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**EXAMINATION OF PUBLIC SERVICE PRAGMATICS ON
THE BASIS OF THE STAFF REGULATIONS AND RULES OF
THE UNITED NATIONS**

With a perspective to the main European civil service systems

Theses of PhD dissertation

**Deák Ferenc Doctoral School of
Legal Sciences**

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Title of the doctoral programme: Further development of the Hungarian state
and legal system, jurisprudence, with special regard to European legal
development trends

Doctoral advisor: DSc Tamás Prugberger professor emeritus

**MISKOLC
2021**

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I. Brief summary of the research task

With my dissertation, I would like to publish a legal paper that offers an opportunity to compare the independent internal employment law of international organizations, and in particular the United Nations (UN), with the civil service law of states. I carried out my research with the aim of finding the inalienable, specific identifying features of the legal relationship of public service officials by presenting the legal status of civil servants and examining the generally prevailing rights and obligations.

There is a lot of uncertainty surrounding the concepts of public service, civil service or public official, civil servant, as legal systems differ in what exactly we mean by each term and exactly what kind of persons belong to each name. In this area, the UN operates like any public service, with its entire dogmatic system, set of sources of law, system of sanctions and responsibilities, and its independent judicial organization.

The similarity of the operational frameworks provides an opportunity for the researcher to compare the seemingly distant international and national public services, to highlight the good practices developed in them, and to make proposals for amendments to improve the adversely affecting or incomplete regulations.

I originally chose the topic because of my professional interest in international organizational operations and labor law and later I was also able to experience the research materials in practice when I was the national coordinator of the United Nations Commission on International Trade Law (UNCITRAL) in Hungary for two years and as an expert from the Ministry of Justice, I was able to attend several meetings in both New York and Vienna. These visits gave me the opportunity to get feedback on the specifics I had discovered so far, to get a personal impression of how the organization worked, and to give further directions to my ongoing doctoral work. The result of this process is the present dissertation, which examines and explores the connection between certain legal institutions of the UN regulations and of the Hungarian, German, Austrian, French, partly English and Italian civil service in a total of three structural parts, such as the general theoretical basis; the appointment, amendment and termination of the contract and elements of the public service legal relation; collective bargaining and the system of dispute resolution.

As *Konrad Zweigert* and *Hein Kötz* have stated, some of the main functions of comparing laws are improvement of knowledge, help in understanding how to identify problems and suggestion of direct or indirect solutions to these. Through the comparison of laws, we can explore different social and cultural arrangements in a sociological or an organizational approach.¹ In the present dissertation I point out that the UN apparatus can be presented in the same way as the system of state-level central administration, because the legal relations, organizational cultural constraints and practices of those serving in it show a high level of similarity or even equivalence.

I summarize the logical structure of my dissertation and each of my hypotheses in Figure 1. My starting point is that I intend to explore public service pragmatics along three main organizational governance factors: institutional structure, institutional and staff responsibilities, and staffing requirements. Civil service is undergoing a constant transformation, and any reform will bring about changes related to these three factors. In my work, I focus on the points that show consistency in this field of law, and my results show that this structure qualifies as such, regardless of the administrative unit we are examining.

¹ HORVÁTHY, Balázs: *A jogösszehasonlítás főbb tézisei és az európai integráció.* (<https://mek.oszk.hu/03400/03435/03435.htm>). See the specifics of the comparison for more details: ZWIEGERT, Konrad – KÖTZ, Hein: *Einführung in die Rechtsvergleichung auf dem Gebiete des Privatrechts I.* (Grundlagen. J.C.B. Mohr, Tübingen. 1971.

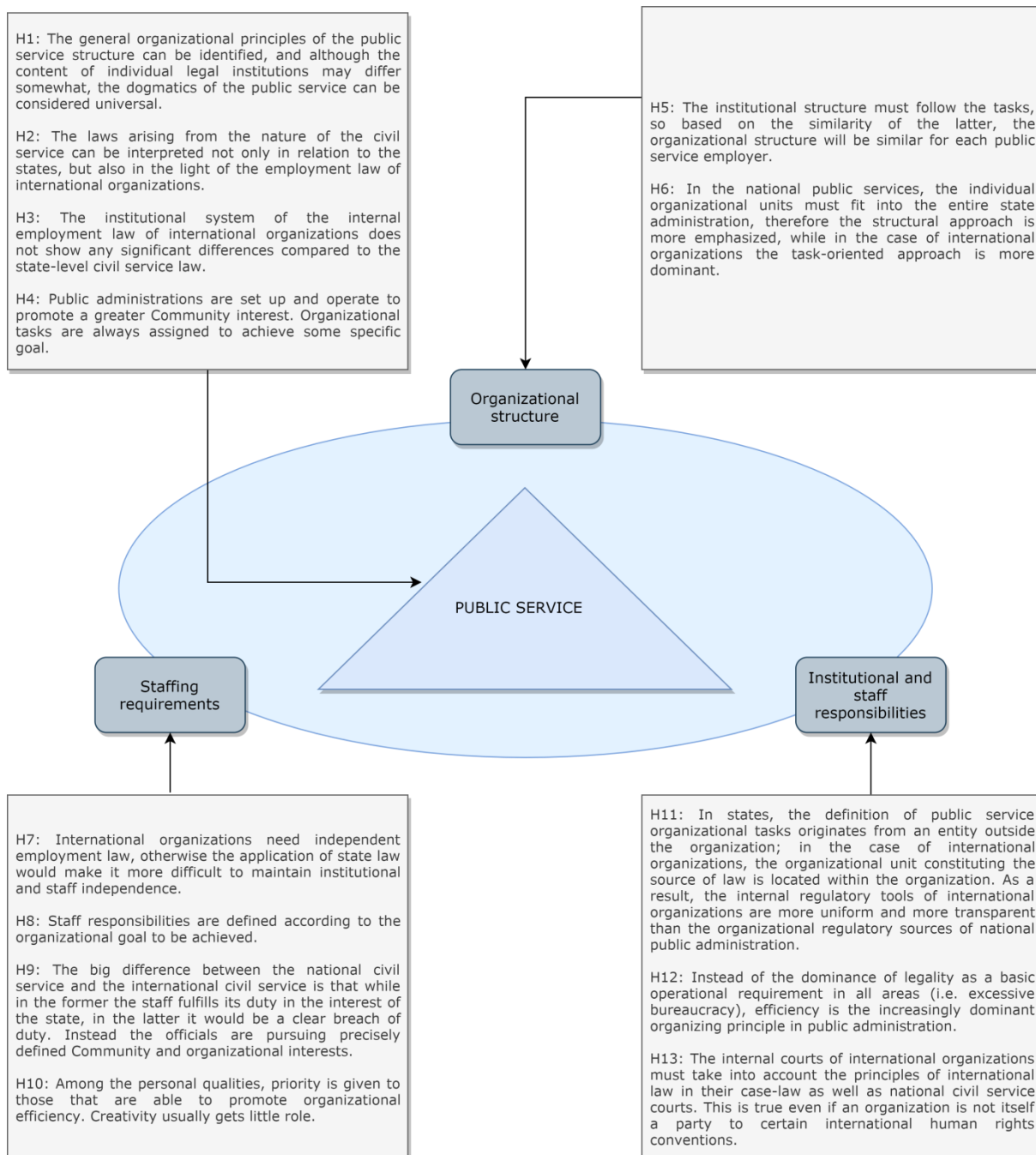


Figure 1: The logical structure of the dissertation²

² Own figure.

In my dissertation I sought answers to the following research questions:

- 1) What is the reason for international organizations to have their own personnel and organizational management structure?
- 2) What would happen if intergovernmental organizations did not create their own employment legislation?
- 3) Is there a link between the way in which the United Nations has developed its own employment law and the way in which public service law operates in large European public service systems?
- 4) With regard to legal instruments, how transparent is the UN system and can we speak of meeting the requirement of legal certainty in organizational terms?
- 5) How does UN ensure sufficient staff independence through its Staff Regulations?
- 6) The UN employment law is a product of organizational sovereignty, but to what extent do the basic labor law institutions (appointment, amendment, termination of legal relations) show individual solutions?
- 7) Is there a legal structure that can help international officials to be able to enforce collective rights even in the absence of trade unions in the classic sense?
- 8) To what extent is the internal judicial system capable of respecting the fundamental human rights applicable to the jurisdiction in general and recognized by international law?

In order to fulfill the research task delimited by the questions, I prepared my dissertation as shown in Figure 2.

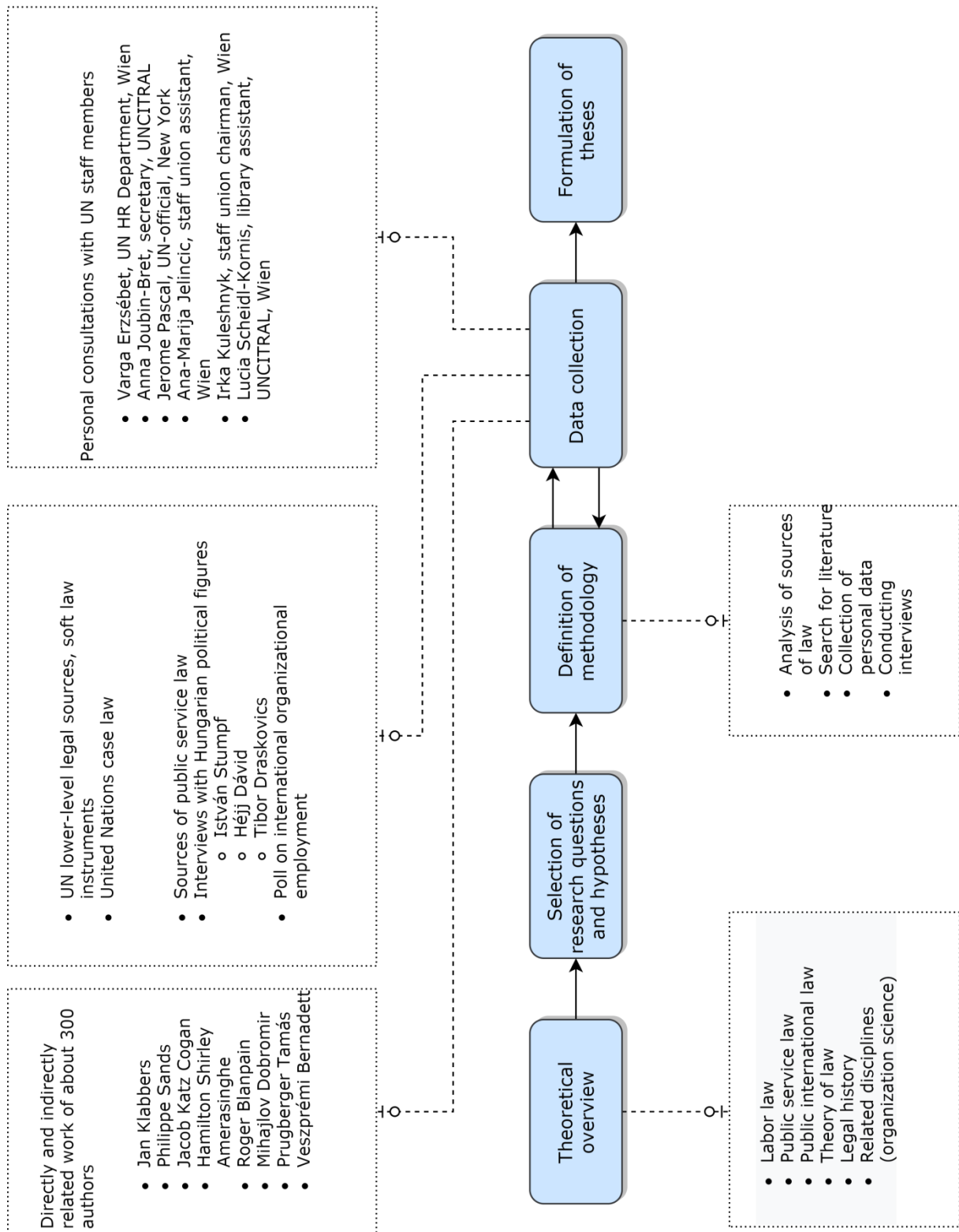


Figure 2: The process of preparing the dissertation³

³ Own figure.

My research was therefore based on two main objectives: on the one hand, I wanted to present the employment law of the United Nations as one of the most important international organizations, and on the other hand, I wanted to point out the specific features that make the public service itself, irrespective of the question what kind of organization we are talking about. In my dissertation I examined the following hypotheses:

H1: The general organizational principles of the public service structure can be identified, and although the content of individual legal institutions may differ somewhat, the dogmatics of the public service can be considered universal.

H2: The laws inherent in the nature of the civil service can be interpreted not only in relation to the States, but also in the light of the employment law of international organizations.

H3: The institutional system of the internal employment law of international organizations does not show any significant differences compared to the state-level civil service law.

H4: Public administrations are set up and operate to promote greater Community interest. Organizational tasks are always assigned to achieve some specific goal.

On the one hand, I examined my first four hypotheses with the help of legal history sources, and on the other hand, I compared the large European public service systems with the current UN employment legislation. I also conducted empirical studies, as I interviewed professionals and compared my own experience with the results obtained.

H5: The institutional structure must follow the tasks, so based on the similarity of the latter, the organizational structure will be similar for each public service employer.

H6: In the national public services, the individual organizational units must fit into the entire state administration, therefore the structural approach is more emphasized, while in the case of international organizations the task-oriented approach is more dominant.

In order to examine the 5th and 6th hypotheses, in addition to the UN employment law, I also conducted research in the field of organizational management in order to better understand and contextualize it.

H7: International organizations need independent employment law, otherwise the application of state law would make it more difficult to maintain institutional and staff independence.

H8: Staff responsibilities are defined according to the organizational goal to be achieved.

H9: The big difference between the national civil service and the international civil service is that while in the former the staff fulfills its duty in the interest of the state, in the latter it would be a clear breach of duty. Instead the officials are pursuing precisely defined Community and organizational interests.

H10: Among the personal qualities, priority is given to those that are able to promote organizational efficiency. Creativity usually gets little role.

With regard to 7th-10th hypotheses, I examined the UN personnel policy by analyzing the specialist materials of the HR department and other departments dealing with personnel management, and then compared this with the characteristics experienced in the civil service.

H11: In states, the definition of public service organizational tasks originates from an entity outside the organization; in the case of international organizations, the organizational unit constituting the source of law is located within the organization. As a result, the internal regulatory tools of international organizations are more uniform and more transparent than the organizational regulatory sources of national public administration.

H12: Instead of the dominance of legality as a basic operational requirement in all areas (i.e. excessive bureaucracy), efficiency is the increasingly dominant organizing principle in public administration.

H13: The internal courts of international organizations must take into account the principles of international law in their case-law as well as national civil service courts. This is true even if an organization is not itself a party to certain international human rights conventions.

In order to examine my last three hypotheses and to analyze the isolation of the international civil service and the enforcement of rights, in addition to the available legal sources, I have collected relevant cases from the case law of the internal court.

II. Research methodology, resources and their use

The internal employment law of international organizations is not an intensely researched field in Hungary, and only the leading publishers, such as Cambridge University Press,⁴ Oxford University Press⁵ and Sweet & Maxwell,⁶ have written works abroad. Although the selection of literature on the topic is not really diverse, in addition to the works mentioned above, the *International Encyclopaedia of Laws: Labor Law and Industrial Relations*⁷ and the three-volume series *Jura Europae Droit du Travail/Arbeitsrecht*,⁸ edited by Roger Blanpain, were very helpful in my present work. The work of Bernadett Veszprémi served as a useful starting point in the review of the structure of the public service,⁹ and Tamás Prugberger's book entitled *Hungarian Labor and Public Service Law Reform with a European Perspective*¹⁰ also proved to be a fundamental source of research.

My dissertation is emphatically based on primary sources, so basically the Staff Regulations and Rules of the UN General Assembly and the lower level legal sources of the Secretary General provide a framework to which I add each state rule with a comparative approach in order to answer the question of which extent the UN constitutes a unique set of rules and seeks to follow already known, proven public service models.

My research was driven by the need to fully process the theoretical aspects, which I supplemented with an evaluation of my personal experience as well as the practical knowledge gained during the interviews. I note that although my dissertation is about the internal system of the United Nations, in my view, any international organization with its own staff regulations and internal courts, such as the European Union, has an almost identical picture with the entity I have chosen.

I see the significance of the work mainly in the fact that the organization has created a number of administrative instructions regarding the sub-issues and legal institutions included in the Staff Regulations, the review of which takes a lot of time and the connections between these instruments are not always clear. In my work, I aimed to gain a comprehensive understanding of the internal employment law of the United Nations and, through it, of intergovernmental organizations. I can compare my research work in this field to the way a person unfolds a puzzle of a thousand pieces, and the dissertation will hopefully give the reader a complete picture of the small patches.

In order to be able to follow and understand the research methods and the derived research results throughout, we can read a short introduction at the beginning of each chapter, outlining the common features and differences of the regulations of each legal institution, and summarize them in detail at the end of the three major sections. Given that the topic of the

⁴ KLABBERS, Jan: *An Introduction to International Organizations Law* (3rd ed.) Cambridge University Press, Cambridge, 2015. (doi:10.1017/CBO9781139946308)

⁵ COGAN, Jacob Katz – HURD, Ian – JOHNSTONE, Ian (ed.): *The Oxford Handbook of International Organizations*. Oxford University Press, 2016.

⁶ SANDS, Philippe – KLEIN, Pierre Klein: *Bowett's Law of International Institutions*. Sweet & Maxwell, 2009.

⁷ BLANPAIN, Roger (szerk.): *International Encyclopaedia of Laws: Labour Law and Industrial Relations*. Wolters Kluwer, 1977.

⁸ *Jura Europae. Droit du Travail/Arbeitsrecht. 1-3 Vols.* Verlag C. H. Beck, Munich; Editions Techniques Juris-Classeurs, Paris. 1971.

⁹ Id. pl. ÁRVA, Zsuzsanna – BALÁZS, István – BARTA, Attila – VESZPRÉMI, Bernadett: *Közigazgatás-elmélet*. Debreceni Egyetem Állam- és Jogtudományi Kar, 2020. (<http://real.mtak.hu/118796/>), and VESZPRÉMI Bernadett: *Felelősség a közszolgálatban*. Debreceni Egyetemi Kiadó, Debrecen, 2012.

¹⁰ PRUGBERGER, Tamás: *Magyar munka- és közszolgálati jogi reform európai kitekintéssel*. Novotni Kiadó, 2013.

dissertation is primarily, but not exclusively, of a labor law nature, I also took into account the results of legal theory, public international law and general civil law in my research.

Referring back to the title of the dissertation, my aim was to explore the whole public service pragmatics,¹¹ therefore my work differs from the traditional structure of labor law in two chapters. In the first major structural unit, I elaborate on the basics of legal history and philosophy that form the basis of the existence of international organizations and the right of independent employment, somewhat dogmatically placing the topic, the detailed presentation of which is the aim of the dissertation. I am convinced that without this introduction, the existence of organizational employment law is less understandable and justifiable. The other more specific chapter deals with the non-legal topics of organizational culture, management, and psychology, for in my view, public service cannot be interpreted without these aspects. Although the topic is strongly sociological, I considered that the dissertation cannot be without a theoretical basis for what is different in international organizational and public sector employment from the practical application of a set of rules.

In the rest of the dissertation I will follow the well-known structure of labor law research, I write about the legal sources, appointment, issues of amendment and termination of legal relationship, working hours and rest periods, pay systems, social security, liability system, labor relations and on the functioning of the internal judicial system.

¹¹ GYÖRGY, István – HAZAFI, Zoltán (szerk.): *Közszolgálati jog*. Nemzeti Közszolgálati Egyetem, Budapest, 2014. p7. By public service pragmatics we mean all the elements of the legal status of the officials performing administrative work (including, inter alia, from selection to promotion, through the salary system to the termination of the legal relationship) that are coherently based on the same principles and consist of one or more legal acts.

III. Scientific results and possibilities for their utilization

In my research, I have found that both the state and the international public service carry the characteristics that make them public service in nature. There is a special selection system everywhere on the employer's side, and it is an unavoidable feature that the employer is always the state or one of its bodies – in this respect, the intergovernmental organization is also a kind of manifestation of the state entity. We find a difference rather in the fact that the state in its own administration obviously manifests itself directly as an employer, whereas in the case of international organizations, through international establishment and membership, we experience an indirect state presence.

T1a: The public service nature of the legal relationship exists or does not exist regardless of the type of organization.

T1b: An employment relationship of a public service nature is one that is in some way linked to state authority and performs its duties for the benefit of citizens.

T1c: The internal administration of the state and the international organization finds itself facing essentially the same problems and issues at a certain level of development, we only find differences in the types of regulatory system.

Based on the research, I concluded that the German civil service model had the most tangible effect on the development of the UN's internal rules, considering that from the division of civil servants and employees to organizational management of flexible working methods we can see many solutions that resemble the German situation. At the same time, there is a big and fundamental difference between the German and Francophone civil service and UN employment law, that while the former clearly pragmatizes the sphere, i.e. the removal of an official is only possible in case of particularly serious misconduct, the UN system is more managerial, since it prioritises the compatibility of officials' personal competencies with organizational goals at all times.

T2a: The internal employment law of international organizations has historically evolved from state-level public service law.

T2b: The merit system and the spoils system-approach do not show a direct correlation with the functioning or efficiency of the given public service: While merit-based appointments contribute to the democratization of the civil service, performance enhancement can only be achieved through performance management.

My important observation is that the internal employment legal system does not reflect at all the process by which an organization reacts to world political events. In the case of the United Nations, this task is performed by the Secretary-General and the General Assembly, but the political activities of these units have no effect on internal employment law, either in practical or theoretical terms. This is expressed in the dissertation by the parts written on the so-called external and internal development curve. The legislation is at least as stable in terms of the separation of powers, legal certainty and the application of internationally recognized labor law principles as the civil service law of any of the states examined. The political activity of

organizations has virtually less effect on the content of internal employment legislation, as the periodic government elections has in a state.

T3a: There is no direct link between the organizational activity and the legal order within the organization.

T3b: Structural subordination to the organisation's global objectives would run the risk of legal uncertainty.

T3c: The dogmatic content of the “rule of law requirement” can also be interpreted in the internal legal system of international organizations.

It is clear that if intergovernmental organizations applied the law of any Member State to their own internal legal relations, this situation would sooner or later open the way for the jurisdiction of a state court, so that it could act in internal disputes. The influence of the law of the State where the organization has its seat would indirectly make the international organization a branch of that public administration, which would run counter to the principle that those organizations are intended to promote independent international interests. Internal law means more than a set of otherwise essential employment rules: the establishment and management of internal units, the appointment of members of these units, the decision-making mechanisms within the units, the staff requirements, and the management of financial resources for operation belongs here.

T4a: Internal labor law regulations independent of any of the state-related legal systems ensure full organizational sovereignty.

T4b: The internal sphere of operation means activities that guarantee the maintenance of the system.

T4c: External functions cover procedures that underpin the influence of an international organization on Member States and, within that, on their participation in joint work.

Opinions in the literature are divided on the extent to which the law of international organizations can be considered an independent branch of law. According to some theories, it is not a law on its own, others hold the opposite: it is seen as a *sui generis* legal field. According to an intermediate opinion, this is an area of law that can be delimited independently within public international law.

T5: Internal organizational regulation is an underlying legislative product of public international law mechanisms.

Organizational culture is a set of basic assumptions that a particular group has invented, introduced, discovered during the solution of problems arising during external adaptation and the design of the internal system. We are talking about presuppositions that have worked well enough for the community to accept as valid and to teach new members as common ways to perceive, think, and feel about a specific problem. In many cases, the achievements of

organizational culture are summarized in internal regulations as an easy-to-reach source, but some inferior or unspoken habits can only be acquired through daily work and interactions. Referring to an organizational culture before a court is basically possible if it is objectively known and does not conflict with law or internal regulations.

T6a: Organizational culture defines the social dimension of an organization, which is represented in the internal legal system as rules of rights and obligations.

T6b: Organizational culture always explains why and how everything happens within an organization in terms of behavior.

T6c: As the diversity of staff increases, so does the importance of organizational culture.

In civil service law, a selection model based on merit is well known, and a selection model based on some other condition is less common. A distinctive feature of the merit-based selection system is that it typically aims to ensure equality by allowing anyone to enter the system if they meet the eligibility criteria. This trend is known in today's rule of law and is followed in international organizations. In the merit-based selection system, the state or an international organization may decide to objectify the recruitment process as much as possible, so the methodology is provided by the legal institution of compulsory tendering and the competitive examinations in international organizations.

T7: The objectification of the civil service legal relationship helps the efficient operation of the public administration.

Within an international organization, less actors take part in the protection and promotion of the staff's industrial interests than in the case of a state. However given that the legislative role in the United Nations is exercised by the General Assembly and the Secretary-General, who is also the employer's authority, it is necessary to submit comments to these departments on the improvement of working conditions. One cannot expect the presence of classical bipartite, tripartite social dialogue. In addition, from the point of view of the representation of the interests of the parties, it is not a negligible circumstance that within the organization, there may be interest representation primarily on the part of the employees: due to the said directness of the decision-making mechanism, it would be inadequate on the part of the employer to maintain a separate organizational unit for this purpose.

T8: Irrespective of the name, the actors of the industrial relations are able to operate in a very similar way within the framework of any employment relationship.

What is striking is the fact that alternative dispute resolution is far from versatile in the UN. This is the case for all international organizations, as they sometimes set up different institutions, but when looking at all the options, they typically choose only two or three types. The question is, how much versatility is needed at all? I see efficiency in this area as more important than choice. In many cases, one does not see any major differences between the various methods, so it is clear from the labor law disputes that usually arise in international organizations which are the few legal institutions that, by their purpose and nature, are suitable to help resolve conflicts. In the case of the UN, Ombudsman and Mediation Services

make it possible to avoid the formal way of conflict resolution. An important principle in dispute resolution is that the parties use the level of conflict resolution as close as possible to that of the official, as this will ensure the most time- and cost-effective solution that also has a positive impact on the relationship between the parties.

T9a: Alternative dispute resolution procedures help the organization operate.

T9b: In terms of the variety of ADR procedures, it is more effective for an organization to provide its officials with a legal background to only two or three such options.

T9c: The identity of the individual is formed through a series of decisions, and consequently those conflict resolution procedures that support compromise-based thinking should come to the fore in accordance with the social interests.

T9d: Alternativeness as an indicator does not represent an “anti-judiciary” point of view – it aims to facilitate an agile transition in the judicial system. Alternative dispute resolution procedures and formal court proceedings are considered to be fully equivalent.

T9e: Subsidiarity and equality of the parties contribute to the effectiveness of dispute resolution.

Given that the inequality of the parties could, in extreme cases, can lead to questioning the legitimacy of the internal procedure, a solution could be to set up a legal insurance scheme which, like social, health or pension insurance, would cover all officials in the event of future labor disputes. The UN appears to be performing relatively well among international organizations in terms of legality, as its case law is well transparent and it also provides legal advice to its officials. At the same time, it is also characteristic of the organization that negotiations can be prolonged, respect for fundamental rights is not complete and internal regulations are almost opaque.

T10a: International organizations often struggle with “rule of law” deficits due to prolonged negotiation procedures, lack of guarantees for the full application of fundamental human rights, non-transparent internal regulations or internal case law.

T10b: The establishment of an internal judicial system is an inevitable obligation if the organization is willing to maintain its independence.

T10c: The existence of an independent international legal entity confers additional responsibilities on international organizations in shaping their structure and operating system.

Opportunities for utilization

- 1) Employment at the UN is fundamentally one-stop-shop, meaning that there is only one “code” in its legal system that defines the law of service. It can be noticed that in Hungary there is a similar intention to unify in the literature, but the maintenance of

the current, fragmented public service regulatory system is too deeply ingrained in the everyday practice of the affected interests, therefore it is extremely difficult to break away from it. It would be recommended to unify the Hungarian public service law, and the specialties could be included in lower-level organizational instructions.

- 2) A useful direction in the field of public service organization management can be the flexibility and adoption of a fresh approach characteristic of the United Nations. The organization explicitly strives to keep pace with the requirements of the age when it comes to performing its functions, which is reflected in everything from adaptive personnel policy through modern organizational infrastructure to realistic objectives in all operating segments. In domestic civil service law, merit-based employment should be pursued with an appropriate division of tasks, more and stricter training of personnel, so that civil servants could form a highly prestigious employment group.
- 3) There is already an organizational unit in the UK responsible for public service organizational psychology, and based on its experience, as well as at the UN, it may be useful to set up a network of professional units to improve effective organizational functioning.
- 4) The Hungarian legislator should change the methodology and institutional system of public service industrial interests, because there is currently no really strong presence in this segment of the labor market. Emphasis should also be placed on the motivation of officials, as well as the training of staff union members and the involvement of current decision-makers in conciliation processes. The UN can serve as a good model in that there are many units within the organization in different areas of representation, so that officials and decision-makers are also involved in general and ongoing activity when it comes to consultations, identifying problems and developing solutions.
- 5) I have already had the suggestion, in the case of international organizations, that a (even compulsory) legal insurance scheme could be set up for workers. This option would also be useful in the domestic public service (or even in full employment law) because there would be more opportunities for employees to bring an action in the event of a legal dispute or even a conflict of interests. Because of the latter, insurance should cover all forms of dispute resolution, not just formal, court proceedings. In addition to the payment of insurance fees, the real value of employees' salaries should be maintained.
- 6) The UN provides a good example by implementing an informal conflict resolution toolkit in the governance structure, as officials are aware of their options and organizational integrity can be ensured by excluding the use of external experts.
- 7) Today in Hungary, for the classification of officials regulated in Act No. 125 of 2018 on government administration, managers are primarily and often solely responsible and the official himself may not formally intervene in any form in the decision on which personnel level they would belong to. The system is similar to the UN, however, the organization maintains a dedicated committee to allow the official to dispute the legitimacy of the classification level. A similar legal remedy would be beneficial in Hungary as well, I would imagine its operation on the model of the Civil Service Arbitration Committee, or I would expand the competencies of the Arbitration Committee with the classification matter.
- 8) The UN HR department performs high-quality professional work, its task is organizational planning, classification of the required positions, and checking the background of the candidates. The department prepares comparative analyzes and reports on the workforce, provides job descriptions, develops standard job profiles, analyzes contract modalities through technical review and evaluation of current functions and positions, reviews and evaluates competencies with a technical approach

to determine the appropriate level of positions, and develops and reviews tailored competency frameworks. In my opinion, in the Hungarian public service, emphasis should be placed not only on the necessary training of officials, but also the human resource management providing the administrative background of the organization should undergo a large-scale modernization. This would include raising the standard of training, the active integration of foreign good practices into day-to-day work processes and the continuous training of employed HR professionals in all areas relevant to their function.

IV. The author's related publications

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