreign adversaries and preservation of security, order and peace on its territory and within the community (Duguit, 1998: 48). The theoreticians of that period stressed that social development also increased the number of activities that may be subject to public service. Since the development of society also increases the number of all kinds of needs that have to be fulfilled in the shortest possible time, intervention by the state has increased in line with social development. Hence, a special legal public service regime has been established for an

[2] In the early stage of public service regulation, legislation mostly regulated the method of management and ownership of public services. In that period, the implementation of public service activities was primarily left to entities governed by public law, while entities governed by private law rendered public service activities under the supervision of public authorities on the basis of individual administrative acts (concessions) or orders. Public service activities were thus rendered by individual organisations within the public administration (including ad hoc organisations) that held very broad powers or entities governed by private law based on a special order (power) or a concession (della Cananea, G, 2002: 73-74).

increasing number of activities in the modern bourgeois state. The basic reason for the increasing number of public service activities in bourgeois states should be sought in the development and requirements of the capitalist mode of production. The bourgeoisie as the ruling class could not fulfil all needs of the newly emerging society without state intervention. For that reason, the state started assuming new tasks, thus ensuring an undisturbed capitalist mode of production. The state educated human resources, established schools and other educational institutions organised the provision of postal, telephone and railway services and other services that were vital for the development of the then bourgeois society (Popović & Mladinović, 1985: 68).

A major contribution to the mental image of the public service concept was made by the French legal theory, which built all its postulates on the concept of public service. A special place in the French legal theory is attributed to *Duguit*. The latter was influenced by the French social affairs at the time when the so-called 'servicing function of the state' with the emergence of public services was in full swing. In his well-known work on the transformation of public law, he declared the state a system that organises and coordinates public services (more in Igličar, 2000: 43-44). At the time, a finding was reached both in theory and practice that the state is not only sovereign authority in command of groups of individuals by coercion, but also needs to use force for the creation and implementation of public services. In his reflections on the concept of public service, *Duguit* exaggerated, since he equated the entire state operations with the concept of public service and denoted the state as a pool of public services (Krbek, 1932: 11). *Duguit* was followed by a series of theoreticians who thought similarly.. *Waline*, for example, claimed that public service is any service that is implemented under the rule of public law (Waline, 1996), while *Jeze* saw public service as a technical procedure that is used to fulfil the needs of general (public) interest (Jeze, 1926: 36). Public service is, therefore, characterised according to public interest or, as claimed by *Rivero*, is a form of administrative actions with which public entities ensure the fulfilment of needs that are in the public interest (Rivero, 1971: 397). In the French legal theory, the concept of public service still holds a symbolic meaning; it is the foundation of administrative law and state regulation in general. Although the French constitution from 1958 makes a reference to the concept of public service, which can also be noticed in the French positive law regulation, the content of the concept was primarily laid down by legal practice and, hence, the French legal theory understands the concept of public service as 'an activity that is directly or indirectly provided by public authority in the general interest' (Druesne et al, 2005: 52).

The public service institute was taken from the French law by the German legal theory, yet despite some theoretical definitions there is today no trace of a uniform concept of public service in the German legal regulation (Druesne et al, 2005: 52). The German legal theory was followed by the Austrian normative school of law, which interpreted the concept of public service in the broadest terms. Its interpretation is based on the idea of the state and law being identical; every law enforcer is a public body and every public body service is a public service (Krbek, 1938: 12). These days, the concept of

public service in the Austrian legal theory (like in Italy, Spain and Portugal, where the concept of public service is the subject of constitutional regulation, and in Belgium, Luxemburg, Greece) has a legal meaning (Druesne et al, 2005: 52).[3]

The concept of public service also appears in the Anglo-Saxon administrative law theory and practice. As in European states, public services in USA and Great Britain also grew in line with increasing state interventions in production. For that reason, the Anglo-Saxon administrative law theory has paid attention to that concept as well. Today, the concept of public service in states with the Anglo-Saxon legal regulation is not understood as a legal, but predominantly as a political concept.[4] It is safe to say that an idea of activities that are directly or indirectly carried out by public authorities in the general (public) interest can be noticed in such states, but that the understanding of the concept of public service is pragmatic, i.e. the acknowledgement of general interest calls for special legislative regulation. For instance, the legal regulations of Great Britain or Ireland feature no uniform legal definition of the concept of public service, yet they show a series of regulations establishing and regulating public services (Druesne et al, 2005: 52).

After World War II, the concept of public service also emerged in the Yugoslav law. The concept was used especially widely by the former Yugoslav legislator after 1952, when a series of activities were proclaimed a public service, but with no explicit criteria from which their legal regime could be inferred. In that period, the broadest concept of public service was laid down by the Public Servants Act of 1957, which considered the concept of public service the overall activity of institutions and public bodies.

After 1963, the concept of public service was left out of constitutional legal texts. It was replaced with the term 'labour organisation', which was used to denote a form of organisation that rendered production and social services. The constitution of 1974 introduced a special concept of 'activities of special social interest', which replaced the concept of public service. The new expression was also applied in the rest of the legislation (more in Popović & Mladinović, 1985: 70).

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[3] Notably, the territory of Slovenia (the state got its name with its entry into the Kingdom of Serbs, Croats and Slovenes) was a territory governed by Austrian law until World War II, like the territories of Hungary and Czechoslovakia. It was subject to Austrian state acts as applicable on 29 October 1918 (when the old Austria fell apart). In addition, it was subject to the then enacted autonomous acts and regulations of the national government. Details about the legal territories of old Yugoslavia are available in Vilfan, 1993: 133.

[4] Phillips, for example, sets the following criteria for the identification of public service by stating that 'if an activity (1) is provided in public interest and (2) is closely related with transport and distribution processes and (3) is offered to the public, ordinarily on demand and at proper and non-discriminatory prices and (4) is largely performed independently and without business competition or (a) has obtained a monopoly or (b) was awarded a franchise or certificate issued by the state putting such activity in that position, then it is … public service' (Phillips, 1992: 118).

In the new Slovenian legal regulation, the concept of public service is not a constitutional category, but it is the subject of legislation, in which it does not appear uniformly. Upon the introduction of public services in the Slovenian legal system in 1991, public services were defined in a general way contrary to the current individual approach. The concept derived from the belief that it was necessary to introduce a special end-to-end public law regime in all areas of (economic and non-economic) activities where the absence of commercial legalities in production or (and) distribution of products and services may lead to various negative effects, such as inaccessibility of certain services or goods, unacceptable prices, etc. The legislator modelled on the French legal regulation of public services, which typically governs a vast and complex system of public services (Pličanič, 1999: 923-924).

With Slovenia's entry in the European Union, Slovenia assumed the Union acquis, which uses no uniform concept of public service, but only the term 'services of general interest', which indicates the subject of a public service, i.e. the provision of services in the public interest, and appears for the first time in the Commission Communication on Services of General Interest in Europe (OJ C 281, 26.9.1996) and later in the mentioned Green Paper on Services of General Interest (COM (2003) 270 final, 21.5.2003) and in the White Paper on Services of General Interest (COM (2004) 374 final, 12.5.2004), which are politically very important, but not legally binding documents. In practice, the term 'services of general interest' started to be used on the basis of the term 'services of general economic interest', and is used in primary Community law[5]. Semantically, it is broader than the mentioned term and covers marketable (economic) and non-marketable (non-economic) services, which are identified by public authorities as those rendered in the general interest and subject to special public service obligations. According to the European Commission, the term 'services of general interest' is complex and subject to change. It covers a wide range of energy, postal, transport and telecommunication services as well as health care, education and social services. Moreover, it covers different dimensions of implementation, ranging from European and global to the local environment. The organisation of the implementation of such activities is diverse, as a result of cultural, historical and geographic diversities and the technological development of a particular state (Green Paper on Services of General Interest, 2003: 5).

In the introduction to the Green paper on Services of General Interest, the European Commission stressed that services of general interest are particularly important for the EU. They hold a special place among the common EU values and are the key element of the European society model. They contribute importantly to enhanced quality of life among EU residents and prevent social exclusion and isolation of individual population structures. With respect to their importance in the economy and important role in the

[5] 'Primary Community law defines treaties establishing each of the communities (EEC, Euratom, ECSC), including addenda, protocols, annexes and any subsequent amendments to the treaties in the form of public international law treaties and general legal principles and customs' (Grilc & Ilešič, 2001: 5-6).

production of goods and services, the quality, availability and accessibility of such services contribute to the general competitiveness of the European economy and enhanced cohesion of the single market. As indicated by the European Commission, efficient and non-discriminatory provision of services of general interest is a prerequisite for the efficient functioning of the single market and future economic integration in the EU. Such services are the pillar of the so-called European citizenship and form some rights enjoyed by EU residents. In light of the above, the European Commission stressed that Member States need to provide efficient and quality implementation of public service activities throughout the EU territory, so that the EU and its Member States achieve balanced and sustainable development with a high employment rate and economic and social cohesion, hence the fundamental goals of the EU.

The definition of the public service concept at Community level is by no means simple and, according to some authors even impossible, since the understanding of the concept differs from one state to another. Despite that, some elements may be noticed regardless of the varied understanding of the concept, which are shared by all legal regulations of EU Member States and can contribute substantially to the understanding of the public service concept at EU level. The notion of public service is inherently related to the concept of state regulation, which differs from one state to another. It primarily depends on the position held by public services in the legal regulation of a particular state (Brezovnik, 2008).

2 Definition of the 'public service' concept

The concept of public service is one of the central issues of administrative theory, which is perceived in many ways, yet no general and accurate (legal) definition of the concept can be noticed in theory and practice. All attempts to define the concept of public service have led to the revelation of its content, which primarily reflects its complexity and heterogeneity. As claimed by *Fisher*, every definition of the public service concept is relative rather than absolute, as the scope of activities subject to the classification of a public service changes in relation to social welfare (Fisher, 1998: 5).

In contemporary legal theory, there are in principle, two different definitions or two different concepts of public service. The first one is focused on the content and purpose of public service, while the other is focused on the entity rendering public service. The first one is material and the other is formal. The concepts are not identical, as they try to show the concept of public service from different points of view.

The material concept deals with the content of public service rather than with the entity rendering it. Hence, the material concept of public service is understood as any activity subjected by society to a special legal regime of public service that differs from the legal regime of a 'private' service due to its importance for the social, economic or cultural development. In light of the mentioned definition of the material concept, the

legal regime of public service does not depend on the provider, but solely on the activities performed under such a regime. The formal concept of public service deals with a public service provider, meaning that an activity has the nature of public service only if it is provided by an entity governed by public law (Krbek, 1938: 11-17; Borković, 1997: 14).

Authors acknowledge that the concepts allow variations and combinations in the mental image of the public service concept, but underline that they need to be shown separately in their pure content.

As already indicated, a major contribution to the mental image of the public service concept was made by French legal theory, which built all its postulates on the concept of public service. In present times, however, it has developed widely, by considering the state as a pool of public services. The other part of the old French theory is closer to the current public service concept and essentially represents a starting point for the present definition of the concept. According to the theory, public service does not represent an activity. Notably, no activity by itself is a public service; it becomes one upon the establishment of a special legal regime that constitutes its essence. An activity alone in technical terms is, therefore, not related with public service, since the latter is defined by a set of specific, legally regulated social relations emerging in relation to its implementation and results.

Despite such a definition of the public service concept, there are some characteristics of individual activities that affect the establishment of a special legal regime denoted as public service (Krbek, 1938: 13).

3 The servicing function of the state

As already indicated, the public administration carries out three basic functions, i.e.: regulatory (authoritative), promotional and servicing. Within the scope of the regulatory function, it carries out social regulation, whereby setting abstract rules of conduct and forming specific legal relations or rules of conduct on their basis and on the grounds of real situations. The function is carried out at an executive level by the entire state administration system and, to a certain extent, by holders of public powers. The second role is the promotional function, which represents a set of non-authoritative measures of the state and its institutions with which it facilitates the development of certain activities or areas of social life pursuant to its policy. Within the scope of the servicing function, it provides public goods and public services, i.e. goods and services that are vital for the fulfilment of individuals' needs, but cannot be provided through a market exchange system for various reasons.

As mentioned above, all the functions are carried out in the general or public interest, which gives them meaning and basis for their existence. Social regulation provides predictability in the conduct of individuals and their interactions with one another, thus

providing social harmony. Promotional measures provide balanced social development and, consequently, a balanced social system. The provision of public goods and public services ensures the production and distribution of goods and services that cannot be obtained through a market exchange system, but only through certain channels in an organised social community. All such activities represent general or public interest, which needs to be realised, so that the interests or needs of individuals are ultimately met.

To define the concept of public service, the servicing function, i.e. the provision of public goods and public services, is of particular importance. Essentially, the goods and services provided within the scope of the servicing function cannot be obtained through a market exchange system. That does not mean that market-based mechanisms cannot be established in such activities, because practically any activity may be carried out in a market-based manner. The absence of market-based mechanisms in that relation implies that their establishment in a particular activity could lead to interruptions in the functioning of the social system or its individual sub-systems. For that reason, the state makes up for such mechanisms by ensuring their implementation through its administrative systems within the scope of the fundamental function, i.e. social regulation (Trpin, 2005: 356-360).

The absence of market-based mechanisms is compensated with regulation either by the state or a narrow (local) or wide (e.g. European) community to which the state delegates the competence of regulation. That means that the state or a narrow or wide community puts in place a special public-law regime for the implementation of activities and distribution of goods or services deriving from such activities, thus comprehensively regulating all relations pertaining to such activities.

A public service is, therefore, not an actual, but a normative phenomenon. This phenomenon depends on the real social relations it governs, but the normative part is nevertheless essential for the public service concept. There is no public service without its normative part, because there is no special legal regime in a particular activity without legal regulation that makes the legal position of such an activity, in relation to entirely the same activity carried out within the scope of a private-law regime, essentially different (Trpin, 2005: 356-360).

It may be inferred that the decision to establish or abolish a public service, i.e. to establish a special public-law regime in the implementation of a particular activity, is made solely by the state. Furthermore, it depends on its will (public interest) whether the competence for decision-making about the establishment or abolition of a public service and the establishment of a special legal regime of public service and its scope, i.e. the competence of regulation, will be left to a narrow or wide community or to itself. The delegation of that competence to a wider (European) community depends on the level of its integration in the wider community, while its delegation to a narrow (e.g. regional or local) community depends mostly on the level of state decentralisation.

Notably, a state that fully delegates its competence to establish and abolish public services and the competence to establish a legal regime of public service either to a narrow or a wide social community waives a part of its sovereignty (Brezovnik, 2008).

4 Regulation of public services

The state enters the area of public services on one side as the regulator of public service activities and, on the other, as their provider when and if it provides them itself or as a (co-)owner (of equity shares) or (co-)founder of different legal entities governed either by public or private law (public service providers). The basis for public service regulation is an activity that is taken out of the market-based system in the public interest by the state or, under its authority, a narrow (e.g. a region, province, or municipality) or wide (e.g. European) community, regulating all legal relations referring to its implementation and provision of goods in the public interest with legal norms. The content of regulation depends on the nature of the activity taken out of the market mechanism system. Schematically, the content of public service regulation may be broken down to (Pličanič, 1999: 926-927):

a. the regulation of a general legal frame of public service covering in particular:
   - the identification of activities (economic or non-economic) showing a general (public) interest;
   - the definition of the scope and content of public interest and an adequate public-law regime or public service obligation that is to ensure the realisation of public interest;
   - the identification of the funding system for the implementation of public service activities, also including pricing and other economic conditions for the pursuit of activities;
   - the identification of the forms and method of implementing public service activities.

   This part of public service regulation ordinarily falls within the competence of the state and, within the state authority, within the competence of the legislator.

b. ongoing 'normative' intervention or management of public services referring to:
   - the identification of technical and other conditions (standards and norms) for the provision of public services;
   - the settlement of disputes between public service providers themselves and between them and the users of public goods and services;
   - supervision of the implementation of regulations, etc.

   At state level, such activity usually falls within the competence of the executive administrative branch of authority (hence, the government).

In relation to the regulation of public services, the issue of delineating regulatory competences between the EU, the state and local communities (regions, provinces,

municipalities) is particularly topical in Slovenia and other EU Member States. The delineation of such competences is no doubt complex and often misleading for Member States, local communities, public service providers and users of goods or services (Green Paper on Services of General Interest, 2003) (Brezovnik, 2008).

5 Public service activity

The primary obligation of the legislator in the regulation of a general legal frame of public service is to identify activities that are to be implemented in the public interest. The content of public interest and the nature of the activity, which may be economic (market) or non-economic (non-market), depends on the regulation of the public-law regime of a particular public service, which also covers the identification of the forms of implementation that are the subject of examination in this paper.

The basis of public service activities is to provide public goods, which may be certain products, services, social relations or a social situation and are, as will be shown in the continuation, frequently the subject of human rights and fundamental freedoms. Before discussing public goods that are the subject of human rights and fundamental freedoms, one or two things should be said about the common good and its use, since the subject of public service activities is often also the concern for things in common use and their maintenance in a condition allowing common use (Brezovnik, 2008).

5.1 Concern for things in common use

In a simplified definition, the concept of the common good implies things that are intended for use by everyone under the same, legally prescribed conditions. The legal regime of every item comprises civil law and public law components, whereby the relation between the former and the latter depends on the intensity of public interest regarding individual types of things. The common good is, therefore, a category of things where public-law components are the most pronounced. The legal regime of the common good covers the regulation of legal relations related to ownership of the common good, with the use (general and specific), emergence of the common good status, cross-border (neighbour) relations, competent questions, etc. (Virant, 1995: 353).

Although the legal theory of the public good places most attention on the ownership concept of the common good, the latter is not the only element of the legal regime. To understand that part, the question of the use of the common good is of particular importance, since the latter refers directly to a public service activit. Before discussing it, one or two things must be said about the scope of the common good. With respect to definition, the scope may be narrow or wide. The common denominator of the narrow and wide conception of the common good includes things intended for use by everyone under the same conditions (air, water courses, lakes, seas and seashore, roads, public squares and similar). Considering the ownership criterion, it also includes cultural monuments and natural attractions owned by the state or local community. The scope of

the common good in broader terms is further supplemented with immovable and movable property intended for public service provision (the so-called administrative good) taking into account the criterion of the necessity of things (as species rather than genus) for service implementation (more in Virant, 1994: 729-731). To sum up, the common good in broader terms includes all things intended for general (common) use, the implementation of public service activities and the operations of public administration bodies, while the common good in narrow terms includes only things intended for general use, hence use by everyone under the same conditions. Considering the common good in narrow terms, one could replace the term in broad terms with the term 'public property' as known, for instance, by the German law. Public property includes all things that are intended to be used for public purposes (Virant, 1996: 309-310).

In theory and practice, the common good is broken down to natural and built (artificial) common good, hence in respect of whether a public good emerged as a result of human intervention or natural events, whereas the breakdown to waters, sea, air, road and rail may also be supplemented with a breakdown in respect of external shape (immovable and movable common good) and the type of use, which is particularly important to understand this section, as follows: • things in general use (common good in narrow terms), • structures and facilities intended for public service provision (infrastructural facilities and devices) and • things that are necessary for the operation of state bodies and local community bodies.

General use is use that permitted to everyone. It has the following characteristics: • anyone can use the common good under the same condition (principle of freedom and equality of general use), • no special permit is necessary for it, • it is in principle free of charge, although payment for use (e.g. toll) has been enforced lately, • it is always temporary (the user does not occupy things permanently), • it does not hinder the same use of other things (Virant, 1996: 319). Restrictions of general use are permissible only for reasons of public order and security and for the maintenance of the common good.

The legal theory has dealt quite a lot with the legal nature of the common (general) use of the common good. General use represents a legally unusual position where everyone can freely use a thing that is not theirs. Theoreticians do not agree on the answer to the question whether the right to general use exists or whether general use is merely a 'reflex of objective law', hence merely an actual benefit that is enjoyed by users of the common good. The theoretical discussion also holds practical significance: if a user is granted the right to general use, it is necessary to enable them undisturbed use of the common good while granting them legal protection if the right is breached. It follows that the state has an obligation to manage things in common use by creating conditions for undisturbed use of the common good. Notably, things in general use are owned by the state (or local community); it is property *sui generis* implying predominantly the obligation to care for a thing and maintain it in a condition that will enable its use to everyone, and supervisory competences (Virant, 1994: 737). In light of the above, the

state frequently subjects the activity of managing things in general use to the public-law regime of public service (Brezovnik, 2008).

5.1.1 Structures and facilities intended for the implementation of public service activities

At this point, something should be said about the structures and facilities intended for the implementation of public service activities (infrastructural facilities and devices). That group (denoted as 'infrastructure'[6]) includes all things necessary for the implementation of public service activities. Since it involves specific (exclusive) use by public service providers, the nature of such things is believed to differ from the legal nature of the common good in narrow terms, since it does not include the right of any person to use such a thing. An essential element of the legal regime is the purpose of such things or the prohibition of use that is not compliant with such purpose. Any change of purpose is possible solely on the basis of a legal document that exempts a thing from the set of public services. The ownership regime, legal transactions, prescription, management, use and other elements of the legal regime of such things must be subject to the fundamental goal of ensuring their use for the purposes of implementing public service activities (Virant, 1994: 737-738).

Infrastructural facilities and devices are not necessarily owned by the state or a self-governing local community, but may also be owned by other public-law entities (a public undertaking) or even private-law entities (public service concessionaires) (Brezovnik, 2008).

5.2 The provision of public goods that are the subject of human rights

As already indicated, the basis of public service activities concerning the common good is the concern for things in general use (public good in narrow terms) and their maintenance in a condition that enables general use. Furthermore, the basis of public service activities also includes public goods that are often the subject of fundamental human rights and freedoms.

In the Green Paper on Services of General Interest, the European Commission noted that the goods provided to residents with public services were the pillar of the so-called European citizenship and formed certain rights as enjoyed by EU residents. It is a fact that, these days, rights are not governed and safeguarded solely by state constitutions, but also by numerous international treaties, which give human rights and their protection a universal character. The adoption of international legal documents on human rights was promoted by the tragic experience of World War II, which was one of the gravest mass infringements of human rights. Until that time, the prevailing belief was that the

[6] The term infrastructure implies a technical network that is required for the production, transmission and distribution of a particular product or for the provision of a service or merely for any of the mentioned successive stages (Hrovatin, 1997: 94).

regulation and protection of human rights and freedoms fell within the exclusive competence of each state and, as such, could not be subject to external interference.

After World War II, the incentive for the codification of rights and freedoms was assumed by the United Nations Organisation, which adopted the Universal Declaration of Human Rights[7] on 10 December 1948, covering classic civil and political rights as well as certain recent economic, social and cultural rights. To understand the content of this section, note should be taken of the provision of paragraph 2 of Article 21 laying down that 'everyone has the right to equal access to public service in his country'. Although the Universal Declaration of Human Rights is not a legally binding document, it holds profound importance, as it has become a criterion for the realisation of human rights in individual parts of the world and the basis for the adoption of universal and regional legal documents on human rights. Along with the universal documents adopted by the UN, the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR; regulating only civil and political rights), which was adopted by members of the Council of Europe on 4 November 1950 based on the Universal Declaration of Human Rights and entered into force on 3 September 1950, and the European Social Charter, which was adopted by members of the Council of Europe on 18 October 1961, are of particular importance to Slovenia. The content of the latter is vital for the understanding of this section, as it ensures, together with the Protocol, a series of economic and social rights (e.g. the right to work, the right to vocational guidance and training, the right to health care, the right to social security, social and healthcare assistance and to the enjoyment of the services provided by social services, the right of physical and mentally impaired persons to vocational training and vocational and social rehabilitation, to legal and economic protection, the right of mothers and children to social and economic protection, and the right of elderly people to social security, etc.), the content of which are services or goods that need to be provided to residents by the state. The mentioned economic and social rights are classified as the so-called positive rights, which give an individual a chance to request certain goods or services from the state, while the state must provide them (Brezovnik, 2008: 68).

5.3 The nature of public service activities

The differentiation between the economic (market) and non-economic (non-market) nature of the services provided with the implementation of public service activities is relevant primarily for the demarcation of regulatory competence between the EU and a Member State. Notably, the Court of Justice of the European Union, in its decisions referring to the freedom of service provision and application of the rules of the EU

[7] Although the Universal Declaration of Human Rights by content constitutes a compromise between the interests of Western states and the interests of the former Soviet Union and the social states included in its ideological sphere and is not a legally binding document, the Declaration is of vital importance, as it has become a criterion for the realisation of human rights in individual parts of the world and the basis for the adoption of universal and regional legal documents on human rights (Rupnik, Cijan & Grafenauer, 1996: 219).

competition law, places special emphasis on the importance of distinguishing between the economic and non-economic nature of a service. Whether a service is an economic or non-economic one in particular depends on the way the state organises the provision of such service. Importantly, the subject of regulation of the EU competitive law and of the freedom to render services includes only services of an economic nature. If public services are by nature defined as non-economic, they are not subject to most rules under the EU law. When a service has an economic nature, the activity and provider of such activity are subject to the rules of the EU competitive law. If the implementation is transferred to a provider with special public service obligations, such as universal services, these activities are public utility service activities (Brezovnik, 2008: 90-97).

6 Public service obligations

Public service obligations are an essential element to define the concept and are considered to be special obligations imposed upon public service providers in the implementation of public service activities. No advance definition of the public service concept can be noticed in EU law; however, the legal regime concerning (economic) public services covers any (economic) activity that features special obligations of public interest as laid down by the authorities in legal documents. Such obligations must be imposed pursuant to the principles and rules of EU law with an adequate legal document in national legislation. Principles that need to be taken into account are in particular:

- the reliability of the law principle: public service obligations must be laid down clearly and definitely, whereby they must be related to the public services to which they refer;
- the prohibition of discrimination principle: although the prohibition is relatively broad in EU law, the prohibition of discrimination is applicable based on nationality by the nature of things in respect of public service obligations; public service obligations must be laid down for all public service providers equally regardless of their registered office in EU Member States;
- the principle of transparency: public service obligations must be laid down in a published legal document and in a transparent manner;
- principle of proportionality: it involves a relation between public service obligations and the public interest due to which they have been imposed; public service obligations must be laid down so as to contribute objectively to the public interest for which they have been established, to represent the easiest burden of providers and to be comparable by implication to the meaning of public interest (Pirnat, 2004: 3-4).

In light of the above, it is possible to find in sectoral rules in individual areas, particularly in guidelines, numerous provisions that either directly order or at least permit Member States to lay down certain public service obligations. Such rules contain a common set of public service obligations in EU law. They include particularly the following obligations (Green Paper on Services of General Interest, 2003: 16-18):

- universal services: the concept presently implies a special obligation of public service providers to provide certain services to all users in a specific territory regardless of their location and at an affordable price. The price, therefore, is not necessarily the same for all users, although that may be laid down in national legislation, but the obligation indeed implies that the price for some users is lower than the economic price. The purpose of the obligation is to provide complete territorial coverage of the minimum scope of public services to realise important public interests (equal development, preservation of settlement, etc.) (Brezovnik, 2008: 101-102);
- sustainable provision of public goods: the obligation of permanent, i.e. uninterrupted, implementation of public service activities and provision of public goods is typical of almost all public service activities. It derives from the direct right of an individual to a public good that is provided with the implementation of public service activities. Since the state is principally obliged to provide its residents undisturbed enjoyment of their rights, the subject of which mostly includes public goods, the state is also obliged to provide permanent and undisturbed implementation of public service activities. Hence, the state disposes with a series of measures to bind a public service provider (when the latter does not implement public service activities itself or through a specialised entity governed by public law it established itself) to comply with the mentioned obligations. In cases when the state delegates the implementation of public services activities to an entity governed by private law by entering into a concession relationship, the state temporarily assumes the implementation of public service activities or any other method as laid down in the concession contract if the concessionaire fails to ensure public service provision as a result of the conduct of its employees or it may terminate the concession relationship (Brezovnik, 2008: 102-104);
- quality of services: upon the provision of user equality and the prohibition of discrimination principle, a new approach to the regulation of public service activities has evolved since the 1980s simultaneously with the liberalisation and privatisation of public services, where major emphasis is placed primarily on the quality of public goods and financial efficiency (Pollit in Brezovnik, 2008: 105). The fundamental task of the state in the implementation of public service activities is to provide quality public goods at affordable prices. The quality of public goods is otherwise often the result of marketing efforts of a public service provider, particularly where competition is ensured among providers; it may be observed in the example of liberalised sectors that the EU relied not only on providers' marketing efforts, but also laid down quality standards in its legislation in certain cases in order to preserve and develop the quality of public goods. In other cases, EU law empowers Members States to lay down quality standards themselves (Green Paper on Services of General Interest, 2003: Chapter 3.2). The state is often required to lay down special standards on the minimum quality of public services, which differ from one public service to another, but in any case imply additional costs in public service provision. As a result, the price of a public good

depends on the prescribed quality of the public good. Through regulation, the state must achieve that users receive quality services at affordable prices (more in Keller in Brezovnik, 2008: 105);

- accessibility, which refers to the price of a public good that is provided with the implementation of public service activities. It is the obligation of a public service provider to provide public goods at a price affordable to everyone (Green paper on Services of General Interest, 2003: 18). The provision of public goods at affordable prices is the fundamental obligation of the state, which needs to observe the interests of individuals or individual population groups pursuant to the principle of a welfare state. Therefore, the state is required to provide public goods at affordable prices to all user structures, including those in a poorer socio-economic position. As a result, different forms of the regulation (restriction) of public goods prices can be noticed in the practice of various states. That said, one may detect fully market-based pricing of public goods in the implementation of liberalised public service activities, whereby states often perform control over them due to the provision of public interest. Regardless of whether the prices of public goods are regulated by the state or whether they are freely set on the market, public goods are in reality not equally accessible to all users. Hence, the state is required to take active measures to offer assistance to those structures of public goods users who need it due to their unfavourable social position. That ensures actual equality among the users of public goods in their acquisition of material and moral public goods (Brezovnik, 2008: 106);
- protection of users: since the public goods provided with the implementation of public service activities are mostly the subject of human rights, the state is required to provide adequate protection of the users of public goods if it is in its interest to have its residents enjoy their rights and freedoms. With respect to the nature of the implementation of public service activities and the relationship between the state, a public service provider and the user of a public good, such protection is multi-faceted. In the relationship between the state and a public service provider, the state may ensure observance of the rights of public goods users with a series of instruments (e.g. institutional protection of public goods users, participation of users in the management of a specialised legal entity governed by public law, etc.) (Brezovnik, 2008: 109). In the relationship between a public service provider and user of a public good, the protection of users of public goods is a public service obligation only when and if it goes beyond the general rules on consumer protection referring to all activities. Such special requirements are ordinarily bound by special provision of safety in the service rendering, protection of user interests in the regulation of the relationship with the provider (general terms and conditions for a contractual relationship, transparency of accounting, limited possibilities to terminate the provision of services, etc.), special mechanisms for the legal protection of users (appeal and a similar instrument for the provider and/or independent body for the protection of users) and participation of users in the regulation and assessment of public services (Pirnat, 2004: 16-18).

Naturally, additional public service obligations may be found in individual areas, such as safety, security of supply, medial pluralism, etc. (Green Paper on Services of General Interest, 2003: Chapter 3.2) (Brezovnik, 2008).

7 Funding of public services

Taking into account the tradition and particularities of the public goods provided with the implementation of public service activities, the practice of EU Member States reveals a range of methods of financing the implementation of public service activities, which mostly reflect the public interest held by the state in the implementation of a particular public service activity and provision of public goods, and include: • direct budget funding (e.g. granting subsidies or other financial benefits, such as tax reductions); • special or exclusive rights (in the event of so-called natural monopolies); • contributions (payments) by users of public goods; • average tariffs (e.g. a uniform tariff irrespective of differences in the cost of public service provision); • financing based on a solidarity system (e.g. social and health insurance contributions, etc.) (Green Paper on Services of General Interest, 2003: 26).

EU Member States in principle have autonomy in selecting the method of financing the implementation of individual public service activities, but they need to ensure that the selected method of financing has no effect on the functioning of the internal market and distortion of competition. Hence, Member States may also finance the implementation of public service activities from public funds, whereby they are not allowed to transcend the rules of EU law on state aids (Brezovnik, 2008: 112-113).

8 Forms of public service provision

National authorities of EU Member States are in principle free to decide what activities will be taken to provide public goods and to what extent. The EU harmonised the implementation of public service activities and laid down common requirements that have to be observed by EU Member States only in the case of large network-bound industries. Alongside deciding activities that will provide public goods and to what extent, national authorities must also decide on the method of allocation (planned distribution) and distribution (organised distribution) of the mentioned public goods that are the subject of the implementation of public service activities among users. They have to decide how to organise the distribution of public goods among users. The public service system, therefore, has a content and organisational aspect, with the latter shown in (organisational) forms of public service provision. The practice of EU Member States and beyond reveals a series of different systems of public service provision, varying between the public sector and the market and including numerous and diverse (organisational) forms of public service provision.

Within the limits of EU law, EU Member States are free to select the organisational forms and method of implementation of public (utility) service activities. They are free to decide whether public (utility) service activities will be implemented by themselves

within the scope of their apparatus or by legal entities established for that purpose or whether they will delegate the task and right to the implementation of public (utility) service activities to a third party (an entity governed by public or private law) (Green Paper on Services of General Interest, 2003: 24). That practically means that a public service activity can be implemented by any legal entity governed by public or private law. It derives that there are three basic (organisational) forms of public service provision, with the following acting as public service providers: • the state or local communities by way of administrative services; • independent (specialised) entities governed by public law; and • entities governed by private law. The last two organisational forms are denoted in international practice with the common term of parastatal organisations (Hood & Schupert, 1998: 5).

Taking into account the three levels of authority, within the scope of which public service activities may be implemented (local, national and transnational), the simplified breakdown to three basic organisational forms of public service provision provides us with eight basic types that may be combined with one another in more than 500 ways, thus obtaining just as many organisational forms suitable for the implementation of public service activities. Theory reveals a series of arguments giving priority to one or some other organisational form, but it should be noted that the selection of an organisational form depends primarily on the institutional options permitted by the legal system of a particular state and, most importantly, on the cost effectiveness of the provision of public goods.

In parallel with the breakdown of organisational forms of public service provision to three basic forms, it is also possible to break down theories that are used to substantiate the adequacy of a particular organisational form.

The selection of the implementation of public service activities by the administrative services of the state or local communities was substantiated mostly by classic administrative theoreticians from the end of the 19th century and the beginning of the 20th century (Wilson, 1887: 197-222). The so-called classic administrative theoreticians did not pay much attention in their works to parastatal organisations, but they did justify advantages if public service activities were implemented by the administrative services of the state or local communities. They justified their positions primarily in terms of constitutional law and political science: the prevailing belief was that efficient democracy needs a universally hierarchical organisation under the control of elected representatives (administrative services of the state or local communities are hence merely their extended arm). As is often the case in history, parastatal organisations appeared in administrative theory just when the so-called classic administrative law theory achieved its intellectual peak (with *Weber's* essay on bureaucratic organisation) (Gereth, 1948). Discourse on autonomous (specialised) entities governed by public law and their advantages in the implementation of public service activities emerged in the 1920s and 1930s. Along with numerous ideas on possible organisational forms of entities governed by public law, authors at that time argued that autonomous

(specialised) entities governed by public law were more suitable for the implementation of public service activities than state administrative services or local communities. They substantiated their findings by stating that such parastatal organisations had characteristics of entities governed by private law and characteristics of administrative services of the state or local communities (e.g. a public-law owner and limited responsibility to representative bodies). From the theories justifying the implementation of public service activities by way of entities governed by private law, note should be taken primarily of the theory of new institutional economics, which has developed since the mid-1950s and is based on the application of economic methods in politics and public administration (more in Mueller, 2003). While classic theoreticians, such as *Weber*, failed to deal with the issue of public goods distribution and x-inefficiency, neo-institutional theoreticians focused on resolving that issue. Advocates of neo-institutionalism have hence devoted their attention primarily to the issue of including consumers or users of public goods in the system of implementing public service activities. Notably, neo-institutionalist theoreticians favour public service providers governed by private law rather than other organisational forms. They justify that by arguing that public goods that are the subject of the implementation of public service activities may be provided more cheaply and effectively only in independent and autonomous organisational forms governed by private law (Hood & Schuppert, 1998: 8-11). Naturally, that claim may also be called into question.

Upon reviewing administrative theories that justified the advantage of a particular organisational form for public service provision over others, it should be noted that the so-called *classic form* of public goods provision and financing of the implementation of public service activities through the administrative services of the state or local communities used to prevail in Europe and throughout the world until the 1980s. The infrastructure intended for the provision of economic and non-economic public services was at the time mostly owned by the public sector. The primary causes for that were the public interest and the character of production at the time. Notably, the implementation of public service activities in the period following World War II called for very high investments in infrastructure, which was completely unattractive to the private sector considering the long-term character of investments. The dominant role of the public sector in the implementation of public service activities and financing of investments in public infrastructure was also dictated by the recognition of political and economic importance of infrastructure and a belief that active cooperation of the public sector was vital for the elimination of technological obstacles in the provision of goods and that the state was the only entity capable of eliminating market inefficiency (Green Paper on Services of General Interest, 2003: 26).

Detected deficiencies of excessive operations of the state, which manifested as high costs and prices of goods and services, losses in public undertakings and inefficiency of investments, gradually led to attempts of most developed economies in the 1980s to reduce the economic role of the state, mostly by deregulating and privatising the public sector. That is understandable, since states were unable to fulfil the ever growing needs

of citizens at the time of high technological progress and a high level of indebtedness of state budgets. By developing different forms of public service provision, states would include the private sector more and more intensively in the financing of the construction of new infrastructural facilities and their management and in the implementation of public service activities. That substantially changed the role of the state, since the role of the funder of public infrastructure and public service provider began to be assumed by the private sector, while the state started strengthening its role in regulatory and supervisory affairs (Mrak, 2002: 2). By including the private sector in the so-called project financing of investments in the construction of infrastructural facilities and, consequently, the implementation of public service activities, new innovative forms of cooperation between the public and private sectors were gradually introduced (public-private partnership). Meanwhile, states gradually introduced new methods of financing public service activities along with classic (budget) funding, thus enabling the repayment of investments in public infrastructure and repayment to (private) providers for the goods supplied or services rendered (public goods). In parallel with the development of various forms of a public-private partnership, practice also reveals the development of various forms of cooperation within the public sector (public-public partnership) as an alternative to the privatisation and deregulation of public service activities, combining different forms of cooperation and integration among public sector entities in financing investments in public infrastructure and/or implementing public service activities.

In the practice of EU Member States and elsewhere in the world, we have witnessed a shift away from traditional (classic) forms of public service provision through the administrative services of the state or local communities, mostly due to the mentioned public sector crisis, to new (alternative) forms of public service provision (Ford, 1997: 6), which mostly resulted from the mentioned institutional cooperation either within the public sector (public-public partnership) or between the public and private sectors (public-private partnership). That said, the introduction of new alternative forms of public service provision includes two things: • firstly, the institutional integration of organisations either within the public sector or between public and private sector organisations in the implementation of public service activities, and • secondly, the creation of adequate organisational forms within the scope of state administrative services and local communities or beyond that scope or even outside the public sector for the purposes of more efficient implementation of public service activities (Good & Carin, 2003: 5).

With the introduction and development of new (innovative) alternative forms of public service provision, national, regional and local authorities responsible for the provision of public goods have at their disposal a wide range of organisational forms of public service provision that are primarily aimed at improving the implementation of public service activities, thus meeting the requirements of users for quality and affordable public goods. With a wide range of organisational forms, national, regional and local authorities are allowed to decide on the most suitable (organisational) form for the

implementation of individual public service activities autonomously within the scope of their competences.

In addition to the mentioned (organisational) forms of public service provision, practice reveals a series of possible ways for public service provision, i.e. (Good & Carin, 2003: 7):

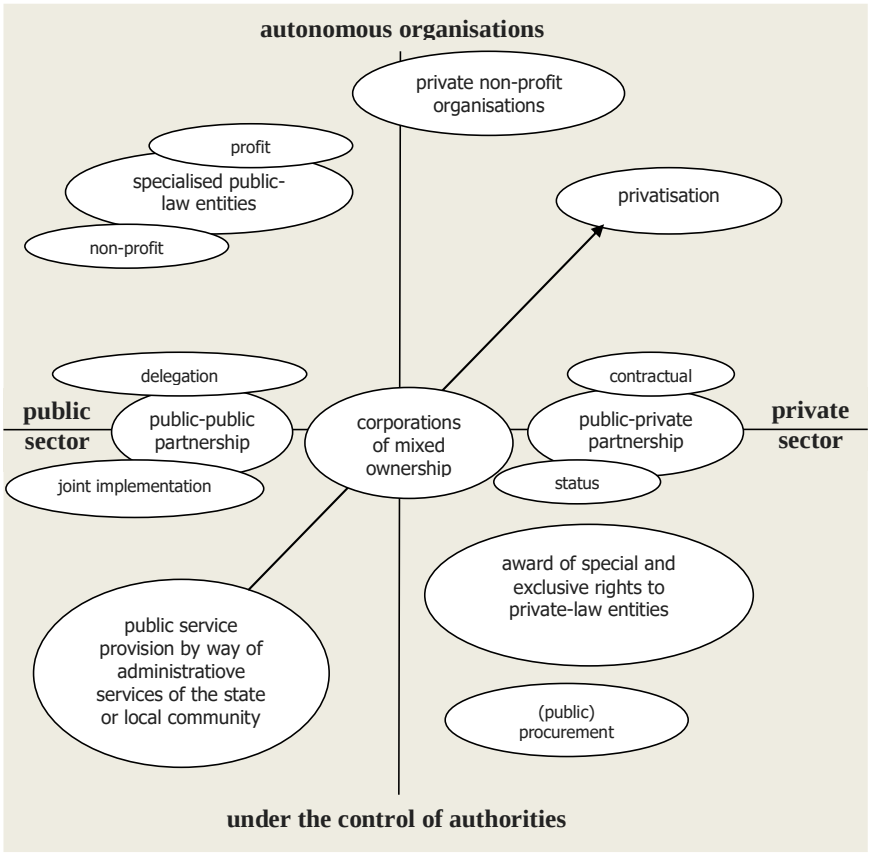
- direct delivery: public service activities are implemented by the state or local community within the scope of the core government bureaucracy. Such a method of implementation is in theory often denoted as asutonomous public service provision. Hence, it involves complete incorporation of public service providers in the system of state or local administration (Hood, 1990: 93);
- agencies: public service activities are implemented by the so-called independent (administrative) agencies,[8] which can be noticed mostly in the practice of the so-called common-law states and are practically unknown to our legal system (Pirnat, 1999). The group includes organisational forms that are still entities governed by public law, but are exempt from the system of state or local administration. As such, they are controlled by the state or local communities, but have their own personality. Considering the mentioned characteristics, the group also includes some specialised entities governed by public law, such as a public undertaking and a public institute, and other organisational forms of public institutions and organisations organised outside the state structure for the purposes of providing public services in terms of their implementation, harmonisation, financing, supervision and protection of public goods users;
- devolution: the authorities delegate the competence for the implementation of public service activities either to some other authority (horizontally or vertically) or to private (profit) or non-profit organisations, which receive funds for the implementation of public service activities;
- purchase of services: the authorities procure the implementation of a service that is the subject of public service activities from a private provider, while they remain responsible for the implementation of public service activities (outsourcing);
- partnerships: partnerships include all forms of mutual cooperation in the implementation of public service activities either between public-law entities within the public sector (public-public partnership) or between public-law and private-law entities (public-private partnership);
- franchising or licensing: the authorities award a special and exclusive right to implement a public service activity to a private-law entity (e.g. with a concession) or issue a (administrative) permit to a private-law entity to carry out a public service activity (e.g. with an administrative decision);

[8] Independent agencies started appearing in USA and then spread to other common-law states, such as Australia, Canada and Great Britain. Upon a tendency to privatise economic public services and similar infrastructural activities, independent agencies also started appearing in various developing states in transition (Pirnat: 1999).

- privatisation: the state or local community sells off equity shares or management rights to an entity governed by private law, while pursuing the public interest by regulating the implementation of public service activities.

Considering three basic (organisational) forms, the methods of public service provision indicated above may be broken down and shown in three dimensions with respect to their characteristics (as evident from the figure below). The horizontal dimension covers the relationship between the public and private sectors, the vertical dimension provides an answer to the question of the scope of authoritative control over public service providers, while the oblique dimension shows the level of commercialisation in the provision of public goods and indicates a trend of shifting away from the classic forms of public service provision to privatisation (more in Manning, 1998) (Brezovnik, 2008).

Figure: Forms and methods of public service provision



Taken and adapted after: Wilkins, 2003: 175; Good & Carin, 2000; Folke, 1991: 124-126; Hood & Schopert, 1998 etc.

8.1 Public service provision within the scope of the public sector

8.1.1 Public service provision by way of the administrative services of the state or self-governing local communities

The implementation of public service activities by way of the administrative services of territorial entities governed by public law – the state and local communities – is one of the oldest traditional forms of public service provision and well known in administrative theory and practice. In the practice of EU Member States, a range of organisational forms can be observed within the scope of administrative services of the state or a local community, which form a component part of the state or a local community in organisational terms and (are) typically: • financed directly from the budget, • employ public servants, • their constitutional rights are as a rule not transferable, • their operations are carried out under specially set rules and • are under the direct 'control' of political authorities (Brezovnik, 2008: 145).

In relation to the provision of municipal public services in the form of service units, special note should be taken of the current issue affecting the provision of municipal public services. As already indicated in the chapter dealing with territorial and fiscal decentralisation, diversity between municipalities and an inadequate model for municipality funding along with an inadequate number of public employees in municipal administrations lead to deficient (non-quality) implementation of original tasks (Brezovnik & Oplotnik, 2003: 137-143), which also include the regulation, management and concern for local public services. In that relation, questions are raised as to the permanent capacity to implement public service activities and thus provide for the common needs and interests of its residents. Most EU Member States face such problems. Most of them have a long tradition of local self-government, which has gradually led to a large number of small and economically weak local communities. Such a situation has deteriorated the position of the local self-government, which is why some states have made efforts since the 1980s to reorganise local self-government by changing the territorial division of the state into local communities, thus reducing the number of municipalities (Brezovnik, 2008: 148).

Relations between the size of local communities, efficiency in the provision of local public services and participation of citizens in local public life have been at the heart of discussions on local self-government reforms. The idea was to enhance the efficiency of local self-government by forming larger local communities. Most of the mentioned arguments derived from economic theories, which tried to define the optimum size of local communities with respect to the benefits and costs of public services. That, however, is practically impossible, since all elements demonstrating the efficiency of a local community change continuously. The idea of a minimum 'living size' of a local community derives from the fact that very small local communities do not dispose with the financial, human, technical and other resources required for the management and implementation of ever more complex public services. The size of a local community

corresponds to the point at which it is capable of providing the necessary public goods on its own. The core of the matter is that the size of a local community depends primarily on its competences. In Europe, the belief that large municipalities have a negative effect on citizen participation in local public affairs and on the quality of local democracy is widely present. That, in turn, has a major effect on interpretations rejecting the merging of small local communities into larger ones (Brezovnik, 2008: 148).

Growing public expenditure conditioned by rapid technological development and growth of the utility infrastructure standard and the scope and quality of services provided by local public services, including in states with developed local self-government, have reopened questions on the permanent ability of local communities to provide for the common needs and interests of its residents, on the significance of local administrative systems and on the rational implementation of its tasks. States have different policies when changing the borders of local communities (Juvan Gotova, 2003: 74-76).

Therefore, local communities in EU Member States differ greatly in size (number of inhabitants) and economic power. In states where the state's intervention in a functionally inconsistent network of local communities was based on the observation of tradition and sociological components of a local community, the options to integrate and cooperate with the private sector (public-private partnership) and to integrate and cooperate within the public sector (public-public partnership[9]) were exploited to bridge the financial and economic weakness of a large number of municipalities with a small number of residents and to promote a more harmonious development in the servicing function of local authorities, which led to new (organisational) forms of public service provision.

8.1.2 Public-public partnership

Although most developed economies have tried to diminish the role of the state in financing investments in public infrastructure and in the implementation of public service activities since the 1980s, primarily with deregulation and privatisation processes, it is possible to notice the development of different forms of public-public partnership in parallel with the development of various forms of public-private partnership. Literature notes no uniform and general definition of public-public partnership, yet the concept combines different forms of cooperation and integration between public sector entities in financing investments in public infrastructure and/or implementation of public service activities. Despite no uniform definition, public-public partnerships may be classified according to: • different types of partners entered in

[9] *Kitchen*, for example, indicates that local communities keep facing new challenges in the implementation of public service activities and in financing investments in public infrastructure. That is why they need to develop innovative alternative approaches to the implementation of public service activities, whereby entering into different partnerships in order to reduce costs and provide public goods more effectively (Kitchen, 2003).

partnership and • the goals of partnership.

According to the definition of a public-public partnership that is most commonly used in the EU, a public-public partnership refers to cooperation between two or more authorities or legal entities governed by public law within a state (Lobin & Hall, 2006: 7). It may be established horizontally at the same level of authority (e.g. between local communities, such as inter-municipal cooperation) or vertically between different levels of authority (e.g. between the state and a local community). A public-public partnership is not limited solely to public-law authoritative (territorial) entities (the state, regions, provinces, municipalities), but may also be established between public-law authoritative entities and other entities governed by public law (specialised entities governed by public law, such as public undertakings, public funds, public institutes, etc.) or only between other entities governed by public law (Brezovnik, 2008: 150).

Along with the mentioned forms of cooperation, it is also possible to set up development partnerships, which are transnational. The latter may include, for instance, forms of cooperation that are entered into by public-law entities from different states or by public-law entities of the state and an international community, such as the EU (Hall, 2005: 4).

Partnerships between two or more public-law authoritative entities within the state are very frequent and common. Two or more public-law authoritative entities may cooperate with one another either in the financing of investments in public infrastructure or in the implementation of public service activities or other tasks. Such forms of public-public partnerships may be noticed in almost all EU Member States. The reasons for such cooperation lie in the rationalisation of the organisation, management and provision of public goods or in common investments in infrastructure that contribute to quality implementation of public service activities (e.g. joint construction of a waste water treatment plant).

Notably, several EU policies (within the scope of the EU structural policy) attempt to strengthen the mentioned forms of horizontal and vertical cooperation, primarily between local and regional authorities; however, the administrative regulation of public service provision may restrict the capacities of regional and local authority bodies in the implementation of public service activities, which raises the question of consistency in EU activities (Vanddame, 2004: 139-140).

By comparison, Member States reveal several forms of cooperation between regional and local authority bodies in the organisation or implementation of public service activities. The main differences are based on participating partners (horizontal cooperation, where partners operate at the same level; vertical cooperation, where they operate at different levels, and common cooperation with combined horizontal and vertical cooperation and/or inclusion of private partners), while taking into account procedures to realise cooperation, which have been enforced differently from one state

to another and have become a part of the institutional structure (Brezovnik, 2008: 150-151).

8.1.2.1 Horizontal cooperation in public service provision

Horizontal cooperation in public service provision includes forms of cooperation (partnerships) that have been developed by the bodies of regional or local authorities operating at the same level with the same powers (and ordinarily with comparable resources) and include partners at the same level.[10] As indicated by Vandamme, such partnerships reflect in: • the harmonisation of the policies of different authority bodies without establishing a legal entity[11] or • the establishment of a (autonomous) specialised legal entity (governed by public law) [12] (Vandamme, 2004: 145-149).
Within the scope of horizontal cooperation in public service provision, note should be taken mostly of the different forms of inter-municipal cooperation. Such forms of

[10] As found by *Levrat*, the development of horizontal forms of cooperation is an alternative to the introduction of new administration levels (Levrat, 1994: 86-96). For that reason, different levels, with forms of cooperation that are part of the institutional system, differ in relation to the continuity of the supply of public goods. The most extreme cases lead to the emergence of a new level of administration (e.g. several Scandinavian states formed a level of 'districts', which assumed competences for the implementation of public service activities in health care and, to a minor extent, in social security; these had previously been the responsibility of local community administration).

[11] Such partnerships, which are the least complicated, are ordinarily inefficient for the harmonious implementation of public service activities when several authority bodies (partners) appear on the part of providers. In such cases, it is more appropriate to establish a specialised legal entity (governed by public law) that will be jointly financed and managed by the authority bodies included in a partnership.

Practice often reveals partnerships between bodies that jointly delegate the provision of a service that is the subject of public service activities to a private provider (ordinarily a franchise or public contract execution). In such cases, there is often inefficient coordination in the selection of a provider and violations of procedural rules and regulations pertaining to public procurement, particularly Community law, in respect of transparency and impartiality in public procurement procedures.

In addition, practice often also reveals contractual partnerships between authority bodies, where one or more authority bodies delegate the implementation of public service activities to some other authority body. A question of public service delegation is raised here, i.e. in circumstances where a local or regional authority body develops and expands public service activities and carries them out in a local area (or for one or more partner authority bodies). Two or more authority bodies may thus contractually commit to delegate the implementation of public service activities to a third authority body. On one side, the contract must lay down the scope of obligations of the new public service provider and, on the other it must lay down reimbursement (mostly financial) that is paid by the body transferring the mentioned tasks to some entity. Such partnerships are in principle effective only in the implementation of public service activities that are vital for participating authority bodies. Examples of such cooperation can be noticed in children's transport, waste water treatment, intervention services or health care. They are mostly found in Germany, Finland, Ireland and the United Kingdom.

[12] Importantly, it is necessary to distinguish between voluntary cooperation in the establishment of a specialised entity (governed by public law) and the one required by the law. The practice of EU Member States reveals special forms of compulsory cooperation: • in Spain (interest groupings of municipalities), • in France (some urban communities), • in Greece (development partnerships established with a ministerial decision), • in the Netherlands (since 1994, the law has laid down compulsory cooperation of local and regional authority bodies in common projects; the government may issue mandatory instructions for cooperation to municipalities); in the United Kingdom (the law lays down such cooperation in any area). Voluntary cooperation is ordinarily the choice of authority bodies that attempt, in particular, to rationalise the implementation of public service activities or share the burden of investments in public infrastructure.

horizontal cooperation, which carry out common tasks at the level of the basic units of local self-government, have been known in local self-government systems for over a century. Inter-municipal cooperation is, for instance, considered by all acts that are used by individual states to regulate local self-government at the basic level. Several states, including France, have regulated inter-municipal cooperation with special acts. The constitutional status of a local self-governing institution is held by municipal associations in Germany and Austria (Brezovnik, 2008: 152).

The acts as a rule do not encroach upon the functionally competent personality of local self-government at the basic level. The promotion of inter-municipal cooperation in the normative area has taken two directions. The first one (used in Austria at federal level and in Italy) is the legal standardisation of compulsory formation of associations for certain tasks. The other direction (Belgium, Germany – Bavaria, Sweden, Netherlands and Finland) took the course of accelerating voluntary integration of municipalities for certain tasks. A special case is the French inter-municipal cooperation that was built on single-purpose associations (the first act of 1890), which outgrew all similar movements by type and number of institutional inter-municipal cooperation with multi-purpose associations, districts and municipality associations (Fr. communautes de communes). Hence, France adopted a special act on inter-municipal cooperation in 1998 establishing three forms of institutions within the scope of such cooperation (municipality associations, settlement associations and urban associations), laying down requirements as to the number of residents, cohesion of territory and tasks to be selected by an association in order to gain access to resources earmarked by the state for the promotion of local self-government activities. The French way of promoting inter-municipal cooperation is a unique and successful way to change the territorial organisation of the administration.

In all mentioned states, inter-municipal cooperation has been institutionalised and represents an autonomous legal entity (governed by public law) that deals with municipal affairs on behalf of its founders, which no longer carry out the tasks themselves. In terms of organisation, all forms have a representative body (typically composed on a parity and indirect basis) and an administrative system – organisation.[13] Importantly, institutions of inter-municipal cooperation as defined in the laws of EU Member States do not involve the formation of administrative systems of new 'larger' local communities, but the same kind of local self-government (Gotovac Juvan, 2003: 74-76).

[13] As a special form of inter-municipal cooperation, we see in most EU Member States the so-called municipality associations, which are aimed at joint implementation of public service activities (supply of energy and water, transport, waste collection and processing, management of health care institutions, e.g. hospitals, medical centres, etc., environment protection, management of sports and recreation facilities, etc.).

8.1.2.2 Vertical cooperation in public service provision

Vertical cooperation involves forms of cooperation operating at different levels (EU, the state and local communities). Vertical cooperation thus includes partners operating at different levels. Joint cooperation may include several partners operating at the same level and at least one partner operating at a different level. As found by Vandamme, such cooperation is in practice reflected as: • the establishment of a common entity (a legal entity), • cooperation based on the transfer of assets, and • contractual cooperation (Vandamme, 2004: 139-140).

In addition to various forms of vertical cooperation between authority bodies that are aimed at establishing a common (specialised) legal entity, practice also reveals cases where private partners are included in the establishment of specialised legal entities (e.g. intercommunales in Belgium, société d'économie mixte in France, in Denmark, consorcio in Spain or in Sweden). By including private partners, the implementation of public service activities is provided on the basis of commercial principles, while pursuing public interest, the provision of which falls within the competence of public partners. All mentioned forms of organisation (specialised legal entities) share a common feature, i.e. they are economic operators and hence legal entities governed by private law in which the authority bodies hold their equity shares. The size of the latter mostly depends on the public interest (Vandamme, 2004: 150-154).

In addition, practice often also reveals cooperation that is based on the transfer of assets and is by structure mostly vertical. In practice, such cooperation is usually related to the financing of investments in public infrastructure.

In a vertical structure, special note should be taken of contractual cooperation in the implementation of public service activities that includes different levels of authority bodies. Depending on internal legislation, such contracts (target contracts, supply contracts and partnership contracts) may be based either on public or private law. The basis of such contracts is no doubt the fulfilment of specific tasks in the public interest by one or more partners pursuant to the conditions laid down in a contract and in return for co-funding by other partners. The restriction of funding options for certain services would, therefore, reduce interest in the application of such methods of cooperation (Vandamme, 2004: 150-154).

8.1.3 Autonomous (specialised) entities governed by public law

Authority bodies (in broad terms) may delegate special and/or exclusive rights for the implementation of public service activities either to an entity governed by public law or to an entity governed by private law with a general, individual or some other *de iure imperii* legal document: • by establishing an autonomous (specialised) entity governed by public law (e.g. a public undertaking, a public institute) or a legal entity governed by private law or • by awarding a public service concession (Brezovnik, 2008: 168).

Administrative theory includes a wide range of organisational forms with the status of a legal entity governed by public law in the set of autonomous (specialised) entities governed by public law, which are established to perform activities in the public interest. Although the practice of EU Member States reveals various organisational forms of autonomous (specialised) entities governed by public law (e.g. public corporations in Great Britain, Anstalten, Körperschaften, Öeffentliche Unternehmung in Germany, ente parastato in Italy, folkrörestlser in Sweden, éstablissment publics in France, a public undertaking and a public institute in Slovenia, etc.), the administrative theory contains no uniform and general definition of such parastatal organisations. Their essential characteristics are their public-law personalities (they have the status of a public-law entity) and autonomy. The latter must be predominantly organisational, meaning that they cannot be part of the administrative structure of the state or local communities. In addition, they are typically established with a (special) public-law document and their ownerships is as a rule not transferable, while they often hold a special fiscal status (Hood & Schuppert, 1998: 6-7).

Notably, various organisational forms of autonomous (specialised) entities governed by public law include profit and non-profit organisations with respect to the purpose of activities in the public interest. Two basic forms stand out that are known in almost all EU Member States, i.e. a public undertaking as a form of a profit organisation and a public institute as a form of a non-profit organisation for the implementation of public service activities by a specialised entity governed by public law (Brezovnik, 2008).

8.1.3.1 Public undertaking

Since the 1930s and 1940s, public undertakings have held an important, if not decisive, role in individual sectors of European economies (e.g. supply of gas, electricity, utility services, etc.). Some of such undertakings, which used to be owned by the state within the scope of public law, frequently competed with private undertakings in the production of the same or similar products and services on the market, while being subject to special rules and benefits. Numerous public undertakings were awarded special tasks by public authorities, i.e. to provide goods in the public interest, which were mostly not profitable. For that reason, they enjoyed special and often exclusive rights, which led to their monopoly position on the market (Camenen, 1996: 7-9).

In the 1980s, France, Italy, Greece, Germany and Portugal in particular showed a trend to privatise public undertakings and the implementation of public service activities, which has spread throughout the EU. Notably, in parallel with the privatisation process, there is also a trend to liberalise and deregulate the implementation of public service activities for the purposes of reducing the scope of privileged methods of implementing public service activities and introducing competition in such activities (Ferk, 2007: 2-8).

EU law, unlike the status definition of a public undertaking in the legislation of some Member States, reveals the definition of a public undertaking as any undertaking that is

subject to direct or indirect dominant influence of public authorities (the state and regional or local authorities) due to their ownership or financial participation in such undertakings or rules regulating their operations. A dominant influence on the part of public authorities is presumed in any of the cases in which those authorities, directly or indirectly: • hold the majority of the undertaking's subscribed capital; • control the majority of votes attaching to shares issued by the undertaking; • can appoint more than half of the undertaking's administrative, management or supervisory body (Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts) (Brezovnik, 2008).

8.1.3.2 Public institute

Historically, institutes appeared for the first time in the Austrian and German legal literature in the 18th century with a vague meaning in terms of status and law, which was not finalised in the 19th century, since the concept of a public undertaking (Ger. Öffentlichen Unternehmung) was used with the same meaning as a public institute (Ger. Öffentlichen Anstalt). It was at the end of the 19th century that the German theoretician *Mayer* laid the foundations for the institute law. According to his definition, an institute is set within the framework of public law, which is mostly the subject of consideration by administrative law science. *Mayer* defined a public institute as a 'community of people and things that are in technical use by a public administration entity for the provision of a specific special purpose'. *Mayer* could not outline the public institute concept in more detail at the time, but he did manage to systematically classify it with the definition to make is useful for the theory of a liberal legal state of the 19th century. An institute hence became a solid public-law institution. By comparison, the institute law developed like public law and yet always permitted the form of a private-law institute (more in Trstenjak, 1995: 190). Hence, a private institute is permissible in legal systems even if it is not subject to specific legal regulation (Tičar, 2005: 520).

Today, the regulation of institutes in European states varies. Their formation is largely based on traditional regulations of the pursuit of non-economic (social) activities and hence no unique answer can be provided to the question of the European regulation of the providers of non-economic (social) activities. Furthermore, there is no European legislation that would uniformly regulate the legal form of the organisation of public institutes, which is why such regulation is left to the discretion of EU Member States. A legal form comparable to institutes appears in Europe both in public and private institutional organisation. In comparative regulations, an institute is as a rule a legal form of organisation that is used mostly by local communities to implement the activity of non-economic public services. By comparison, institutes may be entities with or without their own legal personality. These days, non-economic (social) public service activities are mostly implemented in the form of public institutes (Ger. Öffentlichen-rechtliche Anstalten) in continental Europe, under the influence of the Germanic legal system. In theory, they are defined as legal entities that consist of persons (employees)

and things or, rather, material and personal substance and are intended for continuous realisation of administrative tasks (Trstenjak, 2003: 118).

Institutes may be established as autonomous or non-autonomous institutes (Ger. Unselbstaendige Anstalten), whereby autonomous institutes are legal entities governed by public law, while non-autonomous institutes have no own legal personality. Interim forms of institutes which possess legal capacity, but only to a certain extent, are also recognised. Regardless of properly formed theoretical bases, Germany and Austria have failed to regulate public institutes with an organic statute. Instead of a uniform act, issues pertaining to the status of public institutes in the mentioned states are regulated with sector-specific instruments regulating a particular area (e.g. education) or certain public institutes are established on the basis of a special act when the public interest calls for special regulation. Considering the absence of a uniform system regulation, it is possible to find that the role of an organic statute was assumed by the legal theory, which has preserved the mentioned regulations within uniform frameworks (National Assembly of the Republic of Slovenia, 2004).

In the Anglo-Saxon part of Europe, public institutions carry out non-economic (social) activities of public services. The English theory is not based on the system of a legal entity, so that public institutes as autonomous legal entities or as non-autonomous organisational forms are established by a causal relation with respect to the specific needs of the state and/or a local community. There is no umbrella act that would regulate them. In the private sphere, the pursuit of non-economic activities is regulated functionally with the Charity Act of 1992. Based on the latter, a special commission assesses whether an activity is charitable or not (Bohinc, Mužina & Tičar, 2007: 133).

8.2 Public service provision within the scope of the private sector

As indicated, the role of the state in the implementation of public service activities has gradually changed since the 1980s due to a public sector crisis, whereby the role of the funder of public infrastructure and at the same time a public service provider has been more and more often delegated to the private sector, while the state started strengthening its role in regulatory and supervisory spheres. By including the private sector in the so-called project financing of investments in the construction of infrastructural facilities and, consequently, the implementation of public service activities, new innovative forms of cooperation between the public and private sectors were gradually introduced (public-private partnership) in addition to the well-established concession and public contract relationships. Meanwhile, states gradually introduced new methods of financing public service activities along with classic (budget) funding, thus enabling the repayment of investments in public infrastructure and repayment to (private) providers for the products supplied or services rendered (public goods) (Brezovnik, 2008: 193).

8.2.1 Public service concession

Although the legal theory contains no general and accurate definition of a concession (the word derives from the Latin concessio, concessimus or concedere and means to award or allow) (Šafar et al, 1975: 360), a concession could be defined as a power that is given (awarded) in the prescribed manner and in the prescribed form by the state or a local community or a body empowered by them as a rule to a civil law entity. The entity awarding a power is denoted as a concession-granting authority and the entity that has been awarded a power is denoted as a concessionaire.

The subject of a power is typically the pursuit of (economic or non-economic) public service activities or the management, use or exploitation of natural goods (natural resources, the common good or other items in public ownerships). Therefore, it involves a power to perform an activity that falls within the exclusive competence of the state or local communities (Borković, 1981: 23). Such a power cannot be simply equated with a public power in the narrow sense, which may be delegated to civil-law entities for the pursuit of classic functions of the state administration. It is true, however, that they may intertwine, particularly when the concessionaire decides on the rights and obligations of legal entities and natural persons based on public powers within the scope of implementing activities that are the subject of concession (Čebulj, 1996: 237).

It follows that concessions may be broken down into two groups, i.e.: • concessions for the provision of a (economic or non-economic) public service and • concessions for the use, exploitation or some other special right to a natural resource, the common good or items in public ownership (Pirnat, 1999: 8). While the subject of a public service concession, the legal regulation of which will be examined below, is the award/acquisition of a special or exclusive right to implement (economic or non-economic) public service activities, the subject of a concession for the management, use or exploitation of natural resources is the award/acquisition of a special or exclusive right to the management, use or exploitation of a natural good.

A public service concession, which is typically established by the legislator or representative body of a local community (exceptionally also the executive or administrative body of the state or a local community or some other entity governed by public law if so empowered by the legislator), is used to permit the delegation of a special or exclusive right to the implementation of public service activities from the sphere of the state *in largo sensu* to the sphere of private-law entities. In relation to the mentioned, it is necessary to distinguish between the creation of concession and award of concession. The creation of concession merely implies a decision by the legislator or representative body of a local community whether a certain public service activity will be implemented as a concession activity rather than performed by the state or a local community on its own or whether a special or exclusive right to the implementation of a public service activity will be awarded to an autonomous (specialised) entity governed by public (or private) law upon the establishment. Concession is created with a

concession document which may be an act, a local community regulation, an executive authority regulation or even an administrative decision depending on who creates the concession.

The award of a concession is essentially the closing part of a prescribed procedure to select a concessionaire, which is typically carried out on the basis of an open invitation to tender that is based on a concession document. The result of such a procedure is a legal document on the selection of a concessionaire, which is ordinarily issued by the administration, meaning that it has the character of an administrative decision. An act on the award of a concession typically creates a concession relationship which, however, is not fully specified in detail, which is why such a legal document is ordinarily followed by a third one, i.e. a concession contract (Čebulj, 1996: 238-239).

The dilemma dealt with by the legal theory and practice lies in the question whether a concession relationship is solely a private-law or solely a public-law relationship. The theory frequently indicates that a concession relationship involves a mixed relationship intertwining the elements of public and private law (regulatory and contractual part of concession). It follows that it may be denoted as a special legal relationship with the concession-granting authority as the public authority on one part, hence *ex iure imperii*, which as a result holds special powers it would otherwise not hold had it appeared in the relationship as *de iure gestionis* (Ahlin, 2007: 21), and as the concessionaire on the other part (a natural person or legal entity governed by public or private law), which obtains a special or exclusive right to the implementation of public service activities (Brezovnik, 2008).

8.2.2 Public-private partnership

The basis of a public-private partnership in private investments in public infrastructure and implementation of public service activities is project financing, which represents an off-balance-sheet form of the provision of medium-term and long-term capital for financing capital-intensive infrastructural projects requiring the establishment of such a capital structure where project assets and cash flow will suffice for the payment of all liabilities (Mrak, Gazvoda & Mrak, 2005). Since cash flow is the most important guarantee for the payment of all liabilities due to the restriction of ownership rights over an infrastructural facility (that results from a concession relationship), lenders give priority to infrastructural projects that enable a forecast of future cash flows with greater certainty when identifying the creditworthiness of a concessionaire, whereby they have no interest in the credit rating of project sponsors (except when they guarantee with all their assets for the concessionaire's liabilities). As stated by *Schmidt*, project and business financing are quite different. In project financing, funds for servicing liabilities are typically provided from project assets and cash flow, while in business or balance-sheet financing they are provided from the assets and cash flow of a company rather than a particular investment project. That, however, is not the case when a special undertaking is established for the purposes of executing an investment project. In such a

case, the value of recognised assets and liabilities would be the same for a company and a contractually excluded infrastructural project. When identifying the economic acceptability of the execution of an infrastructural project, potential investors opt for it mostly on the basis of a calculation whether the project would demonstrate a positive net cash flow in the long term. If that is not provided, the return on the execution or project implementation should be provided by the state or a local community, otherwise the project would not be executed (Schmidt, 1993: 524-529).

Since project financing typically involves off-balance-sheet recognition of assets and liabilities and conditional elimination of an investment project from the guarantee scheme of potential investors, such a form of financing may only be used when it is possible to structure individual infrastructural projects in separate units and delegate them to the management of a private concessionaire by awarding the latter a concession. As indicated by *Buckley*, there are three basic forms of project financing, i.e.: • project financing with no approach, • project financing with a limited approach or limited payment liability and • project financing with a full approach or full payment liability, which is in content no different than business financing, as it involves a form of recourse in which project sponsors guarantee for the payment of liabilities with all their assets (Buckley, 1996). Hence, such a form cannot involve an off-balance sheet effect on the recognition of assets and liabilities.

Project financing with no approach is a form of recourse in which lenders and other investors have no direct or indirect access to the assets of project sponsors *ex voto*, since the latter do not guarantee the payment of liabilities with all their assets, but only up to the amount of subscribed share capital or a contractually specified amount. That is why a riskier future cash flow calls for a higher amount of guarantee or a larger volume of equity, which represents the basic guarantee for the payment of liabilities and the basis for achieving positive financial leverage. The financial structure of an investment project must be known to potential investors in advance, otherwise the latter will be unable to make a decision as to whether the project is economically acceptable to them or whether the rate of return on the capital invested is proportionate to the risk assumed, while they would also be exposed to an excessive risk of bankruptcy in uncertain conditions. An entirely different matter is found in project financing with a limited approach or limited payment liability, where risks are divided among individual contracting parties in a manner where there is limited guarantee of project sponsors for the payment of liabilities, ordinarily in the form of bonds or by transferring a certain amount of sponsor funds to an escrow account. Project sponsors or third parties, under their instructions, use a bond to commit to pay a certain amount to a further party if some other contracting party fails to settle its liabilities by the due date. When the escrow account instrument is used as a form of guarantee, project sponsors must transfer a sufficient amount of funds to it for any payment of outstanding liabilities arising from the investment project (Romih, Oplotnik & Brezovnik, 2006: 31-32).

In practice, there are two more forms of project financing, i.e.: • project financing with the spin-off (segregation) of an investment project to an ad hoc project company, i.e. a Single Purpose Stock Company (SPSC) or a Special Purpose Vehicle SPV, and • project financing with contractual exclusion of an investment project, which still remains, in terms of organisation, a part of the sponsor as a legal entity, while restrictions regarding the investors' access to sponsor funds are laid down in contracts (mostly loan agreements) along with other legal relations. Since in project financing an entity governed by private law enters into a concession relationship (governed by the act or some other legal document) with an entity governed by public law, the latter may limit the legal capacity of the concessionaire to conclude new concession contracts in order to protect the public interest, thus avoiding a burden on net cash flow from an individual project with liabilities from other concession relationships. Nevertheless, both forms of project financing show advantages and disadvantages. A restriction on the activities of a project company may reduce the risk of contractual opportunism, but cannot eliminate it in full. Such a restriction may give lenders and other investors increased influence over the adoption of business decisions of a project company, as they are able to request a change in management upon poor project management or upon the management board's objection to its early completion. By doing so, they risk that the new management board would take over an unfinished project with low residual value (Romih, Oplotnik & Brezovnik, 2006: 31-32).

As indicated by *Mrak et al.*, the advantage of project financing (and its forms) primarily lies in easier access to funds and reduced project risks to a level acceptable to investors (Mrak, Gazvoda & Mrak, 2005: 14-15). By using project financing, it is possible to carry out infrastructural projects that would otherwise expose private investors to excessive risk and for that reason might not be realised. Since a successful execution of capital-intensive investment projects is the most important guarantee for the payment of all liabilities, potential private investors decide to execute projects in which the state or a self-governing local community will guarantee a minimum volume of annual revenue, while projects involving a high risk of demand will be less attractive to them. A smaller interest will also be shown by lenders, which will request additional guarantees for the payment of liabilities from the concession-granting authority or project sponsors. When that is not possible, a project company may secure their coverage on the financial market, but must have access to the developed financial market in such a case. As indicated by Peterson, one of the advantages of project financing is that the financial rate of return (FRR) and risks are the most important factors in the calculation of the creditworthiness of a special investment company (Peterson, 1998).

The most commonly used form of project financing in capital-intensive projects to construct infrastructural facilities is the so-called BOT or Build-Operate-Transfer.[14] It is

[14] The BOT form of project financing is among the most established ones; however, note should be taken that theory and practice show no numerus clauses of project financing forms for infrastructural projects. It is the practice that has produced new forms in respect of the current needs. Well-established forms include BTO (Build-Transfer-Operate), BOOT (Build-Own-Operate-Transfer), BOO (Build-Own-Operate), MOT

typical for the latter that a public partner (concession-granting authority) awards a concession to a private project company or consortium (concessionaire) to build and manage infrastructural facilities or other capacities for the implementation of public service activities, while the concessionaire commits with the concession contract to supply the missing funds and transfer all ownership rights from the project back to the concession-granting authority after the end of the concession period with no additional transaction costs.[15] As stated by *Katz and Smith*, the concession-granting authority that way transfers a part of responsibility for financing, building and managing infrastructure from the public to the private sector, while private investors get the opportunity to maximise the rate of return on the capital invested by enhancing business performance, which has unlimited up-side potential and is therefore the most important motive for the participation of private investors in the development of infrastructural facilities (Katz & Smith, 2003: 36-48). As indicated by *Pirnat* and *Pličanič*, the BOT concept is a reflection of the privatisation of public service provision, one of the most important tendencies in the development of the modern state. Unlike the classic concept of concession, the BOT model is designed as a partnership between the state and entities governed by private law. Such a concept of a relationship between the state and entities governed by private law derives from findings about increased efficiency of public services (both from the perspective of users of public goods or services and from the state's perspective) organised on the basis of the BOT concept compared to classic concession relationships (Pirnat & Pličanič in Mužina, 2004: 365).

Since the goal of project financing participants is to maximise the function of their own satisfaction, participants need to establish a contractual balance that will represent the *pareto optimum* of contractual relations. To achieve that, it is necessary to legally regulate by way of a development agreement relations regarding: • the duties and rights of project financing participants, • the provision of funds for the construction and management of infrastructural facilities, • the allocation of financial, technical and technological, operational and other risks, • the use of guarantees for reducing the exposure of project financing participants to the risk of default by the opposing party, • the measurement of the concessionaire's business performance and the quality of utility infrastructure management during the operational stage, • the method of reimbursing or sanctioning setbacks in project execution, • assistance for the concessionaire when subcontractors refuse or are unable to fulfil their obligations, • a possibility to supplement or amend contractual provisions, • the circumstances and method to expand

(Modernise-Operate-Transfer), BOR (Build-Operate-Remove), ROT (Refurbish-Operate-Transfer) and so on. (Ferčič, 2003: 1884-1898)

[15] The economic BOT model often also covers relations between the concessionaire and third parties in addition to the concession relationship. The acronym BOT is denoted as a form of a business relationship in which the government or a local authority (concession-granting authority) awards a concession to a group of investors (project consortium) for the development, management and commercial marketing of a certain project, while the consortium or a legal entity established by the latter specifically for such a project (concessionaire) undertakes to develop the project and manage the concession pursuant to the contract (Ilešič, 1998: 181).

or withdraw the concession right and • the method to resolve any disputes between parties participating in a concession relationship (McCharty & Tiong, 1991: 222-227).

As indicated by *Lu et al.*, the BOT model of project financing implies temporary privatisation of infrastructural facilities (Lu et al, 2000: 53-63), which is why the state or a local community must conduct four analyses before acceding to project financing, i.e.: • an analysis of the condition of infrastructural facilities and the level of public service and goods provision to the population, • an analysis of existing regulatory mechanisms, • an analysis of the attitude of interest groups to the private sector entering into the implementation of public service activities and • an analysis of financial and other possibilities to introduce a public-private partnership. Failing this, any disagreement with the temporary privatisation of infrastructural facilities by interest groups might threaten the financial closure or execution of an investment project (Coven, 1999).

The BOT model of project financing was developed on the basis of a limited approach to funding and the modern form of concessions. The former is a form of project financing in which lenders have no direct right of recourse to the assets of sponsors or the concessionaire, which is why they decide to co-finance an investment project only when a project is capable of generating sufficient cash flows to service the debt, when there is a guarantee scheme, and when the volume of equity is proportionate to the exposure of a project company to business risks (capital adequacy requirement). The latter involves the development of a concession form that differs from classic ones in that it enables an increased role of the public sector in decision-making pertaining to the investment in the event of properly structured project financing (Mrak, Gazvoda & Mrak, 2005: 18-19).

Since project financing typically involves the servicing of liabilities from the cash flow and assets of an investment project, it is used primarily in those activities where the prices of products or services are regulated by either the state or a local community and it is, therefore, possible to predict future cash flows with relative certainty. When that is not possible, the state or a local community will have to guarantee the stability of sales revenues. That, in turn, is objected by many, since they believe that the industry of annuity seekers is being developed with the help of various forms of guarantees, transfers and grants, thus financing the x-inefficiency of the concessionaire. That is why the inclusion of the private sector in public supply activities is still no guarantee for enhanced efficiency in the supply of public goods to the population (Stigliz, 1998).

As indicated by *Menheere* and *Pollalis*, project financing represents the fastest way for the state or a local community and the most expensive way of access to infrastructural facilities for end users (Menheere & Pollalis, 1996). The result of the concessionaire's wish, unlike that of the public sector, is to maximise the return on equity rather than the function of social satisfaction, although profit generation in the provision of public goods is subject to the satisfaction of public needs. Hence, a question is raised as to

whether the concessionaire would pursue a policy of socially responsible conduct and consider the maximisation of the economic rate of return as a goal or whether the state or a local community as the regulatory body would have to intervene in pricing. That dilemma is rejected by *Kay et al.*, as they believe that a public-private partnership enables the harmonisation of expectations by the public and private sectors, which is why the task of the state or a local community must be to ensure efficient use of private funds in order to maximise social welfare (Kay, Mayer & Thomson, 1987).

Another advantage of the BOT model of project financing is also the transfer of responsibility for financing, building and managing infrastructural facilities from the public to the private sector, which may prevent the negative influence of the classic form of financing capital-intensive investment projects on the balance of the national budget or the budgets of local communities. The latter, however, is more of an exception that the rule, since the state or a local community very frequently appears in the role of a project sponsor or a guarantor. Since access to the assets of the state or a local community is also conditional in such a case, the most important guarantee for the payment of all liabilities is the right of the concessionaire to revenues deriving from the marketing of infrastructural facilities, which are expected by investors to suffice for debt servicing and payment of the required return on the equity invested. As indicated by *Katz* and *Smith*, the state or a local community may thus realise investment projects that would otherwise not be executed due to fiscal and other constraints. If their execution should be provided by the state or a local community, it would threaten the long-term sustainability of public funds and the execution of other investment projects (Katz & Smith, 2003: 36-48).

Since it is also possible to carry out infrastructural projects with project financing when the state or a local community does not dispose with the necessary funds, a project firm may also carry out individual investment projects when conditions for borrowing are the most favourable on the capital market. Project financing typically involves a high share of debt equity in the capital structure of a project firm, which is why the interest rate is a major factor to determine the optimum capital structure. As indicated by *Brigham* and *Gapenski*, the use of financial leverage is based on a principle under which foreign capital may be used only when at least interest costs are covered by net cash flows. That is why it is possible to engage a larger volume of debt equity upon a low interest rate and an unchanged rate of return on total equity, thus shortening the activation period of investments or the average time necessary to activate an average unit of investment generated (Brigham & Gapenski, 1996).

As stated by *Menheere* and *Pollalis*, the advantages of the BOT model of project financing also includes the allocation of financial, technical and technological, operational and other risks (Menheere & Pollalis, 1996). It is a fact that the identification and allocation of risks are vital for the successful execution of an investment project. That is why project financing participants may achieve the *pareto optimum* of contractual relationships only when risks are distributed among individual

participants, so that each participant assumes only the risks it is capable of managing the most. Risk management is vital in project financing, since future cash flows, in addition to project assets, represent the most important guarantee for the payment of all liabilities. Hence, there is a risk that the concessionaire might increase return on the equity invested in the event of inefficient risk management at the expense of quality and hand over infrastructure to the public sector at a low residual value at the end of the concession period (Romih, Oplotnik & Brezovnik, 2006).

Since one of the goals of project sponsors is to maximise the return rate on equity, potential private investors in project financing may opt only for the execution of infrastructural projects that are commercially the most attractive, while the state or a local community will have to execute projects with an expected low rate of return. That is primarily the result of rational conduct by economic operators and a market-led tendency of potential investors to achieve a high rate of return. However, that is not bad in terms of efficient use of public funds, since there would be an opportunistic loss of welfare in the value of non-supplied public goods in the event of classic financing of commercially attractive infrastructural projects. Hence, one of the advantages of the BOT model of project financing is also the allocation of responsibility for the provision of public goods (Romih, Oplotnik & Brezovnik, 2006).

As indicated by *Vinter* and *Price*, the central legal action in project financing is the award of a concession for the construction and management of infrastructural facilities to an entity governed by private law (concessionaire), which is most often selected in a public invitation to tender. There is, however, a risk that the latter would prove to be inadequate in subsequent negotiations conducted in the absence of competition and that the state or a local community would have to repeat the procedure to award a concession. That would increase the cost and delay the construction of infrastructural facilities, which is vital to properly legally regulate the area (Vinter, 2005). We can point out one other weakness of concession models, i.e. the problem of poor arrangements, which is revealed when the concessionaire is unable or unwilling to fulfil all contractual obligations (Vukmir & Skendrović, 1986: 8-9). Hence, the disadvantages of the BOT model of project financing also include high agency costs, which represent the sum total of the cost of supervision, the cost of committing own assets and the principal's residual loss (Oplotnik, 2006).

8.2.2.1 Evolution of public-private partnership

As indicated, the inclusion of the private sector in the financing of the construction of infrastructural facilities and implementation of public service infrastructural activities gradually gave rise to a public-private partnership, which covers various forms of cooperation between the state or local communities or other legal entities governed by public law (public sector) and natural persons or legal entities governed by private law (private sector). Although initial forms of cooperation between the public and private sectors can be noticed early in infrastructure construction and management and in

infrastructure service provision,[16] the modern public-private partnership institute can be detected with the emergence of neo-institutionalism, the representatives of which advocated for the establishment of such an economic and socio-political environment that would enable the inclusion of private undertakings in the implementation of economic and non-economic public service activities (North, 1990; Williamson, 1994). As indicated by *Lorraine*, it is a period that was characterised by transfer from the concerted to managerial economy and by company ownership transformation and deregulation processes that enabled the establishment of an institutional framework for the entry of the private sector in the implementation of public service activities, provision of public infrastructure and the state's shift to the role of the regulator (Lorraine, 2000).

Since the 1980s, it has been possible to detect a widely growing interest of authority bodies at all levels in cooperation with the public sector in infrastructure establishment and implementation of public service activities. Interest in such cooperation is partially the result of benefits that authority bodies may obtain know-how and particularly increased efficiency from the private sector, which is partially the result of fiscal constraints. Notably, a public-private partnership, as claimed by the European Commission, is not a silver bullet decision; namely, it must be assessed for each project whether a partnership can indeed generate added value for individual relevant services compared to other possibilities, such as the conclusion of a classic contract (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Public-Private Partnerships and Community Law on Public Procurement and Concessions (COM(2005) 569 final., 15.11.2005).

Importantly, theory and practice reveal no general and common definition of the public-private partnership concept (European Commission, 2003: 17), but there is no doubt that partnership between the public and private sectors includes various types of arrangements between the public sector at the level of the state or local community and the private sector, which are aimed at providing public infrastructure and/or therewith related services. In such partnerships, investment amounts, risks, responsibilities and payments are typically allocated among the partners from the public and private sectors in various combinations depending on the type of partnership (Brezovnik, 2008).

[16] Cooperation of the private sector in the management of the common good (ports, squares) and common infrastructure (bathing sites) can be noticed as early as in the classical antiquity. Moreover, volume 50 of the Digest (on public and private law) proves the existence of concessions and licences for the management of public property. Such forms of cooperation between the public and private sectors disappeared with the downfall of the Roman Empire in the 5th century, but can be noticed again in the Middle Ages in France, i.e. in the 12th and 13th centuries. In the 16th and 17th centuries, European rulers, particularly in France, awarded concessions to investors (entrepreneurs) for the management of the common good. The subject of concession used to be river beds and channels, public services, such as road pavement, waste collection, public lighting, postal services, public transport and management of opera houses. At that time, one may notice the emergence of concessions in other European states as well (e.g. in Britain and Spain). In the 19th century, concessions spread throughout all areas of infrastructure management and public service provision (more in: UNECE, 2000: 5 - 6 Jan, 2004: 151-152).

In practice, cooperation between the public and private sectors can be noticed in the financing and execution of a series of infrastructural projects, such as the construction and management of hospitals, schools, prisons, roads, bridges, tunnels, air control systems, water distribution and sewerage systems, and so on. A public-private partnership may be of interest to both the public as well as the private sector. By including the private sector in infrastructural projects, the public sector may gain sufficient funds to develop infrastructure without having to borrow, while better governance and management by the private sector may ensure more efficient, quality and cheaper implementation of public service activities (Ter-Minassian, 2004: 6).

Expert literature reveals various forms of a public-private partnership that may be, with respect to the level of inclusion of the private sector in the financing of infrastructure construction and, consequently, the implementation of public service activities, classified as classic public procurement and full privatisation. Two basic forms of partnership are shown, i.e. contractual and status. Contractual partnership between the public and private sectors may be broken down into two groups: • different forms of co-management by the private sector, where ownership rights over the infrastructure are kept by the public sector, while the implementation of public service activities is entrusted to a private provider, and • forms of fully private implementation of public service activities, where ownership rights over the infrastructure are temporarily or permanently transferred to the private sector. As stated by *Haarmayer* and *Mody*, the former group includes • service provision contracts, • public infrastructure management contracts, • leasing contracts and • classic concession contract, while the latter group includes • forms of partial and full privatisation • and various forms of project financing, with the most commonly used form for financing the construction of infrastructural facilities being the 'Build-Operate-Transfer' (BOT) model and therefrom deriving forms of project financing (Harrmeyer & Mody, 1999: 61-64). In forms in which the private sector assumes full responsibility for management and funding, as in the case of concession and type B projects, the arrangement is reached within the framework laid down by the public sector. The most important of part of the framework laid down by the state is the legal framework with which the state wishes to • protect the consumer from monopoly prices, • ensure compliance with different standards and • provide access to public goods to all population segments (Brezovnik, 2008).

Chart: Forms of public-private partnership

PUBLIC-PRIVATE PARTNERSHIP

STATUS
project firm

public contracts	**CONTRACTUAL:** **service provision contracts** **infrastructure management contracts** **leasing contracts** **concession contracts** **BOT form of project financing**	**privatisation**

Different forms of private sector inclusion in service provision and/or infrastructure investment funding differ in the allocation of responsibility between the public and private sectors in respect of the following key functions: • ownership over the property, • management and maintenance, • capital investments and • commercial risk. In practice, it often happens that specific arrangements are a combination of two or more 'pure' forms of partnership between both sectors (Mrak, Gazvoda & Mrak, 2005: 40).

The basic characteristics of the mentioned forms of status and contractual public-private partnership, as appearing in practice, are the following (Mrak, Gazvoda & Mrak, 2005: 31-38):

1. **status partnership:**
   - **project company:** A project company is usually established by project sponsors in order to realise a certain project. A project company is the key element in the entire project financing scheme. It is an autonomous legal entity established with the purpose of building infrastructure and ensuring its management and provision of infrastructural services. Company shares/shareholdings are owned by project sponsors that regulate the rights and obligations between them with a special co-ownership or joint venture contract.

     A consortium of private founders of a project company includes project initiators and other participants with a commercial interest in selling the end product or service. A project company is primarily responsible for generating profit or providing an adequate rate of return on the equity invested. A minority shareholding in a project may also be kept by the state in which the project is located and the interests of which are ordinarily different and focused on important goals in terms of national economy.

A project company has its own management, adopts the basic business decisions autonomously and appears directly on the financial market, where it hires loans and issues debt and equity securities. The same may also be done on its behalf by project sponsors, whereby the sponsor's obligation to the borrower arising from borrowing for the purposes of a project is ordinarily restricted in advance.

2. **contractual public-private partnership:**
   - **service provision contracts:** This is the simplest form of private sector participation in the provision of infrastructural services, where the public sector keeps the responsibility for the management of infrastructural activities, except for the provision of a limited and precisely specified scope of pre-set services. The public sector continues to provide the funds required for investments and working capital and bears all business risks, while the responsibility of the private sector is limited to efficient provision of contractually specified services. These types of contracts, which are usually concluded for a period of one to two years and often renewable, are in most cases intended for activities, such as the maintenance of infrastructural facilities, emergency repairs, payment recovery, etc. The main quality of service provision contracts from the public sector perspective is that the latter need not provide its own people for the provision of such services or that the payment of such services depends on their quality.

   - **management contracts:** Such contracts, which are more complex than leasing contracts, are used by the public sector to transfer the responsibility for the management of an infrastructural facility to the private sector. That gives the private sector free hands in decision-making pertaining to facility management without assuming the commercial risks of the facility. In this type of a legal contract, the private sector has no direct contact with the infrastructural service user, since it always operates solely on behalf of the public sector. That means that the latter remains responsible for the services provided by the infrastructural facility and for the provision of the funds required for investments and working capital. The payments received by the private sector under a management contract usually depend on certain physical parameters, such as enhanced production efficiency. Since these types of contracts call for no major investments by the private sector, their duration usually lasts from three to five years, and they are often used as an introductory stage to other, more intensive forms of cooperation between the public and private sectors in the provision of infrastructural services. In such cases, the basic purpose of management contracts is to establish a situation that will enable more intensive inclusion of the private sector in the provision of infrastructural services.

   - **leasing contracts:** Such contracts give the private sector the right to lease certain infrastructural facilities that are owned by the public sector. In such

cases, a private undertaking is responsible for the management, maintenance and operation of an infrastructural facility for a certain period, usually five to ten years or in some cases also more than 15 years. The public sector, which remains the owner of a facility, is to provide the funds required for new investments, investment maintenance and debt servicing, while the private undertaking covers the costs of current operations. The lessor's income depends on the difference between the generated revenue (the contract gives it an exclusive right to revenues generated with service invoicing at a contractually specified price) and total operating costs (these also include the lease fee). To achieve the best income result possible, the lessor strives to enhance business efficiency and performance, meaning that such a form of contract ensures higher efficiency of an infrastructural activity.

- **concession contracts:** By concluding a concession contract, a private undertaking or the concessionaire becomes fully responsible for the provision of certain infrastructural services, including management, maintenance, operation, investment maintenance and investments in new capacities. In such a form of cooperation between the public and private sectors, the fixed assets of a facility remain in the possession of the public sector, while the concessionaire receives an exclusive right to dispose with them during the concession period. Concessions are ordinarily awarded for a period between 20 and 30 years, depending on the volume of additional investments or the time required to recoup an investment. The basic advantage of a concession from the public sector perspective is that it combines the responsibility of the private sector for the management and operation of an infrastructural facility with its responsibility for investments. That should provide top-quality decisions-making on new investments, since the results of such decisions would directly affect the concessionaire's business performance.

- **BOT form of project financing:** This is a form of infrastructure service provision and infrastructure investment funding in which the concessionaire builds and finances an infrastructural facility based on a concession contract concluded with the state or a local community, owns and manages it in the period specified in the contract and, upon its expiry, transfers the facility to the possession of the state or a local community.

9 Privatisation of public services

Before discussing the privatisation of public services, it should be noted that most developed economies tried to reduce the economic role of the state with deregulation and privatisation processes, mostly in the 1980s after the described public sector crisis (Parker, 1999: 9-38). By changing the role of the public sector and departing from classic forms of public service provision to privatisation, states sold off equity stakes or management rights in public undertakings and other public service providers to private

sector entities on one side and, on the other, awarded special and/or exclusive rights by concluding concession relationships, while they themselves pursued the public interest by regulating public service activities. It follows that there are two dimensions of public service privatisation, i.e. privatisation of the implementation of public service activities and the privatisation of public service providers (Brezovnik, 2008).

The concept of privatisation is in practice often equated with ownership transformation, but there is a major difference in content between them. Ownership transformation implies the standardisation of social capital with the known owners, while privatisation implies the transfer of ownership entitlements to the private sphere. Privatisation is, therefore, a narrower term than ownership transformation and may have a double meaning: • when it involves the creation of an ownership right to anonymous social capital by private entities, it is called the privatisation of social property; • when it involves the transfer of an ownership right of a public owner (the state or a local community) to private entities, it is called the privatisation of state property (Tičar, 1995: 272-275).

Conclusion

This book provides a comprehensive overview of the public administration system. The task was not an easy one, since the content had to be presented in sufficient detail and clarity, thus making it a useful tool as student literature, while having sufficient depth and complexity, so as to be a welcome expert tool in the work of politicians, administrative workers and other administrative experts. Its special feature is that it considers the entire public administration system in one place, which firstly called for the definition of its boundaries, fundamental institutions and functions, and its relation to the external environment. Its goal is not to consider all public administration issues in an extensive manner, but at a system level, making it useful as an overarching paper for further study of the public administration system. In that sense, it can be related to present and future scientific and expert works in areas, such as the protection of individuals' rights in relation to the administration covering administrative procedures, judicial control over the operations of the administration, and informal forms of the protection of individuals' rights in relation to the administration; the study of internal relations within the public administration system covering the issues of people in public administration and organisational issues of the administration; and the area of public administration institutions and functions covering the issues of the organisation and operations of state administration, local self-government and public services or activities of general interest. This paper will pave the way for many other papers dealing with the mentioned issues. The paper will integrate them in a systematic whole. Hence, this book provides a system framework for the future study of public administration and new system bases for the further development of the administrative science.

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