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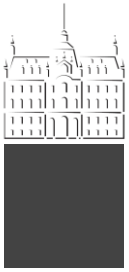

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Employment Law, its Structure and the Relation to Social Sciences

Employment law is a legal subsystem which deals with employment relations between employers and employees as well as other participants in the employment relations. It is divided in two areas, namely the area of the legal regulations, dealing with relations between single employees and employers (individual labour law) and the other area of regulations, dealing with relations between the groups of the employees which have a common legal position and the employers or their groups which also have a specific legal position (collective labour law). Within employment law there is a place for many regulations which are beyond the direct legal regulation of labour relations. The regulations regarding the activities of the National Employment Service in the area of the employment can be mentioned as an example. The employment law as a legal subsystem has to be regarded through different angles. The interpretation of the employment law regulations has to take into account the historical and cultural grounds of this legal area, its international and comparative aspects, its relation to other legal subsystems, and its relation to different social approaches to the relations between labour and capital. From this point of view, the employment law takes part of the two interdisciplinary scientific areas, namely the human resource management as well as industrial or post industrial relations.

Employment law, considered as the wider area of labour law, has to be divided in two areas, namely the regulatory area of the private sector and the area of the public sector. It must be emphasized that this division does not justify the thesis of the two subsystems of the employment law; the two areas are not strictly separated but are closely connected and consequently the thesis about only one legal subsystem is founded. Employment relations of civil servants have contractual basis, as it is the case of the employment relations of the workers, employed in the private sector. Narrowly connected with this basic statement is the fact that the general employment relations regulations are envisaged to be applied for the public sector employment relations. Slovene employment law therefore corresponds to the theoretical paradigm of "monism" and not "dualism" of the employment law, which is a theoretical framework of the legislation in some other European countries (e.g. Germany). From the employment relations point of view, the public sector includes the relations between civil servants and public employers in the state bodies and in the administrations of self-governing local communities, public agencies, public funds, public institutions, and public commercial institutions, as well as other entities of public law that indirectly use state or local budgetary funds.

General Notion of Employees in the Private Sector and Civil Servants

The employees in the private sector have the legal position according to the general regulations of the employment law. These regulations allow the **medium range of the contractual freedom** between the employment relation parties. This characteristic can be noticed from the dimensions, wideness and depth of the compulsory regulations of different legal types in the area of the employment law

(ius cogens). The contractual freedom of civil servants is narrowed by more detailed regulations of their employment relations, which is the consequence of the need for the protection of the **public interest** over the functioning of the public entities. From the point of view of the limits of the contractual freedom, the division of civil servants is of great importance. Within the general notion of civil servants, the statute provides specific regulations for the **subcategory of officials**.[1] Officials' legal position is based on certain specific legal principles. They have to perform public tasks for the public benefit in a politically neutral and impartial manner (**principle of political neutrality and impartiality**). By promotion they are enabled to pursue a career. Pursuing a career depends on professional qualifications, other work and professional qualities, as well as work results (**career principle**). Officials **as well as other civil servants** may be transferred to another job within the bodies, under the conditions determined by the statute (**principle of transferability**). They must be protected against harassment, threats, and similar conduct that may threaten performance of their work. All civil servants have this right (see below) but the statute emphasizes the protection of the officers. The same applies to the statutory provision that the employer must provide officials or former officials with **paid legal assistance** in judicial proceedings, commenced against individuals that committed acts at, or relating to, the work of the officials, causing harm to the officials or to their immediate family. The employer may refuse to pay for legal assistance, if it holds that the grounds for the commencement of the proceedings are not justified. In case that the judicial proceedings result in reimbursement of the cost of legal assistance to the official, the official must repay the employer (**protection of professional interests**). Public bodies have to keep the public informed of their service and of the results of work performed by officials, in a manner provided by law and executive regulations (**principle of publicity**).

The main emphasis of these characteristics can be seen in the introductory part of the Civil Servants Act (CSA 2002) which stresses certain principles being the basis for the legal position of the civil servants. The specific characteristics of the civil servants legal position are as followed:

- the selection of the civil servants in the hiring procedure is more formal (open competition) and the freedom of the authorised persons to hire civil servants is narrower as it is the case in the private sector because the statutory rules refer to the **professional qualifications** as a decisive criterion for the selection of candidates (principle of equal access),
- the statute stresses the duty of the civil servants to perform public tasks on the basis and within the framework of the Constitution, ratified and published treaties, laws, and executive regulations (principle of legality), which significantly **limits** the area of the free negotiations among the employment relations participants. The consequence of the application of this principle is the limited space for the free negotiations in the process of

[1]Officials are considered civil servants that **perform public tasks** in the bodies, while other civil servants perform exacting ancillary work. These working tasks are of the professional-technical nature. If necessary, the official may be transferred and posted on such jobs, whereas they must keep the legal position of an official as well as the rights and obligations arising thereof, including the right to promotion.

stipulating the employment contract and in reaching collective agreements of the public sector.[2]

- the statute imposes on the civil servants the duty to perform public tasks with due expertise, and in a timely and conscientious manner. They must act in line with the rules of the profession. The statute also stresses their **duty to exercise constant training** even in order to gain additional qualifications (principle of the professional conduct),
- the duty to restrain from any behaviour which could be harmful for the employer is a general statutory duty of all employees, however, CSA stresses that in the performance of public tasks, **civil servants must act honourably and in line with the rules of professional ethics** (principle of the honourable conduct),
- beside the general legal prohibition of corruption, CSA regulates the due civil servants conduct in order to prevent this phenomenon in the public sector. With reference to such, civil servants performing public tasks **may not accept gifts** relating to their work, with the exception of protocol and occasional gifts of smaller value.[3] This prohibition should also be applied to the spouses of civil servants, to persons living with them in extramarital communities, their children, parents, and persons living with them in joint housekeeping. Civil servants are obliged to **warn donors** that gifts exceeding small value become the property of the employer. In case that the donor insists on presenting the gift, civil servants are obliged to **deliver the gift** to the employer or to the body of the employer authorised to dispose with the gifts. Data on the accepted gifts, their value, the donors, and other circumstances are entered in a **list of gifts**. Civil servants accepting the gifts are obliged to report the data subject to entry. The manner of disposing with the gifts, the manner of managing the list of gifts, and other issues relating to the implementation of the restrictions and duties according to the statute with respect to public administration bodies, judiciary bodies, local community administrations, and entities of public law, are governed by **regulation** adopted by the Government (principle of gift acceptance limitations),
- the duty of the employees is the general duty of all the employees, however, the position of civil servants in this respect is stressed. They must not only safeguard the protected data, but also **protect secret** information regardless of how they learned of it. The duty of protecting secret information must continue to apply also **after the termination of**

[2] Regardless of this principle which is realized through many legal institutions of CSA (e.g. dependence of the employment contract on the unilateral authoritative decision of the employer), according to the statute the rights and obligations of civil servants arising from employment relation are governed by regulations on employment, **collective labour agreements**, CSA itself and other laws, and by executive regulations adopted on their basis. The employer may not secure to civil servants rights to **an extent greater** than that provided by law, executive regulations or collective labour agreement, if public funds are to be burdened therewith.

[3] Gifts not exceeding the statutory determined value are deemed as gifts of smaller value. Gifts received from functionaries or civil servants of other states or international organisations, given during visits, guest appearances or on other occasions, and other gifts given in similar circumstances, are deemed as protocol gifts.

employment. It must continue to apply until civil servants are **released** of such duty by their employer (principle of confidentiality),

- the quality of the job performance in the public sector is of a public interest, therefore, the statute regulates the civil servants′ legal position in a manner such that the civil servants will be held responsible for the **quality, speedy, and efficient performance of public tasks** entrusted to them (principle of responsibility for results),
- any employee has to act in a way that his job performance is useful for the employer. This duty is defined more concretely for the civil servants. They must **use public funds in an economic and efficient manner**, in pursuit of the best results possible at the same cost, or in pursuit of the same results at the minimum cost possible (diligence of a good manager),
- on one hand the principles and characteristics mentioned above generally mean the additional burdens to the candidates or civil servants, the statute on the other hand also stresses the straightened position of the civil servants in situations, when they may find themselves **under attack** of the users of their services. In this sense must be understood the statutory provision which imposes on the employer the duty **to provide for paid legal assistance** to civil servants or to former civil servants, against whom criminal proceedings or action for damages have been instituted in relation to performance of public tasks (protection of professional interests),

Employment Law.

Slovene employment law or labour law is an independent subsystem of the legal system. This characteristic is confirmed by the fact that it has its own specific structure of regulations with its own principles, and that someone's rights, which have the origin in this legal subsystem are protected in the special branch of Slovene court system. The subsystem can be **divided** in different elements applying different approaches. The most important division is the division on the **individual labour law**, which deals with the legal position of the single employee in relation with the employer, and the **collective labour law**, which deals with the legal position of the group of employees and their legal position in relation with the employers. The first area has a tight relation with the sociological and psychological aspects of working life. Observed from this point of view, the individual labour law is a part of an interdisciplinary approach to labour, namely the **human resource management**. The second area of labour law, observed from the interdisciplinary point of view, can be considered as a part of interdisciplinary scientific approach, namely the **industrial or post-industrial relations**. In addition to the division of employment law in the area of individual and collective labour law there are also other divisions of the central employment legislation, e.g. labour legislation concerning employment relations in the private sector of the economy and the labour legislation concerning the employment relations of civil servants in the public sector. Employment law as the subsystem is connected with other legal subsystems. It has its constitutional basis and basis in the area of international law. The most important link of employment law with other legal subsystems is the connection with social security law, however, important connections especially with civil contract law, administrative law, company law, and penal law can also be mentioned.

Employment Law and the Constitution.

The Constitution of the Republic of Slovenia has a wide range of provisions which can be considered as a basis of the employment law. They are various and dispersed in different parts of the Constitution and they also have a different role. The most abstract constitutional provisions are **general provisions** of the Constitution, which are important as the **source of general values of the society**. These values however give the ground for the regulation of the relations between the employees and employers. They also serve as a guideline for the application of regulations in practice and as the tool for interpretation of the regulations concerned. The most important regulations of this kind are the constitutional provisions which determine that Slovenia is a **"democratic state"** (Art. 1 of the Constitution). The value of the democracy has an important role in Slovene employment relations: more so in the area of individual employment relations than in the area of collective employment relations. Democratic values are largely implemented in the area of legal regulation and practice of the **social dialogue** among social partners. The employees and their representatives have the rights to influence the **processes of decision making** in companies, wider in the society, and even on the international level. Another constitutional rule which has to be emphasized is the rule that Slovenia is a state which is based on the **"rule of law"** and has the character of a **"social state"** (Art. 2 of the Constitution). The first provision in the area of the employment relations requires the **appropriate evaluation of the regulations** in the area of the employment law, permanent **development** of these regulations in accordance with cultural and historical characteristics of the state, and social development as such. It also requires the development of the system of the **supervision** over the implementation of regulations by the competent institutions. The second provision, however, challenges the society to develop a modern system of **social security,** which will provide the people on the territory of the country with all necessary means for decent life. This goal is pursued by building the system of efficient social assurances of various types and the additional system of social protection.

The fundamental social values which are of significant importance for the employment relations are also the constitutional provisions on **human rights and fundamental freedoms**. First of all, the provisions about the **equality** must be mentioned (Art. 14 of the Constitution). The constitutional provision prohibits the discrimination of persons on the basis of their personal circumstances. The provision must be highly respected by the employers and managers when they deal with the employees or job seekers therefore the message of the constitutional provision is emphasized also as the employment-law principle in ERA provisions. The majority of other human rights and fundamental freedoms have such nature that the employers and managers may easily violate them when using their powers over them. The most important and at the same time most vulnerable among them seems to be the **right to personal integrity and the right to privacy (**Art. 35 of the Constitution). Employers or managers must always keep in mind these human rights and fundamental freedoms when they deal with the staff, therefore, statutory provisions which touch this subject are only guidelines for mangers or they only partly regulate individual legal questions about the topics (e.g. mobbing). Similar significance have the provisions about the **freedom of work** (Art. 49 of the Constitution). In addition to the rules which prohibit forced labour,

the provisions have quite larger sense. Every person may freely choose their employment and may have access under equal conditions to any position of employment.

The second group of constitutional regulations requires from the state authorities the **statutory regulation of specific labour law issues which are of a great importance for the employment relations.** Some of such constitutional regulations are included in the group of human rights and fundamental freedoms, some in the group of provisions about economic and social relations, and some in the group of provisions about the state organization. As an important example the constitutional regulation which determines that citizens have the right to social security **under conditions provided by law** (Art. 50 of the Constitution) can be mentioned. In the area of economic and social provisions, the Constitution provides for the employees' participation in the decision making which should be regulated by law (Art. 75 of the Constitution). In the area of the organization of the state bodies, the Constitution provides that many important **factors of the employment relations** such as the National Assembly, the National Council, state administration, courts, and others are regulated by law, and so on.

Employment Law and Other Legal Subsystems.

The fact that employment law must be considered as the subsystem of employment relations, leads to a conclusion that the character of the connection between the employment law and other subsystems must be clarified in order to gain complete image of the employment law. The first insight must be directed in relation between **employment law and civil law.** The most important characteristics of this relation are as followed: the employment law has developed from the civil law, namely the contract law, and it is still keeping the tight relation to it. This relation can be seen through the statutory approach to the regulation of the employment contract. The statute namely determines that labour law legislation regulates only the specific elements of the employment contract; however, other elements, which are the same for all types of contracts, are regulated by the civil-law provisions. These provisions are widely used also in certain other areas. The most evident case of such regulation is the liability for damages arising from the employment relation. Another close relation between the subsystems is the statutorily defined demarcation line between the two systems with regard to the types of contracts whose subject is human work and creativity. From this respect the statutory definition of the employment relation or employment contract is of a big importance. This definition contains the essential elements of the employment relation. Whenever they appear in reality, they are indicating the existence of the employment relation. In other words, it means that in such case the stipulation of the civil contract is not permitted. The relation between the civil law and employment law can be found also in the area of the formal (procedural) law. Again some civil-law provisions can be directly applied in the area of employment relations. The statutory law about the court procedure in civil cases can be to the great extent also applied in cases of the resolution of labour disputes before labour and social courts. Only a few procedural regulations are different from the civil procedural regulations and are regulated in specific statutory provisions.

Employment law has many important connections with **penal law.** In the employment relation, employees and employers or their management can commit many inadmissible acts with a different degree of harmfulness. With regard to the employees there is less need for specific definitions of their wrongdoings in penal law as in case of appearance of the employers' wrongdoings. The employers, namely have the entire power and authority to react against possible misbehaviour of the employees therefore the protection of employer's interests by the statutory provisions is not needed significantly. On the other hand, employees as weaker parties in the employment relation must be protected more decisively by statutory provisions against the employers' or managers' misuse of their powers. Penal law therefore determines and regulates specific criminal offences, which can be committed by the employers and managers against the employees. In addition, the statutory regulations determine also less harmful wrongdoings of both parties as minor offences, punishable by fines. Second important relation between the employment law and the penal law is connected with the fact that the employers and managers have to deal with legal categories which are precisely defined in the penal legislation. These categories may not be interpreted differently in the area of employment law, when they have to be used in practice. The statutory description of the intent, negligence, self-defence, accountability, and others must be strictly taken into account whenever the employer or manger have to decide about the consequences for the employee because of his or her guilt related behaviour in relation to his or her job performance. The third connection between the two legal areas is related to procedural law. Statutory employment law provides only the most important provisions about the right of the employees to defend themselves against the accusations of the wrongdoings on the job. Those single provisions are relatively abstract; therefore, they must be explained with help of other statutory provisions. This can be done if general principles about the rights of the accused persons, arising from the penal procedural legislation, are taken into account.

Connections between the employment law and the **corporative law** must also be explained. Corporative law among other topics deals with the regulation of the various forms of work units. Different forms of work units are related with different position of the employees who perform work in these units. The rights of the employees in companies are not necessarily the same as the rights of the employees in the state institutions which provide public services, or even the legal position of the employees in one type of the company is not always the same as in other type. The size of the company can namely be a decisive factor for the type and the charateristics of the rights of the workers' participation in decision making, for example.

Next observation must be made with reference to the legal position of managers. The managers as the group of persons who make decisions about the due work activities of other persons are divided in two groups. The first group consists of top mangers, who are authorised by the statute to represent the work units in their legal relations, and the second group of mangers consists of persons, who have the authorisation to exercise managerial function, however, on the basis of the autonomous enactments or the explicit written authorisation of top managers. The members of the first group are considered as persons who are not dependant on the employers and therefore there is no need for them to be protected by employment law.

In consequence, the law permits the contractual parties, namely the top manager and the employer, to conclude the contract of their own choice when establishing their mutual relation. The contract can therefore be a civil-law contract or an employment contract with all or only some benefits of the employment-law protection, namely some employment law guarantees may be excluded or rearranged by the contractual clauses. Because of this option such contract is considered as a special flexible employment contract. The second group of mangers is considered as subordinated and dependant persons in employment relation therefore the statute requires that the contractual parties stipulate the employment contract, securing the mangers with the entire employment-law protection.

International law is also an important legal area which is narrowly related to the employment law. Many employment law regulations are created by international organizations as the UNO, International Labour Organization, the Council of Europe, European Union, and others. In addition to regulations, which are the result of the activities of these organizations, the principles and regulations of international law about the collision of legislations must be applied. International regulations can be divided according to different criteria; however the most important division divides the regulations in two groups: regulations, which can be used directly in the national territory (e.g. the ratified ILO Conventions, EU Regulations) and regulations, which must be brought in the national legal system by the adequate activity of national state bodies (e.g. the ratified ILO Recommendations, EU Directives). For the international regulations of the employment relations, bilateral and multilateral treaties signed between countries, which are or may not be the members of a specific international organization, are also important.

The relation between the employment law and **administrative law is** based on the fact that the public interest touches the question of the quality of job performance of people employed in the public sector with much greater weight. The Slovene legal system divides the employees in the public sector in two groups. First group of employees are considered as civil servants, who have the public authorization to decide on the legal position of citizens. The second group consists of the employees without such authorisations. In order to secure the efficient exercise of the functions of civil servants, the employment legislation gives them a specific legal position in comparison with the employees in the private sector. The differences, however, are not so great that their legal position could be considered as a separate legal subsystem, separated from the general employment law, therefore, the Slovene regulation of the employment relations in the public and private sectors is still based on the **monistic theory**. The main reasons in support of this theory is the fact that civil servants stipulate the employment contract with the public authority and that civil servants have the right to establish or join the unions and exercise the right to strike with some exceptions. There are also some elements of the workers' participation in decision making processes secured to employees in the public sector, the strike is in general not forbidden in this sector, and so on. Collective bargaining between the trade unions of the public sector and the public authorities is a widely used method for the regulation of the working conditions of the employees in the public sector.

The Structure, Objectives of the Employment Legislation, General Framework.

Employment legislation is traditionally connected with the achievements of the employees' fight for good working conditions and with the efforts of the modern state to secure the balance between capital and labour. After the Constitution of 1991, these goals are secured by means of the balanced legislation which secures employees the necessary legal protection on one hand, and the employers and their managers the necessary organizational tools to manage the human resources effectively on the other hand. The base of the Slovenian contemporary employment law is the regulation of **individual employment relations** by some complex statutes with **ERA of 2002 as the central law** in this area. The central statute in the area of the individual employment relations is accompanied by special legislation. The special legislation may have different characteristics in relation to general regulation. The main types of special regulations

- contain the more profound elaboration of single institutions, generally elaborated in ERA (e.g. the legislation of minimal wage),
- they regulate legal institutions of individual labour relations in a specific manner for the certain professions (e.g. doctors, pilots, truck drivers) or for the employees in specific economic branches (e.g. the industry, agriculture, the traffic),
- they regulate the entire specific area of employment relations (e.g. safety and health on the workplace) or explicitly connect the legal area of employment relations to other legal areas (e.g. industrial property),
- they connect the regulatory area of individual employment relations with other employment relations areas or other areas (e.g. the regulation of the trade union rights in the area of the individual labour relations).

In the public sector the central statute is the **Civil Servants Act (CSA) 2002,** which is applied for civil servants employed in state bodies and work units of local communities and partly in the institutes which exercise the public services. This act is organically connected with the **Salary System Act in Public Sector (SSAPS) 2002,** which deals with salaries and promotions of civil servants in the public sector. These general and central statutes are accompanied by many others, which regulate a specific position of some specific categories of employees (e.g. police forces) or some narrower fields of the relation between the single employee and the employer. As examples of such statutes - the act about the minimal wage or act regulating the safety and health on workplace, and many others can be mentioned.[4] These acts are designed to **secure to the employees their essential and minimal rights**.

[4] CSA states that **particular issues** relating to judicial personnel, personnel in state prosecutor's office, state attorney's office, and in independent bodies competent for violations, diplomats, professional members of the Slovene Army, civil servants in the field of defence, civil protection and rescue, police officers, inspectors, employees in the customs and tax administration, personnel in the service for execution of sentences, authorised public officers in security services and other public officers with special authorisations, **may be governed by law in a manner different** in respect of the provisions of CSA, if so necessary due to the specific nature of the tasks or the performance of special duties and authorisations.

These regulations are connected with the **international obligations** of the state. According to the Constitution, ratified treaties are part of the state's legal order. After adopting the Constitution in 1991, all the most important international acts have become the part of the Slovene legal order. In addition to the acts of UNO, these are also the most important ILO conventions and recommendations, the acts of the European Council, and acts of the European Union. Nevertheless, the legal position of the individual employees depends also on bilateral and multilateral agreements between Slovenia and other states. The state legislation which guarantees the employees their minimal rights has also the function to give **decisive incentives to the process of widening the rights of the employees by the collective bargaining[5] and by forming the necessary provisions in the employment contracts.** This function of the legislation is based directly on Art. 66 of the Constitution. It provides that the state must create opportunities for employment and work, and ensure the protection of both by law. Regulations which have the function to protect individual employees have, as mentioned before, their origin in the state legislative activities on one hand, and in the processes of social dialog on the other hand. Protective regulations are the main content of the autonomous legal sources, namely the employers' general acts and different types of collective agreements, more precisely, of their normative part.

The second main objective of the employment legislation is to **secure the employers and managers to manage the human resources in work units efficiently,** therefore to make the decision making process in this area flexible to the greatest extent possible. The modern Slovene legislation about the employment relations have appeared from the socialist social and political order which was burdened by some disadvantageous ideological premises. They did not permit building the flexible legislation on the basis of the balance between the interest of owners of resources of production means and employees. Exaggerated job protection and other types of protection of the employees in a socialist legal order disabled the employers to keep the costs of labour force within the normal

[5] The individual labour law is inseparably connected to the collective labour law. This statement is valid as for the private sector as well as for the public sector. According to the Art. 75, 76, and 77 and relevant statutory regulations, the employees in both sectors have the right to employees' participation in decision making, the right to organize unions freely and to join unions freely as well as the right to strike (social partnership). In order to support social dialogue in the public sector, CSA provides for a **specific body** established for the implementation of social partnership in state bodies and local community bodies. A collective labour agreement settles the composition and the procedural regulations about the operation of the standing body. In the standing body, the representatives of public administration bodies, other state bodies and local communities participate on the part of the employer, and the representatives of most representative trade unions of branches and professions participate on the part of civil servants.
Another important element of social dialogue in the public sector is the right of the most representative trade unions of branches and professions in state bodies and local community administrations to **give their opinion** prior to adopting **regulations** affecting employment relations or the status of civil servants in state bodies and local community administrations. The state body principal must enable the representative trade union, operating within the body, to give its **opinion prior to adopting general acts** affecting the rights and obligations of civil servants.

frames and gain the normal competitive position on global markets. After radical social changes in the beginning of the 90's and after the enactment of the employment legislation from that time, based on the new Constitution of 1991, the powers of the employers and mangers have increased significantly. Along with this process the legislation development in the area of employment relations has developed **new flexible legal instruments** which are nowadays comparable with those known in labour legislations of other modern countries. With the increased power of owners of companies and with their growing influence on politics, which is grows faster than the development of general political culture in the country, the **pressures for further deregulation** of the protective employment legislation can be noticed. In Slovene reality, however, trade unions have a strong position and successfully oppose these trends. This fact and the fact that the state follows the decisive action plan for permanent development of so-called **active politics of employment** which can successfully neutralize the employees' losses in the area of job protection, brings the country the **balance** of the two apparently antagonistic goals of the employment legislation, namely the efficient protection of the employees and the powers of the employers and managers in the area of human resource management. The balance which is in Europe already known as the concept of **flexicurity** is therefore present in modern Slovene social and economic politics.

The Act of Job Systemization as Central Employer's General Act

Through different periods of Slovene history, the employment law has always provided for the regulations about the job systemization as a result of the skilful **dissertation of the working process** at the employer. The law has also provided for the formal act which contained the regulations regarding the systemization which is the result of the disserting process. The general act on the job systemization is a compulsory method of employment relation issue and as such a due care of the employer. Only small employers are not obliged to publish this general act. From the employment law point of view, the main function of this general act is the job description which enables the clear **identification of working tasks that** the employee who is placed on a specific job is due to perform. The job description enables the valuation of the characteristics of the job from security, health, and evaluation point of view. The essential element of the job description is also the determination of the **job requirements** which have to be fulfilled on the job seekers' side when they apply for vacancy.

The general act containing the job systemization is foreseen also with regard to employment relations in the public sector. With reference to such, CSA regulations require that unless otherwise provided by a particular law, each state body, local community administration, and entity of public law must have an act on jobs systematisation determining the jobs required for the performance of tasks in accordance with the internal organisation of a working unit. With each job, the systematisation must at least include the **description of tasks and the conditions** for the specific work post. For jobs of officials, the statute determines specific conditions, namely, the **title** which may be gained in case the person meets **complex specific conditions** determined by the statute which rand him or her competent to make decisions in public matters. Title may be **acquired by**

appointment following the selection of applicants on the basis of open competition [6] or by promotion to a higher title. The conditions for the access to the title are determined by the statute and are at least related to education, professional examination,[7] active knowledge of the official language, but usually also to work experience or period of service. For special titles the additional conditions may be prescribed, such as citizenship, clear penal record and similar. The statute also regulates the issue of the **termination of the title.** The acquired title must terminate on the date of the termination of employment relation of the official, upon dismissal, and upon promotion to a higher title. Officials may also be dismissed from their title in the event of the ascertained incompetence, in the event of the transfer of the civil servant in case of redundancy, if he or she so requests or with his or her consent, and in other cases determined by the statute.

Each state body, local community administration, and entity of public law must **keep a record on the actual occupation of existing jobs;**[8] if only in these work units a system of titles has been established, a **record on the structure of civil servants** according to title must be kept in the evidence. General acts mentioned above must be edited by the principal of the work unit in the public administration. The Government is authorised to adopt the regulation containing the **common grounds** of the systematisation in public administration bodies and local community administrations. In addition, the Government has to approve the systemisation in public administration bodies, prepared by the competent body. The systemization in the public sector must be accompanied with another act so as to define the extensiveness of the staff management needs. With this objective the **personnel plans** have to be adopted by competent state bodies on the proposal of principals or in case of state bodies and local communities by principals themselves. Their main content is the definition of **target state of employment**, potential **reduction of employment,** the number of apprentices, trainees, pupils, and students having practice lessons or receiving similar theoretical or practical training. **Joint personnel plans** may be created for public administration bodies, courts, state prosecutor's office, and some other state bodies, on the basis of the common proposals of their principals or competent bodies.[9]

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[6] Titles of regular state administration officials are classified into sixteen grades from lower clerk to the senior secretary, however, titles in special areas of the public sector may be regulated by the special statutes or the Governmental regulation.

[7] Normally the person would be acquired prior to the appointment. The statute also permits that the appointment to the title is possible even lacking the professional exam with the condition that the officer **passes the exam in one year**.

[8] Jobs are classified with regard to **difficulty** of the work and conditions of work and **other circumstances** regarding conditions of work. The classification is done by the Government regulation, employer's general act, or the collective agreement. CSA also provides for the notion of the **specific** working conditions of the officials, namely the **title**, the course of **education** or vocational qualifications, functional and special learning and special **skills**, as well as other conditions laid down by the statute. Work at specific official job and positions may, as a rule, be performed **holding one of the three possible titles**.

[9] The personnel plan has to be **harmonized** inside the public institutions and the most representative unions of branch levels and professions must have the possibility to express their opinion on the proposal. Personnel plans and joint personnel plans may be amended in the case of permanent or temporary increase in workload that cannot be

Influence of the Officers' Representatives on the Legal Regulation and Decision Making about their Legal Position.

Officers are a special category of civil servants who need special knowledge and skills for their job performance. In order to develop appropriate **standards** in this area they have the right to be represented by unions, professional associations, as well as the specific **independent** body with the statutorily determined competences, i.e. the "Official Council" (Council), elected by the officials themselves[10] and appointed by subjects defined by CSA. The Council may express its views on legal regulation of organizational and legal position of the officers. Its important role is to develop the **codex of professional ethics** of civil servants. The Council may also define standards for determining the **professional competences of civil servants, criteria for their selection, and methods of determining their competences.** The Council may also directly influence the selection of officials by appointing the members to the Open Competition Commissions.

Making Decisions about the Employees Rights, Duties, and Responsibilities as a Legal Aspect of Human Resource Management.

By concluding the employment contract the employee enters the employment relation with the employer, however, he or she starts to exercise his or her rights, duties, and responsibilities with the beginning of his or her work performance according to the employment contract. The position of the employee is protected by the contract and also by the compulsory regulations of different types. Regarding the nature of the employment relation and the general duty of the employee to follow the **employer's orders** with regard to job performance (subordination), the facts about the authorisation of the persons in charge to make such decisions should be cleared out. This right belongs to the **top managers** who have the original authorisation, regulated by the statute, to decide on the entire scope of the business activities of the employer. The right to decide on these matters can also be **granted to other persons**, usually lover level of managers. The statutory law of the private sector does not contain any restrictions over such authorisation, however, in the public sector the statutory law contains such restrictions. The content of the restrictions arising from CSA is related to the **duration of the previous working experience [11] and the specific level of the**

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handled with the existent number of civil servants provided that funding for new employment has been secured.

[10] The structure and the competence of appointment of members are regulated by the statute. In addition to officials' elections, the membership in the Council may be also reached by the appointment of a person by the President of the Republic, representative trade union, or the Government.

[11] "Working experience" means the years of employment at the jobs demanding the **same level** of education, and the period of apprenticeship demanding the same level of education, regardless of whether a person entered into employment or apprenticeship with the same employer; working experience also include the working experience that a civil servant has gained by working at jobs demanding a **one-degree lesser level** of education in the same line of profession or the same occupation, not including the period of

education, which are conditions that must be fulfilled on the side of the civil servant who is going to obtain the authorisation. The original power to make decisions about the legal position of civil servants in the employment relation in state bodies and local communities is given to the "principal",[12] or in some parts of the public sector to a person, determined by the statute, other regulations, or general acts of the body. Their authority may arise from the general authorisation, fixed in autonomous legal enactments or may be granted to them by the single written authorisation of the manager who already has such an authorisation.

In the state administration and local communities, the principal may grant authorisation for exercising the rights and duties of the employer to an official, the **"head of the personnel management"** with the proper education level and the proper amount of years of service. The authorisation must be published within the body in an appropriate manner and representative trade union in the body must be notified of such authorisation. By the specific statutory provision, the head of personal management in a body will retain **full authority** with respect to the exercising of the rights and obligations of the employer. The principal may also authorise other persons for the performance of individual tasks in the field of personnel resources management, if so specifically provided by the statute.

From the substantive point of view the legal basis for the decision making should be mentioned. The persons authorized to make decisions about the legal position of civil servants, have to take into account the existing law, the employment contract as well as the administrative acts edited unilaterally, however, the statute emphasizes that the principal may not adopt an administrative act containing a decision granting civil servants rights to a **lesser or to a greater extent, or more or less favourable working conditions**, other than that provided by acts.

Many decisions on employee's rights, duties, and responsibilities depend on the quality of the employee's work performance. This fact is a starting point for the recognition of the need of **systematic and permanent evaluation** of the employees' working results. The issue is not only among the **main subjects of the human resource management,** but it is also an important legal question. On one hand, ERA does not contain a wide regulatory area of this issue, whereas CSA does. The main reason for that is the fact that managers in the private sector bear great economic liability for the quality of their decisions in the area of human resource management, whereas in the public sector the liability of the authorities in this regard is less emphasized. Consequently, the public sector regulations must regulate this area more strictly. In addition, working and professional qualities of civil servants are observed and documented systematically in accordance with CSA provisions. According to CSA provisions, **assessments of officials** are carried out with the purpose of **fostering careers** and the correctness of the

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apprenticeship at one-degree lesser level of education. The statute therefore does not demands the certain period of "years of service" which is defined as the number of years of employment as a civil servant in state bodies or local community administrations.

[12] "Principal" means a person managing the work of a state body or a local community administration; the mayor is the principal of municipal administration; in cases where the **principal holds the status of an official**, the **decisions on his or her rights** and obligations is taken by the person or body **to whom the principal is held responsible**.

decisions on their promotion. Assessments are also carried out having regard to the evaluation of the **contribution of individual officials** to the operations of the body. The statute defines the essential elements of the assessment of officials. Such elements are
- work results,
- independence, creativity, and accuracy in the performance of work,
- reliability in the performance of work,
- the quality of cooperation and the organisation of work,
- other skills in relation to the work performance quality.

CSA provisions regulate the modalities of the assessment of the qualities of civil servants so as to define the time of regular assessment (once a year), the group of the officials who are the subject of the assessment (fixed-term contract holders and employees with the short service period are excluded). The evaluation is determined by the superior.[13]

Deciding on Promotion and Remuneration in the Private and in Public Sector.

Promotion and the flexible part of wage or salary depend on the work results of the employee. In the private sector, the legal bases for these decisions are modest. The main principle which must be fully respected in this area is the principle of **equality**, namely the prohibition of discrimination on the basis of personal circumstances. In order to secure the implementation of this principle, it is necessary for the employers to enact regulations containing the rules which secure the criteria for the **statement of work results and work efficiency** of the employees. The legal order provides the incentives to bilateral regulation of these matters by collective agreements. The employees' representatives will normally be ambitious to make such agreements with the employers, however, in opposite case or in case no agreement is reached in the processes of social dialogue the employer **must enact the criteria unilaterally**. In case that the works council is established in the company the employer has to enact the criteria for the statement of wage elements, depending on the work efficiency in **consent** with the works council. These general rules may be **analogically applied for the promotion system** of the employees in accordance with modern human resource management strategies and managerial skills.

A regulation on the process of deciding in regard to the promotion and remuneration on the basis of work efficiency in the public sector is entirely different, much more precisely regulated by the statute (System of Wages in Public Sector Act 2007). The **promotion entails** that the civil servant or functionary on his or her job or title may be **granted** the rights arising from higher

[13] Evaluation sheets must be completed by the **superior each year**. The principal must ensure that the evaluation sheets are completed by the end of January for the previous year. Officials must be notified of their evaluation through an interview with their superior. They must be notified of their evaluation within 30 days after the evaluation has been determined. Officials disagreeing with the evaluation may **request the test of the evaluation** within 8 days. The test of evaluation is conducted by a commission composed of the superior and two other officials. Officials are entitled to be present at the test of the evaluation. The commission decision is final.

wage class or even that he or she may be **transferred** to the new job, posted in the higher wage class or **appointed** to the new title with a corresponding higher salary class. The decision about the promotion is taken by the competent authority. The statute also provides for the limitations or exclusion of promotion for some categories of civil servants or functionaries as well as regular promotion periods. The main criterion for the promotion is the work efficiency of the person. The criteria for its assessment are also determined by the statute.[14] Apart from the conditions for the promotion, the statute also regulates the **procedure** of deciding in regard to promotion by stating **formal acts and bodies** which have the role in this procedure. The formal act may be the state regulation or general acts of bodies with the certain amount of the autonomy in this regard. In both cases the **representative unions** must be given the opportunity to express their views about it.

Other area of deciding about the legal position of the employee on the grounds of the work efficiency is the area of the part of wage or salary. In the private sector, this area is not regulated by statutory rules therefore it is left to wide regulation of contractual parties of the employment relations. The main category which must be mentioned is the duty of employers to secure the **equal treatment** of employees and to avoid any kind of discrimination in this regard. Taking into account this principle, the employers must regulate the criteria for the statement of the work efficiency. In the public sector, the statutory regulation regarding such is wider. According to the System of Wages in Public Sector Act, civil servants are entitled to a part of wage or salary on the basis of the **regular work efficiency**,[15] the part of wage or salary on the basis of the **increased working extent,** and the part of the wage on the basis of the **business results** arising from the market activities of the works unit of the public sector. The statute regulates the entire relatively defined amount of the financial resources available for the distribution among the employees. Normally the functionaries are not entitled to this part of the salary, however, there are some exceptions, e.g. judges.

Increased working extent may be the basis for payment of a part of working efficiency if the work unit in the public sector has necessary financial means. These financial means may be obtained by the work unit especially on the account of the **reduced** wages or salaries of partially or whole **absence** of civil servant from the work. In the case of his absence his work is replaced by the increased working extent of someone else. Other possibility for such work and remuneration is the **project work** which is planned and financed by the Government. Increased working extent may be introduced for the civil servant on the basis of the **written agreement** between the civil servant and the competent representative of the body. Similar statutory regulation of this issue is in force for judges, however, the Supreme Court of the Republic of Slovenia and the Judicial Council has certain

[14] As such criteria are determined the work results, the independence of the person in the job performance, the creativity and reliability of his or her work, the organizational skills, and other competences developed by the job performance, the education, and training.

[15] Civil servants whose work efficiency is valuated as extraordinary good are entitled to this part of wage or salary. The amount of this part of wage is limited. The criteria for the statement of this part of wage are determined by the collective contract for the public sector. There are some special regulations about this part of salary for certain functionaries.

regulatory role. In public services there may be special statutory regulations of this subject. The part of wage on the basis of the **business results** arising from the market activities of the work unit of the public sector is secured to civil servants employed in the institutes performing **public services together with other legal activities** which enable them to sell their goods on the market. According to the statute, a part of the financial incomes earned on the market may be used for the distribution of wages of employees on the ground of the business results if the work unit meets certain additional statutorily defined conditions.[16] The Government must publish the regulation which defines the list of incomes of the work unit on the market, and the amount of the financial means which may be distributed among the employees on the basis of business results. The amount of the sum which is assigned to the distribution on the basis of business success of the work unit must be determined by the management in agreement with the representative unions.

Freedom of Contract.

The constitutional right to freedom of work imposes on employers the duty to announce vacancies in such a manner that the information is accessible to the job seekers. On the other hand, the employer also has the right to decide freely about making contract with applicants after the announcement of vacancies. This entails that the employer is relatively free to decide with which applicant, who fulfils the conditions for carrying out work, he or she will conclude the employment contract.

In the public sector the employment relation must also be regulated by the employment contract, however, the free will of contracting parties in case of stipulating the employment contract in public sector is much narrower than in the case of stipulation of the employment contract in the private sector. Not only that the free will of the parties to employment contract is limited to a greater extent by state regulations which regulate the employment law institutions in more detail, CSA even allows the employer to **intervene in the contractual relation by unilateral authoritative decision.** According to CSA provisions, the contract must contain the statement that the employer may unilaterally amend specific provisions of the contract in conformity with the law. [17] Another specific feature of this type of the employment contract follows from the statutory provision that after the appointment to another title, upon promotion to a higher payment class and upon transfer to another work post, an act must be issued on the affected rights and obligations. The **act replaces the provisions of the contract of employment and the preceding acts**. CSA also gives a ground to a special contractual clause between the contractual parties about the temporary suspension of the employment contract of the civil servant. In such cases, rights and duties of the parties may not be executed and the civil servant may **stipulate another fix-**

[16] The work unit has to perform public service in accordance with planed programme of work and financial plan, must not have problems with the business success, and must have surpluses of incomes for past periods, and has also the internal regulations regarding the standards for cost management in regard to public services and the market activities. The particularities about these issues are regulated by the ordinance.

[17] By its nature the provision mentioned above only has an informative function and does not necessarily express the real will of the contractual parties.

term employment contract with some other employer, according to the agreement. During his or her work for the employer the officer's **title** is also suspended.

Transfer of Civil Servants.

Transfers of employees in the private sector may be ordered unilaterally by the employer in case of exceptional situations defined by the statute for the limited period of time. The possibilities for the use of this institution are much wider in the public sector. CSA provides the conditions for the transfer, the limitations of its use, and the legal procedure regarding such. The transfer of the civil servant may be carried out **with his or her consent** or even on his or her request; therefore the decision about such transfer is followed by the modification of the employment contract. The transfer however may be carried out also **without the civil servant's consent.** This is possible in case of the **work requirements.** Transfers may be permanent or temporary.[18] Temporary transfers may last no less than a month and no more than a year.

Civil servants may be transferred to suitable work posts, for which they satisfy the prescribed conditions and which they are competent to perform.[19] Officials may be permanently transferred only to official jobs that can be held in the title of the official, unless the official is transferred due to incompetence for the official work post or for the reasons of service. The officer may be temporarily transferred **to the more demanding job** which may be executed in a higher title. In such a case the transferee has to fulfil the conditions of the education level. The official performing such a job may not be necessarily appointed in the higher title, but he or she is entitled to enjoy the rights pertaining to the higher title.

Transfers due to work requirements may not be allowed during temporary inability for work due to illness, pregnancy, or during parental leave. Civil servants may, due to work requirements, be transferred to the available jobs or to a professional-technical jobs within the same or in another body for the **reasons of service**, if civil servant is found to be **incompetent** for his or her job, if the principal believes that a **more effective and expedient** performance of the body can be ensured therewith, if there is a permanent **change in the workload** or the working procedures are being rationalised and the civil servant no longer bears the full work burden, and in other cases provided by law. A further condition prescribed by the statute is related to the **place of work**. Transfers due to work requirements are only allowed if the locations of work in the case of transfer in no more than 70 km distance from the current location or no more than one hour's travel away by public transport.

[18] In such case the maximal duration is two years.

[19] With their consent, officials may be exceptionally transferred to a professional-technical work post for a period no longer than two years. Officials keep their title and the period of working in the professional-technical work post to which they were transferred is included in the promotion period.

Procedure in the Case of Transfers due to Work Requirements

In case the civil servants do not give their consent to the transfer, transfers due to work requirements are carried out by an unilaterally issued decision. The decision of transfer due to work requirements within the same body may be issued by the **principal**, whereas in the case of transfer to another body, the order may be issued by the common consent of the bodies' principals. The order of transfer due to work requirements contains the location and the date of the commencement of work on another job, and the rights and obligations related to the new job.[20]
Transfers at request or with the consent of civil servants may be carried out by an **annex** to the employment contract. In the case of transfers to another body, the annex on the part of the employer may be concluded by the principals of both bodies. In the case of another employer in the public administration or the local community, transfers may be carried out by an agreed **termination** of the contract of employment and a **conclusion of a new** contract of employment.

The **Government** may decide on the transfer to another body within public administration bodies, at the **request of a civil servant, without the consent of the body** where the civil servant requesting the transfer works. In this case, the annex to the contract of employment on the part of the employer may be concluded by the principal of the body to which the civil servant is to be transferred.

In the public sector, hiring of employees is allowed in cases of permanent or temporary **increase in workload that cannot be handled** with the existent number of civil servants, or where there is a **vacant job** without a change in the workload; CSA also explicitly states the additional condition that the body has **secured funding** for the new employment and that new employment is in accordance with the existing personnel plan. The decision to hire new staff is made by the principal, who must take into account some specific procedural regulations. He must namely verify whether it is possible to fill the vacant job by **transferring** civil servants from within the same body or by transferring civil servants from another body; an **announcement of internal competition** may be held for this purpose. It may be held so as to include other state bodies and local community administrations as well.[21] The proceedings for new employment of **an official must be conducted as an open competition**, whereas the proceedings for new employment for a professional-technical job must be conducted in conformity with the regulations governing employment and in conformity with the collective labour agreement. Open competitions must **be published** in the

[20] The decision on transfer due to work requirements within public administration bodies may also be issued by the Government on proposal by the principal of the body to which the civil servant is to be transferred; account should be taken of the requirements of the service of the body in which the civil servant that is to be transferred works, and a suitable suspensive period for transfer should be set.

[21] Internal competition may also be held in other state bodies and local community administrations so as to include several bodies and local community administrations. Provisions on the **procedure** for the implementation of the internal competition are laid down for all bodies by **government regulation**.

Official Gazette of the Republic of Slovenia or in daily newspapers, and with the Employment Service of Slovenia.

The selection procedure[22] may be conducted by the **competition commission** or in some cases the **principal** himself or herself. The procedure which follows the open competition announcement or internal competition announcement of jobs of some high categories of officials, must be conducted by so-called **special competition commission.** Such commission makes selection of candidates for positions of directors-general, secretaries-general, the principals of bodies within ministries, the principals of Government offices, and the principals of administrative units. The members of the commission are appointed by the Officials Council in each particular instance. CSA emphasizes that only a candidate, who demonstrated in the selection procedure to be the most professionally qualified for the job, may be selected. The procedure ends by the issuing of an **administrative decision act** on the selection of an official. It must be served on the selected candidate, whereas other candidates must be served with an act informing them that they were not selected. After the act which contains decision on selection is issued, the candidates participating in the selection procedure may, under the supervision of a public officer of the body, **inspect** all the data of the selection procedure. After the selection procedure, the civil servant is offered the employment contract proposal. Whenever the civil servant has the position of the officer he or she must be previously appointed in the adequate title by the authoritative decision of the competent body. In case that the employment contract is not concluded within 30 days after the appointment to title for reasons on the part of the official, the person or the body that issued the decision on the appointment to title must annul such a decision.

It is not only the employer who has the statutorily defined duties with regard to hiring procedure. The applicant also has certain obligations. These obligations are related to providing the employer with the possibility to verify that the applicant fulfils the statutory requirements.

In accordance with this principle the statute requires from the applicant some specific activities. He or she must submit to the employer the **documents** proving the fulfilment of conditions for carrying out work and **inform t**he employer of all personal circumstances, relevant for the employment relationship that he or she is familiar with. The applicant also has a duty to inform the employer about the circumstances known to him or her, which prevent or substantially prohibit him or her from executing the obligations arising from the contract. He or she also has the duty to inform him or her about threats to life or health of persons he or she is in contact with in executing the obligations. In the selection procedure, the applicant is **not obliged to answer questions** which are not directly related to the employment relation.

[22]In selection procedure the qualifications of the candidates for the performance of tasks on the official jobs are tested. The procedure may be conducted in several phases so that the candidates are gradually eliminated. It may be conducted in the form of testing the professional qualifications on the basis of the documentation submitted by the candidate, written tests of qualifications, oral discussions, and other forms.

If the applicant is not selected in the hiring procedure, he or she still has certain rights. Within eight days after concluding the employment contract with the selected applicant,
the employer must **notify in writing** the applicant who was not selected of the fact that he or she was not selected. At his or her request the employer has to **render back** to the applicant all the documents submitted as proof of fulfilment of required conditions for carrying out the work of the specific job.

Fix term employment contract

In the public sector, the contractual parties may stipulate a fix-term employment contract **also** in some additional cases distinct for the public sector determined by CSA, namely:
- in cases of work posts where personal trust of functionaries is required (work posts in the cabinet[23]),
- in order to substitute for temporarily absent civil servants,
- for the positions of director-general, secretary-general, the principal of a body within ministry, the principal of Government office, the principal of administrative unit, and the director of municipal administration (municipal secretary).

No fixed-term contracts of employment may be concluded in any other cases, regardless of the provisions of the law governing employment.

3) The provisions of the law governing employment apply to the restrictions on consecutive conclusions of fixed-term contracts of employment, and to consequences for violating the statutory provisions in this regard.

4) Provisions on work posts in the cabinet reasonably apply to work posts in the Office of the Prime Minister, including the director of the Office, and for work posts in the National Assembly and the National Council, where work for parliamentary groups and the groups of councillors is performed.

5) Fixed-term contracts of employment may be concluded provided that funding has been secured.

In the public sector the time limitations are similar to those, regulated by ERA. CSA however emphasizes that **no permanent contract** of employment may be concluded **without open competition** with civil servants that entered into fixed-term employment relation, with some exemptions, determined by the statute. Officials that entered into fixed-term employment may **not be appointed to title** and the **contract of employment itself** must determine the official title relevant for determining the rights and obligations of the official.

[23] For the bodies, the **number** and types of jobs in the cabinet for a fixed term is determined by the Government within the **personnel plan**, whereas for other state bodies and local community bodies, the number and types of jobs in the cabinet for a fixed term is determined by state bodies and representative bodies of local communities respectively.

Managers

The provisions of CSA have a specific approach to the regulation of the managerial staff in public administration. On one hand, there is the principal of the specific body, and on the other hand, there are also other levels of the management. Persons who hold a specific **position** in public administration may be considered managers. According to CSA, the position is considered an official job, which secures the officer managerial authority, along with the coordination and the organisation of working process within the body.[24] Position holders have to meet the criteria and conditions determined by the statute. In this respect, CSA determines that for the acquisition of official job which has the character of the position, **functional knowledge of administrative management and of personnel resources management, and other special skills** may be required**.** The applicant may gain the position in the regular hiring process, but some positions may be accessed by the **appointment**[25] after being selected in the internal or open competition procedure. If they previously did not have the position of the official, the possibility to stipulate the employment contract is limited to a term of 5 years. Their employment contract may terminate in accordance with the regular rules and the special rules determined by the statute (see, termination of employment contract). They may be **dismissed from the position** in cases determined by the statute, which does not necessarily entail the termination of the employment contract. The **cases** are as followed: upon their own request, if no contract of employment or annex to the contract of employment is concluded within one month after the appointment; if it is ascertained by the prescribed procedure that the official is not competent to perform tasks in the position; pursuant to an order determining the responsibility for a disciplinary violation; in the case of termination of employment relation. The statute also determines some other cases of an organizational nature and one, related to trust. A functionary of the body, competent to appoint an official may namely dismiss the official from the position even **regardless of the statutorily determined reasons,** therefore, on the basis of lack of trust, in a short time limit of 3 months after the functionary assumed the office. The statute also regulates the possibility

[24] The list of positions according to CSA is as follows:
- in ministries: director-general, secretary-general, and the heads of organisational units;
- in the bodies within ministries: the director and the heads of organisational units;
- in administrative units: the principal of administrative unit and the heads of organisational units;
- in Government offices: the director and the heads of organisational units;
- in local community administrations: the director and the heads of organisational units.

In addition, the positions may also be considered the jobs of officials related to the **substitution** of some high officials or to their **support**. They may be defined by the statute or the general act of a body.

[25] The director of local community administration is appointed by the person to whom the director is directly held responsible. The principal of administrative unit is appointed by the minister competent for the administration. Secretaries-general and directors-general in ministries, the directors of the bodies within ministries, and Government offices are appointed by the Government on proposal by the minister or by the functionary to whom the director of Government office is held responsible. They may be appointed for the term of 5 years.

of transfer, termination of the employment relation, and the dismissal compensation of the officials in question.

Rights and duties of the contractual parties.

Parties of the employment contract are the employee and the employer. The nature of their rights arising from the employment relation is mutual in the sense that the rights of one party are related with the duties of the other. However, the parties of the employment contract have also some statutorily determined duties which have to be respected or exercised in the interest of some other subjects. The duties of the employment contract parties can be divided in two groups. The first group contains the duties which arise from the **legal sources** and the second group the duties which have their basis in the **free agreement** of the parties. Between the two, there are also the duties of the employee which arise from the **employer's authority** to lead and give orders to the employee. This right has two main aspects. On one hand, the employer can decide about **modes** of carrying out the employee′s working tasks, and on the other hand, the employer also has the right to decide about the mode of exercising of employee's duties arising from legal sources, but he or she may not **establish new duties of the employee unilaterally**. This employer's power has its legitimate basis in the fact that the employer is the party which organises the specific activity by investing capital and resources, therefore, the employer must have the right and real possibility to protect itself inside and outside the organisation. In the structure of the legal regulation of a legal relation which contains some duty, there is normally also the provision about the sanction which must be applied, if the duty had not been fulfilled. The implementation of the legal provisions and clauses arising from the employment law and employment contract are sanctioned by different legal sanctions which have their domicile either in the area of employment law or in other legal areas. A typical area of responsibility of the parties, regulated within the framework of the employment law is the disciplinary responsibility of the employees.

When establishing the duties of the parties of the employment contract by legal sources, the parties of the employment contract have possibility to **influence the formation of the law regulating employment relations**. The most concrete opportunity for this is the possibility to take part in bilateral negotiations on collective agreements. The contracting parties can take part in the process of the creation of legal enactments, such as collective contracts and other types of the collective agreements, either directly or through representatives. The employers have the right to enact the working rules in organisation in order to protect their vital interests in the protection of their resources and the commercial or other activities.

Statutory Defined Duties of the Parties.

The parties of the employment contract have many rights and duties which are either regulated in different legal sources or are agreed between them. Certain duties of the parties of employment contract are considered to be of such great importance that they have to be regulated in the public interest, namely with the state regulations. Some of them arise directly from the Constitution and

international law and have to be considered as the legal basis for the regulation of minimal working conditions. From this point of view, they are considered as a part of the minimal working conditions.

According to ERA, the employee must carry out work within the framework of his or her job as described in the relevant regulations (internal or external) and/or in the employment contract. He or she must also follow the managerial instructions and orders. He or she may refuse the instructions or orders in cases in which such would lead in the unlawful actions. This right of the employee is explicitly emphasized in CSA by describing the duties of civil servants, however it must be respected as the general employment standard.[26] In cases in which the employer's **undertaking is endangered**, the employer has the right to impose on the employee **necessary** working tasks for the limited period of time. These cases must be provided for by the statute or the collective agreement. ERA also gives a **direct legal ground** to the employer's decision about the employee's duty to execute the working tasks outside the frames of the job or area of the professional activity of the employee, determined by the employment contract. Such work can be ordered in cases of natural or other **disasters**, or when such accident is expected, or in other exceptional circumstances, when **human life and health as well as the employer's assets** are at risk, the type or place of carrying out the work, defined in the employment contract, may temporarily be changed even without the worker's consent. However, such a situation can last only until such circumstances are present. Pursuant to CSA provisions, however, the civil servants have a duty to perform work **outside the job frames**. According to the statute, they have to perform work **not included in the job description** even if the work **does not suit their professional qualifications** in case of temporary **increase of workload, or due to substituting for a temporary absent civil servant.** The order of a competent superior imposing the duty mentioned above must contain the notion of the type and the scope of extraordinary work, and the duration of such work . The extraordinary work may be ordered also **inside the framework** of the specific job. In this sense the principal may, on the basis of an agreement between the civil servant and the superior, issue a **written decision on the increase of workload** or on the above-average burden of individual civil servants, and on the payment for the increased workload or for the above-average burden. Such act may be issued if it is possible to ensure the performance of body's tasks by means of **increasing workload or by placing additional burden** on individual civil servants within the framework of full working hours and within the framework of permitted increase of workload in excess of full working hours. Similar legal institution that can be found in CSA regulating the civil servants duties with regard to work performance is the regulation of the duty to **additional work.** The statute provides for a decision of the principal imposing on civil servants a **duty to accept the performance of additional work** in the interest of

[26] Civil servants may request for **written** directions or written instructions, if they hold the contents of oral directions or instructions to be **unclear or if they consider the order or instruction to be unlawful or that its execution could cause damages.** The statute explicitly allows the civil servant to **refuse** the direction or instruction if the execution would lead in the unlawful conduct or criminal offence. Civil servants must perform the requested work, or perform the work in the requested manner, according to written directions and instructions.

the employer that suits their professional qualifications, however, they might not be mentioned in the job description. The scope of additional work includes mainly the participation in supervisory bodies with the intention of exercising the rights of the employer, and the participation in appellate commissions. Another special legal institution related to the civil servant job performance duty is a **team work on projects.** Civil servants **must** perform work in project groups within the body for which they work upon appointment by the principal. Civil servants **may** perform work in project groups even **within other bodies upon their request and with the approval** of the principal. Such work must suit the professional qualifications of civil servants. The order on establishment of a project group must include the data on the scope of work and the data on the disburdening of the work performed by civil servants at their jobs in cases where work in project group exceeds the framework of the tasks of the work post. The approval of the principal is not required in cases in which civil servants employed in public administration bodies participate in the project group and the project group is appointed by the Government.

Civil servants normally execute the working tasks for which they are qualified. However, the statute contains one exception. A civil servant must temporarily, but for no longer than 3 months, perform even **less demanding work,** if so directed by the superior in the event of force majeure, natural or other disasters, exceptional increase in workload, and in the cases of other unforeseeable circumstances. In the case of performance of less demanding work, civil servants receive salary equal to the salary received at their jobs.

The duty of the employee in such a case is based on his or her general **duty to be loyal** to the undertaking whose success is of the common interest of both parties of the employment relation. In principle, the employee has to exercise his or her job during working time at the location defined for carrying out work in accordance with the organization of work and business operations of the employer. Also regarding such the statute can determine certain exceptions on the legal basis mentioned above. If the employee fails to fulfil these duties he or she can be charged for his or her misconduct and can suffer the consequences of different kinds of the responsibilities.

The job performance of the employee must be carried out in accordance with the law and the employee's knowledge and skills within the framework of existing professional standards. CSA also emphasize the duty of the civil servants to perform the work in conformity with the **code of ethics.** His or her work is only **partly independent** because the civil servant has to follow the requirements and instructions of the employer in relation to the fulfilment of contractual and other obligations arising from the employment relation. These requirements or instructions may be delivered by employer itself or by its management. The employee has to follow, respect, and implement the regulations on safety and health at work and perform his or her work carefully in order to protect his or her life and health, and health and life of others.

Assessment of the Job Performance and Employee's Promotion and Acknowledgments.

As already mentioned above, the duty of the employee to perform his or her work in employment relation to his or her best ability is inseparably connected to his or her rights which must be acknowledged to the employee after the assessment of his or her job performance, therefore the assessment itself is an important legal issue. Nonetheless, **ERA does not contain** explicit regulation on this issue. Some labour law (individual, collective) institutions, however, contain regulations on the specific rights whose legal nature **implicitly requires the assessment** of job performance. The assessment methods are left to be determined by the contractual regulation and to good human resource practices. On the other hand, the issue of the assessment of the job performance is much **more explicitly regulated for the public sector**. The main reason for the regulation is in securing the statutory guarantees which may enable safe managerial approach to the processes of decision making about the legal position of the employees, excluding or minimizing the possibilities of their unequal treatment or discrimination. The first legal institution which decisively depends on assessment of job performance is **promotion**, which is a special acknowledged right of the civil servants. According to CSA, the officials may be promoted to a **higher title**.[27] Officials and other civil servants may be promoted to a **higher payment class** in conformity with the statute governing the system of salaries in the public sector. The statute also regulates the **promotion period** and **standards** of evaluation prescribed for promotion.

The consequence and a kind of the positive sanction in regard to the employee's job performance quality is the **formal acknowledgement of the successful work** of the employee. This human resource management tool is not at all regulated in the general employment relations regulation of the private sector. Again the issue is regulated by CSA for the public sector. CSA regulates the conditions for awarding the civil servants who perform their job well. According to CSA, the acknowledgement may be awarded to civil servants for **outstanding achievements** contributing to the success and efficiency of service and to the reputation of the body, to reducing the costs of service, and to reducing the length of working procedures.

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Obligation of Informing and the Prohibition of Harmful Actions or Activities.

The worker must inform the employer of relevant circumstances which affect or might affect the fulfilment of his or her contractual obligations. He or she must inform the employer of **any threatening danger** to life or health or to the occurrence of material damage he or she notices at work.
The prohibition of harmful actions or activities in the public sector, especially in regard to the officers, is wider still. According to CSA, they may not perform certain activities:

1. if the activity **violates the prohibition of competition** or the **competition clause** pursuant to the law governing employment;

[28] An official may be promoted to a higher title if he or she satisfies the **conditions for appointment** to a higher title; the job, where an official works, **may also** be performed holding a higher title; an official **fulfils all the obligations of training** according to the programme; his or her **evaluations meet the standards** prescribed for promotion;

2. if the performance of the activity **might affect the impartiality** of the performance of work;
3. if the performance of the activity might result in the **abuse of data** accessible at the performance of the tasks at work, that are not accessible to the public;
4. if the performance of the activity is **harmful to the reputation** of the body.

In case in which the officer assumes that such consequences may arise from his or her conduct executed outside the employment, he or she is obliged to notify the principal about it. In such a case the principal may make a necessary judgement of the relevant circumstances and may eventually edit an order prohibiting official to perform activities in question. The duties of notification and the restrictions mentioned above do not apply to activities relating to scientific and educational work, work in associations and organisations in the field of culture, art, sport, humanitarian activities and other similar associations and organisations, work in the area of journalism, and to membership and activities in political parties. Some categories of officials are still less free in their activities outside the job. Officials **holding the highest positions** like director-general, secretary-general, the principal of body within ministry, the principal of a Government office, the principal of administrative unit, and the director of municipal administration (municipal secretary), as well as their close relatives, may not perform **any profitable activities** with the exception of activities in the field of science, research, education, art, journalism, and culture.

General remarks about termination of the employment contract

General.

The employment contract can terminate only in accordance with the statute which enumerates all the possible cases of the termination. This general principle is envisaged to straighten the principle of the job security. Individual regulations of this subject in ERA do not allow the use of civil-law regulations which regulate the termination of contracts in general. The statute determinates the following reasons for the termination of the employment contract:
- the expiration of the period for which the employment contract was concluded,
- the death of the worker or the employer-natural person,
- mutual consent,
- regular or irregular dismissal,
- termination of the employment contract on the basis of a court decision,
- in other cases determined by the statute.

Such statute which determines additional reasons for the termination of the employment contract is CSA, which contains the following supplements to the general regulation of the issue. According to the statute, the employment relation of the civil servant may terminate **by the force of law** (*ex lege*) in the following cases: in case that the **official does not pass the professional exam** which is the essential condition for his or her job performance according to the employment contract. In such a case the employment contract terminates next day after the expiration of the deadline determined by the employment contract for fulfilment of this duty. Second case determined by the statute is related to the penal liability of the officer. Officer's employment contract terminates if he or she is convicted

of a **criminal offence**, which is prosecuted by the official duty and sentenced to the imprisonment over six months. The employment relation of the civil servant terminates at the latest 15 days after serving the judgement on the employer on the ground of the employer's act ascertaining the fact which causes the termination of the employment contract. CSA also envisages the possibility that **other statute** regulating the legal position of the civil servants regulates additional modes of the termination of their employment contracts. The termination of the employment contract has the effect on the title and the position of the civil servant, namely they both terminate.

Reasons which Cause the Regular (Ordinary) Dismissal.

The reasons for a regular termination of the employment contract of the worker by the employer are classified by the statute as (a) business reasons, (b) reasons of incapacity (c) fault reasons, and (d) inability to work under conditions determined by the employment contract on the ground of regulations about invalidity and pension insurance or employment rehabilitation and employment of disabled persons. The **business** reasons can be the legal ground for the termination of the employment contract in cases of cessation of the employer's need to carry out certain activity due to economic, organisational, technological, structural, or similar reasons on his or her side. The reason of **incapacity** entails the basis for the termination of the employment contract because of non-achievement of expected worker's work results. More specifically, if the worker failed to carry out the work in due time, professionally, and with due quality. This ground can also be used in case of worker's non-fulfilment of conditions for carrying out work specified by law due to which the worker fails to fulfil or cannot fulfil the contractual or other obligations arising from the employment relation. However, the fault **reason** exists as the basis for the termination of the employment contract if the worker violates an obligation arising from the employment relation.

Reasons for the Regular (Ordinary) Dismissal of Officers and Other Civil Servants.

CSA excludes the application of general provisions about **business reasons** for the regular dismissal. In cases of the reduction of public service activities, in cases of the privatization of public services, and in cases of organizational, structural, fiscal, and similar reasons, the civil servant may be **transferred to a new job** regardless to his or her title or may be **dismissed.** The direct legal basis for a decision about the transfer of an employee or the dismissal is the change of the regulations about the internal organization and systemization of jobs (reorganization). The decision of the reorganization may be adopted by the state body or the Government. The **plan for the reorganization** must be supported by the documentation explaining the goals and causes of the reorganization, the analyses of the working tasks and working procedures, as well as the number and the structure of jobs and the number of the civil servants. The plan must be sent to the representative unions organized in the body, to enable them to form their opinion.

The reason of **incapacity** is also regulated more precisely as it is in the case of general regulation. The special regulation of this issue by CSA explicitly excludes

the application of general regulations. According to CSA, the civil servant is considered not to be capable to perform the job if he or she is not achieving **expected working results.** In case that he or she was transferred because of the organizational reasons, the procedure of stating the incapacity may not begin in the period of the first six month after the transfer as well as in the case that he or she was not given the possibility of the professional training. The **officer** may be considered as incapable for his or her job if the **body or the organizational unit** of the body does not meet the **expected results** of its activity or if there are **frequent mistakes or if a grave mistake** in the performance of the body or organizational unit of the body occurs.[29] However, his or her responsibility for the results of the work unit is limited. If he or she succeeds to prove that he or she had been acting throughout as **good expert** to prevent the wrongful performance of the work unit.

If the civil servant is found not capable for his or her job or position, the employer may give regular notice of the termination of the employment contract only in case that there is no possibility for his or her transfer to other appropriate job.[30] In case that the transfer is realized during the notice period, the decision on the dismissal is annulled.

In the state administration and the administrations of local communities **two additional** legally defined cases of the regular dismissal related to the civil servant's capability exist. CSA therefore regulates the **dismissal** (with the severance pay) of the civil servant who **no longer fulfils the conditions** for the job performance if these conditions have been changed by the statute and the civil servant has not fulfilled them in reasonable time-limit offered to him or her. Another possibility for dismissal arises in case that the civil servant **reaches the full age and full pension period** which ensures him or her the regular old pension income.

Special Provision about the Employment Protection in State Administration and the Local Communities.

State administration and local communities may go through different **organizational changes** which may also influence the systemization and personnel plans. As a consequence these changes may cause the personnel surplus in some parts of the system and the lack of the deficiency of the personnel in other parts. Organizational changes may lead to the **transfer of tasks** in case of the abolishment of the body or even without its abolishment. Such organizational changes have consequences for civil servants' legal position. According to CSA, **all civil servants may be taken on** by the body assuming the tasks of the abolished body. Employment relation of such civil servants may therefore not be terminated. They may be assigned to the same jobs. In case the tasks of the

[29] It is considered that the civil servant or the work unit does not meet the expected results if he or she fails to perform the job or activity in the determined deadlines or if the work or activity performance does not reach required expertise or quality.

[30]. It may be considered that no transfer is possible if there is no free job which matches with the competences of the civil servant according to the **principal' estimation** or if the civil servant refuses the offered transfer. The principal is obliged to notify representative union in the body of the incapacity to.

abolished body **are not assumed** by another body, the employment of the civil servant may be terminated. The body may be finally abolished only when the principal manages to finish the proceedings relating to the termination of employment for the reasons of service. In case the tasks of a state body are assumed by a local community administration or vice versa, the employment may be **terminated only to be newly concluded** on the following day with the new employer, without job announcement or open competition. Civil servants may retain equivalent jobs and all rights acquired by the contract of employment or by an act of the employer.

These rules may be reasonably applied also in the case of transfer of tasks **from a body to an entity of public law** and vice versa. The **reasons of service,** namely the reasons of reduction in the scope of public tasks, the privatisation of public tasks for organisational, structural, or financial reasons, and other similar reasons are legitimate grounds for the **unfavourable transfer** as well as for the **termination** of the employment contract of the civil servant. According to CSA, such reasons which result in amendments to the internal organisation act and the job systematisation may lead to termination of the employment contract or civil servants may be transferred to new jobs that **do not correspond to their titles** for **reasons of service**.

Programme to Manage the Dismissal.

The programme, which is focused towards the efficient and just approach to resolve the problem of work unit concerning the redundancy, consists of different elements. According to the statute the programme must contain

- reasons for the redundancies,
- measures for preventing or limiting to the highest possible degree the termination of
  workers' employment relations. The main duty of the employer in this area is to examine the possibility to secure the continuation of the employment of the employees under modified conditions,
- the list of redundant workers. It is of a big importance that it also contains measures and criteria for the selection of measures to mitigate harmful consequences of the termination of employment relations, such as the offer for a new job with another employer, the assurance of pecuniary aid, the assurance of financial help for starting an independent activity, and the purchase of insurance period. The dismissal programme for redundant workers must be financially assessed.

The dismissal of the great number of the employees may also take place in the public sector. In the public sector the programme to manage the dismissal must be elaborated according CSA provisions as well. In the **procedure of stating** the existence of the great number of redundant civil servants every body is considered as the independent unit of the public sector, however, in the **process of resolving** the problem of redundancy, the personnel needs and demands of all bodies included in the web of internal labour market must be taken into consideration. Officer whose work becomes redundant may be transferred to the **job which corresponds** to his or her title and competences if such job is available in the

body. Other civil servants who perform the **supportive jobs** may be transferred to the job if the basic wage for job performance is assessed at least as high as their previous basic wage and if only they are competent to perform such job.

If the transfer of the civil servant is not possible, the professional training may be granted to the civil servant providing him or her competences needed for the performance of the free job in the body. CSA also regulates the situation and conditions for his or her eventual transfer to **other jobs** with the change of the title. In case that none of these possibilities exist, the civil servant may be placed in the **internal labour market**. If the transfer is not possible within **one month** the civil servant may be dismissed as a redundant employee.[31] In such case, he or she is entitled to have the right of **priority** of employment in later hiring procedure regardless of the rules of the public competition if the new hiring takes place in the period of two years from the dismissal. If the possibility for the transfer of the employee in a **remote location** exists, the competent authority must offer this possibility to the civil servant; however, the civil servant may choose whether to accept such offer or to refuse it and assert the right to the severance pay.

The Types of Immediate Termination of the Employment Contract.

The immediate termination of the employment contract is a legal fact caused by the unilaterally expressed will of an employment contract party in accordance with the statute. The statute determines the cases in which the employment contract party has the right to terminate the existing contract with the immediate legal effect. These cases are concretely described by the statute, taking into account the abstract frames of the definition of the justified or valid reasons for the termination of the employment contract upon the unilateral decision of the party of the contract. There are two possible modes of the immediate termination of the employment contract. On one hand, there is the possibility of the **employer's immediate dismissal** of the employee, and on the other hand, there is also an irregular (extraordinary) termination of the employment contract, caused by the **employee′s decision** notified to the employer. For both situations the statute imposes a, strict condition which must be fulfilled in order for the unilateral decision of the employment contract party to terminate the contract to be legally valid. This condition entails that in the given circumstances it is **not possible to preserve the employment relation** even until the expiration of the notice of termination or until the expiration of the period for which the employment contract was concluded. The irregular termination of the employment contract must be delivered by the contractual party in short deadlines. The party may do so within 30 days as from learning of the reasons which justify the irregular termination of the employment contract (subjective deadline) and no later than six months as **from the occurrence** of the reason in reality (objective deadline). In the case of a fault reason caused by the worker or by the employer, which has all characteristics of a criminal offence, the contractual party may terminate the employment contract within 30 days as from learning of the reasons which justify the irregular termination of the employment contract (subjective

[31] During the notice period the possibility of transfer of the public servant may be found. In such a case the dismissal may be cancelled if the civil servant agrees.

deadline) and regarding the offender, for the entire period in which he or she may be the subject to criminal prosecution.

WAGES - Supplements as the Elements of the Wage or Salary System in the Public Sector.

Supplements in the public sector are more or less regulated on the basis of the common starting point. The statute determines the basis for the supplements recognition. These bases are as followed:

- supplement on the basis of the managerial position of the officer,[32]
- supplement on the basis of the period of employment,[33]
- supplement for the mentorship to the applicants, [34]
- supplement for the reached specialization, the master degree or Ph degree if this is not a precondition for a specific job,[35]
- supplement for due bilingual service,[36]
- supplement for the unfavourable working conditions, which have not been taken into account in the process of the evaluation of the job or title or function,[37]
- supplement for work in less favourable working time.[38]

Functionaries are as a general rule not entitled to supplements with the exception of the supplement for the employment period. The supplements are determined by the statute, the Government ordinance, or the collective contracts stipulated for the public sector and are calculated on the basis of the basic wage or salary of the civil servant. The supplements for judges and some functionaries are separately regulated by the statute.

Education and Training

ERA does not regulate the issues of the scholarships in the private sector. The subject is namely considered a special area of **free contractual regulation**

[32] The supplement which is based on the managerial position of the officer or functionary is determined by the statute in or by the Governmental ordinance.

[33] The supplement which is based on the employment period of a person has its legitimate grounds in fact that the person has acquired added working skills in his or her entire professional career.

[34] The supplement for the mentorship to the applicants may be determined by the collective contract for the public sector.

[35] The supplement may be determined by the collective contract for the public sector.

[36] The supplement is acknowledged to civil servants and functionaries who work on the territory with the bilingual administration.

[37] The supplement may be granted to persons who work in difficult working circumstances however this fact is not taken into account in the evaluation of their basic wage. Special type of this supplement is the one which is based on the fact that persons work in dangerous circumstances and with increased workload. They are determined by the collective contract for the public sector.

[38] This supplements may be determined for the work in shifts, work in irregular distribution of the working time, work at night, etc. The special supplement is secured to persons who have the duty of permanent readiness for emergency interventions. They are determined by the collective contract for the public sector.

between the employees and employers. The subject, however, may be an important part of collective bargaining between the employers and workers' representatives. Scholarships are also an important subject of a national employment policy and as such present the important issue of the national employment strategy under the custody of the Employment Service Institute of Republic of Slovenia and the Ministry of Labour, Social Affaires and Family. The main subject of this policy is to provide national scholarships for pupils and students, who prove their **learning or studying excellence** or who are living in unfavourable **social conditions** such that their social situation disable them to learn or study without the state support.

The approach to scholarships in the public sector has a different starting point. The public sector entities have a legitimate goal of providing the financial support to pupils and students with the aim of drawing the **hiring policy.** On such basis CSA determines frames of scholarship relations with the pupils and students. The statute provides for scholarship-holders to be selected on the basis of **open competition**. The selection must made by an administrative decision served on all those participating in the competition. Appeal is allowed against the decision and is decided by an appellate commission. Upon the finality of the decision on selection, a **contract, regulating mutual rights and duties** must be concluded with the scholarship-holder.

xxx. The Role of the Training for the Employment Contract Parties.

In the era of quick changes of modern states in direction of developments of the information society and growing competition among enterprises on global markets, human knowledge and the knowledge and skills of the employees play a vital role in the business success and perspectives works units. The paradigm of the **lifelong learning** has become an important value. This paradigm has its regulatory basis in the Constitution, relevant international regulations, i.e. the ILO conventions and others. Slovene legislation has included some regulations about the education and training of the employees amongst the minimal working conditions. Educated and skilled employees are essential for employers to be competitive on the market. At the same time, the employees have a vital interest to gain additional knowledge and skills during the employment relation in order to stay in touch with technical and technological development and to improve their professional skills.

According to statute, a worker has the **right and obligation** to the education, advanced training, and retraining in accordance with the **requirements of the working process** with the purpose of maintaining and/or improving capability to be able to keep the job. An employer is **obliged to provide** education, advanced training, and retraining of workers if so required by the needs of the working process, or if the education, advanced training, or training may prevent the termination of the employment contract due to incapacity of the employee or business reasons. In accordance with the needs of education, advanced training, and training of workers, the employer has the right to refer the worker to education, training, and advanced training, whereas the worker has the right to apply for this himself or herself. The duration and the course of education and the

rights of the contracting parties during and after the education is determined by the **contract** on education and/or a collective agreement.

In the public sector the importance of permanent education and training is emphasized even more. First of all, civil servants must prepare themselves for passing the prescribed exams to be permanently permitted to perform their jobs. Such exams are of two kinds, firstly, the **state exam regarding the public administration,** and secondly, the **expert administration exam.** The first one is imposed as the condition for the access to titles which may be reached by the persons with the **high education degree**; whereas the second must be passed by officers with other titles.[39]The exams are enabled without charge to apprentices and to officials who have the duty to pass the exam in a deadline specified in the employer's decision of appointment in the title. The statute defines the content of the exams and regulates the recognition of contents if the civil servant has already passed a similar exam.

CSA namely regulates that **officials** have the **right to apply** to be referred to receive additional education provided in the interest of the employer. Referrals to further education are carried out on the basis of **internal competition** published by the principal, provided that funding has been secured.[40] The employer bears the costs of the further education of officials. The rights and obligations of officials referred to further education are determined in a contract concluded by the principal and the official. Officials referred to further education must, after the completion of education, **remain employed** with the same employer at least for a further period of the duration of such education. Otherwise, the employer is entitled to receive reimbursement of the proportionate share of the paid costs of education.[41] Civil servants also have the right and duty of **further training** in respect to their jobs. The officials also have the duty to develop their expert knowledge according to the **specified programme** and upon referral by their superior. The **programmes of education, training, and additional qualifications** determine the contents of education, training, and additional qualifications, and also the funds earmarked for further education and for the implementation of training and additional qualifications. The **general programme** of education, training, and additional qualifications determining the contents that apply to all bodies, is formed **by the Government**. The **proposal** of the programme is drafted by the body competent for personnel issues on the basis of expert analyses; the body also manages the implementation of the programme and makes a plan for its funding. The other plans mentioned above are determined **by principles** of the bodies in the specified deadline after the state budget or local

[39] CSA provisions regulate the composition of the exam commission, however, the procedure and other issues regarding the exams fall within the regulatory competence of the minister for the administration.

[40] Officials with higher average annual assessment over the last three years have **priority** with respect to referrals to further education.

[41] This obligation **expires** in case the employer within 6 months fails to appoint the official to title, or to transfer to the work post, for which the education received by the official is prescribed.

budgets come into force. A **report** on the implementation and effectiveness of the programme adopted for the previous period must also be prepared by the principles within specified deadlines. The **content** of the programmes and the **evaluation** of their success depend on the modern human resource management principles. The competent authority have to **monitor** the careers and the expertise of the civil servants, especially officials. It means that the superior must monitor the work and the careers of officials, and at least once a year conduct an **interview** with each official. Along with this the superior has to monitor the professional qualifications of officials and provide for **occasional testing** of their theoretical and practical knowledge.

The Enforcement and the Protection of Rights, Obligations, and Responsibilities of the Employees.

ERA contains the provisions which have the function of **dispute preventive measures** in cases in which employers do not fulfil their obligations to employees. The statute determines that whenever a worker learns that the employer does not fulfil his or her obligations arising from the employment relation or that he or she violates any of his or her rights arising from employment relation, the employee can make a **request in writing** addressed to the employer to abolish the violation and/or fulfils his or her obligations. Should the employer not fulfil his or her obligation arising from the employment relation and/or not abolish the violation within eight working days upon the receipt of the worker's written request, and the worker insist upon his or her request, the individual labour dispute may be initiated on the employee's unilateral request before the competent state authority or on his or her request addressed to the third party with the consent of the employer. Claims arising from employment relation **lapse after five years.**

Similar provisions can be found in the law regulating employment relations of civil servants. The **decisions over the legal position of the civil servants** should be made in written form.[42] The same rule is applied for the **decisions made on requests to remedy**[43] the violations of rights arising out of employment relation. Such decisions must be edited by a written act. Such act must be composed of the definition of the content of the decision, the statement of grounds, and must be handed to the civil servant. The provisions of the law governing civil procedure reasonably apply to the handing of these decisions. In case of the disagreement with such decision, the employee has the **right to appeal** which is allowed **against the decision** on the rights and obligations arising out of civil servant's employment relation, and **against the violations** of rights arising out of

[42] Managerial orders and instructions in respect of work falling within the description of the specific job may not be considered as the decisions on the rights and duties of the employees. The nature of these decisions must be regarded as the execution of their rights and duties.

[43] In case a civil servant is of the opinion that the employer **failed to meet the obligations or has violated any of his or her rights** arising out of employment relation, he or she has the right to **request** that violations be remedied and that the employer's obligations are met. The employer must meet his or her obligations or remedy the violations within 15 days.

employment relation. The civil servant may file an appeal in deadlines determined by the statute to the **appellate commission.**[44] When deciding on appeals **against administrative acts**, an appellate commission applies the provisions of law governing **general administrative procedure**. On the other hand, when deciding on appeals against acts on the rights, obligations, or responsibilities of civil servants in pure labour dispute without the authoritative elements, appellate commissions **reasonably apply** the statutory regulations governing civil procedure. An appeal may suspend the execution of the decision on the rights and obligations arising out of civil servant's employment relation, unless otherwise provided by the statute. In cases where an **authoritative decision** on the rights and obligations of the civil servant is taken, an appeal is allowed in conformity with the law governing **general administrative procedure,** unless otherwise provided by the statute; judicial review of the final decision is allowed in an **administrative dispute**. **Judicial review** of the decision made about the complainant's claims is allowed at the labour court, if the civil servant has previously exhausted the right to appeal. The possibility of submitting the dispute to the **arbitration body** is also allowed under the same condition. A civil servant or the job applicant may request judicial review by **submitting the suit** to a competent labour court or administrative court[45] within deadlines determined by the statute. These deadlines run from the time the civil servant has been served with the decision of the **appellate commission** or the time in which the deadline for issuing the order of the appellate commission has expired. If no appeal is allowed, the period for the submission of the suit begins with the service of the first-instance act.

Inspectors and Their Activities.

Supervision over implementation of the provisions of ERA, executive regulations, collective agreements, and general acts of an employer, which regulate employment relations, is exercised by a **labour inspection**, unless otherwise provided by the law. In case of violation of the fundamental provisions of ERA, the labour inspector has upon the performed supervisory inspection the right and obligation to issue a decision and order the employer to ensure the implementation of the Act.

[44] The appellate commission is organized **with the Government**, on issues relating to civil servants in public administration bodies and judiciary bodies; **with other state bodies**, on issues relating to civil servants in other state bodies, **with the representative associations of local communities**, on issues relating to civil servants in local community administrations; in case no such commission is established, appeals may be decided by the Governmental commission. The statute determines the structure of commissions, the level of education as the condition for the membership in the commission, appointment and dismissals of chairman and members, as well as other procedural and organizational issues (e.g. deadlines).

[45] No appeal is allowed against the decisions of the special competition commission but judicial review in an **administrative dispute** is, however, allowed.

In order to prevent arbitrary conduct and irreparable damage the labour inspection may **suspend the effect of the termination of the employment** contract due to a notice until the expiry of the time limit for commencing the arbitration and/or judicial protection procedure, and/or, until the executable arbitration award, and/or, if the worker in a judicial proceedings requests, not later than by the filing of a complaint, a temporary injunction, until the decision of the court following a proposal for issue of a temporary injunction.

According to CSA, the supervision over the use and implementation of the regulations about the legal position of civil servants is imposed on the **inspector for civil servants system**. Inspector has the right to inspect all the documentation and the data records related to the employment of civil servants. He or she performs inspections out of official duty. In particular, the inspectors **supervise the conformity of the acts** on the systematisation and general acts with laws and executive regulations; **legality and regularity** of providing the central personnel records with the relevant data, and the keeping of the collection of documents related to the personnel records; it is inspector's duty to **inspect** whether individual acts are issues in a timely and regular mode, the legality of the contracts of employment, whether the employment is in accordance with personnel plans, and that employment is otherwise legally correct, the conduct of competition procedures, that the acts on appointment to title or to a position are legal; the conduct of proceedings for the assessment of working and professional qualities, for promotion and for transfer, the conduct of reorganisation proceedings, the conduct of proceedings for determining incompetence of civil servants for the performance of work, the implementation of the programmes of education, training, and additional qualifications, and other. In the conduct of inspection supervision, the inspector **acts independently**.[46]

Inspectors must protect the security of personal and other data that they acquire during the conduct of supervision. Inspectors draw up the **minutes** on the conducted supervision and they are obliged to pass the minutes to the principal of the body and to the minister competent for the administration as well.

In case inspectors find unlawfulness or irregularities in the activities of the body, they may propose to the principal that disciplinary proceedings be commenced against the person who is held responsible. They may also address a claim to the competent appellate commission, proposing that the unlawful act should be annulled. They may address to the principal of the body and the minister competent for the administration a proposal that the measure necessary for the removal of irregularities be taken. In case the actions found by inspectors amount to a serious violation of law, they must propose that the proceedings for stating the responsibility of the competent officers should be instituted. They must consider the applications of civil servants and representative trade unions of activities and professions, or representative trade unions in the body, falling within they competence, and notify the applicants of their findings.

[46] The authorisation for the performance of supervision must be demonstrated with an official identity card. The minister competent for the administration makes provisions as to the form of the identity card and the procedure for the issuing thereof.