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RENÁTA HRECSKA-KOVÁCS

PRAGMATICS OF INTERNATIONAL PUBLIC SERVICE THROUGH THE LENS OF THE UN EMPLOYMENT LAW

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Renáta Hrecska-Kovács
Senior Researcher, Ferenc Mádl Institute of Comparative Law

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REVIEWERS:
Prugberger Tamás
Professor Emeritus, University of Miskolc Faculty of Law,
Department of Agricultural and Labor Law

Hajdú József
Head of Department, Professor, University of Szeged
Faculty of Law, Department of Labor and Social Law

Zaccaria Márton Leó
Associate Professor, University of Debrecen Faculty of Law,
Department of Environmental Law and Labor Law

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Recommendations

Renáta Hrecska-Kovács's book "Pragmatics of International Public Service Through the Lens of the UN Employment Law" deals with the employment relationship of UN officials, which is neither a private employment relationship nor a public service relationship of a state nature but lies somewhere between the two. This specific legal relationship has not been elaborated comprehensively in the Hungarian labor law literature, which makes the author's work particularly valuable as it can serve as a starting point for the presentation and analysis of the service legal relationships of other institutions of international importance of a similar nature.

The author's book not only outlines the legal relationships of employees employed at the UN but also compares them with the legal relations of civil servants in European states and, above all, in Hungary. The primary value of the processing is provided by the extensive information data collection, which presents the nature of the UN employees' legal relationship in parallel with the rules included in the public service systems of European states. This also applies to the comparison between Hungarian civil service law and the civil servant law, where the author emphasizes that, unlike other Western European countries, Hungarian civil service law finds its source, not from one but two sources of law—separate civil servant and public servant laws. In her volume, the author refers to the fact that, while the Francophone-Latin civil service legal regulation manages the duties of administrators, that is, civil servants, and case managers, in a public service legal source system, the Germanic legal system transferred its case managers to the labor law regulations. The thesis highlights that the nature of UN civil service regulation follows a traditional Francophone-Latin system.

The author's work is divided into three main sections: the first section contains the general theoretical foundation in four chapters where she presents in detail the historical and legal theoretical roots of the regulation, the place of international organizations in legal systems, the role of morality in international law, the interests of nations and supranational collision and the possibilities of reaching a compromise. In this section, the author discusses why the service relationships that exist within the UN are public

service rather than private service. Here, the author compares the internal law of international organizations as an independent field of law, as well as the UN personnel discipline, whose structure is consistent with the system of national civil service rights compared to the general source of law. The need for a legal philosophical foundation can be raised in relation to this section; however, I think the author undertook the task with some justification, given that the current Frankfurt system of neo-Kantian legal philosophy has a significant impact on bringing public service closer to the employment law relationship, whose impact is also being investigated by the UN on the legal service relationship.

In the second part, the first of the five chapters deals with appointment and its modification, the second is about working and resting time, and the third discusses salary and other benefits. This is followed by the presentation of basic rights, obligations, the liability system, and disciplinary measures related to their violation in the fourth chapter. The chapter that concludes this section deals with the forms of service relationship termination and the restrictions following the termination of the service relationship. The positive aspect of this section is that all the institutions discussed here comply with UN rules or present their solutions precisely, highlighting how they compare to and differ from European and Hungarian regulations.

In the third section, which discusses labor relations, the author illustrates how the interest representation and negotiation solutions related to service issues are significantly different from the Hungarian public employee interest conciliation system, which is nearly identical to the Hungarian labor law in terms of its dogmatic system. This similarity exists along with the highly limited system of matching the interests of Hungarian civil servants. However, the joint negotiation committee system presents similar features to Western European solutions. The procedure and system for managing conflicts of interest and legal disputes between the UN and its employees are covered in a few chapters in this section. The institutional system and mechanism for resolving individual and collective interest disputes are similar in both Western European and Hungarian labor laws, which, in my opinion, the author presents in a fair manner. On the other hand, the UN essentially has a two-level domestic court without the possibility of external legal remedies, which is one way that judicial dispute resolution differs from national alternatives. However, I believe that such a procedural step could be established in such a way that the presidency of the human rights court could also review the judgments; the UN court could also be assigned a narrower presidency, or I also agree with the author that the International Court of Justice could act in such cases by restoring the older system.

In my opinion, the book's significant value lies in the author's discussion of the individual UN legal service institutions, which she does after outlining the national regulations of the European states and discussing the UN's solution in relation to these solutions. She does this not only in a "de lege lata" manner but also by evaluating and criticizing the solutions in addition to offering "de lege ferenda" suggestions. These proposals are usually summarized by individual legal institutions.

Taking all of this into account, I recommend the book by Renáta Hrecska-Kovács to all professionals dealing with labor law, especially international labor law, as it provides both theoretical insights and extremely helpful practical experience. For a long time, the author participated in the work of the UN as a national expert. Therefore, the reader can gain first-hand information about service life within the UN.

Dr. Prugberger Tamás, D.Sc., *Professor Emeritus*

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List of Abbreviations

ACAS (Advisory, Conciliation and Arbitration Service)

ACUNS (Academic Council on the United Nations System)

ADR (Alternative Dispute Resolution)

ANT (actor-network theory)

ArbZG (Arbeitszeitgesetz)

ASG (Assistant Secretary-General)

ASIL (American Society of International Law)

ATBIS (Bank for International Settlements)

BBG (Bundesbeamtengesetz)

BDG (Bundesdisziplinargesetz)

BPW (Beiträge zur Politischen Wissenschaft)

BUSINESSEUROPE (Confederation of European Business)

CAF (Common Assessment Framework)

CASBIA (Association Coopérative des Automobilistes et des motocyclistes des Secrétariats et Bureaux des organisations Internationales et des institutions Accrédités)

CEB (Chief Executive Board for Coordination)

CEEP (Central Europe Energy Partners)

CJEU (Court of Justice of the European Union)

COE (Council of Europe)

Comecon (Council for Mutual Economic Assistance)

CPEC (Civic Consulting of the Consumer Policy Evaluation Consortium)

CSR (corporate social responsibility)

DAB (Dispute Adjudication Board)

DMSPC (Department of Management Strategy, Policy and Compliance)

DPO (Department of Peacekeeping Operations)

DRB (Dispute Review Board)

EBRD (European Bank for Reconstruction and Development Administrative Tribunal)

ECOSOC (Economic and Social Council)

EIGE (European Institute for Gender Equality)

EOSG (az ENSZ Főtitkárának Kabinetirodája; Executive Office of the Secretary-General)

EPO (European Patent Organisation)

ESZSZ (Európai Szakszervezeti Szövetség)

EU (European Union)

Euratom (European Atomic Energy Community)

FALD/DPKO (Field Administration and Logistics Division; Department of Peacekeeping Operations)

FAO (Food and Agriculture Organization of the United Nations)

FICSA (Federation of International Civil Servants' Associations)

HCCH (Hague Conference on Private International Law)

IAEA (International Atomic Energy Agency)

IBRD (International Bank for Reconstruction and Development)

ICAO (International Civil Aviation Organization)

ICJ (International Court of Justice)

ICSAB (International Civil Service Advisory Board)

ICSC (International Civil Service Commission)

IDA (International Development Association)

IFAD (International Fund for Agricultural Development)

IFC (International Finance Corporation)

ILO (International Labour Organization)

ILOAT (International Labour Organization Administrative Tribunal)

IMF (International Monetary Fund)

IMO (International Maritime Organization)

ITU (International Telecommunication Union)

IWC (International Whaling Commission)

JAC (Joint Advisory Committee)

JNC (Joint Negotiating Committee)

LOA (Letter of Appointment)

MINUSTAH (United Nations Stabilization Mission in Haiti)

MIT (Massachusetts Institute of Technology)

NATO (North Atlantic Treaty Organization)

NGO (Non-Governmental Organizations)

NLRB (National Labour Relations Board)

NPM (New Public Management)

OAS (Organization of American States)

OECD (Organisation for Economic Co-operation and Development)

OHR (Office for Human Resources)

OHRM (Office of Human Resources Management)

OIOS (Office of Internal Oversight Services)

OLA (Office for Legal Affairs)

OMS (Ombudsman and Mediation Services)

ONS (Office for National Statistics)

OSAGI (Office of the Special Adviser to the Secretary-General on Gender Issues and Advancement of Women)

OSCE (Organization for Security and Co-operation in Europe)

OSLA (Office of Staff Legal Assistance)

PAHO (Pan-American Health Organization)

PAS (Performance Appraisal System)

PPP (Public Private Partnership)

R&R (Rest and Recuperation)

RP Report (Rich Property Report)

SECNAV (United States Secretary of the Navy)

SHRM (Society for Human Resource Management)

SIMA (Servicio Interconfederal de Mediación y Arbitraje)

SMAC (Servicio de Mediación, Arbitraje y Conciliación)

TTO (Term-Time Only)

UEAPME (European Association of Craft, Small and Medium-sized Enterprises)

UN (United Nations)

UNBA (United Nations Board of Auditors)

UNAT (United Nations Appeals Tribunal)

UNCITRAL (United Nations Commission on International Trade Law)

UNCLOS (United Nations Convention on the Law of the Sea)

UNDP (United Nations Development Programme)

UNDT (United Nations Dispute Tribunal)

UNESCO (United Nations Educational, Scientific and Cultural Organization)

UNFPA (United Nations Population Fund)

UNHCR (United Nations High Commissioner for Refugees)

UNICE (Union des Industries de la Communauté européenne)

UNICEF (United Nations Children's Fund)

UNIDO (United Nations Industrial Development Organization)

UNITAR (United Nations Institute for Training and Research)

UNJSPF (United Nations Joint Staff Pension Fund)

UNOPS (United Nations Office for Project Services)

UNRWA (United Nations Relief and Works Agency for Palestine Refugees in the Near East)

UNSSC (United Nations System Staff College)

UN Women (United Nations Entity for Gender Equality and the Empowerment of Women)

UNWTO (United Nations World Tourism Organization)

UPU (Universal Postal Union)

US (United States)

USA (United States of America)

USD (United States Dollar)

USG (Under-Secretary-General)

WHO (World Health Organization)

WIPO (World Intellectual Property Organization)

WMO (World Meteorological Organization)

WTO (World Trade Organization)

PART 1
GENERAL THEORETICS

I. The formation of the UN and its personnel structure

Just as constitutional law serves as the basis for the internal legal order of states, international public law serves as the basis for the external legal order. These two areas are connected by legal philosophy, as the current dogmatic system and the range of legal institutions are formed under the influence of legal theory. The first chapter of this work aims to examine the historical steps of public law significance and the legal philosophical trends along which the organization could be established and acquire its independent international legal status before learning the internal employment law of the United Nations, and then—in accordance with the principle of separation of powers—it could develop its legislative mechanism as part of its internal operating order. Finally, because of this, it could create its own employment law and establish its labor own justice system.

Although diplomatic cooperations date back to the time of the ancient Greek and Roman empires,[1] it was not until the fifteenth century that these cooperations took their modern form, and consequently, we could trace the origins of the complex associations at the beginning of the nineteenth century. When the already existing and successfully functioning diplomatic missions could not deal bilaterally with the complex issues that groups of states were forced to face during social development, the affected nations

1 In addition to the roots of diplomatic cooperation described in this chapter, the fundamental features of public service are already to be found in Roman law, and this is of particular importance for the subject of this material. As Theodor Mommsen explains in his volume Römisches Staatsrecht (Mommsen, 2011), it was in the chancellery and the army that the subordination characteristic of the civil service first appeared. Theodor Mommsen, the most influential Romanist of the 19th century, was the only Roman jurist until today to win the Nobel Prize for his work Römische Geschichte, published in 1902. Mommsen's work on public law had a decisive influence on research on this subject in the late 19th and early 20th centuries, with János Zlinszky having made significant achievements in Hungary (see, for example, Zlinszky, 1972; 1988; 1993; 1994; 1997; and Pókecz Kovács, 2016, who praises the achievements of this legal expert).

gathered and organized international conferences. Such conferences typically sought to regulate a specific issue, and if an agreement was reached during the negotiations, it was included in an international document,[2] and the conference was dissolved upon its completion. The outcomes of the conferences may have been international treaties that established a subsequent international organization, ensuring that after the conference, the cooperation of the states did not cease but was transformed into an institutionalized form.[3]

Many international lawyers[4] have dealt with the question of exactly what historical steps led to the emergence of international organizations in the second half of the nineteenth century. We can distinguish between *institutional operations* and the formation of *ad hoc*[5] *cooperation groups*. In America—at a time when states still organized ad hoc conferences in Europe—a permanent meeting society had already formed: in 1826, the Pan-American states gathered in a conference, which became regular after the Washington Conference of 1885, and in 1948 was formed through the cooperation of the Organization of American States (OAS). This Pan-American cooperation differed from the nature of the congresses and conferences observed in Europe during the same period in that the participating states determined when and where the next meeting would take place, *rather than convening with each country to clarify a problem* to be discussed. The conferences had an administrative organizational unit (the Pan-American Union, founded in 1912), which prepared the agenda for the next meeting in advance. The continuous cooperation allowed for more opportunities to conduct preparatory research related to the individual occasions than in the case of ad hoc, organized conferences, and *the periodic nature allowed for a more continuous construction*.[6]

Although the path of development is different, the two continents moved roughly side by side in time. In Europe, the operation of river commissions and various

2 Such a document or legal source is typically an international treaty, memorandum of understanding (MOU), or protocol.

3 Amerasinghe, 2005, p. 1–2.

4 Chittharanjan Felix Amerasinghe, a former judge of the UN's internal tribunal, cited above, lists several relevant literatures on the subject, among which I highlight Sands and Klein, 2009; and Virally, 1991.

5 It is a general phenomenon that instead of legal issues, the participants in conferences have typically debated political orientations; however, the nature of political issues is not at all suited to being decided without preparation in a forum with so many participants. This is one reason international meetings have seen the emergence of different groupings, independent of governments, around particular principles to be promoted and then similar groupings formed over time by some governments themselves; however, these have been more concerned with administrative issues than with policy-making or representation (see for more: Amerasinghe, 2005, pp. 3–6).

6 Amerasinghe, 2005, p. 3.

associations[7] contributed to the development of international organizational operations, the first steps of which included regular meetings, the creation of a permanent administrative body, and for the most part, the introduction of decision-making, initially in a limited context and then in an increasingly wide range. Finally, in 1919, under the Treaty of Versailles, *the League of Nations,* or the predecessor of the UN, could be founded. The founders already wanted to give this political organization an open, general operational character, and from there, *the culture of international organizations* was created in Europe as well.

The Permanent Secretariat of the League of Nations—which was established at the organization's headquarters in Geneva—comprised various departments under the direction of the Secretary-General, in which an expert staff worked; politics, finance and economics, communication and transit, minorities and public administration, mandates, withdrawal of weapons, health, social issues, cooperation, law, and the flow of information were the main areas of the groups. Officials working in the Secretariat's departments were responsible for all meetings and conferences organized in connection with the work area; they also prepared the meetings of the General Assembly. In September 1924, the number of officials working at the Secretariat totaled seventy-five people, while the total number of staff was 400.[8]

International legal entities and communities saw a need to achieve some goals more efficiently, especially after World War II. They realized that cooperation could prevent[9] the enforcement of individual interests that are contrary to community and

7 See, among others, the International Telecommunication Association (1865), the Universal Postal Union (1874), the International Association for the Carriage of Goods by Rail (1890), the International Bureau for the Protection of Industrial Property (1883), the International Bureau for the Protection of Contract Rights (1886), and the International Bureau of Public Health (1907).

8 For more on the League of Nations, see Diliana Stoyanova's insightful article (Stoyanova, 2018), in which she points out that the organization, established in 1920, had a major impact on the quality of international officials that would later take shape and that Sir Eric Drummond, the organization's first Secretary-General, was the person who realized that a sufficiently effective organization could be created with an autonomous apparatus of officials, completely independent of states.

9 Jürgen Habermas, the neo-Kantian German philosopher and sociologist, is known for his idea that short-term national interests should be put aside when they conflict with medium- or long-term community interests.
In Hungary, a major figure in neo-Kantian thought is István Losonczy. To a certain extent, overstating the case, he arrives at a neo-naturalist foundation through Habermas (Europe) and Dworkin (America); in the contemporary political arena, the UN, the subject of this work, also represents this line of thought, for example, when it foregrounds a supportive migration policy by ideologizing neo-colonization efforts. (The problematic morality of discourse can be traced back to Jürgen Habermas' idea that if the members of a political community justify the validity of the norms governing their lives in a free and rational discourse involving all concerned, their subjective rights of freedom, which guarantee their private autonomy, and their political rights of freedom, which guarantee their public

states' interests, and decision-makers also noticed that they supported certain desired results that would be impossible or disproportionately difficult to achieve without persistent joint work.[10] The number of international organizations has therefore increased,[11] and according to their purposes, a fundamental distinction can be made between the preservation of peace,[12] the implementation of developments,[13] and the administration

autonomy, are protected.) The manifestation of this principle is the question of democracy and legitimate governance today. For more on this topic, see Szücs, 2011.

However, neo-natural law thinking can be criticized for the lack of clear benchmarks for the discourse that takes place within it. As an example, I have already mentioned the UN migration policy, and I would like to give a brief historical perspective on its evaluation. The International Pan-European Union, launched in 1923 as an instrument of post-World War I reforms, aimed to create a united Europe by eliminating nations, partly through cultural mixing. However, migration policies must also consider that the admission of a foreign culture can easily lead to a total transformation of the state apparatus rather than simply rethinking the existing system. As part of the work of Count Richard Coudenhove-Kalergi, Esperanto, developed by Lazar Markovic Zamenhof in 1887, should have been the language that united the people of Europe. However, considering the current linguistic situation, it can be observed that as a counter effect of denationalization, the spread of English is rivaling the original ideas of Esperanto. This can be traced back to the national consciousness that prevented the English and French from promoting Esperanto. In the early 1920s, the French government explicitly banned the use of Esperanto in schools on the grounds that it would "destroy French and English and lower the literary standard of the world." (http://impofthediverse.blogspot.com/2014/09/the-danger-of-esperanto.html).

In conclusion, global results cannot be achieved only by blurring national boundaries, but it is also evident that subjects who maintain the integrity of their identity are able to exert a greater influence on the discourse than their rivals. In a subject as multi-faceted as neo-colonialism, neo-natural law can play a major role because, according to this approach, there is no single system of natural law but as many as the number of authors. According to Ignác Papp, the socio-economic content of the revived natural law is the result of the internal contradictions of capitalism, which radically opposes the Marxist conception that emphasizes the importance of the law of propositions (Papp, 1974, p. 60).

10 There was, and sometimes still is, a fear of international organizations as a philosophical or ideological desire for global governance, but in practice they are driven more by a diversity of perspectives, a diversity of legal and social cultures, a need to reconcile interests and goals, and a sense of shared responsibility.

11 The volume of international organizations is a source of concern for many governments. While there is no doubt that they are an attractive way of resolving cross-border issues together, they consume large sums of money that member states should find to keep them running. The proliferation of organizations therefore creates a counterproductive environment, and it is therefore necessary to define the scope of activities carefully and, where necessary, solve problems by means of existing associations. In this connection, Amerasinghe points out that financial issues are triggered by the proliferation of international organizations, and as human resources become less profitable and economically irrationally fragmented, the more such entities are formed (see Amerasinghe, 2005, p. 9).

12 See e.g., the North Atlantic Treaty Organization (NATO) and the United Nations (UN).

13 See e.g., the World Food and Agriculture Organization (FAO), the International Bank for Reconstruction and Development (IBRD), the International Finance Corporation (IFC), and the International Development Association (IDA).

of practical[14] issues[15] with a narrower scope. Although this book is about the UN,[16] as perhaps the most defining organization, I would like to emphasize that the strength of organizations does not depend in itself on the objective number of member states they have.[17] If we look at the individual international organizations, the key to the effectiveness of their operation is the extent to which they are supported by the states involved in their respective spheres of activity, as well as the extent to which joint work is carried out according to strict and detailed rules.

The international organizational operation is also characterized by the fact that the closed national legal systems[18] postulated by the Danish legal and moral philosopher *Alf Ross* are uncovered and brought together. The simplest example of this is the European Union itself, whose main goal is to harmonize the legal systems of the member states, and while striving for uniformity, it is slowly erasing the closedness of the regulatory systems.

According to the *functionalist theory*,[19] several conflicts occasionally develop in the field of economic and social relations, in which the national interest can be relegated to the background while human justice as well as the individual and collective interests of man come to the fore. Critics of this theory claim that the *political and non-political spheres cannot be clearly separated*, and this differentiation would be the basis of the functionalist theory. Economic organizations, such as the World Trade Organization (WTO)—of which more than a hundred of its 164 member states are developing countries—provide a political basis for cooperation with this fact alone. However, organizations that promote social cooperation, such as the United Nations Children's Fund (UNICEF), are

14 See e.g., the World Trade Organization (WTO), the aforementioned river commissions, or the International Whaling Commission (IWC).

15 An international organization can have a direct or indirect impact on the lives of citizens. On the one hand, the impact is indirect if the state itself is affected by some entitlement or obligation and the population shares in some outcome, for example, the allocation of a grant to build institutions, roads, or businesses. Direct effects are typically caused by certain international treaties that directly protect people through the primacy of international law (see for example, the Universal Declaration of Human Rights).

16 Franklin Delano Roosevelt, the 32nd President of the United States of America, called for the creation of the United Nations as a special agenda item (as the sole speaker but later with the full support of the participants) at the Yalta Conference to prepare for the end of World War II and the geopolitical issues that would follow.

17 The IWC, for example, will certainly never have as many member states as the United Nations, which is concerned with global policies; however, its sense of purpose, effectiveness, and goals can be just as competitive within its own territory if countries where whaling and the problems it causes are a public issue cooperate.

18 Ross, 1958; and Visegrády (ed.), 2013, p. 112.

19 For the topic, see, e.g., Fekete, 2010, p. 116.

gradually becoming more politicized because they have member states that are already political subjects in themselves. In my opinion, however, *we must draw a clear line between organizational activity and the legal order within the organization;* as we will see, the internal employment legislation is completely independent of any kind of influence, political or power affects, and in fact, the current operational goals of the organization are at most indirectly manifested in it. The current goals of the external activity must be reflected in the allocation of tasks; however, when considering the policy changes throughout the years, the personnel structure displays considerably greater stability.

According to Brian Z. Tamanaha, one of the most important researchers in modern legal philosophy, the development and formation of law are influenced by the effects of colonization activities taking place at various levels and the operation of the legal profession.[20] International organizational law, whose development can be divided into external and internal arcs, is no different in this regard. On the external development curve, we attach the events that demonstrate the establishment of the organization and the steps leading to it, the development of the operating rules, and the membership and other participants. The internal development curve presents the steps that enable the creation of the organizational structure, internal culture, staff regulations, and personnel policies.

If we accept *Böröcz's* theory,[21] international organizations are typical *modern-day custodians of colonization efforts* because they were formed as the colonization processes came to a halt on the map, implying that a new kind of colonization was underway, in which these legal entities play a prominent role. This theory can be refuted; however, international organizations are certainly capable of fulfilling a unifying function; in the sub-issues they discuss, they implement colonization metaphorically with varied supranational powers and rules. Nevertheless, it is undeniable that the legal profession occupies a prominent place in international organizations. Consider the UN's internal court in this regard,; this body ensures that organizational law prevails on a daily basis, and through this, the organization itself can survive.[22] Therefore, the person-centered approach to personnel law, which will be explored later, includes the examination of theory- and history-centered development, as the *two together provides us a complete picture*.

20 Tamanaha, 2017, pp. 71–76.

21 Böröcz, 2018.

22 The extraordinary role of courts has been analyzed by many scholars and thinkers throughout history. Sociologist Pierre Bourdieu, for example, says, "The judiciary is the arena of competition for the monopoly of the definition of law. In this field, we witness a confrontation between actors who possess a professional competence that is inevitably socially oriented and which is essentially the socially recognized capacity to interpret texts that essentially sanctify a vision of the way the world works that is considered correct or legitimate." See Bourdieu, 1987.

Johann Gottlieb Fichte's theory of the mutual recognition of law provides an opportunity for a very interesting investigation when he says that the assertion of one's own freedom and self-restraint because of the freedom of the other are intrinsically connected. His theory is very similar to *Jhering's* idea that property cannot be exercised in an absolute way—the question of coherence is a significant one that inevitably sets limits for the owner of the right.[23] In this spirit, Fichte adds that freedom does not mean unlimited power, independent of everything, but rather, because of its reciprocity, which serves to curb the anarchic character, it is initially and always limited in its possibilities.[24] Given that Fichte recognizes freedom as relational in its content, in my opinion, *the role of international organizations can also be perceived as systematizing the scope of state movement to each other's disadvantage*, making it fair based on certain standards, and striving for equalization.

This responsibility is challenging to map in the internal regulations of international organizations, it is an extremely complicated task to find those labor law measures that can be traced back to the fact that the organization designates the framework of freedom for the states. Examining Fichte's theory based on a mutual recognition relationship is a little easier; however, even then we can stay at the principal level. This circumstance concludes that although the nature of the international organization has a certain moral content—because it protects interests—its *internal regulation must be of such a technical nature that it remains functional* regardless of the circumstances. Therefore, we must imagine an international official like a smaller cog in a clock that rotates at the speed set for it but is not aware of the ratios at which it can move the pointer.

The United Nations was founded on the conviction that the nations of the world can and should work together to resolve conflicts peacefully and improve people's lives. At the same time, many circumstances have changed since the founding of the UN: the organization's membership has nearly quadrupled, while decolonization, population growth, and globalization have all separately contributed to the reshaping of our modern world. As the world developed, so did the challenges. Technological development affects and connects with everyone in a way that we could not have imagined even a decade ago; financial, food, health, and energy crises had no regard for national borders; furthermore, climate change and other ecological threats have highlighted that sustainable development rests on three complementary pillars: social development, economic

23 Prugberger, 2002, among others, provides a detailed approach to this issue.

24 Frivaldszky, 2013b, p. 271: Fichte believes that anarchist lines must be curbed. These are intensified today, so that although man is essentially a social being, self-regulation gains ground, and in the meantime the Hobbesian philosophy of the state of nature as a "fight of all against all" is realized.

growth, and environmental protection.[25] The UN *does not have a unified, summarized set of labor-related regulatory materials, which is why the International Labour Organization (ILO), as a later specialized body, was created in 1919.*[26] Through its operation, it can specifically promote social justice with established standards in the field of employment—simply put, it is an organization to ensure *social needs*.[27] However, in the case of the European Union, this aspect is less apparent; rather, *economic motivation* is behind its operation;[28] it can be observed that the first steps of integration were also aimed at strengthening cooperation in this field, given that economic interdependence that develops between countries that trade with each other reduces the probability of potential conflicts.[29] All these tasks and responsibilities require good governance, the subjects and elements of which are the international officials who enter into an employment relationship with a given international organization.

Given that legal constructions must always serve justice between people, it was necessary to create independent labor regulations that correspond to the priority goals along the general principles of labor law because of the internal nature of the matter.[30] An interesting issue—and I will deal with it in later chapters of this material—is the law-abiding behavior of officials. If we look at the Staff Regulations of the UN—this is also true of any other organization—we see that we are holding a kind of labor code in our hands, which does not actually establish any additional responsibility or special rule compared with the content of state civil service codes. The privileged position of officials as employees stems from the privileged responsibility of the organization itself, through which the institution's position in international law is, as it were, transferred to internal legal relations. The practical manifestation of this is the multitude of expectations for excellence during, for example, competitive exams, but also the pre-ponderance of

25 Magyar ENSZ Társaság, 2013, p. 3.

26 Birk, 2000, Dritter Abschnitt: Internationales und Europäisches Arbeitsrecht – Erstes Kapitel: Internationales und supranationales Arbeitsrecht, 37–39th lines. It is important to note that the UN attaches such importance to the guidelines and conventions drawn up by the ILO that they naturally also apply to internal employment.

27 See http://www.ilo.int/declaration/thedeclaration/textdeclaration/lang--en/index.htm

28 Birk, 2000, Chapter: Grundlagen des Europäisches Arbeitsrecht, 8th line.

29 See http://europa.eu/about-eu/index_hu.htm

30 A striking example of this is the 2013 amendment to the EU Staff Regulations, where, given that the European Council published its conclusions on the Multiannual Financial Framework on February 8, 2013, it was inevitable that finance would become an important issue in the Staff Regulation, which was being drafted almost simultaneously. The legislator thus enshrined that the EU would maintain its solidarity tax scheme for its officials (Regulation (EU) No. 1023/2003, preamble, para. (7)). In this measure, we see a response to a crisis that is known and experienced throughout Europe (see Hrecska, 2014e, p. 177).

short-term appointments and a kind of unavoidable unpredictability of working conditions (see missions with changing locations).

The UN and organizations similar to it have full self-governance, thus they also operate legislative, executive, and judicial bodies within the organization. the reason for this can be attributed to the voluntary compliance of the officials, which is that the key to the imposition of internal control or power (that is, practical operation).[31] In addition to the rule of law, the enforcement of basic human rights within international organizations is of course also essential, just as it is necessary for the organization to use coercive force in the same way that a state would.[32] This is also evident in the nature of the service relationship, which I will present in further detail later.

31 On this, see the work of Hart, 1999; Frivaldszky, 2013a, p. 278.
32 Hrecska, 2014a.

II. Comparing the state and international public sector

Researching the law of international organizations, we can find that with the emergence of certain competencies, organizations—and especially members of the UN family—are capable of influencing global political programs and goals, and have grown into entities that are able to provide meaning and a sense of identity for all legal entities in any field of activity.[33] *This is relevant to us because, after examining the operating principles of the various organizations, we conclude that they are similar both in their spirit and partial solutions, which is why the comparison between them, while initially self-explanatory, does not yield many results, primarily because it does not reveal the nature of public service pragmatics. In such an approach, it is much more interesting to review where the apparently different rules regulating organizational and state internal administration display differences and points of connection. A closer bond exists between the two than it would appear at first glance: the organizational constructions originate from the models of the states; therefore, we necessarily find comparable bases, the main connecting element of which lies in the mostly identical legal policy goals behind the individual legal institutions.*

The international and state public services reveal both similarities and differences; these have partly developed in the course of history, and over time, new attributes may come to the research in parallel with changes in international law, sovereignty problems, or even technological innovations. We will now make our comparison according to the official levels, the division within the organization, the purpose of the operation, and the legal sources—the latter will be discussed in further detail in the next chapter.

In general, regardless of the public service provided by any country or international legal entity, their common attribute in terms of their pragmatics is what defines them as public service. Both at the state and international levels, it can be demonstrated in all

33 Simmons and Martin, 2012, p. 193.

cases that establishing a specific selection, promotion, salary, and termination system is relatively uniformly considered necessary. Additionally, it is crucial that the state, or a body owned by it, performing a public task, or a public body,[34] or professional chamber with delegated powers, is always on one side of the regulation's scope. I note here that the employer's person can also be easily approached in the case of international organizations from this perspective, as the inter-governmental organization is also a kind of manifestation of the state entity.[35]

According to *Zoltán Petrovics*, the key to legal comparison is the functional identity of the legal institutions that are the subject of the comparison. The only phenomena that may be compared are those that serve the same or a similar function in the respective legal systems.[36] As the internal administration of the state and the international organization at a certain level of development are faced with essentially the same problems, although they may resolve these issues using different tools and methods, as the case may be, these solutions can generally be the subject of comparison because they serve the same purpose and thus perform the same function.

Historically, it appears that individual states have a great deal of freedom in determining the legal relationships under which public functions are performed. Consequently, the legal status of public service legal relationships and legal entities in the public service can be determined primarily on the basis of whether the given entity meaningfully contributes to the performance of a public function or public service.[37] Basically, taking into account the individual characteristics, several systems can be distinguished. The Anglo-Saxon, Germanic, and Francophone-Latin systems form a group only in Europe; however, special mention can also be made of the Scandinavian and post-socialist (or Eastern European) systems. The categorization was partly carried out in Hungary by *Tamás Prugberger,*[38] but the work of *Christoph Demmke* and *Timo Moilanen* on the subject cannot be avoided in the international legal literature.[39]

The models could be criticized for being extremely simplistic and generalized. At the beginning of my research, I believed that it would be more beneficial to examine the more typical regulatory elements of some states rather than using models to compare them with the solutions found in the UN. Nevertheless, I see these expansive European

34 In Hungary, such as the Hungarian Academy of Sciences or the Hungarian Academy of Arts.
35 György, 2007, pp. 18–19.
36 Petrovics, 2009, p. 88.
37 Petrovics, 2009, p. 89.
38 See e.g., Prugberger, 2010b; Prugberger, Kenderes és Mélypataki, 2012.
39 See e.g., Demmke, 2005; 2008; 2010; 2011; 2019a; 2019b; 2020a; 2020b; Bossaert és Demmke, 2002; Auer, Demmke és Polet, 1997; Demmke és Moilanen, 2010.

public service systems as categories from which we can grasp the essential core of public service types. It is natural that every state organizes its administration according to its own criteria; however, from this perspective, there is no such individual state in the world, not that there is such a state in Europe, which would have created a unique system in a way that neither it follows other solutions nor does anyone follow it. In this way, it is inevitable that it becomes a model, and it will be clearly visible by then that the right to serve in the UN is noticeably built on individual trends. Therefore, let us examine in detail the systems that served as the foundation for the building blocks that ultimately became the components of the UN service system.

In the southern European states (e.g., Spain, Italy, and Portugal, but dogmatically this also includes France), there is a public service, the rules of which apply to both civil servants and civil servants under Hungarian legal terms. In terms of proportions, the employment contract is very widespread in addition to the appointment, which is why the exercise of collective labor rights plays a greater role in public administration than in the public service systems of other states, which are outside the Scandinavian system. At the same time, anyone who works in public service—even if in a lower position—is generally considered a civil servant. In general, the public service employment relationship is used in the case of a replacement or fixed-term legal relationship in France. This phenomenon is typical of public service with an open system, where only the knowledge, skills, and possibly experience of the official matter, for which the official is contracted at that time—usually for the period specified in the contract. If new knowledge or different skills are needed, a new candidate is sought instead, just like in the business sphere.[40]

Tamás Prugberger cites the example of the University of Trier as a vivid example, where professors are clerks, those performing administrative activities and teaching assistants are employees, and those performing physical activities are classified as workers.[41] Although no state's legal system follows this solution, it is still true that, while case managers in the Francophone-Latin legal system generally enjoy the status of civil servants, in the Germanic system, for example, the holders of the same positions are classified as public service employees.[42] From my perspective, there are no signifi-

40 Linder, 2020, [33].

41 Prugberger, 2006, p. 45.

42 Historically, in the German legal system, according to the established legal rules, officials could be classified in two main ways: first, according to their branch of service (legal, technical, etc.); and second, according to the nature of their duties and their level of training. Based on the latter, a distinction was made between substantive, adjudicating, and official drafting officials, auxiliary and administrative officials (clerks), and the actual physical workers—the servants. A separate category comprised non-commissioned officers, who were not classified by any pay grade. Those in the first category had to have a college education, while in the second category, a secondary education was sufficient (see Patriot, 2009, p. 343).

cant consequences arising from the individual names; rather, it is worth investigating how much status security working in the public sector means to the relevant employee groups. In the case of the UN, for example, it is useless to talk about full-fledged civil servants if full employment is otherwise characterized by relative uncertainty.

In Germany, a public service position (Beamte) can essentially be undertaken as a life vocation,[43] with the only truly significant prerequisite being that the appointed official provides public service.[44] In addition to public office workers, we distinguish between contract employees who provide certain public services but do not, as a rule, make decisions (öffentliche-rechtliche Angestellte) and contract workers who perform physical work (öffentliche-rechtliche Arbeiter). In German law, those who serve in public bodies belong to the express category of civil servants; the others are classified as non-commissioned officers, to whom the general labor law rules apply. The nature of the Austrian system is similar to the German one, with the exception that public service employees can be grouped into two categories: civil servants (Beamte) and contract civil service employees (Vertragsbediensters).

The traditional approach, in my opinion, treats everyone who performs essential activities for the functioning of the state as civil servants, regardless of whether they act as authorities. When the UN was founded in 1945, this was the prevailing view, which is why this system can also be observed within the walls of the institution: the people performing support functions (e.g., cleaning staff and security service)[45] are employed, while those performing official duties are all professional officials and are graded. In addition to the significant team of officials, many administrative and technical employees support the work of civil servants because, just like at the state level, the operation of international organizations is also possible through different types of employees.

In connection with international organizations, the use of the term "agent" is unavoidable, considering that the literature refers to staff members who connect the organization with the "outside world" as such.[46] *Count Folke Bernadotte* was a significant figure

43 From the point of view of the profession of life at the same time, we could see a great similarity between the Hungarian and the pragmatized German systems in terms of status security; however, since 2010, this phenomenon has been decreasing—in this respect, the Hungarian system is similar to the Dutch system, which closely follows the German system in other respects. The pragmatized German system means that an official can, in practice, only be removed from his position through disciplinary proceedings, and if the employer ceases to exist, the system is obliged to place him elsewhere.

44 Peine és Heinlein, 1999, pp. 1 and 43.

45 In public service systems, the cleaning tasks are usually outsourced by the administrations to external companies, while the security service is provided either by armed security services contracted out or, as in the case of national ministries, by officers of the police department's external guard.

46 Kovács, 2011b, p. 311.

in the history of the UN. According to his definition, "an international agent is any paid or unpaid, permanent or temporary functionary who is authorized by an organ of the organization to exercise one of its functions or to provide assistance for this." Generally speaking, everyone should be considered an agent through whom the given organization acts.[47] *Péter Kovács* writes in his seminal work International Public Law that "in daily practice, agents are the organization's own officials or permanent employees and members of a peer group of experts who monitor the implementation of international treaties created within the framework of the organization and are called upon to perform tasks requiring special expertise, such as professionals, probationary employees, graduate students completing a professional internship, and young graduates."[48] In theory, the external activity of the organization and the exercise of internal functions are interwoven in this concept of agent.

This concept of agent, which does not exhibit any connection with the nature of the legal relationship but is essential from the perspective of the exercise of functions, leads us to examples that are different from the public service models briefly outlined thus far and sometimes contradictory. In a political context, the strengthening of social democratic influence can be seen in the current development of the Anglo-Saxon system. They tried to abolish the privileges of the civil service; hence, the system moved toward the employment relationship. The United Kingdom is currently the only country where the legal relationship of civil service employees is not regulated within the civil service law.[49] A similar system has been built in the United States of America because it is considered that the governor and the president also bring their circle of friends with whom they have worked in economic life. Therefore, the theoretical foundation related to official positions is quite different, which can also be observed in the creation of specific regulations.

As the absolute opposite of the English regulation, the solution proposed by the Hungarian legislator can be most easily adopted. Domestic regulations differ significantly, among other things, the government service relationship between government officials and government case managers can be included in the scope of the public service; the civil service legal relationship of civil servants, civil service case managers, and clerks; the employment relationship of the mayor and deputy mayor; the service relationship of professional and contract soldiers, volunteer reserve soldiers performing actual service, army officer candidates, and army non-commissioned officer candidates; the professional

47 Kovács, 2011b; and International Court of Justice, 1949, p. 177.

48 Kovács, 2011b, p. 312.

49 The UK Civil Service Act was passed in 2010, but it is more about the values expected of civil servants than about actual specific requirements (see Harris, 2013). The situation is essentially unchanged from before the Act was passed (for more on this, see Demmke and Moilanen, 2012, p. 20).

service relationship and administrative employee service relationship of the employees of the law enforcement agencies; the service relationship of judges, judicial employees, and prosecution employees. Additionally, the picture is enhanced by the fact that the employees hired by the public administration are in an employment relationship, and the civil servants who provide public services are in legal relationship of civil servants.

Comparitively, employment at the UN is uniform and easily transparent, a system that should also be followed by Hungarian legal researchers, whereas in this country there is an effort to unify at the literature level.[50] However, because the maintenance of the current system is too deeply ingrained in the daily lives of the relevant interest groups, separation is therefore extremely difficult.[51]

From a historical perspective, international organizations have created uniform internal regulations; essentially, a single source of law ensures that the internal operation is orderly. Their personnel policy is designed in such a way that everyone who works in the administration is classified as an official, and only those whose job is not related to organizational case management are employed with a contract. In the UN headquarters in Vienna, for example, there are cleaners, security guards, postal and bank employees, newspaper and souvenir shop vendors, as well as several restaurants, alongside the case managers. All these services can also be found in the New York headquarters, and although we are talking about two locations in different parts of the world, there will be officials in certain positions and employees in other positions that are subject to the exact same restriction. This strict, transparent regulation makes it possible to talk about any branch; the internal operation remains transparent and completely independent. The nature of the law regarding staff members employed under an employment contract depends on the agreement between the given organization and the state in which it is based. An organization could possibly regulate itself and thereby maintain the full integrity of its internal employment law (e.g., the European Union), but it is also an existing phenomenon that the law of the given state applies to the employment relationships existing at the organization.[52]

Based on judicial practice, it appears that the law of the country of residence within the UN group is completely irrelevant. The UN Court of Appeal ruled in 1951 that violating the regulations of the applicant's country of residence, which in this case was also the

50 On this subject, see for example, the works of Kiss György, Prugberger Tamás, Kenderes György on the subject. (See, among others, Kenderes and Prugberger, 1993, p. 329; Kenderes and Prugberger, 1991, pp. 908–910; Prugberger, 2010a, pp. 43–50; Mélypataki, no year.)

51 Prugberger and Nádas, 2014, and Tamás Prugberger, 2013, in his book Hungarian Labor Law Reform with a European Perspective (Prugberger, 2013), criticize the topic.

52 Amerasinghe, 2005, pp. 276–277.

applicant's country of citizenship, could not result in unfavorable treatment by the organization.[53] The ILO Court of Appeal made a similar decision in 1955, according to which a lack of consistency with the employee's national law cannot result in the non-renewal or termination of a fixed-term contract.[54] In 1957, the same court expressly stated that only the organization's internal law could be implemented, not the proposed national law.[55]

In this chapter, I examined the public service models, and in addition to their interdependence, I attempted to highlight the similarities and differences of the UN service law. However, the chapter would not be complete without mentioning the Scandinavian public service law and the new public management; therefore, I will discuss these topics briefly.

A unique solution in Scandinavian law is that the public and private sectors are frequently extremely close to each other, making the systems comprehensible for employees. The model is practically not valid in relation to the UN; nonetheless, at one point we can still discover a connection that draws an interesting parallel between the two systems. In his PhD thesis, *Zoltán Hazafi* states that the reforms launched in the 1980s had their most significant impact in Great Britain and the Scandinavian countries because of the proximity of the public and private spheres. As a result, the trend of "New Public Management" (NPM) was most successful in these countries. All this was made possible by the organizational culture, which also ensured adequate openness.

The so-called NPM ideas emerged in the 1990s in the United States with the aim of improving public administration efficiency and economic modernization. The policy's tool system includes measures to increase the independence of public administration units, to reduce the role of the state through outsourcing, privatization, and PPP projects,[56] and to keep politics and public administration separate. These measures are service-oriented, customer-oriented, quality improvement and quality assurance focused, and they transfer market competition methods to public administration.[57] Examining

53 See UNAT 4, pp. 8–22; and UNAT 6, Keeney vs. The Secretary-General of the United Nations, pp. 24–25.

54 See ILOAT 17.

55 See ILOAT 28.

56 In summary and in general, "public private partnership" (PPP or P3 for short) refers to forms of cooperation between the public and private sectors in which the state, which is responsible for the provision of public services, cooperates with private sector (market) actors in a complex way in the organization of its service and investment tasks. In other words, PPP is the umbrella term for all schemes in which the two actors cooperate in a complex and multifaceted way in the planning, construction, operation, and financing of the project (see Kotán, 2005).

57 The impact of the NPM concept has been felt in many countries over the past decades, but it has never radically changed public administration, nor has it been built as a new model (see Parliament's Office, 2017, p. 3).

the organizational culture of the UN—which will be discussed in detail later—we can conclude that certain elements were practically implemented before the NPM even appeared in civil service law. The organization has developed an internal employment structure with a fundamental management approach focused on the operational unit, which means that the managers of each organizational unit have a relatively large freedom of decision and that subordinates also perform their tasks flexibly within their limits (this can be observed, for example, in everyday practice when the organization deviates from the general office working hours and, if the nature of the work allows, typically applies the legal institution of regular hours). Quality assurance can be interpreted as an absolute priority in the UN's work organization methodology, although it should be added that instead of emphasizing the continuous training of officials, the UN intends s to maintain the standard with short-term appointments and easily replaceable human resources. In doing so, the organization may even jeopardize its goals because it is challenging to build a cadre of officials capable of accumulating long-term knowledge and experience; therefore, quality assurance is often exhausted by the fact that the workforce burdened by unpredictable working conditions is replaced from time to time by a cadre of officials with a fresh approach. However, the organization's failure to take decisive steps against turnover confirms my opinion that *it is closer to market-oriented employers than to public service systems following the career model*.

The approach is characteristic of NPM, which separates politics and public administration and is so specific to the organization that it forms an unavoidable principle in its right to serve. This is manifested in the fact that the officials come from all member states according to the principle of geographical diversity, but at the same time, as was also recorded in the regulations of the European Union, they do not represent their own state but the common system of interests along which the organization itself exists. This is what elevates organizational culture to the level of essential cohesive force that it will almost certainly never achieve in state public administration.

Therefore, the UN's right of service resembles the Scandinavian model to the extent that some phenomena have emerged that push the organization's right of service toward a more market-oriented approach. However, in terms of values, the two systems differ at such a level that it cannot be assumed that the model infiltrated the internal law of the UN; rather, we can speak of sketchy and possible similarities in this respect.

III. Sources of law

While it is clear from our research that individual states do not shape their public services according to a uniform regulatory principle, the same cannot be true about international organizations. After World War II, international organizations gained much more autonomy than they had before, and their importance in international law increased in parallel. Starting from the fact that these intergovernmental organizations operate a dedicated public service apparatus, the internal administrative legislation that ensures their operation cannot be ignored.

Even as the rules were being drawn up, it became clear that if the international intergovernmental organizations applied the law of any member state to their own internal relations, sooner or later this situation would pave the way for the jurisdiction of the state court, allowing it to act in the adjudication of internal legal disputes—something they undoubtedly desired and still wish to avoid. Let us also consider what adverse situations would arise if the legal status of an official delegated by a given member state were determined by the civil service law of the home state.[58] Moreover, the influence of the law according to the state of the headquarters would indirectly make the international organization a branch organization of the given state administration, which, to top it all off, operates in many cases with financial contributions from other states. Reflecting on this, it is still a weird creation in our view, even though this situation existed in the past when international organizations lacked such a mature structure and legal background as they enjoy today.[59] After the UN was established, it was explicitly stated that international organizations were not required to follow the laws of the countries in which their headquarters, or any of their headquarters, or branches are located. This was partly because the staff members were from different countries. No problem could arise with this because the predecessor

58 Amerasinghe, 2005, p. 272.

59 The situation is illustrated by the international lawyer Michael Barton Akehurst in his *The Law Governing Employment in International Organizations* (Akehurst, 1967).

of the UN, the League of Nations, already had the right to develop its own internal legal framework.[60]

In view of all this, an international organization—as we have already indicated in connection with the comparison of development arcs—has both an external and internal function. In relation to the dichotomy, we find that the "inner sphere of operation" refers to those activities that guarantee the survival of the system and ensure the smooth progress of the machinery. Comparatively, the external functions cover procedures that establish the influence of the international organization on the member states and their participation in joint work.

Internal law exceeds all employment rules: the establishment and administration of internal units, the appointment of members of these units, the decision-making mechanisms within the units, the regulations regarding the necessary personnel, and the arrangement of the financial resources to be used for operation are included. As in the case of all international organizations, special detailed rules may arise at the UN; hence, the organization I am examining, for example, has special rules for the operation of the permanent force.[61]

International organizations lay the cornerstones of their operation in so-called Staff Regulations.[62] These regulations form the highest autonomous level of internal regulation. Although it is conceivable for subordinate organizational units within an organization to create their own internal regulations, in terms of the hierarchy of legal sources, these are always located below the central Staff Regulations.[63]

As explained in the previous section, we frequently experience minor or significant discrepancies in the civil service regulations of the states, and essentially no two systems are the same. The same is true for international organizations: the legal material applicable to international officials depends on the provisions of the organization's founding document, the content of the Staff Regulations, as well as the lower-level legal sources, that is, the various administrative instructions, information circulars, announcements, and proposals. Naturally, in addition to the differences, we also identified certain similarities that can be traced back to the peculiarities of how international organizations operate: these organizations usually face the same questions when it comes to the selection and appointment procedure, types of contracts,

60 Akehurst, 1967.

61 See e.g., *United Nations Peacekeeping Operations Principles and Guidelines*.

62 In the case of the United Nations, this source of law is called the *Staff Regulations and Rules of the United Nations*, issued by the Secretary-General in a bulletin (ST/SGB/2018/1), and the current version is applicable as of January 1, 2018.

63 Amerasinghe, 2005, p. 274.

remuneration, promotion opportunities, termination of the legal relationship, liability, or labor relations.[64]

1. General introduction of the sources of law

As a general definition, the legal system is the organized set of laws and other legal regulations in force in a given state. However, this is not entirely true: international organizations also form an independent legal system, which, as entities with sovereign international legal status, develops an internal norm structure and law enforcement practice independent of all states.

The general system of the sources of law is established on the same principles for both rule-of-law states and international organizations. On the one hand, it is true that the concepts of legislation and source of law partially overlap; however, while the former refers to the content of the legal institution, the latter includes the formal approach. The general norm becomes legal in nature (that is, a legal act) when it is created and issued by an authorized body or legal entity (that is, a source of law in a broader and formal sense) according to the order governing it.[65] The relationship between the two concepts can also be expressed as the *material source of law* as the issuer (National Assembly, government, ministers, or in the case of the UN, the General Assembly and the Secretary-General) and the *formal source of law* as the issued norm (constitutional rule, law, decree, or staff regulations, administrative instructions, information circulars, and the Secretary-General's bulletin).

Legislation, therefore, consists of different types of legal norms and is created in the form of a specific source of law that is created as a result of the prescribed legislative process. In this spirit, *Lóránt Csink* differentiates between legislation and legislative drafting: the normative content of legislation is from the substantive aspect (from the legislation aspect); the essence that aims to regulate behavioral relations in an abstract manner. Moreover, legislative drafting and codification are no longer matters of constitutional law but of professional administration.[66]

It is also necessary to mention the hierarchy of legal sources. Both states and organizations have a basic source of law from which all subsequent regulations arise: in state legislation, this is the constitutional rule, and in the case of organizations, it is the

64 Cogan, Hurd és Johnstone (szerk.), 2016, p. 1074.
65 Prugberger, 1998, pp. 153–163.
66 Csink, 2011, p. 9.

founding document. However, we must also note that the legal practice of the courts, in addition to the legal norms located below the basic norm and created by the appropriate body in the prescribed sequence, are included in the hierarchy.

The principled decisions of the higher courts are similar to *pro-domo normative acts* affecting lower-level public administrative bodies. The only difference is that, while pro domo administrative normative acts are *de jure* binding for the administrative bodies under the issuing public administrative body, higher court principled decisions are *de jure* only recommended but *de facto* all-in-all binding for the lower courts.[67] The situation is clearer regarding Hungary because of the *uniformity of decisions*, which are definitely binding for the lower-level courts. In the case of the UN, we cannot make these types of distinctions because the two-level internal court organization system does not issue different types of decisions, which, to a certain degree, are precedents in the legal system.

2. International organizational internal law as an independent area of law

In relation to the internal regulations of international organizations, the question arises as to what extent they can be considered law at all. *Amerasinghe* explains that, according to some theories, it is not a law in its own right, but at the same time, this approach does not provide a clear response as to what category it can be classified into—perhaps if it forms an independent category, then what should we call it and based on what attributes? Considering that we are talking about enforceable rules and sanctions, the enforcement of which is ensured by an independent internal court (in addition to other international organizations, also on the eve of the UN), in my opinion, this approach cannot be shared. According to some researchers' perspectives, the internal law of international organizations can best be considered a *sui generis branch of law*[68] that exists independently alongside international public law; however, in my opinion,

67 Prugberger, 2017a, p. 214.

68 On this issue, see also, inter alia, some judgments of the United Nations Dispute Tribunal (UNDT): UNDT/2010/125; UNDT/2010/097. (See the former judgment, point 10: "The Respondent submits that the sources of international administrative law are not the same as the sources of public international law, although international administrative law may be a branch of public international law. Art. 38(1) of the Statute of the International Court of Justice, which is regarded as reflecting the sources of public international law, does not directly apply to international administrative law, and these sources may only be seen 'by analogy' to be a source of international administrative law.")

although it can be treated as an independent area of law with the right approach, it is still an integral part of public international law in its quality and cannot be completely independent of it. Amerasinghe makes a similar argument, contending that the internal regulation is actually an underlying legislative byproduct of the international public law mechanisms because the basis of the theory is that the Charter, on the authority of which the internal regulation can be created, is created by the international public law itself.[69]

The sources of international organizational internal law have previously been extensively discussed in the literature as a significant subject for helping to understand the field of law.[70] Regardless of how self-explanatory the suggestion is, it is an essential premise that *no analogy can be drawn* between the legal source structure of the internal law of international organizations and the legal source system of international public law. Similarly, no connection can be explicitly established between the public service legal sources of the states and the employment rules of international organizations.

3. Internal sources of law in the UN

Can the agreement that governs the employment be a source of law? In many states, this is conceptually excluded, or better said, it only fits into the broader concept of the source of law: although the rights and obligations of the parties can be known from it in part or in whole, they still lack any abstraction, and even in terms of their personal effect, they contain provisions only for those legal entities that participate in it as parties. However, the UN and ILO courts of appeals have expressly accepted the treaty as a source of law.[71] Part of the question is that, as I will explain in detail later, a distinction must be made between those organizations that employ their officials on a contractual basis and those that employ their officials by appointment based on internal legislation.[72] From this perspective, the employment contract raises many questions if it is

69 Amerasinghe, 2005, p. 274.

70 Amerasinghe, 2005, p. 283.

71 Amerasinghe, 2005, pp. 283–284. For more on the historical development of the role of the employment contract, see Kenderes, 2007, pp. 541–579.

72 Regarding the UN, for example, it is worth noting the court of appeal judgment in this case, No 19, according to which, for the purposes of the legal status of staff members, all matters concerning the personal situation of the staff members (e.g., the nature of their contract, salary, grading) are to be considered contractual in nature, and all matters concerning the organization itself (e.g., general rules which have no personal relation) are to be considered based on internal law. UNAT Judgement No. 19, p. 74.

used as a source of law,[73] but of course, in the case of officials employed by unilateral appointment on the basis of internal legislation, individual agreements different from the content of the appointment have no relevance in the legal source sense.

If treaties are accepted as a source of law by a particular international organization, they are considered the primary but not the most significant source of law. Following the 1981 report of the Court of Appeal of the World Bank, the contract can be regarded as a resource, a source, which is an essential element for the creation of the actual legal relationship. Having fulfilled this task, it has no other role than to summarize the operational conditions that prevail in the legal relationship between the organization and its employees.[74]

In other respects, the legal source system of the UN is almost entirely identical to the legal source system of states in general, although there are differences in the application of the legal sources. The courts acting, for example, in Hungary, apply the Basic Law regarding the basic constitutional rights; additionally, the special rules because of the threefold division of the public service (civil public service,[75] judicial bodies,[76] and exercise of public power)[77] are provided by various laws and regulations.

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73 For example, if the parties have entered a contract with each other but the actual appointment is not made, a legal relationship can still be established between them, Amerasinghe points out (see Amerasinghe, 2005, p. 284).

74 Amerasinghe, 2005, p 285.

75 Act 23 of 1992 on the status of civil servants (e.g., in health, education, and public education) has a general-specific relationship with the Labor Code.
With the entry into force of the act on government administration (01.03.2019), the act on state officials (Act 52 of 2016) was repealed. Organizational scope: Central government administrative bodies (ministries, government head offices, central offices); metropolitan and county government offices: Act 1 of 2012 on the Labor Code applies to the extent provided by law.
Act on public servants (Act 199 of 2011): Organizational scope: Public administration bodies with autonomous legal status (e.g., the Office of the President of Hungary, the State Audit Office, and the Hungarian Competition Authority); local government administration bodies (e.g., the mayor's office); body designated to maintain institutions (e.g., Klebelsberg Center for the Maintenance of Institutions)—The Labour Code applies to the extent provided by law.
Act on central state administration bodies and the status of members of the government and state secretaries (Act 43 of 2010)—The act on government administration repealed many sections. The personal scope of the Act covers central state administration bodies, members of the government, state secretaries, and individuals holding the office of commissioner.

76 Act 162 of 2011: Status of Judges; Act 164 of 2011: Status of Prosecutors; Act 68 of 1997: Judicial Staff (e.g., legal draftsmen, experts).

77 The Act on the Status of the Military Personnel (Act 205 of 2012): personal scope covers professional and contract soldiers, volunteer reserve soldiers on active service, candidate officers, and candidate non-commissioned officers.
The Act on the Service Status of the Professional Staff of Law Enforcement Agencies (Act 42 of 2015): Personnel scope covers the personnel of the police, disaster management, NAV, penitentiaries, parliamentary guards, and civil national security services.

At the top of the hierarchy in the case of the UN is the *founding document*, which corresponds to the constitutional rule at the state level. Generally, however, it does not come to the fore as a basis for reference; nevertheless, if the fundamental values contained therein are affected by a legal dispute, no internal court will question the legal basis of the reference. Regarding the UN, for the first time in the aforementioned decision No. 4, the Appeals Tribunal (UNAT) declared the applicability of the Charter as a source of law. Incidentally, an important debate has arisen over the decades about the applicability of the founding documents in internal legal disputes, given that these sources regulate the relationship between the organization and the member states, and in terms of their content, they are not really related to personnel matters. Moreover, according to Akehurst, they are neither usually referred to in appointment documents, nor are mentioned in the founding documents of administrative courts as a legal basis for decisions.[78]

The UN Charter tangentially deals with personnel matters in *four articles*.[79] According to Article 8, the UN might not impose any restrictions on the participation of men and women in any capacity under equal conditions in the work of its main and subsidiary bodies. The provision of Article 97 applies to the Secretariat and as such is the first specific rule as a "precursor" to the later Staff Regulations and Rules. Based on this, the Secretariat consists of a Secretary-General and such staff "as the organization may require." The Secretary-General is appointed by the *General Assembly on the recommendation of the Security Council*. He is the chief administrative officer of the organization.

Based on Article 100, the Secretary-General and the staff may not request or receive instructions from any government or other authority outside the organization regarding the performance of their duties. They must refrain from any behavior incompatible with their quality as international officials and are solely responsible to the organization. Each member of the organization undertakes to respect the exclusively international nature of the duties of the Secretary-General and the staff and not to attempt to influence them in the exercise of their duties.

According to Article 105, each member of the organization is entitled to the privileges and immunities necessary to achieve its goals, and the representatives of the members of the United Nations, as well as the officials of the organization, are also entitled

78 Akehurst, 1967, p.61. Both the UNDT and the UNAT Statute refer to the UN Charter only at one point, when they define the scope of the organization in which the Tribunal may hear cases: Statute of the United Nations Dispute Tribunal, Art. 2/5. (https://www.un.org/en/internaljustice/undt/undt-statute.shtml) and Statute of the United Nations Appeals Tribunal, Art. 2/10. (https://www.un.org/en/internaljustice/unat/unat-statute.shtml).

79 The original electronic copy of the UN Charter is available at https://treaties.un.org/doc/publication/ctc/uncharter.pdf

to the privileges and immunities necessary for the independent performance of their duties in relation to the organization. I deal with this question in more detail in the chapter regarding disciplinary law.

As an auxiliary source of law for the founding documents, we must consider the *general legal principles* that have been included in the jurisprudence of the main internal courts as a basis of reference since 1929.[80] In this context, a scientific discussion has developed over the decades about how the legal principles shall or must be derived and whether the general legal principles of a state—and in this case, *which* state—or international law should be applied in specific cases?[81] At the same time, as a prevailing practice, it is common for administrative courts to emphasize the universal legal principles of law; therefore, the *clausula rebus sic stantibus*[82] and the *estoppel*[83] principle were particularly invoked.[84] General principles of law usually serve as a source of law in the internal court proceedings of international organizations when control of administrative power and discretionary authority is necessary.[85]

In addition to the general principles of law, the *internal practice of the organization* serves as an unwritten source of law, which corresponds mostly to *customary law at the state level*. In Hungary, based on customary law, it is not typical to form a legal practice in the public service, nor to engage in legal disputes. *László Blutman* writes[86] that the situation of customary law in international law has recently been determined by a two-way process, that is, on the one hand, the quantitative growth of international treaty law is slowly displacing it from legal disputes, on the other hand, their codification has

80 Amerasinghe, 2005, p. 288.

81 On this subject see, among others, Jenks, Clarence Wilfred *The Proper Law of International Organizations* (Jenks, 1962).

82 ILO AT 1879. The principle is "a clause concerning the present state of things," developed by the Decretists from a quotation by Aurelius Augustine and included in the Decretum by Gratian, which is in fact about the binding force of the oath. Aurelius Augustine cites the example of a person depositing a stranger's sword and swearing to return it at the depositor's request. The depositor, however, goes mad in the process, and it would be an act of public danger if the depositary were (in keeping with the deposit and his oath) to return the sword to him. If he did not return it, he would be in breach of contract and in breach of oath. According to Aurelius Augustine, in such a case, the depositary is not bound by the oath and can refuse to give the sword until the madman regains his sanity (see Bónis, 2016, pp. 32–36).

83 ILO AT 592; 3160; 3614; 3647; 3729; 3942; 3950; 4273.

84 *Péter Kovács* defines the otherwise untranslatable estoppel principle as a principle expressed in the Germanic-Roman schools of law by three separate principles, namely the "sanctity of the given word," the principle of good faith, and the principle of non venire contra factum proprium, that is, "no one may invoke his own wrongful conduct as a legal defense" (see Kovács, 2011b).

85 Amerasinghe writes about the issue in detail in his already cited work (see Amerasinghe, 2005, p. 290).

86 Blutman, 2018.

progressed in many areas, consequently the existence of more customary law norms is *becoming accepted and they can be applied with greater safety when necessary.*

The international legal responsibility of states remains a more significant issue that is settled by customary law, if only because many states are not parties to the various codification treaties, which pave the way for the application of customary law. However, customary international law is surrounded by many uncertainties, which prompts international bodies to be cautious if they want to apply it. The practice associated with them is contradictory on many issues, and the theory of international law does not offer generally accepted solutions to all problems.[87]

Comparatively, we observe within international organizations that practices or customs can form part of the employment conditions. This can easily lead to an *ad hoc application of the law,* which consequently—as usual—endangers legal security. The advisory opinion issued by the International Court of Justice/Cour Internationale de Justice (ICJ) in 1956 serves as a starting point, according to which it is possible to apply in the field of internal practice only those customs whose existence and content can be ascertained.[88] Organizational practice usually arises in interest-based situations, that is, not typically in legal matters; therefore, it can be decisive in, for example, the circumstances under which a fixed-term appointment is extended or the extent of the general salary increase. Sometimes, it also happens that an established practice fills the available legal environment to the disadvantage of the official; however, this phenomenon is marginal and there are rarely examples of these practices.[89] Regarding the hierarchical relationship between general legal principles and internal practice, we conclude that, as a general rule, internal practice cannot override universally applicable legal principles; however, the content can be a decisive factor here as well, taking into account that internal practice that places officials in a more favorable position can legally prevent the application of the general legal principles in a row. A written source of law can even be overruled even less by practice, and regulations contained in the founding document can never be adversely affected.[90]

The *equity* known from Anglo-Saxon jurisprudence can also be an important source for the internal law of international organizations. In the spirit of equity, the acting decision-maker acts according to their discretion; in this process, they are not bound by the decisions made earlier. From the 17th and 18th centuries on, the head of the chancellery

87 Blutman, 2018.
88 International Court of Justice, 1956, p. 91.
89 Amerasinghe, 2005, p. 292.
90 Amerasinghe, 2005, pp. 296–299.

was replaced—instead of church leaders—by famous legal scholars (e.g., lord chancellors *Heneage Finch, Philip Yorke, and John Scott*), who tried to lay down the basic principles of equity and thereby eliminate legal uncertainty. If these basic principles match or correlate with universal legal principles, then the courts of international organizations are also happy to apply them—because of this stipulation, there is *actually no difference* in the practice of international organizations between the *application of general legal principles and equity* within the institution; however, given that legal practitioners do deal with the phenomenon of equity, it is worth addressing this legal institution as well.[91] Incidentally, on the basis of *equity*, the extent of liability is typically established *ex aequo et bono*.[92]

In terms of written law, in the hierarchy of sources of law, below the statute is the collection of regulations and rules related to the legal relationship of officials, as well as other lower-level bulletins, recommendations, and information circulars, which are usually issued by the Secretary-General.[93] In the law of states, these two types of inferior-quality legal sources correspond to the level of laws, decrees, and instructions. The unwritten sources of law follow only after these—at least as far as the fate of the unwritten law adversely affecting officials is concerned. Unwritten rules that place officials in a more advantageous position can sometimes *take precedence* and provide an opportunity to *supplement the written law* accordingly.

An important point of interest is that, although I indicated earlier that national rights do not constitute a source of law within the international organization, if the Staff Rules and Regulations do so (e.g., typically in social security matters), then the law of the specified state must be applied in a given sub-issue. Additionally, when the written law is interpreted considering national law, state law also plays an important role (e.g., in the case of the stipulation that requires the existence of marriage because

91 Amerasinghe, 2005, p. 292.

92 A legal concept that empowers judges to decide a case based on fairness and good conscience rather than strictly applying the rules of a particular legal system (Teramura, 2018; and Teramura, 2019, pp. 63–86).

93 The lower-level sources are described in detail in the Secretary-General's bulletin ST/SGB/2009/4. Accordingly, the scope of a Secretary-General's bulletin may include detailed rules on all matters, whether relating to the Staff Regulations or the Financial Regulations (ST/SGB/2013/4/Amend.1), adopted by the General Assembly; details of the implementation of texts adopted by the Security Council; other regulatory matters considered relevant by the Secretary-General; the organization of the Secretariat; and details regarding the launch of special programs. By comparison, the subject matter of an administrative instruction may cover everything that concerns the details of the Staff Regulations or the financial regulations, and may also deal with special regulatory tasks arising from the Secretary-General's communications. Administrative instructions are in principle issued by the Under Secretary-General for Management, but this function may occasionally be delegated by the Secretary-General (see ST/SGB/2009/4, Points 3.1, 4.1 to 4.2).

of the definition of marriage).[94] Owing to the greater transparency of the internal legal sources system, I present the hierarchical arrangement in the diagram below.

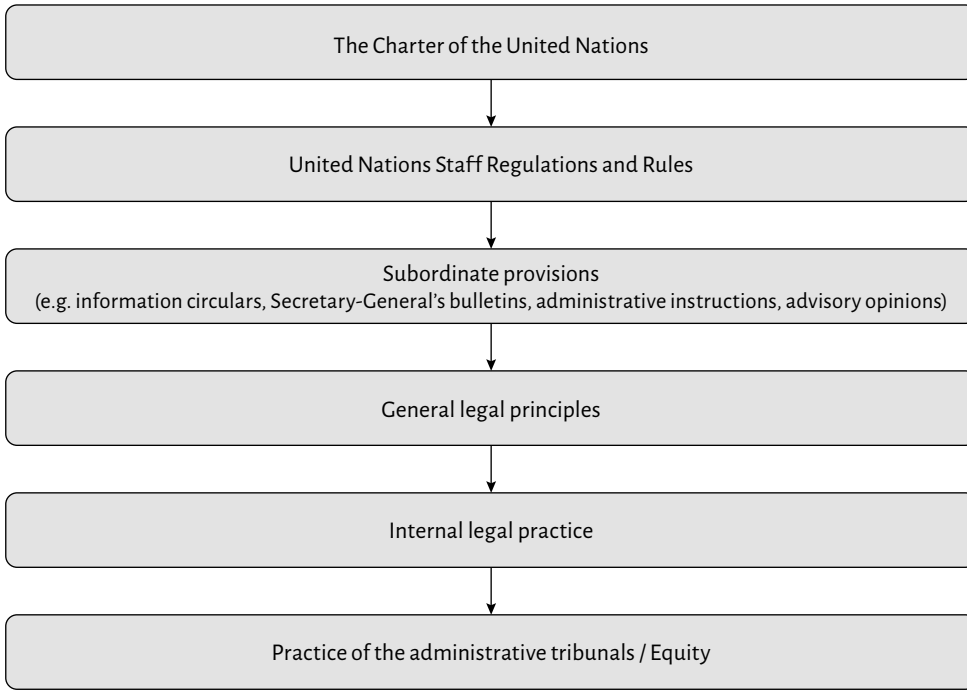

Figure 1. The internal hierarchy of the sources of employment law at the UN[95]

4. Scope of the Staff Regulations and Rules of the United Nations

To examine the scope of Staff Regulations, it does not hurt to recall why an international organization can and does create this type of legal source. The German, Austrian, and Swiss *Beamtegesetz*, as well as the Dutch *Ambtenarewet*, function as framework laws that are made concrete by individual ministerial decrees and institutional regulations.[96] Just as a state needs an employment code, international organizations also

94 Amerasinghe, 2005, p. 294.
95 Own figure.
96 Prugberger, 2010b, p. 439.

need a basic employment regulation, considering that the founding document, international treaties, or other legal sources of universal scope—for which legal sources, even in state employment law, only provide frameworks for the development of local regulations—cannot fulfill the role of a special regulation closest to the employees' level.

Although it has already been mentioned, the question always arises: why cannot the given international organization apply the labor law of the member state where it is based? The explanation for this is relatively complex but easy to understand. Let us take as a basis the UN organization, which has centers in New York, Geneva, and Vienna. It also has main operations in Africa—in Nairobi and Addis Ababa—as well as regional offices and nine peacekeeping missions. In South America, Santiago, Chile, is the center that hosts the Economic Commission for Latin America and the Caribbean. Bangkok is home to the headquarters of the Economic Commission for Asia and Oceania, as well as many regional offices in the area. The Economic Commission for Western Asia has its headquarters in Beirut, Lebanon. If we only take these more central units as a basis, then the UN organization would have to rely on the laws of about eight different countries, not to mention that officials are often temporarily appointed in another country—in which case they would always change their working conditions. I would also add that if such circumstances were to arise, the transfer of an official working in Geneva to Ethiopia, for example, could probably give rise to labor law abuses, considering the fact that the legal system of the latter country does not have as much labor law protection[97] as the former.

Staff regulations also provide an opportunity for something that the civil service at the state level does not really encounter, even in countries like Britain or France that have overseas territories. In principle, it would be possible for such countries to enforce public service law outside their own state because their other territories adopt their legal system. Generally, however, these areas either have autonomy regarding the development of their own legal regulations or else the mother country makes some special rules with which they can reflect local conditions. In short, in the case of public service at the state level, it cannot happen that while someone is serving in five different countries in five different organizational units, he will still be governed by a single set of regulations—with at most some special deviations applicable to the given task or area.

97 International Labour Organization, 2004.

Questions may arise about why international organizations can create rights for individuals. In addition to the fact that every organization with an independent legal entity has the right to establish its internal operating order, an individual, as an international legal entity, has the same active and passive legal entity[98] vis-à-vis an international organization as a state. Consequently, there *cannot be any restrictions* according to which a given organization cannot create internal labor law regulations.

4.1. Personal scope

The personal scope of the UN Staff Regulations helps us define who we consider to be an international official. In Hungary, government officials are individuals who, as employees of the state, perform various administrative tasks, and the law assigns them this classification;[99] government officials act in specific matters and prepare, make, and implement decisions.[100] The personnel of the public administration represent the public administration in the direction of society on the one hand and politics on the other.

The same mechanism can be found in the case of international officials, who, however, are not in the service of one or more state entities; rather, they represent an international organization with independent legal status. In their case, society is a multipolar factor: on the one hand, it means people, but it also means the community of states. "Society" is always the legal entity that uses public services or against whom the given administrative unit exercises public authority.[101]

The UN Staff Regulations are entitled the *Staff Rules and Regulations of the United Nations*, and they regulate the legal status and employment relationship of the employees of the UN Secretariat with basic principles and detailed provisions. According to what is included in it, administrators and those who carry out activities essential to the operation of the institution are classified as officials. As I mentioned earlier, those who hold *support positions*—such as the cleaning and security services—are employed by the organization not as officials but as *workers*.

The question of personal scope is not only important to determine which written sources of law apply to which staff member. Knowing the group of personnel involved

98 Kovács, 2011b, p. 314.
99 Act on government administration, Art. 3.
100 Fazekas (szerk.), 2015, p. 321.
101 Fazekas (szerk.), 2015, p. 322.

is also crucial because many public service principles, even if they bind the given individuals as a written source, still move primarily in the sphere of morality. Therefore, it is important to clearly define which seemingly contradictory expectations that are often difficult to grasp and that are gradually crystallized based on court practice, such as efficiency and legality, flexibility and stability, loyalty, and neutrality, are imposed as a special requirement on whom.

4.2. Territorial scope

The general feature of the international civil service regulation is that it frequently bases employment eligibility on citizenship and has the authority to order official postings to any location. For this reason, the question of territorial scope is crucial from the perspective of recruitment and employment. In this domain, it is necessary to depart from the concept of territorial scope as it is applied to state-level legislation because it is not possible to establish an objective limit beyond which, for example, the Staff Regulations of the UN will no longer apply.

The basis of my approach is that, on the one hand, the territorial scope of the Staff Regulations of international organizations extends to those geographical units where the organization has a branch office, that is, a permanent employee, or even in the absence of an office or branch office, where the officials designated in the personal scope—typically in the employment or as a representative of the international organization—stay. The territorial scope in this case is therefore *extremely malleable*, and instead of being determined within objective limits, it can change continuously depending on personal movement. This is attributed to the circumstance that has already been presented several times—that state law does not determine the operation of the international organization in the absence of authorization given by internal organizational law, that is, the internal regulations of the international organization must remain in force even if the official leaves the seat country or territory of any branch organization.

4.3. Temporal scope

Examining the temporal scope of the Staff Regulations allows for the simplest approach: naturally, the transitional provisions include the date of entry into force, and the regulations are applicable until a new amendment is voted on by the designated body, which in the case of the UN is the General Assembly. The current UN Staff Regulations

underwent 78 amendments between 1952 and 2022; the latest version entered into force on January 1, 2018.[102]

4.4. Material scope

In terms of its objective scope, the UN Staff Regulations apply to the legal relationship of civil servants. All other legal relationships—be they employment or commission-entrepreneurial legal relationships—are performed based on the laws of other countries, mostly those of the state where the work is accomplished.

Why is it necessary to regulate the two types of legal relationships separately? According to *István György*, given that both the public and private sector employment systems regulate subordinate work, there are several similarities between the areas, among them the living conditions subject to legal regulation, the types and elements of regulated service and employment relationships, the common principles, the basic legal provisions of the exercise of law, and the relationship between the most important legal sources of the two branches of law.[103] As we know, labor law and civil service law are separated from the types of work performed purely according to the rules of civil law by the fact that in our case, the employer and the employed are subordinate to each other, whereas in civil law legal relationships, as a rule, equality is typical.[104] The existence of regular remuneration, the creation of contracts based on freewill decisions, personal work obligations, and work according to fixed rules are all important requirements in labor and civil service law. All these characteristics can be found in the special employment law of international organizations as well as in the public service law at the state level.[105]

When distinguishing between the two domains—civil servants and private employment—*Ulpianus*' perspective should be used, according to which public law

102 *Staff Regulations*, Regulation 12. 4, Rule 12.4.

103 György, 2007, p. 27.

104 The subordination system in civil law is disrupted by legal relationships in which one party has a legal knowledge or enforcement deficit (and is therefore de facto subordinate), and the legislator therefore artificially interferes in the relationship between the parties by creating various legal guarantees. (Typical examples are consumer contracts or insurance contracts, and the legal instrument of popularis actio has been introduced to compensate for the disadvantaged position of the parties.) For more information, see the opinion of the civil law college (PK vélemény) 3/2011 (XII. 12).

105 György, 2007, pp. 28–31.

serves the state and private law serves the direct interests of the individual.[106] Thus, public service law regulates legal relationships, the framework within which employees perform a public task, the employer is some kind of public administration body, and the basic regulatory philosophy is characterized by the fact that the bargaining position of the parties is not the same: because of the coercion that generally characterizes public service law, employees can usually choose whether or not to accept the construction offered to them, but they can only make amending proposals within certain frameworks. The reality of public service law at the state level is that, while unilaterally created employer regulations typical of labor law are more widespread for public employees, we find that they are completely absent in other segments of the public sector. For instance, in the case of ministries in Hungary, the role of day-to-day work organization is defined by ordinary sources of law, such as ministerial decrees and instructions or the instructions of the Permanent Secretaries for Ministries. In civil service law, all aspects are regulated by an independent law, which is implemented by government decrees, and these do not affect issues of the employment relationship strictly speaking.[107]

Civil service law is uniquely characterized by a predictable career development system, guaranteed by law, and a set of obligations that set high expectations. The latter completely defines the legal relationship, as it is here that we find the strict requirements of aptitude, the wide range of conflict of interest rules, the requirement for continuous training, the rigid rules of obedience to instructions, and the disciplinary law.[108] As specific, special legal principles, I would list the principles of policy neutrality (loyalty and legality), subordination (hierarchical system), careerism (guaranteed promotion), professionalism (life vocation), and increased responsibility (complex responsibility).[109] These characteristics make it clearly more transparent for the UN *to provide a framework*

106 György, 2007, p. 45; or see also Ulpianus, 1872: "Huius studii duae sunt positiones, publicum et privatum. Publicum ius est quod ad statum rei Romanae spectat, privatum quod ad singulorum utilitatem: sunt enim quaedam publice utilia, quaedam privatim. Publicum ius in sacris, in sacerdotibus, in magistratibus constitit. Privatum ius tripertitum est: collectum etenim est ex naturalibus praeceptis aut gentium aut civilibus." That is, "There are two main parts to this science: public law and private law. The public law is the law that applies to the Roman state, the private law is that which is concerned with the interests of individuals; for some things are for the benefit of the public, others for the benefit of individuals." (https://cutt.ly/nSjemt4); Benke, 2019; and Jellinek, 1914, p. 383: "Public law regulates legal relations in which the subjects are subordinate to one another ('Herrschaftssubjekten und Unterworfenen'), whereas private law involves subjects who are subordinate to one another ('Nebengeordneten')."

107 György, 2007, pp. 45–48.

108 György, 2007, p. 49.

109 György, 2007, pp. 49–53.

of rules for officials only and to leave the very different nature of private employment to other, typically external, sources of law.

There are no major differences between the civil service in different European states and the civil service within the UN; however, this is only natural, as these employment systems are similar in their principles, attitudes, and goals and often even share the same characteristics. *Indeed, the differentia specifica of public service as a concept lies not in the organization or the level at which it is provided, but in the fact that we are talking about a type of service provided in the public interest.*

5. Other sources of labor law in international organizations: Judicial law

Finally, to gain a complete overview of the legal source system, we need to look at the case law that is not affected by the scope restrictions. Civil service litigation is a familiar concept in both the public and international civil services, and its rules and mechanisms provide a framework for the enforcement of a claim arising from a public service relationship or for challenging a decision by an employer exercising its powers.[110]

In addition to the employment history in general, there are inescapable similarities in civil service litigation particularly within nations and in international organizations. Any official who has a claim arising from their substantive rights may apply to the courts, but in disputes of interest, that is, decisions made at the employer's discretion, the court may act only based on authorization of the relevant legislation.[111] This principle can be observed in the rulings of the UN administrative tribunal of the first instance (that is, *United Nations Dispute Tribunal, UNDT*), which require management to treat its employees fairly, equitably, and transparently,[112] but do not give the UNDT the authority to decide what allowances the General Assembly grants to the various categories of officials.[113]

I will discuss the organization and functioning of the court system in more detail in later chapters of this volume. However, from the perspective of the source of law, now is the time to state that, having followed the work of the courts in the first and second instances over many years, I find that internal labor disputes are not dissimilar

110 György, 2007, p. 196.
111 György, 2007, p. 196.
112 2014-UNAT-433.
113 2015-UNAT-563.

in nature to the conflicts that arise in the most average workplace—contract renewal, equal treatment,[114] promotion, harassment, and disciplinary sanctions are the most common areas of internal UN litigation. However, as I have already mentioned, in the case of the UN, this is compounded by cultural diversity and the specificity of the situation owing to geographical diversity.[115]

Despite the similarities, it has become a common international legal solution that international organization service law—and the judicial system associated with it—is part of the internal rules of the international organization in question, which in turn necessarily falls outside the legal system of any state.[116] This solution is important for several reasons. On the one hand, the need for an independent legal system is natural when we consider that officials come to the organization from all over the world, and thus have been socialized in very different legal systems. To ensure equality between officials, a clearly identifiable set of autonomous legal rules is required. Simultaneously, it is also necessary to establish that the autonomous law of an international organization protects the member states from any one of them being able to exert pressure on the others—which could easily happen if one of their legal systems were to be taken over by another.[117]

Internal administrative tribunals can be found in almost all major international organizations, including the UN,[118] the ILO,[119] the Council of Europe,[120] the International Monetary Fund (IMF),[121] the World Bank,[122] and the European Bank for Reconstruction and Development (EBRD),[123] among others. Contrastingly, the European Union has transferred disputes between the Union and its employees to the jurisdiction of the General Court as of September 1, 2016, which meant the end of the dedicated Civil Service Tribunal established in 2004.[124]

114 Discriminatory practices are extremely common in the exercise of employer power, regardless of the organization and its type, often leading to unintentional discrimination by decision-makers. For more on this topic, see Zaccaria and Bankó, 2016, pp. 53–78.

115 United Nations, no year-b.

116 Hutter, 2007.

117 Hutter, 2007, p. 4.

118 UN Internal Justice System: https://www.un.org/en/internaljustice/index.shtml

119 ILO Administrative Tribunal: https://www.ilo.org/tribunal/lang--en/index.htm

120 Council of Europe Administrative Tribunal: https://www.coe.int/en/web/tribunal

121 IMF Administrative Tribunal: https://www.imf.org/external/imfat/index.htm

122 World Bank Administrative Tribunal: https://tribunal.worldbank.org/

123 EBRD Administrative Tribunal: https://www.ebrd.com/who-we-are/corporate-governance/administrative-tribunal.html

124 European Parliament and Council (EU, EURATOM) 2016/1192. See also Angyal, 2017, pp. 11–22.

The UN Administrative Tribunal for Internal Administration is relevant to the subject of the current study, as many of the legal principles on which the judgments are based have been laid down by this body[125] and, in many cases, by the ILO Administrative Tribunal.[126] In terms of the law of judges, it appears that international organizations incorporate the principles laid down by their own courts into their rules or practices and follow the jurisprudence of other international organizations. The extent to which the jurisprudence of internal administrative tribunals can be considered a precedent system is difficult to determine, but the recognition of equity as a source of law clearly allows the court to depart from the previous line of case law at any time.

125 See, e.g., UNAT 71 (1958), Mihajlov, 1993c, p. 119. According to the cited decision, an international official may be lawfully dismissed merely because of misjudgment or an unfortunate combination of circumstances. This decision establishes the special responsibility of international officials, which will be discussed later.

126 ILO AT 392 (1980), Mihajlov, 1993c, p. 87. The decision states that prolonged unjustified absences without disciplinary action may be grounds for dismissal. This is a rule that was pronounced by the court but is now part of written law; for example, a passage on this subject can be found in the UN Staff Regulations.

IV. Personnel policy in the light of organizational sociology

Organizational culture, organizational management, and, above all, organizational psychology are outside the purely legal scope of this chapter; however, it is necessary to mention them because the phenomena and laws described in this chapter are behind all the sources of law and practice that make the civil service what it is, whether in its national or international form. In different states, practice has shaped expectations and arrangements for public service behavior, which have become part of the organizational culture and embedded in the system. These have been considered by the UN in developing its own system of conduct and organizational policy, right from the drafting of the Charter. Over the last few decades, these practices have developed into a discipline that seeks to explore the laws of organizational culture, organizational governance, and organizational psychology to ensure that a community of workers can function as effectively as possible.

International organizations—including the United Nations—are constantly evolving, and this is because they must react much more flexibly and quickly than states to different global political and economic events. Without an organizational culture and effective organizational management, internal legal sources are a lifeless skeleton for a series of measures that help the organization do its job. The enforcement of organizational culture by legal means is only occasionally and mainly indirectly possible—we are witnessing a type of legal compliance where the assumptions that are part of the culture are so natural to the members of the organization that they are essentially subconscious and determine the way the members understand themselves and the environment in a way that is taken for granted. Hence, culture gives meaning to the environment, reduces its uncertainty, and stabilizes it. Culture aids in orienting what is right and wrong, important and unimportant.[127] Thus, culture can increase adaptability

127 Belényesi, 2018, p. 8.

by keeping the organization itself within its own moral framework in all circumstances. Organizational culture is the social dimension of the organization, which is represented in the internal legal system by rules on rights and obligations.

Organizational culture is a set of basic assumptions[128] that a given group has invented, introduced, and discovered in the process of external adaptation and in the process of solving problems that arise in the design of an internal system. We are talking about assumptions that have worked well enough to be accepted as valid by the community and taught to new members as established ways of perceiving, thinking, and feeling about particular problems.[129] The organizational culture includes everything: the amount and accounting of overtime, the rules for communication with the manager, the procedure for taking leave, the typical content of employment contracts or appointment documents, and the typical termination procedures. Notably, the concept never refers to a single tangible thing but rather to a set of procedures that can be implemented in different work products.[130] In many cases, the achievements of organizational culture are summarized in internal rules as a source of knowledge; however, some lower-level or non-articulated customs can only be acquired through daily work and interactions. In principle, organizational culture can only be valid in court if it is objectively knowable and not contrary to the law or internal rules.

In the case of an organization, organizational culture is a significant factor because, unlike in government, where belonging to a nation provides officials with a sense of identity, belonging to the UN, because of its geographical diversity, becomes the cohesive force on which governance can be based.

128 In other words, it is the collection of dialogs, narratives, instructions, and reactions that a workplace collective shares with each other on a day-to-day basis, whether through anecdotes, expressions, treatment, internal goals, or working methods (MacQueen, 2020, p. 7).

129 Edgar Henry Schein (1928), a former professor at MIT's Sloan School of Management, expressed his views on organizational culture in a similar way to S. M. Davis, who distinguished between dominant and daily values. The dominant values and beliefs are the philosophical underpinnings of how an organization operates, enduring views on how the organization should compete, how it should relate to its environment, how people within the organization should relate to each other, etc. Dominant (governing) beliefs are rarely changed and are difficult to change; therefore, if the strategy is not in line with the dominant beliefs, it is likely to cause the strategy to fail. Daily values determine everyday behavior and are therefore more easily adapted to changes in life situations. The strategy is based on prevailing values and beliefs. In turn, the feasibility of the strategy depends on daily values and behavioral norms (see also Barlai, 2011, chapter 4.3).

130 Barlai, 2011, p. 13.

1. Organizational culture and organizational management in the public sector

The process of building an *organizational culture* consists of bringing together our assumptions and ideas about the world around us. From this, we can create a paradigm for how our organization works, a framework that will serve as a starting point for those in the organization to define their own cultural boundaries. The resulting paradigm can then serve as a benchmark for assessing the appropriateness of individual activities within the organization.[131] However, as the system is subjective, it is worth keeping a constant check on internal cultural development because, depending on the organization and the set-up, a community may produce irrational results in this area.[132]

In all cases, organizational culture explains what, why, and how things happen in an organization in terms of behavior. A good example of an entrenched mechanism is the strict hierarchy of public administration, which is enshrined in the organizational and operational rules of the department but, because of its cultural embeddedness, as soon as a newly employed official steps in the door, the pressure is almost on him. This pressure is felt at first; however, subsequently, it is encountered in practice as soon as a memo, a letter, or any transcript subject to the approval of superiors is drafted, or a relevant department has to be contacted at the appropriate level. Therefore, it is surprising when a Deputy Secretary of State or even a Secretary of State is friendly or even accommodating to a problem, preferring personal meetings, and the staff of the department concerned can communicate directly with him because it is a matter of habit that we are opposed to the basic assumption that we cannot talk to the person two levels above us in the hierarchy, which is another manifestation of the danger of irrationality mentioned in the previous paragraph.

The UN has a similarly strict hierarchy of officials; however, in my personal experience of the organization, international organizational *functioning is a strange combination of multinationals in the competitive sector*[133] *and the public sector in the classical sense*. The public

131 Barlai, 2011, p. 17.

132 By irrationality, I mean phenomena that largely determine the mood, performance, and effectiveness of the collective, but have no direct, realistic link with the tasks to be performed. I am referring here to strict and insurmountable communication hierarchies, meetings held with unnecessary frequency, excessive administrative obligations, etc.

133 Of course, international organizations are different from multinationals in the way they are set up, as the latter are profit-oriented enterprises. However, the similarity is in the cooperation between the international branches and the need for both to be attentive to the socio-economic processes that they can fill the gaps in their operations.

and international spheres are thus very similar in the context of organizational culture. However, the UN seems to operate in a less constrained manner in everyday life. The main reason for this may be that, while the public service of a state basically serves only the cultural and social milieu of that state, the UN and other international organizations seek to serve universal interests, which requires a high degree of flexibility from all participants.

Interests are factors that largely determine the cultural roots of an organization. *János Krizbai*,[134] in his essay on the military profession, examined the various value systems in relation to NATO, among others, and argues that the concept of organizational vision is essentially a response to the question "What?" and as such, it represents the vision that the community of officials is working to create. The concept of mission is the organization's answer to the question "Why?": why was the organization created and what purpose does it serve? Finally, a set of values seeks to answer the "How?" question, that is, how to act to align with the mission and move toward the vision to be achieved.[135] *The mission, vision, and values together are called an organizational philosophy,* which is closely related to an organizational culture. In fact, organizational philosophy is a question of what an entity believes in, and organizational culture is a way of putting this into practice. This relationship implies that, although it is easy to formulate organizational philosophical guiding principles in human resource management, they can be easily ignored by the staff themselves in their daily practice because of their different cultural perspectives.[136] It is therefore important that both organizational philosophy and organizational culture do not stand alone but also reflect on personnel policy—a prominent example of this can be seen in the UN, where geographical diversity is an established principle of personnel policy but also in several internal programs and policies that promote[137] diversity in all its senses and set out a system of expectations for its implementation.

134 Dr. habil János Krizbai colonel (retired) (1954), qualified sociologist, electrical engineer.

135 Krizbai, 2018, p. 128.

136 Davies, 2017, unnumbered page.

137 So much is the organizational culture of the UN geared toward allowing national traditions to be represented and to some extent integrated into the daily life of the UN that, for example, both the New York and Vienna headquarters have national kitchens in their restaurants, and officials not only eat their own national cuisine but also enjoy getting to know their colleagues through their own food. For me, one of the most interesting cultural experiences was eating paprika chicken prepared by American chefs. The imperfection of the dish and the fact that it bore no resemblance to the flavors and textures I had experienced at home were both humorous and moving, because nevertheless I felt a sense of care for Hungarian culture on the part of the organization.

1.1. The manifestation of public service in organizational culture

Owing to the multi-directional compliance constraints (e.g., central/state versus client orientation, professional versus political orientation), the national public administration system that has evolved over history has a specific, albeit far from homogeneous, organizational culture that determines the management tools that can be applied.[138] I agree with *Emese Belényesi* that public administration and public service tasks can be performed in different ways of thinking, understanding, human and organizational behavior, appearance, expression—these differences are, for example, clearly visible when comparing the way a public service task is performed in a state and international public service. The unique character of local government (both general and individual members of bodies, offices, and institutions) is expressed in historically and socially determined patterns (e.g., values, beliefs, behaviors, and habits), institutionalized in the organization and/or the wider community. This is an organizational culture that is very strongly influenced by the national, societal, and professional culture.

Complex organizational systems require complex thinking and communication solutions. Significantly for public service, the more other-focused an organization's activities are, the more this external stakeholder must be reflected in the fabric of the organizational culture as well as in individual performance. *Jim MacQueen* contends that an employee of an organization can be more effective if they are aware from the moment of entry that they are part of the organization and that their decisions and performance of tasks are not purely based on self-interest, goals, and beliefs, but on the spirit of the organizational culture. This step can lead the official to observe the activities of their organization in the first person, which will enable them to represent them to their clients.[139]

The cultural dynamics model describes how a group of people—such as a group of civil servants—develop a common set of perceptions, thoughts, and emotions among themselves that will determine a set of values:

138 Belényesi, 2018, p. 22.
139 MacQueen, 2020, p. 19.

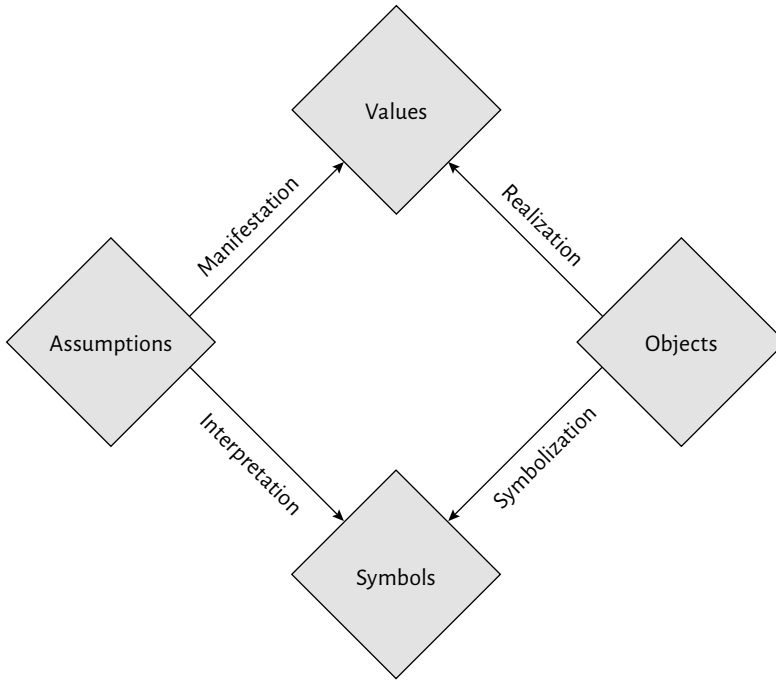

Figure 2. Model of the Cultural Dynamics[140]

This model demonstrates how the form of everyday business is shaped. Generally, the values and assumptions in international organizations and public services are developed along similar lines; however, the material elements and symbols within the walls of international organizations are more diverse and perhaps more dominant.[141] The main reason for this is that, at the state level, these elements are intended to express national belonging, which is a given and therefore needs to be reinforced. At the international level, however, it is necessary to develop a sense that states are working together to achieve a common, higher goal, which can be achieved quite simply by means of a larger-scale, more complex system of symbols.

140 Own figure. Source: MacQueen, 2020, p. 30.

141 Just think that in Hungary, the use of the coat of arms on documents and the national flag on buildings with administrative functions are typical symbols of public service. This is a simpler, smaller-scale symbolic background than at the UN, where the organization's row of flags in the courtyards of its headquarters, the common UN flag, and the souvenirs available to all are all intended to express a sense of global belonging.

1.2. The challenges of public service organizational management

Organizational management is the management of human resources and processes, the basic framework of which is the organizational culture. The challenge in administrative management processes is essentially to ensure that the official can identify with the organizational objectives and that the machine can function as a truly homogeneous unit.

What can help officials take ownership of their organization's operational values at this level? Whether we are discussing a national or an international organization, it is true that a significant portion of the prevailing views and practices are rooted in the organization's own history. Without this historical background, those who manage the organization cannot always understand why a particular way of doing things is the way it is, and this can have a negative impact on how new recruits view working within the organization.

The fact that something is always done in a certain way does not guarantee quality, which is why we must examine it if we want to improve the organization.[142] International organizations and public services at the state level with a more flexible approach are generally better placed to make effective use of historical precedents in planning for the future. In Hungary, the results are doubtful: there have been several attempts to reform the public administration by the current state leadership, and the remnants of these efforts are also evident in the functioning of the civil service machinery. Looking back to the period before the change of regime, we can observe that following the change of regime, the government of the day was keen to break away from that dominant system. In 2016, I interviewed several political actors who had experienced some form of public administration development in connection with a book on public administration reform published by the Hungarian Institute for Public Administration and Organizational Development: Dávid Héjj, Member of Parliament; Tibor Draskovics, Minister of Finance in the Medgyessy government and the first Gyurcsány government, Minister without portfolio in charge of coordinating government administration in the second Gyurcsány government, later Minister of Justice and Law Enforcement; and István Stumpf, former Constitutional Judge. Based on their feedback, I have reached the following conclusion about organizational management: On the one hand, it is damaging to have officials who are untouchable because they can become distanced from the actual workings of the system, and their knowledge and worldview are not conducive

142 Martinelli és Bowyer (ed.), 2000, p. 11.

to progress. Second, hasty acts that can lead to unsustainable conditions should be avoided.[143] The third essential element is to retain a young workforce and to create and strengthen[144] a strong public service ethos.[145]

All this requires a modern management approach, which is more easily observed at the UN, where the international organization brings the level of activity required in the competitive sector, while this is only true to a limited extent in the average public administration.[146] This is because the most important factor in increasing efficiency and effectiveness is to improve the basic and supporting processes of public administration, in addition to the organizational structure and the various systems of responsibility, interest, and promotion. However, the way in which these processes operate is often unclear at the public administration level, and, over time, they are often not always the same, even within a single organization.[147] The UN implements administrative mechanisms in a much more concentrated manner than a fragmented state administration is able to do, and there is therefore scope for a more active development of a managerial approach. Not to mention the fact that the integration of this type of methodology into the legal and social environment can take decades; hence, in Hungary, for example, the development of public administration basically started after 1989 and the situation we know today began to emerge after 2010, the UN has had an unbroken internal regulatory structure since 1945.

The quest for efficiency is a cornerstone of public administration, and it is everywhere, whatever the state or organization. In the field of organizational management,

143 A typical manifestation of this situation, for example, was the act on public servants, which at the time did not regulate the minimum requirements for severance pay; that is, an official could take home six months' pay for a single day's service.

144 Bernadett Veszprémi also quotes Stumpf when she suggests that the paralysis of the domestic public administration is caused by the intertwining of a lack of vision with a crisis of means (Veszprémi, 2012, p. 270).

145 By "public service ethos" we mean, in a broad sense, the moral conduct of the public service, expressed in a commitment to the pursuit of certain values. In a narrow sense, it can be described as the set of habits, attitudes, and values that characterize the public administration as a whole.

146 Only after 2010, for example, did attitudes toward the public administration organizations change in Hungary, a process in which the Magyary Programme played a decisive role: it established the conditions for civil servants, without which good public administration cannot be created. It reorganized the institutional system, emphasizing support for electronic processes and setting up bodies to help create the conditions for operation (e.g., the Hungarian Faculty of Government Officials). The creation of the University of Public Service, the establishment of the administrative scholarship system, and the reserve pool, which is part of the end-of-career system, were good steps for the civil service career, with the aim of ensuring that civil servants are not excluded from the civil service system but have priority over those coming from outside in case of vacancies. From 2012, the register was extended to include civil servants and military service members (Árva, Balázs, Barta and Veszprémi, 2020a, p. 243).

147 Nemzeti Közszolgálati Egyetem, 2017, p. 61.

the 7s model[148] illustrates the elements to which all organizational management must pay attention to achieve the desired effectiveness.

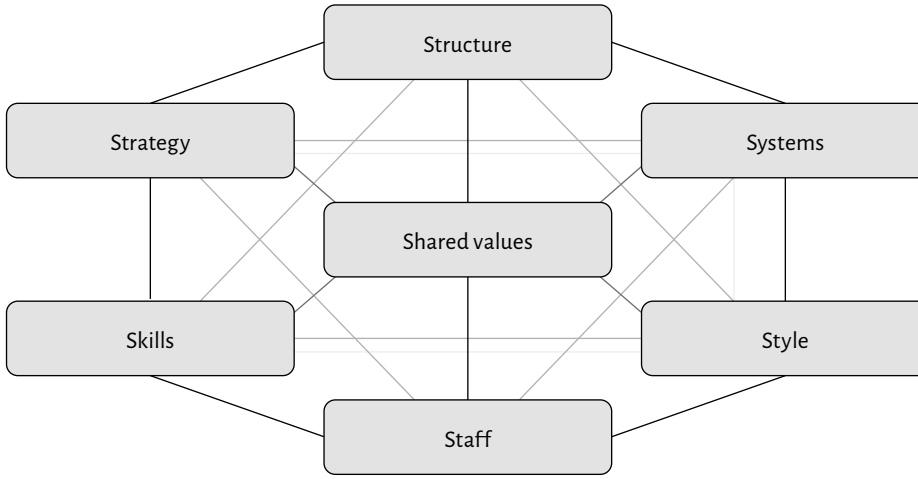

Figure 3. McKinsey 7s model[149]

1.2.1. Organizational strategic planning

Strategic planning as a concept in the context of management and administration only gained traction in the second half of the 20th century, initially in private sector organizations. After its importance was recognized, management soon became one of the most rapidly developing areas of business studies. Not until later, when it became more geographically dispersed in the public sector, did it become the focus of academic attention, and its practical application only became widespread in the 2000s.[150] No difference can be found between the characteristics of strategic management in public service and the competitive sector in that we are always talking about the same few steps: a strategy is (1) a long-term plan of (2) actions (3) to be taken to achieve a certain goal, (4) to provide the resources necessary for its implementation, and (5) in a time-sensitive manner. Furthermore, *strategic planning is nothing other than the methodologically consistent*

148 One of the pioneers in the field, although aimed essentially at the competitive sector and, within it, at large US corporations, is the book "In the Wake of Success" (see Peters and Waterman Jr., 1984). This book introduced the McKinsey 7s model. The name of the model is a play on the initial letters of the English components.

149 Own figure, source: https://cutt.ly/zSjeDKP

150 Kádár, no year, pp. 3–4.

development of this long-term plan, including the importance of cyclical and recurrent re-design and fine-tuning.[151]

Problems that may arise within the organization and outside the organization in relation to its activities can therefore be addressed by the international or public service organization through these steps. *Reforms can be divided into four categories: internal, functional, structural, and territorial.*

Within the UN, there have been numerous strategic programs over the past decades. These strategies aim to influence the so-called setting of action of the organization in such a way that the organization itself can be as effective as possible.[152] These strategies do not manage the organization's own internal environment; however, because they are designed to achieve the objectives they set, they provide a framework against which the organizational management strategy itself can be developed.

The legal framework for the management of the organization is set out in the Charter, the Staff Regulations, the Secretary-General's bulletins, and the Administrative Instructions. Article 101.3 of the Charter requires that the highest standards of efficiency, professionalism, and integrity be considered in designing the staffing plans and conditions for the employment of officials. It is from this requirement that the Charter derives the principle of geographical diversity.

As regards the financial aspect of the organization's management, Article 17.2 of the Charter provides that the expenses of the organization shall be borne by the members as apportioned by the General Assembly. With regard to the staff, the Charter states in Article 97 that the Secretary-General shall be the chief administrative officer of the organization.

The subordinate legal sources contain detailed rules on governance, the delegation of powers, ethical management, the internal justice system, and the disciplinary system.[153]

The administrative structures in each state and the UN are not and cannot be similar in nature. At the state level, full-fledged administrative strategies are developed to ensure that the administration can undergo a constant and continuous process of reform. The *Germanic model*, for example, is an attempt to put the tools of the private sector for product management at the service of the development of administrative activities, both in terms of process optimization and organizational structure (see *Niklas Luhmann's*

151 Kádár, no year, pp. 3–4.

152 These include, for example, the sustainable development strategy, the strategy against hate speech, the strategy on the use of new technologies, or the strategy to combat terrorism.

153 See https://hr.un.org/page/understanding-management-un-context-0

systems theory).[154] One of the most important achievements of the German model at the turn of the millennium was the development of the New Management Model *(Neues Steuerungsmodell)*, which put into practice the principle of unity *(Grundsatz der Einräumigkeit)*, which meant bringing together the different levels of public administration.[155]

The *French model* is strongly resistant to the New Public Management type of public administration reform process, which is, however, highly valued by the countries that follow the Anglo-Saxon model. The sociologist *Michel Crozier,* in his book *Etat modeste, Etat moderne*, takes a pessimistic view of the French public administration reform process because he believes that the state is incapable of the renewal that should characterize both its own role and the behavior of its officials.[156] In France, the civil service can be divided into three broad areas: central administration, regional administration, and the health service. Of these three groups of staff, those working in the territorial administration have been most strengthened by the decentralization process that has been under way since 1982.[157]

In Hungary, the legislator made fundamental changes to the then Act XXIII of 1992 on the Legal Status of Civil Servants in 2001, creating the possibility of building a system that would allow and guarantee a real career. The Széll Kálmán Plan, which provided for the development of new career models, was adopted in 2011, followed by the comprehensive civil service reform program and the Government Personnel Strategy, which was named after Zoltán Magyary, and detailed its implementation. The main objective of the Magyary Programme was to increase efficiency in public administration and the civil service, and the program also aims to reform the civil service while at the same time striving to build a strong state. The creation of common principles, the use of common tools, the exploitation of common knowledge, and the interoperability of legal relations are its tools.[158] The Magyary Programme has been followed up by the Strategy for the Development of Public Administration and Public Services 2014–2020.[159] While there seems to be no shortage of strategies, another characteristic of the domestic public administration is that no tangible vision is developed internally but rather ad hoc, manager-dependent visions are implemented, which in fact can only serve the overall government strategy depending on the quality of the leadership's skills and objectives.

154 According to systems theory, systems proceed from their internal operations, but are nevertheless cognitively open, that is, they do not exclude the evaluation of the effects of cognition (for more on this topic, see Albert, 2019).

155 For more on this issue, see, for example, Bogumil and Ebinger, 2012; and Gather and Geßner, 2012.

156 Simard, 2010, pp. 99–118.

157 See, for example, Bernadett Veszprémi's research on the French civil service (Veszprémi, 2010; and Veszprémi, 2012).

158 Árva, Balázs, Barta és Veszprémi, 2020a, pp. 241–242.

159 Author not available, 2015.

1.2.2. Organizational structure in line with the strategic objectives

The UN structure is made up of six principal or main organs: the General Assembly, based in New York; the Security Council; the Economic and Social Council; the Trusteeship Council; the Secretariat; and the International Court of Justice in The Hague. The General Assembly is the forum in which member states express their views and collectively shape organizational policies. The Security Council is a group of fifteen states that work together to make binding decisions within the organization on any matter that requires immediate and effective intervention. The Economic and Social Council works to raise living standards globally, and its fifty-four members are elected by the General Assembly. The UN Secretariat consists of the Secretary-General and his or her staff, with the Secretary-General being the chief administrative officer of the UN, appointed by the General Assembly on the recommendation of the Security Council.

The UN strategy after the tragedy of World War II is based on maintaining international peace and security through cooperation between states. This strategy prevents conflict, builds peace, manages peacekeeping missions, and creates the conditions for development. These strategic objectives are reflected in a structure that is not too fragmented but that deals with the main characteristics through a single department. This book is not intended to evaluate the UN's activities from the perspective of expediency or policy, but I believe that the current structure serves efficiency well and is supported by several specialized agencies through the Economic and Social Council,[160] of which there are currently 15.[161]

A country's public service does not operate with a global purpose; hence, it is not necessarily imperative to make it compact but rather to locate the different functions as close as possible to where they are performed. Therefore, while the average international organization manages to perform its tasks with a small number of departments and relatively efficiently, a national public service is complex and made up of numerous small units.[162] Unfortunately, this structure is handicapped by its very nature in terms of agility, responsiveness, and capacity to evolve. This is partly why, for example, we see

160 United Nations NGO Branch, Department of Economic and Social Affairs, no year.

161 The UNs specialized agencies are FAO (Rome), ICAO (Montreal), IFAD (Rome), ILO (Geneva), IMF (Washington D.C.), IMO (London), ITU (Geneva), UNESCO (Paris), UNIDO (Vienna), UNWTO (Madrid), UPU (Berne), the World Bank (Washington D.C.), WHO (Geneva), WMO (Geneva), and WIPO (Geneva) (https://www.un.org/en/about-us/un-system).

162 For example, in Hungary, the civil service system is geographically divided into three levels, distinguishing between central, regional, and local government. To these we add the officials of the armed forces and the civil servants. Each organization providing a public service is structured differently; therefore, it would be arbitrary to single out any one of them to illustrate the structure.

in Hungarian public administration a constantly changing tendency toward centralized (typically during 1994–2000, 2007–2011, and 2011–2014) or decentralized (typically during 1989–1994, 2000–2007, and post-2014) public administration. Both systems have their advantages and disadvantages; however, there is no completely good solution at the state level anywhere in the world.

A striking difference between the public service of international organizations and that of states is that while the former builds on roughly identical systems going back decades, the latter seeks to constantly renew itself to develop the most appropriate structure, the nature of which depends on age, geographical presence, social conditions, and many other factors that often change rapidly.

This process can be observed, for example, in Germany, where the German Democratic Republic had a more comprehensive administrative reform in 1952, the structure of which remained in place until 1990. In the Federal Republic of Germany, local administration was strengthened in the 1960s and 1970s, and there were serious efforts to rationalize the overall functioning of the administration; however, this was interrupted by the economic downturn of the mid-1970s. This was followed by the birth of a new model of governance in the 1980s, which introduced transparency, the fight against corruption, public participation, and the availability of public data as a planning criterion, as in the US.[163] After the change of regime, another major reform was undertaken in Germany, namely the unification of the different levels of administration, as mentioned above.[164]

In France, too, we can observe constant reflections on the current historical situation in the structural development of public administration: the opportunities were present under the presidencies of *Charles de Gaulle*, *Georges Pompidou*, and *Valéry Giscard d'Estaing*, but these years did not allow France to face the serious problems that the oil crisis of the 1970s brought. The political changes of the 1980s, with the rise to power of the socialists, do not in themselves explain the range and variety of measures introduced in state action, but this historical period did provide the centralized French state with exceptional opportunities: it demonstrated an openness to new forms of regulation, which then led to the present state system outlined earlier. This also demonstrates that the rationality of the organization, the employer, has an impact on the quality of the work of the civil service—that is, *the changes made by managers interact very closely with the rationality of the organization*.

163 See https://www.foia.gov/
164 Mecking and Oebbecke (eds.), 2009.

1.2.3. Organizational taxonomy

The strategic objective of both international organizations and the civil service can generally be summarized as the most effective way of addressing and solving the problems within its remit. Strategic planning is a distinct discipline, according to which an organization's strategy is briefly and fundamentally determined by its environment and its own capabilities. The environment of the civil service includes those elements that are connected to the organization but that it cannot influence because of its size or limited power. These include, for example, demographics, the general economic situation, the direction and speed of technological development, and legislation. Understanding these elements and identifying their trends can be crucial to the success of a public service strategy. The narrow segment of the environment in which the organization itself carries out its activities is called the "setting of action."

Capabilities include, from a civil service perspective, resources, available expertise, and internal procedural mechanisms already in place.

Public service strategies in the rule of law approach are always designed to recognize and serve the public interest. To achieve this, the available apparatus must adequately represent the organization, identify its own objectives and their relation to the presence of different stakeholders, incorporate a continuous improvement direction in the organization's operations, develop an appropriate human resources strategy, including a reasonable assessment of staffing needs, and provide a predictable financial framework for its work.[165]

In the case of the UN, the established organizational frameworks are suitable for implementing strategies; however, in the public sector, the constant restructuring is not conducive to long-term, balanced strategic thinking.

Overall, every organizational system needs to conduct a rigorous and careful analysis of the layers of its organizational culture, comparing them with its short- and long-term organizational strategy. This means a continuous self-analysis, the results of which can be observed in the (public) management development programs that are and will be drawn up from time to time.

165 Roóz and Heidrich, 2010, Point 3.2.

1.2.4. Organizational governance styles

Whether the characteristics of management in the public and private sectors are the same can be examined both in theory and in practice. The professional discourse in this area is fragmented; there is no common conceptual definition of what is meant by leadership, and there is no active communication between researchers, practitioners, and leadership training institutes in this area.[166] However, the UN's internal strategic planning on leadership is noteworthy: to deliver what is required by the 2030 Agenda for Sustainable Development,[167] the organization has identified the need for new leadership attributes, skills, and ways of working. To this end, the *United Nations System Chief Executives Board for Coordination* has developed the *United Nations System Leadership Framework*[168] to align the UN's common leadership culture with the achievement of the Sustainable Development Goals (SDGs). The Framework is in fact a follow-up to General Assembly Resolution 71/243,[169] which envisages the UN development system developing the capacity of its staff to support the implementation of the 2030 Agenda, including a malleable and empowered leadership model.[170]

The framework is viewed as a tool for human resource management and a facilitator of wider cultural change in the UN system. This framework will also be incorporated into the *United Nations System Staff College's* training materials to ensure that the new concept of leadership can be manifested in all areas of work, at all levels, in all functions, and in all locations of the UN. The framework has an important role to play in the Secretary-General's management reform for 2018–2019,[171] where the new selection system will already consider the updated requirements for Secretariat managers.

From the above, it would appear that the UN is consciously keeping up with the theoretical tool requirements of strategic planning and periodically reviewing whether the organization is moving in the right direction. A significant element of the current framework's objectives for leadership is that it is norm-based, has a strong principled

166 Orazi, Turrini and Valotti 2013, pp. 521–541.

167 Following the decision taken at the Rio+20 UN Conference in 2012, the post-2015 Sustainable Development Framework was adopted in 2015, based on the principles of balanced social development, sustainable economic growth, and environmental protection, as set out in a document of the National Development Department of the Ministry of Foreign Affairs and Trade (see more in National Development Department, no year).

168 See https://www.unsceb.org/CEBPublicFiles/Leadership.pdf

169 See https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/243

170 See https://www.unsystem.org/content/leadership

171 See https://www.un.org/en/ga/search/view_doc.asp?symbol=A/72/492

approach,[172] is inclusive, that is, it supports the simultaneous expression of different perspectives, is accountable, is aligned with the new reform agenda at all levels, is collaborative, and can apply leadership criteria to itself autonomously. My observation in all this is that, if you examine each point, it quickly becomes clear that they are not abstract, theoretical categories. Each of them is fully reflected in the content of the rules governing managers; that is, *the requirements are also integral to everyday practice.*

These elements of leadership reform can be manifested primarily through leaders seeking to make a tangible impact on the populations served by the UN, working to put the 2030 Agenda's goals into practice, taking a systems approach to sustainable development, and working collaboratively to develop cooperative, "co-creation" solutions. The *UN High-Level Committee on Programs* and the *UN High-Level Committee on Management*, considering Guideline No. 10 on the joint implementation of the 2030 Agenda,[173] have developed a unified management framework. Therefore, it is a very forward-looking and positive process to see the implementation of a systemic and multi-faceted program unfold in this manner, although the UN is still at the beginning of its journey in this area, and the earliest we can really assess the success of the program is in about six to eight years.

In my view, this level of awareness is less evident in the Hungarian civil service—in contrast to the approach in France and Germany,[174] for example—although the importance of leadership training has been growing since the Magyary Programme, and it is a stable part of the operation of the civil service system at the epistemological level. Within the civil service training system, the National University of Public Service develops and implements civil service leadership training programs in six areas of competence that, like the UN, reflect the theoretical underpinnings of organizational management processes.[175] In my opinion, although the civil service management training system includes training for management trainees, regular training for managers, and high-level excellence training for managers, the training currently available is often perceived by the officials concerned as redundant, a quick task rather than a long-term knowledge resource.

172 It is therefore particularly true that the leader maintains a constructive dialog with the various interest groups, does not discriminate against anyone, and does not turn a blind eye to any abuse or pressure.

173 Chief Executives Board for Coordination, 2016.

174 Vogel, 2016.

175 The six areas of competence are: people management, leadership self-awareness, leadership decision-making, leadership excellence, management supervision and control, and organizational development.

1.2.5. The role of staff in the functioning of the organization

The purpose and essence of human resource management are to effectively manage and administer human resources, ensure organizational effectiveness, the survival and development of the organization, and to promote organizational performance. *Csilla Petró*, a lecturer at the National University of Public Service, explained in a doctoral thesis that experience indicates that, at present, in the case of Hungarian public service organizations, human resource management is mainly a day-to-day personnel administration activity and that the discipline cannot contribute to the effective functioning of the organization in a supporting or strategic partner role.[176] Unfortunately, I cannot dispute the author's point of view: in the general introduction to organizational culture, I indicated that historical traditions have a strong influence on the nature of the internal culture of an organization. In Hungary, for decades, the civil service operated on a seniority basis:[177] those outside the appropriate circle had no motivation to enter the closed system, and those inside the circle had no incentive to self-improve at all; hence, there was no point in mentioning organizational progress at all. After a change of regime, staff development efforts were repeatedly brought to light, from which we can conclude that the strategic importance of staffing was recognized by the respective governments after 1989. However, these initiatives have not taken place, and only since 2010 can we say that we are on a sort of road that has begun but is having difficulty achieving results in human resources management because it is not, or only very slowly, changing the attitudes of employees.[178] The conclusion we can draw from all this is that the staffing levels in Hungary, as indicated in the McKinsey chart, are not at all at the level to be effective promoters of the common values system.

This is different for international organizations because—and here again, the corporate side of the organization is more apparent—to move forward toward common goals and remain responsive to their environment, they need to ensure an agile, prepared, and ambitious staff. In the case of the UN, the *Department of Management Strategy, Policy and Compliance*,[179] and the *Department of Operational Support*[180] are responsible for the staffing aspects of the new management paradigm within the Secretariat, as

176 Petró, 2014, p. 410.

177 Seniority: time spent in public service. In closed systems, it plays a decisive role in various personnel decisions, especially in promotion (see Gajduschek, 2011; and Krauss and Petró, 2014b, pp. 56–68).

178 The National University of Public Service is the custodian of this; its aim is to train a cadre of knowledgeable civil servants to find a job in the civil service and work effectively in the future.

179 See https://www.un.org/management/

180 See https://www.unjobnet.org/organization/UN%20DOS

described in the previous question. These departments are responsible for selecting staff in line with the objectives and ensuring that the approach is in line with the framework program.

In terms of personal skills, teamwork, customer orientation, creativity, continuous self-learning, good communication skills, good planning and organization, accountability, and openness to technology are essential qualities for a quality administrator. This includes visionary thinking, leadership skills, preferential task assignment ability, managerial performance, and confidence building as essential elements of being a leader.[181] In the best cases, organizational appraisal systems pay special attention to these skills and motivate their development and practice through a reward system.

1.3. Focus on employer branding

Employer branding is an organizational strategy that is needed to attract and retain the right people. *Backhaus and Tikoo* argue that employer branding messages create associations about the employer image that employees bring to the firm.[182] Accordingly, the organization must deliver on its promises to create a workforce that is committed to the values and goals of the organization. To understand these phenomena, researchers have used the concepts of *social exchange theory*[183] and the *psychological contract*,[184] which describe the mutual exchange agreement between employers and employees.[185] The communicated employer brand message provides a picture of what employees gain by being employed within a particular organization. The employee offers working time and expects to receive something in return (e.g., a salary, training, or job security). If the employing unit fails to deliver on its promises, it can lead to disappointment and in extreme cases, resignation from the organization.

The branding strategy therefore, contributes to this by considering that the organizational values set by the management only partially match the organizational values

181 See https://careers.un.org/lbw/home.aspx?viewtype=wwlf. For details on the subject regarding the situation in Hungary, see Szabó, 2014.

182 Backhaus és Tikoo, 2004.

183 The social exchange theory is about stakeholders weighing up social interactions in terms of their social and/or economic benefits. For each stakeholder, the comparison allows the benefits of the hypothetical relationship alternatives to be examined and, hence, the dependence on the relationship to be assessed. If, after a period, the balance of economic and social development of the relationship is judged to be positive, trust between the parties starts to grow, and it is in the interest of all parties involved to maintain the relationship in the long term (see Piricz, Hong and Mandják, 2013).

184 For more on the concept, see Gubányi, 2020.

185 Christiaans, 2013.

that employees hold dear, and employer branding helps to bring them closer together. Furthermore, once employees see the employer as a strong brand, there are clear positive effects on the quality of the organizational culture.[186]

Research on employer branding is overwhelmingly conducted in the private sector context, and there is a distinct lack of applicability of the strategy to the public sector. However, in my view, nothing prevents public servants, both at state and international levels, from working while viewing their employing organization as a "brand" with a well-established prestige and image, of which they themselves can be an integral part—or even a shaper. Why is this important? In my view, it is because such an employee is orders of magnitude more motivated to do his or her job than one who has no personal connection with the employer and no points of identification with the functioning of the organization.

The literature understands employer branding as *a series of rational decisions made in a linear process*. However, strategy-making is rarely so rational; rather, it is a complex process involving many actors who create their own meaning for each concept. The practice of employer branding is a continuous attempt to build and maintain a so-called "network of actors."[187] Above all, the key to success is the ability to involve and coordinate these actors. However, the process cannot be controlled because the building of the employer brand is entirely in the hands of the actors: employees (officials) can be one of the most important parts of building the network of employer branding actors, but they can also be the strongest enemies if they have negative experiences of working in the organization. Professors *David Giauque, Simon Anderfuhren-Biget,* and *Frédéric Varone* have produced a valuable study[188] on the factors that cause turnover in international organizations, which, for example, can easily give us an idea of where the UN stands in the field of employer branding. The study indicates that stress factor is very high in these organizations; it is practically an integral part of the culture, which the employer cannot reduce to the point where it loses its influence. The UN as a brand is therefore intertwined with the image of a job with serious psychological pressures.[189]

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186 Bishop, 2019.

187 The central idea of the *actor-network theory* (ANT) is that actions cannot be traced back to the decisions of individual actors, and therefore it is not the individual actors that need to be examined, but the network of actions and its heterogeneous components. The development of actor network theory dates to the early 1980s and is associated above all with the French scholars Michael Callon and Bruno Latour and the British scholar John Law (for more on this topic, see Szabari, 2007).

188 Giauque, Anderfuhren-Biget és Varone, 2019.

189 As a curiosity, I mention my non-representative survey of twenty-three people, extracted from the responses of people aged 23–36. Five of the respondents had worked for an international organization, but the statistics revealed that this type of employer is not automatically associated with a stressful

Practically, this is a complex building process that must be tailored to local conditions to be successful.[190] According to Amby's theory, the unique aspect of the employer brand in the public sector is that it is associated with valuable work responsibilities and is about serving the public good for society.[191] I agree with this myself and emphasize that there is no difference between the public service in the state and the international civil service in this respect.

2. Organizational psychology in the civil service

Organizational psychology covers many aspects, and whether in the civil service or in private enterprise, these will be virtually the same main points: we will look at individual work behavior, individual differences and capabilities, staff policies, decision-making mechanisms, and internal training. These are areas that arise universally in every workplace, regardless of its size and function.[192]

A common observation in business is that the success or failure of deals depends more on the human factor than on purely objective or material circumstances. The same pattern can be observed in the corporate sphere[193] regarding which employees receive a pay raise or promotion.[194]

The contributions of *Henri Fayol*,[195] *Max Weber*,[196] and *Henry Ford*[197] in the field of corporate and management function theory are noteworthy.[198] As early as 1923, the approach

environment. The majority of my respondents described working for an international organization as an opportunity with high prestige, interesting tasks at a high salary, good language practice, diplomatic skills, and the opportunity to travel. In addition to all these positive brand attributes, only two negatives emerged: on the one hand, the image that there are dangerous workplaces is already part of the brand, and on the other hand, the regulation of working conditions is too diverse and varied to provide legal security for the employee. This finding is also very interesting and relevant to my research because the majority of respondents would prefer to work for the UN or a specialized agency, and it is reasonable to conclude that this is the family of organizations they have the most vivid ideas about.

190 Amby, 2015.

191 Amby, 2015, p. 33.

192 For a comprehensive overview of the structure of organizational psychology, see Ones, Anderson, Viswesvaran and Sinangil (eds.), 2018.

193 In her PhD thesis on the responsibility of civil servants, Bernadett Veszprémi points out that in the US, public administration has been modelled on large industrial enterprises, based on the principles of their operation, using methods applied in the competitive sector (see Veszprémi, 2012, p. 296).

194 Thurstone, 1923, p. 194.

195 Fayol, 1984.

196 Weber, 1947. For more on Weber's theory of state governance, see also Jenei, 2019; Nau, 2005; Anter, 2014.

197 Ford, 1926.

198 Dobák and Antal, 2016.

of employing civil servants in the public sector subject to psychological testing because of the serious weight of the human factor was known in the United States of America through the theory of management, work psychology, and the energies invested in work organization, which, according to psychologist and psychometrician *Thurstone*, was done by better means than in the otherwise profit-oriented private sector, and the specialist went so far as to *propose psychological testing in the public service as a model for the private sector.*[199] This was essentially because private sector companies at the time selected their best candidates from a pool of applicants primarily on the basis of intelligence tests rather than short-answer tests. Contrastingly, in America at the beginning of the last century, it was common practice in the public service to include tests designed by psychologists to assess a certain amount of basic knowledge. This was a way of "killing two birds with one stone," because, in addition to gaining an insight into the psychological readiness of the candidate, it also gave an insight into the depth of his knowledge, which greatly facilitated the selection of suitable professionals.[200]

As a branch of organizational psychology, public service psychology has not developed into a separate field in all countries. While in the UK, for example, there is a specific department dedicated to professionally addressing the psychological effects of public service to promote organizational effectiveness,[201] in other countries, there is often no such focus, and in others, although there is openness to developing an appropriate methodology, results are still to be seen. In Hungary, the latter category is the most common: psychological aptitude testing is not common in the civil service,[202] and unfortunately, besides the recruitment test, there are no other psychological assessments in the sphere.

Moreover, at the UN, there is a strong emphasis on employing the right people, often on long-term secondment, to carry out their various tasks. This is important because it is much more effective for the organization to have a professional who is familiar with

199 Thurstone, 1923, p. 197.

200 Thurstone is best known for his creation of the Thurstone Scale, which can best be described as a methodology. If we want to know the psychological and social characteristics of a respondent in a survey, we can create an agree-disagree questionnaire, where the respondent can indicate their level of agreement with numbers (e.g., The more questions we ask, the more objective the picture, with the only drawback being that each individual response is entirely individual-based, so that a number of 5's does not represent the same thing to one respondent as to another (for details, see Thurstone, 1928; Thurstone and Chave, 1929).

201 See https://cutt.ly/eSjeBNO

202 In Hungary, psychological aptitude testing is essential for the armed forces and law enforcement agencies but not compulsory in other areas. This is also reflected in the fact that although the National University of Public Service has previously held several conferences on civil service and psychology, these have in practice only focused on the work of law enforcement agencies.

the organization itself than a newcomer who is unaware about internal rules, customs, and characteristics to deal with situations and crises.

A psychologist or mental health professional has an exceptional duty when the collective of employees they supervise is subject to constant psychological stress because of the nature of the activity carried out or the working conditions.[203] An example of this is the Special Monitoring Mission to Ukraine in 2020, where a psychologist was requested in August, claiming that it was a non-family duty station with dangerous conditions, long overtime, and limited freedom for movement. The role of the psychology specialist is to work with the team, continuously monitor and assess the psychologically dangerous conditions, advise on what needs to be done and what is appropriate, and provide stress management and resilience-building training.

As the nature of the places of service varies, so do the requirements and expectations of mental health and psychological professionals; some are recruited in fully developed environments in an institution, for example in the United States of America, and others in a refugee camp but are required to perform their duties in non-hazardous conditions. The tasks are similar, but it is in how they are carried out that we find differences, sometimes to the point of extremism.

International organizations such as the United Nations can therefore help us to understand why it is important to deal with organizational psychology in the civil service. Officials on international assignments and even those who perform administrative tasks at headquarters are overworked, but they also must prioritize the interests of the organization, given their general rights and obligations. It is through a combination of states that such an intergovernmental organization is able to function, and it is clearly not possible to entrust it to people who lack the necessary mental strength.

At the state level, it is less pronounced, although the more vulnerable a country is, the less trustworthy and balanced the officials working in the state administration are. That said, it is certainly in the public service's own interest, albeit to varying degrees, to develop a sound and functioning pastoral care mechanism in each civil service that helps to guide officials on a day-to-day basis in line with the organizational culture and goals.

Finally, it should be noted that organizational psychology also has indirect implications, for example in relation to ensuring healthy and safe working conditions, managing occupational illness, maintaining well-being at work, ensuring organizational justice,[204] the level of emotional intelligence within the organization, and the practice of

203 Job opportunities in psychology are listed at https://unjobs.org/themes/psychologist

204 For example, the ethics of conflict resolution, the legality of internal procedures, etc.

actively listening to employee requests. Promoting a balance between personal life and professional performance is one of the many factors that have a demonstrable impact on both managers' and subordinates' psychological performance.[205] All of these factors increase the sense of belonging to the organization and the group, enhance professional performance owing to engagement, and strengthen ethical behavior. If an organization—be it state-related, international, private, or public—does not attach sufficient importance to these aspects, it is easy for employee cohesion to break down and individual interests to come to the fore in the day-to-day performance of their duties.

205 For more on this topic, see Kiss, 2020; and Christiansen and Chandan, 2017.

Summary

In the first part of my work, I set out to provide a comprehensive overview of the background to the specific internal legal system of international organizations as autonomous international legal entities. In the field of organizational functioning, a fundamental distinction must be made between institutional functioning and the formation of ad hoc cooperation groups. The operational effectiveness of international organizations depends on the degree of support they receive from the states involved in their field of activity once they have been set up and on the strict and detailed rules governing their joint work. Although public international law is generally regarded as a lex imperfecta in the legal literature, in my opinion this general truth is nuanced by organizational law: as institutionalized entities of cooperation within international law, international organizations themselves operate under international law, develop their internal legal systems autonomously, and can impose sanctions on either their members or officials. This fact confirms that *the law of international organizations is an autonomous field within public international law.* Internal law indirectly provides the mechanism that guarantees the performance of the organization's functions. International organizations lay down these basic rules in so-called Staff Regulations; in the case of the UN, the relevant source of law is called *Staff Regulations and Rules*.

Both national and international public services have the characteristics that make them public services. A common practice for the employer is to have an individual selection system, and a relevant feature is that the employer is always the state or one of its organs—in this respect, the intergovernmental organization is also a reflection of the state. On the employee side, the status of civil servants links the national and international civil service in such a way that the subjects always contribute to the performance of a public function. The traditional approach is to consider civil servants as those employees of public institutions who perform an essential activity for the functioning of the state or the organization; on this basis, those who perform official duties are classified as civil servants, while those who perform ancillary functions are generally

employed. This aspect characterizes both the German civil service model and the UN employment system.

The internal governance of the state and the international organization at a given level of development faces essentially the same problems and issues, but there are differences in the types of regulatory systems. While in Hungary—unlike in the vast majority of European countries—the law on public service is rather differentiated, in the case of the UN we find a uniform set of rules, and the operation remains transparent and completely independent from the states. Notably, within a UN group or UN system, the law of the headquarters state is, as a rule, not at all relevant, and that, apart from a few specific issues, the employment rules are exclusively made up of instruments prepared and voted on in the organization's autonomous legislative procedure.

As far as the types of organizational sources of law and the hierarchy of sources of law are concerned, I conclude that public international law and organizational law, as well as national law and organizational law, cannot be compared in this way. Organizations have specific sources of law that, despite their similarities in nature, are often not accorded the same status as states or public international law. A striking example of this is that, contrary to general national practice, the UN explicitly accepts the treaty as a source of law, despite its non-abstract nature, while the Charter, which is a constitutional rule under the dogmatic system of national law, is allowed to be applied in a limited manner in staff relations.

Behind the legal sources and practices that make up the civil service are cultural phenomena and laws that have developed into a discipline, which help to ensure that the objectives of the legal sources are implemented by the recipients in accordance with the organizational values. It is a system of presuppositions that works well enough to be accepted as valid by the community and taught to incoming members.

The UN generally represents a more advanced understanding of organizational management and organizational psychology than the typically rigid public service systems of the state. The latter is not yet ubiquitous in public practice, nevertheless, the UN has the necessary legal framework and thus bears similarities to the UK, which has a separate entity in this area.

PART 2
THE CREATION, MODIFICATION, AMENDMENT, TERMINATION, AND CONTENT OF A CIVIL SERVANT'S EMPLOYMENT

I. Appointment and amendment

Civil servants are typically recruited into civil service systems through various recruitment mechanisms, both open and closed, based on a dedicated training structure. The legal institution of a civil service competitive examination may also be required prior to employment, as is the case with the UN. There are also instances of candidates giving evidence of their knowledge after a period of practical training, which may result in dismissal following an unsatisfactory examination or in the official not being allowed to advance to a higher grade.[206]

Appointments may be of fixed or indefinite duration: in the UN, appointments may be further subdivided into subcategories; the Netherlands has a mix of durations within a single legal relationship; and in the German and Francophone models, indefinite duration is predominant because of its life-career nature.

In the Germanic and Francophone-Latin systems, the pragmatism of the civil service implies that appointments can be modified on a temporary basis, with the possibility of a permanent transfer. With the UN, the opposite is the case, where the appointment of officials can be modified relatively freely with the Secretary-General's decision.

1. General overview

The characteristics of the appointment should be examined from at least two angles: one from the perspective of the source of law and the other from the perspective of personal qualities. An explanation is required from the legal source perspective because, as I have already demonstrated, there are different legal sources regarding the status of general employees of international organizations and for staff who are officials: in practice, the Staff Regulations do not apply to staff employed under a contract of employment in the case of the UN, but in the case of the OECD and the EU, for example, the

206 Act on public service Art. 118, para. (7)–(8).

relationship between the organization and its staff is not based on a contract but on the Regulations.[207]

Where the legal relationship is based on the Staff Regulations, it is created by the letter of assignment, which is relatively bilateral, and where the rights and obligations are defined in a contract,[208] the legal relationship is also created by the contract. Simultaneously, the UNAT has made an important discovery in distinguishing between contractual and regulation-based legal relationships: all matters affecting the status of staff, such as the nature of the contract, salary, and grading are contractual in nature, whereas all matters affecting the functioning of the organization and the international civil service in general are regulation-based. This is important because, while contractual elements cannot be changed without the agreement of both parties, the elements set out in the regulations can be changed at any time by the General Assembly, and these changes are binding on the staff.[209]

I will begin with a personal experience. In 2019, I participated in a working visit to Brussels alongside the Commission and received training at the European School of Public Administration as part of the Erasmus Public Administration program. In my experience, officials in both international organizations and national administrations possess very similar skills, regardless of their employment unit.

The entire civil service system is therefore characterized by the basic and specific values that a person qualified to hold public office must be able to demonstrate, in some cases without any specific training. I believe that serving the public, whether it is the international community or a community of citizens, requires a true sense of vocation and to be aware of these skills and competences it is worthwhile to first examine what is meant by "vocation." *Hans Raj Chopra*[210] has, somewhat surprisingly, examined the relevant sociological research on the profession of librarians; nonetheless, this does not detract from the significance of the conclusion, which is even more important in highlighting the universality of the values associated with the profession.

207 Amerasinghe, 2005, p. 281.

208 These typically include the United Kingdom, the United States, and most of the British Overseas Territories.

209 UNAT 19. p. 47.

210 Chopra, 1995: The term "profession" originally meant a recognition or declaration of something and referred to a monastic vow. The deeper root of the word relates to the word "profess," which suggests that the priesthood, as one of the most ancient vocations, seeks to reveal or do for people what they are unable to say or do for themselves. The term still means, in essence, a set of specific knowledge and skills.

Louis Brandeis, judge of the U.S. Supreme Court, has put forward a complex theory of vocation and the profession itself in his book, "Business – A Profession."[211] According to him, a profession is:

1. an occupation for which prior training is intellectual in nature and in which knowledge and, to some extent, learning can be distinguished from mere skill;
2. an occupation that is pursued mainly for the sake of others—for the service of others—and not for the sake of oneself;
3. an occupation in which monetary return is not the measure of success.

The sociological literature[212] available on the concept of profession allows us to identify certain basic, universally accepted characteristics of occupations, which are summarized in the following table:[213]

Characteristic	The manifestation of this characteristic in the international civil service	The manifestation of this characteristic in the national civil service
Specialized knowledge (learning) and skills (practice)	Legal, diplomatic, and administrative skills are usually required.	
Continuous updating of research and specialized knowledge alongside work	The ever-changing nature of the law necessitates keeping up with changes. Following socio-economic and political expectations in the fields of integrity, organizational ethics, and organizational culture are also important.	
Intellectual activity	In the case of the UN, officials are often sent out into the field, but usually, the service involves mental work (except for peacekeeping forces, for example).	Service generally involves mental work (Except for the armed forces, uniformed services exercising public authority).
Social necessity; service to society rather than personal gain	The entire UN system is based on the principle that states can do more together.	The main purpose of public administration is to promote the position of citizens and facilitate the functioning of the state. Civil servants are generally not so highly paid that this thesis does not hold.

211 Brandeis, 1914, p. 2.

212 See among others, Brandeis, 1914; Carr-Saunders és Wilson, 1933; Parsons, 1939; 1968; Barber, 1963; Eisenstadt, 1964; Shaffer, 1969; Etzioni, 1969; Jackson, 1970; Durkheim, 1975; Gyarmati, 1975; Larson, 1977; Illich, 1977; Bhattacharyya, 1979; and Chitnis, 1979.

213 Chopra, 1995.

Characteristic	The manifestation of this characteristic in the international civil service	The manifestation of this characteristic in the national civil service
Community recognition and social status	The social prestige of officials in international organizations is traditionally high, but there are differences in their perception and expectations from one organization to another.[214]	Governmental organizations use PR less, and when they do, it is mainly through press communication of decisions. Thus, the perception of those working for government agencies depends primarily on the citizen's experience of the employing agency. The perception of an employed official is, in principle, directly proportional to the perception of the employing body.
Standardized terminology	Public service law itself has its own specific vocabulary, which is used in both the international and public spheres. There may, of course, be differences in the content and application of the various legal instruments because of the differences in legal systems, but there is a general identity.	
A close-knit professional organization with an altruistic philosophy	The UN's slogan, "Shaping Our Future Together" also reflects the organization's ambition to make the world a more livable place. In its policies and operations, it reflects the goal of states working together to solve existing problems. International organizations, in general, exist to build communities rather than themselves.	The state is meant to serve and unite society, and thus its organs must naturally have a certain level of altruism in their functioning.

214 UN officials, for example, are often expected to "clean up" the international political process. When I was a delegated expert to the UN Commission on International Trade Law (UNCITRAL) meetings as a domestic coordinator from 2017–2019, my acquaintances initially thought that I would be the one to pick the next counter-terrorism task, or to reprimand America's emissions or to reprimand China for their policies against human freedoms. But this was not the case: an official's job is to run the international organization, and policy decisions are usually taken by the delegated heads of state, completely independently of them.

Characteristic	The manifestation of this characteristic in the international civil service	The manifestation of this characteristic in the national civil service
Stability in the profession owing to the stability of the profession	According to a 2017 UN statistic, of the 34,170 people working for the UN, most have been in the service for 5–9 years (around 12,000).[215] However, 40,000 of the 1,05, 000 people working in the UN and its specialized agencies spent less than five years in the same year. Therefore, the international civil service is not a particularly attractive career path; it can be an important stop in a worker's career, but it is not a destination.	In Hungary, within the public sector, employees are increasingly changing jobs and becoming dissatisfied, making it harder and harder for organizations to find qualified staff for vacant posts and key positions.[216] The situation is exacerbated by an almost permanent staff freeze and a recurring wave of redundancies, which makes planning impossible for both managers and applicants.

215 Source: https://www.unsystem.org/content/hr-length (download: 2019. November 25. Note: The website will no longer be available on 30 January 2021, but you can visit the following link to the online archive: https://web.archive.org/web/20201126050344/https://www.unsystem.org/content/hr-length).

Length of Service	Sex	Number of Staff	Total
<5 year(s)	Woman	3 897	10 189
<5 year(s)	Man	6 292	
5–9 years	Woman	3 873	12 251
5–9 years	Man	8 378	
10–14 years	Woman	2 159	6 903
10–14 years	Man	4 744	
15–19 years	Woman	1 247	2 722
15–19 years	Man	1 475	
20–24 years	Woman	411	876
20–24 years	Man	465	
25+ years	Woman	527	1 229
25+ years	Man	702	

216 Poór, Juhász, Hazafi, Szakács and Kovács, 2019.

Characteristic	The manifestation of this characteristic in the international civil service	The manifestation of this characteristic in the national civil service
Code of ethics for members of the profession	There is no specific code of ethics, but the UN Ethics Office identifies the following resources as part of its ethical regulation:[217] ST/SGB/2016/9: Status, fundamental rights, and obligations of UN personnel [218] UN Charter Chapter XV [219] Convention on the Privileges and Immunities of the United Nations [220] Staff Regulations and Rules[221]	The Code of Ethics of the Hungarian Faculty of Government Officials sets out the ethical standards for government officials and civil servants (in force from December 18, 2020). Violations of professional ethics are considered ethical misconduct. Ethical misconduct can be established through an ethics procedure.[222]
The autonomy of the profession	The UN Secretary-General issues the rules of service, but they are adopted by the General Assembly. Hence, the international civil service cannot be considered fully autonomous in the UN context because the content of the relationship depends on the community of states and it is not clearly a self-regulating system. At the same time, the procedures for decision-making in the General Assembly are regulated by the organization itself,[223] so that ultimately a certain degree of autonomy can be demonstrated.	Institutional autonomy can only be observed on certain issues, and usually only to a limited extent. The central administration within the country is controlled by the government, so the profession is less autonomous and is clearly controlled by the state administration. At the public administration level, the public service profession can be considered autonomous to the extent that membership in an international organization or participation in an international treaty is not a factor influencing public administration matters.

217 See https://www.un.org/en/ethics/
218 See https://undocs.org/ST/SGB/2016/9
219 See https://www.un.org/en/sections/un-charter/chapter-xv/index.html
220 Convention on the Privileges and Immunities of the United Nations.
221 See https://hr.un.org/handbook/staff-rules
222 See http://mkk.org.hu/node/335; MKK (2018)
223 General Assembly of the United Nations, 2021.

Characteristic	The manifestation of this characteristic in the international civil service	The manifestation of this characteristic in the national civil service
The prestige of members of the profession	Professionally, the authority of international officials is less dependent on the judgment of ordinary citizens, as they usually have no direct common cause. The professional authority of an international official will clearly be determined primarily by the government employees with whom they work in the day-to-day negotiation processes. Additionally, of course, the press representation of the organization and its professional content may also influence professional prestige.	The public service requires intelligence; this does not mean, of course, that this is not true of the private sector. The point is that a high level of public service requires a level of knowledge and skills that is above average. Government is a high-volume business, which, by its very complexity, requires intelligence to solve difficult problems and a vision that allows for complex thinking and multifaceted problem-solving.[224] According to this, public servants should have a high level of authority; however, as the formation of a public service vocation is still in its infancy in Hungary (see the activities of the NKE), this is still a long way off. Given that the civil servant does not only communicate with clients, paying attention to the image of the civil servant in various intergovernmental and non-governmental organizations is also necessary, and professional competence and development capacity play a much more important role in this.

Table 1. Professional characteristics of the international and national civil service

224 See https://cutt.ly/TA4gLle

2. Types of employment relationships in the public sector

Although the terms "civil service," "civil servant," and "public servant" are frequently used in professional and daily discourse today, the fact that there continue to be uncertainties regarding their content is well known.[225] A uniform terminology at either the national or international level is lacking, and there is no consensus on the population group that is covered by each term.[226] Therefore, when we consider what the Staff Regulations of international organizations cover or how to determine the status of those outside the regulations, we are dealing with questions that are unavoidable from the perspective of organizational employment law.[227]

States and international organizations are similar in the way that they develop their own public service organizations.[228] In contrast to states like Hungary, where there is hardly any uniform terminology and organization (see the previous discussion in Part I, Chapter II), international organizations present a uniform picture. The UN and similar organizations maintain civil servant status and employment relationships; however, within these two categories, there are important differences in the role of the subordinate. As I have already mentioned, the UN system basically follows the Germanic structure; that is, staff with an actual administrative function are classified as officials, while service staff are employed under general labor law. This is a practical solution because, while officials are hired based on geographical diversity and thus benefit from being governed by rules independent of any state influence, support staff are mostly hired from their home state and thus benefit from working under their own labor law.

2.1. Classification of posts

Hungary and the United Nations are not comparable in terms of job classification because the civil service is so segmented in Hungary that practically every piece

225 On the subject of civil service relationships, see also Kun and Petrovics, 2019; and Petrovics, 2019.
226 Hazafi, 2009, pp. 242–243.
227 György, 2007, p. 15.
228 In this context, Fazekas points out that even the member states of the European Union can make their own decisions on this issue, subject to one constraint: they must operate an organizational and staffing apparatus capable of fulfilling the obligations assumed in the founding treaties (see Fazekas (ed.), 2015, p. 328).

of legislation allows us to set up different classification systems.[229] The United Nations and all its specialized agencies classify their posts in various categories on the basis of the International Civil Service Commission's (ICSC) recommendation; therefore, their internal functioning is transparent and simple.[230] According to Regulation 2.1 of the UN Staff Regulations, posts are classified into different categories on the basis of duties and responsibilities, and in many cases, individuals with different duties and statuses do not have the same rights and obligations. According to Rule 2.1, there are five categories of UN posts—this classification is required for all newly created posts: the groups of professional and higher categories (P and D), field service (FS), general service and related categories (G, TC, S, PIA, and LT), as well as trade, maintenance, and security service, for which employees are typically not staffed as officials. To these categories, the National Professional Officers (NO) should be added, which will be introduced later,

229 Compared with the rules of continental European countries, the act on public service does not have a uniform regulation at the level of principles. Although in continental Western European countries the different levels (central, regional, district, and municipal) are regulated by separate laws, the principles of regulation are uniform in all of them. This is not the case for the act on public service. After the general provisions, the act regulates the status of government officials in an almost chaotic manner, followed by the legal regulation of civil servants of autonomous bodies in the individual administrative bodies, and then the legal regulation of municipal civil servants. However, while the legal regime for government officials is too detailed and essentially based on the former Labor Code (Law 22 of 1992), the legal regime for municipal civil servants is rather vague and incomplete. Therefore, if a legal gap arises in the latter area, the legislator is forced to resort to the rules applicable to government officials by "internal analogy" and apply them by analogy. The new act applied to government officials, reclassified them as civil servants in stages. Shortly thereafter, the institution of civil servants was abolished by the Act on Government Administration and the single government official classification was restored (see Jakab, Prugberger and Tóth, 2020).
Today's public service stratification is still too diverse, and this situation makes transparency difficult. I agree with Nóra Jakab's point of view that, for the sake of greater clarity, it would be appropriate to create a general section in the Act on Public Service, highlighting the general rules applicable to government officials. This could include the general rights and obligations of civil servants, complemented by a system of trade union interest consultation and participation in the institutional council. A specific part would then regulate, in chapters, certain specific issues relating to the rights and obligations of government and state officials, national autonomous offices, and local government officials. A single set of rules would eliminate the often-unjustified distinctions currently prevailing in the public sector, which result in discriminatory practices already at the legislative level. The law provides for an additional five working days of leave for a member of the law enforcement administration on his first marriage, at the latest until the end of the second month following the marriage [Art. 289/P, para. (12)], but the legislator does not grant the same right to a member of the professional staff of the law enforcement service. However, the situation is similar in other segments of the public sector: while the act on government administration provides for the same entitlement [Art. 155, para. (6)], the act on civil servants does not, and the Labor Code, which functions as background legislation, does not mention it either. The legal distinction has a legal policy justification, but in my opinion, it can be established here only apparently or not at all.

230 See https://icsc.un.org/Home/JobClassification

and the holders of senior appointments (SG, DSG, USG, and ASG), within which we find the Secretary-General, who is the main manager of the organization, and his deputies and secretaries. The levels are summarized in the following figure for ease of reference:

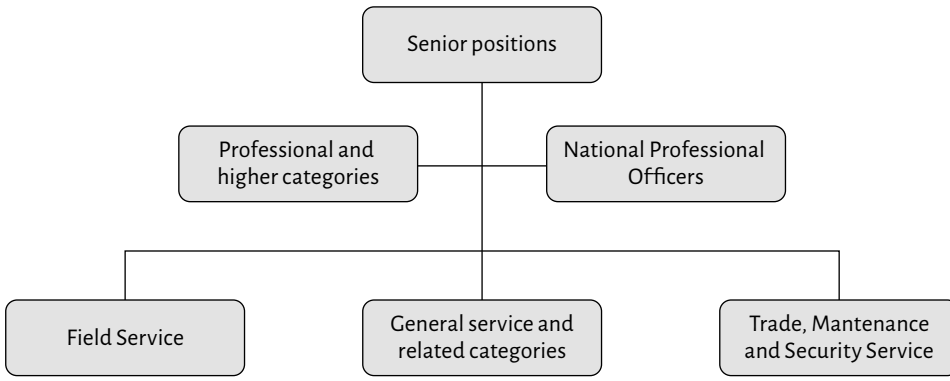

Figure 4. Classification of UN posts[231]

If a staff member disputes the classification of his post, he has the possibility of submitting a request for a change of classification to the *Classification Appeals Committee*[232] within the UN. The classification of a job or post is facilitated by a number of factors: practice, interdepartmental consultations, some relevant recommendations and guidelines, or even the description of the benchmark posts.[233] In Hungary, there is no possibility to submit such a request:[234] the system is similar to the UN solution in that the posts are opened at a given level by virtue of the relevant legislation; however, it is only possible to reclassify an official from one of these levels if the level itself is abolished or if there is a significant change in the quantity and/or quality of the duties. In such cases, however, the change is not requested by the official, but rather, it is initiated at the organizational management level by the competent unit.

At this point, I should mention the operation of the One HR service run by the UN, whose primary role is to plan the organization, classify the posts required, and check the background of applicants.[235] The unit produces benchmarking analyzes and reports

231 Own figure.
232 ST/AI/1998/9.
233 See https://icsc.un.org/Home/JobClassification#collapseJobs
234 The Civil Service Arbitration Board is the department best placed to hear such objections, but under current legislation this is not its responsibility [See https://cutt.ly/VSje83K; Act on government administration Art. 168, para. (2)].
235 See https://onehr.un.org/index.html

on the workforce, provides job descriptions, develops standard job profiles, analyzes contract modalities through technical reviews and assessments of functions and positions, reviews and assesses competencies through a technical approach to determine the appropriate level of positions, and develops and reviews competency frameworks tailored to the needs of the job.

2.2. Appointment and promotion

In civil service law, the merit-based selection model is well-known, and the selection model based on some other criteria is less common. A specific feature of the merit-based selection system is that it is typically designed to ensure equality of rights by allowing anyone to enter the system[236] if they meet the eligibility criteria.[237] This trend is well known in today's legal states and is also followed in international organizations. In addition to following a merit-based selection system, the state or international organization may decide to objectify the recruitment process as far as possible, and the methodology is ensured, inter alia, by the compulsory application procedure and, in international organizations, by the legal instrument of the competitive exam. In Hungary, the rules on selection have been changing over the years, from the rules of the compulsory application system to the regulation of the application system as a matter of choice.[238] Under the current legislation, it is primarily up to the employer's decision (or legal provision) whether to conduct a competitive recruitment procedure or to use a so-called "restricted procedure" based on dedicated invitations. However, if the employer decides to use a competitive procedure, the appointment can only be made to

236 György, 2007, pp. 65–68.

237 E.g., qualifications, no criminal record, legal capacity, specific nationality, not subject to any disqualification or disciplinary penalty, obligation to make a declaration of assets, language skills, and compliance with security conditions.

238 Competitive exams and a new application system were introduced in Hungary in 2001, but over the years the system has been completely dismantled, and the decision to abolish competitions is questionable. The competitive exam will allow people with the right skills and knowledge to enter the civil service and, consequently, will also ensure better service quality. This issue is regulated in different ways in EU countries. A striking example is France, where there is a particular difference between the general rules for hospital staff and civil servants regarding conditions of employment: French law prevents non-French nationals from working in the civil service, but hospital employment is an exception to this, as any EU national can be employed in public and private hospitals. In other areas of the public sector, appointment and competition *(concour)* is the general method for filling a post in the civil service. However, there are some exceptions to the general rule; for example, staff on shorter fixed-term contracts may be selected directly by the hospital director in special circumstances. The *concour* is followed by a probationary period of one year, after which the staff member is usually given permanent status (see Horváth, 2006, p. 174).

a person who has participated in the competitive exam and who has fulfilled the conditions for the appointment.[239] In all cases, candidates are subject to a competition within the UN organization, which will be explained in detail later.

3. The deed of appointment

3.1. The concept and legal nature of the Letter of Appointment

For international organizations, the status of an official is established by the acceptance of a Letter of Appointment (LOA). The LOA is the same as the appointment known in national legal systems, which the official must accept.[240] Like the employment contract, the LOA has a dual function: it certifies that a natural person has been recruited to the organization, and it also defines the content of the appointment.[241] The Secretary-General alone is empowered to issue credentials under Article 101 of the Charter.[242] *The contractual rights of officials shall derive solely from the terms of the LOA, whether expressly stated or implied.*[243]

In Hungary, it is a general phenomenon[244] that the boundaries between appointment and contract of employment are blurred because the private sector's leech effect relaxes the strictures of appointment, and where, as a rule, the official is not in a bargaining position, there is still some scope for individual advocacy. We can still see evidence of this today: the act on government administration (Act No. 125 of 2018) has further relaxed the system. For instance, where civil servants were subject to a well-planned salary scale system after the act came into force it is essentially the employer who decides which grade to place the official in and the exact salary within the scale. A minimum possibility of negotiation has therefore been opened for the official.

Comparatively, a similar general practice can be observed in international organizations: the salary level of UN officials is determined either by reference to the richest

239 Hazafi (ed.), 2012, pp. 109–110.

240 For Hungary see Kenderes, Prugberger, 1993, p. 330; Act on Government Administration, Art. 85, para. (1).

241 See https://hr.un.org/page/appointment-types

242 *Staff Regulations*, Regulation 4.1.

243 *Staff Regulations*, Regulation 4.1.

244 Already at the end of the 1980s, the luring effect of the gradually building and growing private sector was felt, as it could provide much better wages for well-qualified professionals than a public administration with a fixed wage system. The strengthening of the private sector had no direct impact on the public sector. On this, see, e.g., Kincses, 2019.

countries *(the Noblemaire principle)* or by reference to the local salary level of similar jobs (the *Fleming principle)*, depending on their grade. The method of determining the salary will be discussed in detail later, but for now, it is sufficient to note that the content of the LOA is minimally negotiable on this issue. Moreover, the LOA confers on officials a bargaining power that is about as limited as the appointment at the state level, and that first and foremost, the regulatory elements applicable to the organization determine what the specific content of the legal relationship can be. This is also true for the public sector in general—for example, the German legislation reveals that in private law agreements, the parties have contractual freedom, whereas in the public sector, the content of the legal relationship between the parties is determined by the legislation.[245]

3.2. Mandatory content of the Letter of Appointment[246]

The mandatory content of the LOA is set out in the Staff Regulations. They are essentially the same in nature as the content requirements known in the general public service. The mandatory content is, therefore, as follows:

- A stipulation that the provisions of the Staff Regulations and Rules apply to the mandate and that amendments to this shall apply mutatis mutandis;
- The category of the assignment (field, general service, expert, and national officer) and the level (e.g., FS-7, GS-3, P-2, and NO-A);[247]
- The start date of the assignment;
- The duration of the assignment, the notice period, and any probationary period;
- Indication of the salary range, salary step, and starting rate, and, if there is scope for an increase, the fixing of this range with an indication of the maximum available;
- Any other applicable provisions;
- In the case of a temporary assignment, a clause stating that there is no legal or other requirement to renew the assignment. A temporary mandate may not be converted into any other type of mandate;
- In the case of a fixed-term appointment, a clause stipulating that there is no legal or other requirement to renew or convert the appointment, irrespective of its duration.

245 Deutscher Gewerkschaftsbund, 2020.
246 *Staff Regulations*, Annex II (a).
247 See https://hr.un.org/page/appointment-types

3.3. Necessary requirements for the creation of the mandate

For a public service relationship to be established, the legal declaration must contain the appropriate conceptual, validity, and, more narrowly, effectiveness requirements.[248] Conceptual elements are those elements that are required for the formation of a legal relationship. This includes, for example, the failure of the official to take the compulsory oath necessary for the appointment to take effect.

A legal relationship is created if the conceptual conditions alone are met; however, because it is invalid, it has no intended legal effects on the parties.[249]

The issuance of the appointment or credentials and their acceptance as the initial act form the commencement of the service relationship between national and foreign officials from the perspective of validity requirements because they are almost identical steps of the same procedural method. The appointment or credentials must be *in writing* according to both legal environments and require practically the same mandatory elements: grade, step, salary, the scope of work and duties, place of employment, and obligations for promotion.[250]

In UN practice, the following elements are necessary for the establishment process to be valid:

— The LOA may be decided by the Secretary-General and signed by the Secretary-General or an official acting on his behalf;[251]
— The mandatory content must be present;[252]
— A certified copy of the LOA and the Staff Regulations and Rules must be given to the official;[253]
— A declaration must be given by the official that he has read and accepts the provisions of the Staff Regulations and Rules.[254]

248 Szászy, 1969, p. 427.
249 This circumstance does not exclude the existence of other types of legal effects, such as the obligation to pay damages.
250 György, 2007, p. 76.
251 *Staff Regulations*, Regulation 4.1.
252 *Staff Regulations*, Annex II (a).
253 *Staff Regulations*, Annex II (b).
254 *Staff Regulations*, Annex II (b).

Although the conceptual and validity requirements may be met, the declaration is not valid in the strict sense and therefore cannot have legal effect. This may be the case, for example, where a suspensive condition[255] has not yet been fulfilled.[256]

4. Types of appointment

The term of office for UN Secretaries and Assistant Secretaries is five years, while all other officials can be issued with three types of appointments: short-term, fixed-term, and permanent. The characteristics of each type of appointment are summarized in the table below:

Type of appointment by duration	Characteristics of the appointment
Short-term appointment[257]	— An agreement for a period of less than one year (in principle not exceeding 364 days) to meet the requirements for a short period; — The appointment has an expiry date and no renewal requirement; — In the event of social pressure or operational needs linked to field work or special projects requiring more time, the duration of the mandate may be extended for another year; — A short-term or temporary mandate may not be converted into another type of mandate.
Fixed-term appointment (renewable up to five years)[258]	— The appointment is for a fixed period of one to five years; — For a specific time period to perform specific functions or tasks that fall within the general and continuous scope of the organization's activities; — May be renewed for a period of up to five years at a time, subject to available funding, satisfactory performance, and the needs of the organization; — As a general rule, there is no requirement for renewal.

255 In the case of a suspensive condition *(condicio suspensiva)*, a legal transaction that has already been entered validly does not enter into force until the event occurs; if the condition does not occur, the legal transaction never enters into force. Its opposite is the resolutive condition *(condicio resolutiva)*, where the legal transaction enters into force immediately upon its conclusion, but if the condition occurs, the contract expires (see Bónis, 2018, [65]). (An example of a suspensive condition in this case is where the employment of an official requires the acquisition or certification of some qualification; however, the applicant has not yet fulfilled this requirement).

256 Szászy, 1969, p. 427.

257 ST/AI/2010/4/Rev.1.

258 ST/AI/2013/1, and ST/AI/2013/1/Corr.1.

Type of appointment by duration	Characteristics of the appointment
Continuous appointment (after five years of fixed-term – open-ended)[259]	— An open-ended mandate, that is, of indefinite duration; — For those who have passed a competition after two years' service in a fixed-term post with the appropriate qualifications; — In view of the continuing needs of the organization, those who are not recruited through competitive recruitment may be eligible for appointment to a permanent post after five years of continuous service on a fixed-term appointment, based on specific criteria, particularly, mobility requirements and performance.

Table 2. Three types of appointments and their associated entitlements[260]

4.1. Short-term appointment

The short duration of the UN appointment, that is, in principle, a maximum of 364 days, is not known as a separate legal institution in the civil service. Within the fixed-term appointment, national law does not distinguish between short, long, and fixed-term appointments. As seen above, fixed-term appointments are identical everywhere as they have a defined termination date, usually for a short period; however, it is typical of the organization that fixed-term appointees often do not enjoy the same rights as officials with an open-ended appointment. In this respect, it does not even meet the requirements that characterize, for example, the member states of the European Union, where fixed-term contract staff must be granted the same employment conditions as those applicable to permanent contract staff, such as pay, leave, notice periods, and all other rights and benefits linked to their employment. EU legislation also requires employers to inform their fixed-term contract workers of permanent vacancies when they occur.[261]

Fixed-term appointments can be classified as atypical forms of employment, given that the fundamental characteristic of employment relationships—and thus a typical feature—is the requirement of permanence, in addition to their personal nature. To protect the interests of employees, the state legislator always introduces various restrictions and guarantees at the legislative level. In EU member states, the legislator takes

259 ST/AI/2012/3.

260 See https://hr.un.org/page/appointment-types

261 *Council Directive 1999/70/EC* of June 28, 1999, concerning the framework agreement on fixed-term work concluded by ETUC, UNICE, and CEEP

into account the provisions of Council Directive 1999/70/EC of June 28, 1999, concerning the framework agreement on fixed-term work concluded by the European organizations representing the interests of employees and employers in the public and private sectors, which has been converted into EU law.[262] In the case of the UN, this source of law is not binding; however, while the EU legislation is justified and has been drawn up with the participation of the social partners in the labor law, the UN does not follow EU considerations, either in terms of the prohibition of discrimination or the possible duration or number of extensions.

Although the regulations governing fixed-term appointments are developed within the same framework, one difference emerges: the purpose of applying the legal instrument is not the same in all states and organizations. If we examine the large geographical groups of the public sector described above, it can be obsereved that, while in Latin countries fixed-term appointments are typically used to replace employees, in Hungary the issue is complex. The act on government administration provides[263] that the termination of a fixed-term appointment may be linked to the conduct of a specific project, the performance of a specific task, or the occurrence of an event (e.g., the return of the replaced employee). However, the Act on Civil Service (Act 33 of 1992) *expressis verbis* allows the usage of the legal instrument for replacement, in addition to conducting a specific project, or performing a specific task.[264] Furthermore, there is a special situation for judges and prosecutors, with which the Hungarian system is most similar to the practice in the Dutch public sector: as the work has the same professional content, there is no need to ensure that the person can be employed for a specific task, and replacement can only be arranged internally, through colleagues with a specific legal status.[265] In the majority of European countries, the French and German legal systems have introduced the widespread practice of applying the rules of the *personal service contract* or *works contract* rather than those of the civil service in the case of fixed-term appointments.

For these employers, therefore, the establishment of a *fixed-term legal relationship is* more like a condition of entry, a special legal institution somewhat similar to the probationary period.[266] The Hungarian acts on the legal status and remuneration of judges

262 Bérces, 2015.

263 *Act on Government Administration*, Art. 85, para. (2).

264 *Act on Civil Servants*, Art. 21.

265 Bérces, 2015.

266 For example, according to the practice in the Netherlands, in the public sector, a fixed-term appointment is given to the official as a "replacement" for the legal institution of the probationary period, and can receive an indefinite-term appointment if this one year has passed successfully. The first, fixed-term employment contract, which also functions as a trial period, is usually concluded for a period of one year in the world of economic/private work and in the public service (ambtenare). See Prugberger, 2015, p. 289.

(Act 162 of 2011)[267] and the act on the legal status of the chief prosecutor, prosecutors, and other prosecutorial employees, as well as the career path of prosecutors (Act 164 of 2011)[268] allow the first appointment to be given for a fixed period of three years. If the candidate has previously acquired the work experience specified in the relevant law,[269] it is only possible to employ him with a permanent appointment in recognition of this.

The legal institution of a fixed-term appointment is not known in the national defense and armed services in Hungary, but its special form is the mandatory time spent in the service, that is, the period defined in the appointment, during which a person participating in the training supported by the respective national defense organization, the national defense officer training, or the military vocational training is obliged to maintain the relationship.[270] Moreover, a staff member who undertakes military service for a fixed period may only have a *contractual* legal relationship with the organization.[271] The German system is structured similar to the latter: a vocational approach and pragmatic styled public service pervade the system. Therefore, in addition to the death of the official, only dismissal,[272] loss of official rights,[273] or removal from office as part of disciplinary proceedings can[274] end the legal relationship.[275]

Comparatively, the UN has developed a *complex system:* from the outset, it distinguishes between two types of fixed-term legal relationships, and in terms of its purpose, substitution and the performance of a given task are basically dominant. In case new staff are needed in the organization for a period exceeding three months but expected to be less than one year, the program managers must advertise a vacancy with a short-term assignment.[276] If it is less than three months, it is at the discretion of the program managers whether to open a position in this form.

267 Act 162 of 2011, Art. 23, para. (1).

268 Act 164 of 2011, Art. 14, para. (2).

269 For the first time, a judge or prosecutor is appointed for an indefinite time period, among other things, if he has worked previously as a judge, constitutional judge, prosecutor, or has other judicial experience; if he has been active for at least three years at an international organization or at the Court of Justice of the European Union; or if he has acquired outstanding theoretical legal skills in the field of science or education.

270 Act 205 of 2012: *Act on the Status of Military Personnel*, Art. 2, Point 19.

271 According to French law, it is also typical of the general public service that fixed-term assignments are carried out within the framework of an employment contract.

272 Based on Art. 28 of the *Bundesbeamtengesetz (BBG)*, the official is dismissed in marginal cases, practically only if he fulfills a condition objectively incompatible with the performance of his duties (e.g., if he does not take an oath, there is a conflict of interest on his part, or he settles abroad without permission).

273 BBG Art. 48–49. The person concerned may lose official rights in state criminal proceedings.

274 BBG Art. 77.

275 Section 5 (1) and Section 6 (3) of the BBG.

276 ST/AI/2010/4/Rev.1, Point 3.1.

The *short-term assignment* has an impact on the official's future career because it affects the fate of subsequent applications submitted within the organization. Officials holding such appointments may apply for any other position within the organization but must be treated as external applicants.[277] It is a significant restriction that, with the exception of employees of peacekeeping operations and special political missions, officials in the professional category and above may not apply for a fixed-term assignment for a period of one year or longer within six months of the termination of their most recent or current employment. Incidentally, the requirement for a six-month break usually exists between the termination of such a short-term assignment and a new fixed-term appointment of any type; therefore, according to the relevant administrative instruction, officials and volunteers participating in field work cannot be employed within six months either. In the latter case, an additional condition must also be met: to be assigned to peacekeeping operations or special political missions after six months, they must complete voluntary service for at least twelve months.[278]

The *short-term appointment*—although seen as an *ad hoc form* of employment—still entitles the officials to enter the UN Joint Staff Pension Fund (JSPF), unless their mandate expressly excludes this.[279]

There are no special restrictions attached to this nature of the assignment: all officials have the same rights, whether in relation to leave, travel allowance, or compensation in connection with work accidents. Nevertheless, even within such a short-term assignment, we find an additional subcategory that is foreign to state employment law: if the official has a letter of assignment for "actual employment," he or she is not entitled to, among other things, annual leave, extraordinary time off, sick leave, leave after childbirth, or a transport allowance to use. He or she is only entitled to benefits that are specifically included in his or her mandate.[280] This solution once again raises the issue of equal opportunity, which I have touched on earlier regarding officials with fixed-term and permanent mandates.

277 ST/AI/2010/4/Rev.1, Point 5.1. The Court of Justice of the European Union made an interesting decision on the subject, because the problem of subsequent applications for fixed-term officials is a well-known issue in judicial practice. In *C-302/11to C305/11. s. consolidated cases*, the Sixth Board decided that service for a fixed period should be considered full service, for example in salary classification. Although this decision does not apply to the UN, the time of those performing fixed-term service is considered when assessing benefits. At the same time, it is striking that on a new appearance, they are assessed in the same way as fresh applicants; therefore, the exact content of the regulation is not clear from this point of view.

278 ST/AI/2010/4/Rev.1, Point 5.4.

279 ST/AI/2010/4/Rev.1, Point 9.1.

280 ST/AI/2010/4/Rev.1, Point 12.1.

4.2. Fixed-term assignment

In the case of international organizations and state administrative bodies, the legal institution of a fixed-term appointment is primarily important because a sudden need to open a position may easily occur—in the case of the UN, just think of field work taking place at the site of a conflict or even peacekeeping work. In such cases, managers at the UN can also choose a short-term mandate, but in the case of long-term tasks, it is preferable to immediately give the selected official a fixed-term mandate. Nonetheless, what is justified in theory sometimes raises serious questions in practice.

The European Union and its member states set a maximum limit of five years for fixed-term employment relationships, and this limitation is intended to serve the fight against abuse, which is explained in more detail below in Chapter V. I would like to briefly note here that *the UN regulations do not observe the five-year limit* that is typical for a fixed-term employment relationship. It subordinates the prohibition of the illegal chain of fixed-term appointments to the interests of the organization, as well as the time limit that is fundamental in European eyes. According to its rules, the appointment can be extended by two years *at any time and any number of times*, and the fixed-term assignment can also[281] *be extended by a maximum of five years if the following conditions are met:*

- The official has completed at least five years of continuous service with fixed-term assignments in accordance with the Staff Regulations and Rules;
- still has a fixed-term mandate and was selected during a competitive process with a specific evaluation;
- his performance was at least "meets expectations" or received an equivalent assessment;
- did not take extraordinary, unpaid leave for a total of six months in the last five years;[282]
- he was not removed from the organization, did not receive severance pay or repatriation support, and did not redeem his accrued leave during the past five years.

281 ST/AI/2013/1. and ST/AI/2013/1/Corr.1. Point 4.3.

282 This section of the rule means that anyone who is away for a longer time period because of training, childrearing, or actual military service, will lose this five-year extension. As the UN provides no justification for this provision, it can even be considered discriminatory. If the official loses the opportunity because of child care or military service exceeding six months, or perhaps a training program, the normal two-year extension and indefinite assignment may be granted to continue the legal relationship.

Even in the case of a fixed-term assignment, it is true that the official has the right to leave after childbirth, but the time of departure cannot be a decisive factor in the possible renewal of the contract.[283] In Hungary, according to the current regulations, a fixed-term appointment ends at the end of the fixed period. The UN handles the situation quite differently: the contract of all civil servants as a mother is automatically extended by the period until they return to service, provided that the difference between the expiry date and the date of return is not more than six weeks.[284] In the case of a father taking leave after childbirth, the termination of the fixed-term assignment is postponed even if it expires within eight weeks after the birth of the child.[285] Extending a contract in this way cannot result in advancement in the salary classification, but at the same time, the official will continue to collect repatriation[286] credits if he does not return home during the leave.[287] Similar rules apply for the duration of the refutation procedure initiated by the official because of sick leave or inadequate service performance.[288]

In several cases, the *qualification* arises as an important factor in the extension of contracts. In Hungary, the performance evaluation is based on the employee's request and the employer's discretion, and the outcome of this process can also be a factor in the decision to extend or terminate an appointment. At the UN, the official must take a competitive exam even if he wants to extend his appointment to five years or change his mandate from a fixed-term to a permanent one. If the official passes this exam and has already completed a two-year fixed-term assignment, he can receive a mandate for continuous service. Moreover, if the performance of the service did not receive the appropriate qualification during the two-year period, the legal relationship can be terminated; however, in exceptional cases, it can still be extended by another year.[289]

4.3. Assignment for continuous service/Permanent appointment

As already mentioned, *in the Germanic and Francophone systems*, public service is considered a life vocation; therefore, the statuses are filled by appointment for an *indefinite period*. In Hungary, this situation is by no means the same: in many cases, civil servants are forced to hunt for permanent appointments; judges and prosecutors can only

283 ST/AI/2013/1. and ST/AI/2013/1/Corr.1, Point 4.5.
284 ST/AI/2013/1. and ST/AI/2013/1/Corr.1, Point 4.6.
285 ST/AI/2013/1. and ST/AI/2013/1/Corr.1, Point 4.7.
286 ST/AI/2013/1. and ST/AI/2013/1/Corr.1, Point 4.8.
287 See more details about the credit system: ST/AI/2016/2 Sec. 3. Qualifying service.
288 ST/AI/2013/1. and ST/AI/2013/1/Corr.1, Point 4.10–4.12.
289 ST/AI/2013/1. and ST/AI/2013/1/Corr.1, Point 4.13.

receive fixed-term appointments when they are hired; and only the professional staff of the armed forces and the professional military service can count on a stable permanent appointment. The UN, according to the *credit system*, establishes the continuing appointment posts, and these points are awarded to an official if, at the time of becoming eligible,[290]

- based on his performance evaluation, he "meets expectations" or receives an equivalent rating in any of the four examinations conducted during the past year;
- there are at least seven years left until mandatory retirement;
- does not engage in local recruitment mission field service or special political mission activities;
- does not belong to the staff of the International Tribunal for Rwanda or the International Tribunal for Yugoslavia;
- has a fixed-term appointment with five years of service;
- no disciplinary proceedings were conducted against him within the organization in the five years prior to the submission of the application.

The ranking of officials is ultimately influenced by the results of the performance evaluation, the place of service until then, the existence of geographical and functional mobility, language skills, and the duration of service until then.[291]

From time to time, the UN *reviews how many of its officials can receive a permanent mandate*. The most recent—and thus far third—procedure started on October 16, 2017. According to its results, 1,297 expert, higher category, and field service positions, as well as 437 general service and related category positions, can be filled for an indefinite period of time.[292] The total global staff of the Secretariat was 37,505 on December 31, 2018, of which 10,905 had permanent assignments, 23,586 had fixed-term assignments, and 3,014 had short-term assignments.[293] From this, I conclude that for the performance of the UN's tasks, fixed-term mandates work well, officials operating in the background are more likely to receive permanent mandates, and the organization only assigns a supplementary, auxiliary role to the legal institution of short-term mandates.

290 ST/AI/2012/3, Sec. 2.
291 ST/AI/2012/3, Point 4.2.
292 See https://hr.un.org/page/continuing-appointments
293 See the report of the Secretary-General issued on April 22, 2019: https://undocs.org/en/A/74/82, p. 11.

5. The procedure prior to the establishment of a civil service relationship: the competitive examination

Considering the current typical practice, the differentiated implementation of the competitive examination means that this competition can serve as one of the conditions for entering the public administration, that is, establishing a civil service relationship (external competitive examination), filling vacant positions, or as a requirement for advancement (internal competitive examination). To ensure the right candidates for the upcoming application and selection procedures, the competitive examination system can also function as a *reserve* base of currently unsuccessful applicants or candidates who are currently in the background during the selection but are otherwise successful. The *competitive exam* requires the applicant to pass a competitive knowledge assessment as an additional condition attached to the application.[294]

At the international level, applicants usually must meet several *minimum requirements;* therefore, among other things, it is usually a requirement that they be citizens of a member state,[295] and within this, that they have the right to hold a civil servant position in their own country. There is an international organization that requires the applicant to have fulfilled their military service obligations according to their state.[296] Generally, the presentation of various prestigious reference materials cannot be dispensed with, and—especially in the case of physically demanding positions, such as UN field service officials—the requirements related to the physical fitness required for the job must be met. Additional special regulations can be found for each job classification; for example, a university degree or an equivalent degree is required to fill positions in higher categories in international organizations.

The job application system existing in domestic civil service law is intended to check compliance with various special requirements;[297] however, we can also observe in the case of Hungary that the public service is divided from this point of view as well: while civil servants, judges, and prosecutors are, as a general rule, required to call for applications, there is no such thing in the case of public service officials,

294 Szakács, Abay Nemes, 2009.

295 Not all states tie the possibility of holding public office to citizenship, so for example in Germany, as a general rule, citizens of all European Union member states can hold public office.

296 E.g., Council of Europe (COE) *Staff Regulations* Art. 14.

297 In several of his works, *András Torma* mentions that the tendering system is present everywhere where privatization has appeared at a certain level in the public service (e.g., in the United Kingdom, the Netherlands, or Italy). The reason for this is that the competitive examination and the application system ensure the selection of individuals of better quality.

members of the professional staff of law enforcement agencies, or the national defense.

Although the application system is not equally prevalent, different selection methods, such as the personality interview or the competitive examination are available. While the system of competitive examinations in public administration has largely ceased in Hungary, we still find organizations today, typically the courts, where the examination revealing preliminary factual knowledge and concepts is mandatory.[298] According to *Gábor Szakács* and *Orsolya Abay Nemes*, there are many reasons why the legislators did not fully and systematically include the priority human functions targeted by the competitive examination and could not include them in the effective sources of law; hence, they could not become an integral part of either political thinking or public service culture or the dominant practice of leadership. One of the reasons is that, both in the historically and today, making the competitive examination and application mandatory has been accompanied by various (political, organizational, group, and individual) real or perceived harm to interests and has provoked strong resistance, as a result of which the initiative has often led to its slow "death," its only formal fulfillment. The introduction of individual performance evaluation, the intention to implement a salary system expressing the value of the job based on job analysis, and the initiative advocating the general application of the Common Assessment Framework (CAF)[299] provoked similar resistance.

In the state civil service, the possibility *of a competitive exam is generally not present in a decisive way.* Both Germany and the Netherlands lack a centrally registered examination system; the individual offices manage the admission procedure within their autonomy. In the United Kingdom, the system operates almost entirely as seen in the competitive sector: a simple recruitment procedure is announced for vacant positions, and the manager decides from among the applicants, acting on his discretionary powers. At the same time, the competitive examination plays a significant role in the selection process for the operation of the UN and international organizations in general. The Secretary-General's obligation is to establish a qualification unit made up of managers—the *Central Examination Board* and, from the professional level upwards, the *Central Qualification Committee*—whose task is to determine the valid selection criteria from certain classification levels and make recommendations for the admission of given applicants.

298 György, 2007, p. 75.
299 Szakács, Abay Nemes, 2009, p. 50.

The competitive exams are scheduled after the *Sonru interview,*[300] and the decision regarding the admission of successful applicants is made by the Board of Examiners established by the General Secretary. Not every position within the UN organization is subject to a competitive examination obligation; therefore, this form of performance and knowledge assessment basically affects the P1 and P2 categories of professional levels, where the applicant has no or has a maximum of two to five years of professional experience.[301] I summarize the procedural model of the competitive exam in the following figure:

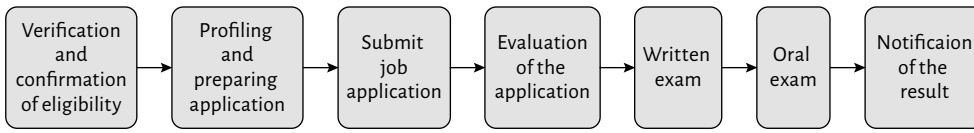

Figure 5. The UN competitive process model[302]

In all legal systems, the purpose of the competitive examination is to select the most suitable person for the position. At the state level, this means that no seats can be reserved for anyone, and internationally, this also entails a diplomatic issue, namely, that no member state can reserve a position. That is, although geographical equality generally[303] plays a role in all circumstances, it must be ensured in a different manner to avoid discrimination.

Before filling a vacant position in an institution, the appointing authority is obliged to consider whether the position can be filled by transfer, appointment, or promotion within the institution and whether requests for transfer have been received from officials of the same grade in other institutions. The appointing authority appoints an admission committee for each competitive examination, and the committee compiles

300 The *Sonru interview* is a special, automated recorded conversation, during which the applicant does not communicate with a real person but gives his or her own answers to a pre-prepared set of questions and records them with a camera. The organization invites to the Sonru interview those individuals whose personal preparation is suitable for the position considering the submitted application material, that is, the fact that the interview can take place at all is a sense of accomplishment for the applicant. Although the novel interview experience may confuse many, the UN mission in Vienna, for example, reserves a separate room for conducting the interview so that internal applicants can prepare their personal materials in a more relaxed environment (see Letherbarrow, 2017).

301 See https://uncareer.net/staff-categories

302 Own figure, source: https://careers.un.org/lbw/home.aspx?viewtype=nces

303 Primarily, in the case of clerical and secretarial tasks, office management, and other equivalent tasks requiring a certain degree of independence, it may be stipulated that the candidates must be chosen from local citizens of the organization's headquarters.

the list of suitable applicants. The appointing authority decides which of these applicants to appoint to the vacant positions.

If the applicant believes that the organization engaged in illegal practices in relation to his or her application at any stage of the examination—we can think of discrimination, harassing behavior, or the presumed contradiction of the admission decision with the result of the examination—he or she can challenge the procedure before the internal court of first instance.[304]

6. Establishing the legal relationship

The UN Staff Regulations distinguish between the creation and the beginning of the legal relationship to ensure that the start of work must be indicated separately in the LOA (in contrast, according to domestic regulations, the appointment document contains the effective date of the appointment, not the start of work). The mandate can come into effect at two different times: on the one hand, if the official must travel to the place of service, by obtaining official traveler status; on the other hand, if travel is not necessary, then by registering for the service.[305] In some cases, the appointment may include a probationary period clause; however, we do not find detailed rules for this in the UN Staff Regulations because flexibility is an essential requirement for the organization in this regard.[306] Furthermore, given that, until recently, a probationary contract was part of employment with a two-year limit as a general rule,[307] in practice, a probationary period can still be considered to be a maximum of two years.[308] In an international comparison, we see very *variable trial periods* in the public service sphere: in Hungary, this period is six months, but in some cases, it can be twelve months. In Ireland, the legislator considers three months to be expedient, which is, however, specifically defined in the individual appointment,[309] and in the Netherlands, as I mentioned earlier, the official is given a fixed-term appointment rather than a probationary period. In my opinion, the legal institution of the probationary period is useful; however, *the*

304 See for example, the court's decision No. 242 (NY/2018) dated December 10, 2018. (https://www.un.org/en/internaljustice/files/undt/orders/ny-2018-242.pdf).

305 *Staff Regulations*, Rule 4.2.

306 This was expressed in the 2002 session of the Human Resources Network, about which see Point 5 of the report. https://www.unsystem.org/content/report-3rd-session-july-2002-new-york

307 *Staff regulations*, Rule 13.3.

308 This corresponds to the relevant decision of the 1953 General Assembly as a starting point. (see https://www.refworld.org/docid/3b00f08164.html).

309 https://hr.per.gov.ie/career/probation-and-induction/

trends indicate that it is often used incorrectly: apart from jobs that require the acquisition of specific knowledge as part of the employment relationship or where performance is more difficult to measure for objective reasons, a probationary period of more than three months is unjustified and cannot be justified in law because, as a general rule, the protection of the parties' specific interests can no longer be demonstrated within such a period.

7. Personal conditions of appointment

The individual service categories and levels are of fundamental importance in determining the requirements imposed on the staff member. We can observe differences between service areas that also have an impact on principles such as the requirement of geographical diversity;[310] a good example is that this principle does not need to be considered in the case of general service and related categories.[311]

In connection with appointments to various positions, *family relationships* must always be examined. If the applicant is a parent, sibling, or child of an official, that relationship automatically disqualifies them for the position. In the case of spouses—provided that they have all the necessary qualifications and their relative rank does not play a role in the decision—there is no such restriction.[312] The goal of the *conflict-of-interest rules* is to guarantee that the official's work can be free from any kind of influence. In this area, the organization is not unique in its regulation but follows the general conflict of interest prohibitions.

The *service levels*[313] *each of them holds have some kind of challenge* and require some *special personal competence;* without taking these into account and fulfilling them, the applicant cannot enter or stay in the position of an international official. Why is the often-dangerous work worth it? Several people believe that it must be for the salary and other benefits received—and this is not entirely true. As an international official, one can easily reach a service location during the agent's assignment, or one can be assigned a task for which the financial resources do not compensate. As *Péter Kovács* writes, the most important guarantee for the agent is that the organization acts on his behalf. The damages suffered by the agent sometimes occur in such a way that their state of citizenship does not

310 *Staff Regulations*, Regulation 4.2.
311 *Staff Regulations*, Rule 4.6.
312 *Staff Regulations*, Rule 4.7. (a)–(b).
313 See the individual classification levels in detail: https://careers.un.org/lbw/home.aspx?viewtype=SC

qualify them to claim compensation under diplomatic protection, or perhaps for some reason they are not ready to do so.[314] In 1949, the International Court of Justice stated in an advisory opinion[315] that, taking into account the nature of the functions entrusted to the organization and the nature of the missions of its agents, the Charter implies that the organization also has the ability to exercise the functional protection of its agents.

7.1. Geographical distribution

In a state public service, the legislator may forbid foreigners other than citizens of the given state from being active in offices or certain jobs, but in Germany and France, for example, this is generally not the case, and for international organizations, it is especially essential to maintain geographical diversity. For an organization to be able to consider the interests of all members and operate according to independent procedures daily, it is essential to ensure that the members can send officials to the organization's staff in a specified proportion but with equal opportunities.

In 2016, the Group of 77 (G77) indicated at the meeting of the Fifth Committee dealing with administrative and budgetary issues that they do not consider the geographical distribution of the UN to be adequate, and the issue was marked as an agenda item whose development never really took place.

While it is true that the Charter and the Staff Regulations both define the principle of geographical diversity *as the widest possible geographical distribution that should be used during recruitment, this* cannot be considered a strict, well-defined requirement. Within the walls of the UN, there are areas—mainly in the decision-making circles[316]—where the emergence of the principle of geographical distribution can be grasped much better than in the personnel composition.

7.2. Officials of locally recruited posts

The selection process can be local or international. Local recruitment is considered essential: if a natural person wishes to become a UN employee in, for example, Hungary, they must apply at the Hungarian office, and they will be employed here as well. An applicant can also submit his application in a country that is within commuting distance

314 Kovács, 2011b, p. 312.

315 International Court of Justice, 1949.

316 For example, the membership requirements of the UN International Trade Law Commission clearly state how many countries from each geographic region can become members.

from him, *because the local selection does not require that the applicant be a citizen of that country,* nor does it consider how much time he spends in that country.[317] The National Professional Officer (NO) is considered a locally recruited civil servant category, which has the same responsibilities as the international professional category. The position is important because tasks of a national nature may arise in the individual branches that require a higher level of expertise, but at the same time, because of their special legal, social, economic, linguistic, cultural, or political connotations, they cannot be solved without the appropriate local knowledge.[318]

7.3. Officials of positions with international recruitment

Anyone who is not recruited to the organization through a local system is considered an international recruit. The distinction is important because in the latter category, among other things, at the beginning of the appointment and at the termination of any type of legal relationship, the official, his or her spouse, and their dependent children receive a *travel allowance;* the organization covers the moving of movable property (relocation shipment); and it also provides the official with leave to travel home, an educational grant, and a repatriation grant.[319] This solution is not alien to the practice of European states; therefore, in Germany, for example, officials affected by relocation can also apply for relocation and home renovation subsidies to create suitable housing conditions for themselves.

Regarding the UN, the situation of officials employed in the category of locally recruited professionals or higher categories constitutes a transition between the locally and internationally recruited categories, because they must be treated as internationally recruited officials. According to the General Secretary's order, they are generally not entitled to the previously detailed benefits. In the event of special circumstances, those appointed to the general service and related categories are also considered internationally recruited officials, but they are not subject to the same restrictions as professionals and higher-level officials.[320] This is because officials with professional and higher-category classifications can be compared to employees in senior positions, in whose legal

317 *Staff Regulations*, Rule 4.4.

318 Such positions are typically held in UN practice by various human rights representatives, administrators responsible for political relations, legal and health administrators, child welfare officials, specialists responsible for humanitarian relations, and interpreters.

319 *Staff Regulations*, Rule 4.5. Point (a).

320 *Staff Regulations*, Rule 4.5. Points (b)-(c).

relationship it is also known in domestic law that certain guarantees do not apply.[321] Apparently, through the distinction, the UN does not comply with the principle of equal opportunity in this area, but certain restrictions may be justified.

7.4. Achieving gender parity

The *European Institute for Gender Equality (EIGE)* defines gender parity as a concept and an objective aimed at recognizing the equal value of women and men, which makes visible the equal dignity of both genders in social organizations where women and men effectively share rights and responsibilities, are not bound by prejudice and gender stereotyping to predetermined positions and functions, and enjoy full equality and freedom of participation at all levels and in all spheres.[322]

The topic is of general interest not only within the European Union and its member states but also in the case of the UN. On August 6, 2020, the Under-Secretary-General for Management Strategy, Policy, and Compliance announced the administrative instruction[323] aimed at achieving an equal ratio of genders regarding those employed by the organization, with which the management intends to comply with the basic principles contained in Articles 8 and 101 of the Charter.[324] Prior to this, a similar instrument was created on September 21, 1999,[325] which, of course, was replaced by the current instruction. The goal of the General Assembly is to achieve a 50:50 gender balance at all levels of the United Nations. Until this can be achieved in all work units of the organization, the temporary measures described in the instruction apply to all positions and statuses during the recruitment and appointment processes. The instruction allows deviations

321 For more on the topic, see, among others: Törő, 2017; Prugberger, 2020b.

322 See https://eige.europa.eu/hu/taxonomy/term/1310

323 ST/AI/2020/5.

324 Art. 8:
The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs. Art. 101:
1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.
2. Appropriate personnel shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, other organs of the United Nations. These personnel shall be a part of the Secretariat.
3. The paramount consideration in the employment of the staff and in the determination of the service conditions shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

325 ST/AI/1999/9 (archived source).

from the targeted half-half ratio to a certain degree and that the goal is fulfilled when the ratio of 47:53 is achieved in individual organizational units and as a whole.[326]

Temporary measures must be applied whenever the desired parity is not achieved, including the establishment of a new organizational unit, expansion of existing organizational units, redundancy periods, periods affected by headcount freezes, and reorganizations. As the measures are aimed at correcting the historical gender imbalance, they apply to the under-representation of women alone and therefore, do not apply to the selection and appointment procedures of organizations within which gender parity has already reached the desired ratio.

The organization intends to ensure an equal ratio between the sexes with a kind of headhunting attitude: according to this, in the case of positions with an appointment of at least one year, the organizational units "must try to find appropriately qualified women" two to six months before opening any position. This can naturally be accomplished in cases where future vacancies are foreseeable, such as retirements, or when new positions are planned. According to the instruction, the head of the relevant unit maps the list of possible female candidates both inside and outside the organization, including through advertised job applications. Preference for women does not mean that male applicants will not be selected; the instructions only state that if a female and a male applicant have equal qualities, then the former must be chosen.[327] In the event that, at the end of the recruitment process, the manager still decides in favor of a male applicant,[328] this must be submitted to the *Executive Office of the Secretary-General (EOSG)*[329] for review on a specially designated form with justification. The regulations do not explicitly mention the legal consequences; however, through a systematic and teleological interpretation, I believe that the EOSG cannot decide on the issue of selection, but rather it can instruct the relevant manager to re-evaluate his own decision.

Preference for women is of particular importance in cases where the applicant comes from a developing country, which, based on the principle of geographical diversity, would have priority in the selection process. Even in the case of an internal application in the expert and

326 Currently, it appears that the UN, despite its well-known range of initiatives aimed at achieving parity within its walls, does not excel in this area. We meet women in junior positions; their proportion in expert and higher categories (P5) is 38% (which, however, is considered high according to European standards, as 30% is considered general, and in many places, it is only a target for now). At the same time, in terms of leaving the employment relationship, we are talking about 50:50 ratios in the P5 category, which means that women leave the UN at a much higher rate than their male colleagues (Perkins, 2021).

327 ST/AI/2020/5. Point 3.4. para. (a).

328 See https://policy.un.org/content/p401-temporary-special-measures-achievement-gender-parity

329 See https://www.un.org/sg/en/global-leadership/executive-office-of-the-secretary-general/all

above categories, the manager must consider several aspects, given that, in addition to the equal ratio of the sexes, the organization also wants to expand women's career opportunities.

Referring to the chapter on organizational culture, it is worth highlighting here that the Department of Management Strategy, Policy, and Compliance develops and plans training programs on gender equality to promote a better understanding of gender dynamics in recruitment, the advancement of women, women's development opportunities, and a better understanding of the cross-cultural work environment. Additionally, it aims to create and sustain a work environment that accepts both genders through the program. The instruction specifically emphasizes that training programs must be designed to positively change organizational culture, increase gender equality, and address issues of gender discrimination as well as sexual harassment.

Later, we will talk about the 2030 framework of the *Sustainable Development Goals* developed by the UN, whose seventeen global goals are about the transformation necessary to achieve sustainable development. The framework emphasizes several times that public institutions reflect the diversity of the population they serve and that these organizations must also implement reforms to achieve their goals.[330] Both private and public stakeholders increasingly recognize that diversity, including equal access for women and men to leadership roles, is not only morally right but also contributes greatly to good operational results.

The gender equality of the employed has been raised among the priorities set by the governments of many states in terms of their public administration bodies; the research carried out by the UNDP in this field in 2017 examined the practices of Kenya, Slovenia, Azerbaijan, and Sweden.[331] At the time, the statistical data in Kenya lagged behind the current goals of the UN: in 2017, 75.4% of ministries and other offices employed at least one-third of women. This corresponds to the objective contained in the country's constitution, according to which the number of members of the same sex in elected and appointed bodies cannot exceed two-thirds. In Azerbaijan, we encountered a similar phenomenon in the public sector: only 29% of civil servants were women, and among senior managers, this figure was only 22%. In 2013, the country launched a public administration development program, which does not include the issue of gender parity among its objectives, but, the proportion of female employees improved somewhat as a result. The state created a network similar to the Government Window system in Hungary, in which the proportion of female workers was well above the general public

330 McKinsey&Company and United Nations Development Programme, 2017, p. 3.
331 McKinsey&Company and United Nations Development Programme, 2017, p. 21.

administration indicators; hence, their proportion in relation to the total workforce in 2017 was 39%, and in management positions, it was very favorable with 52.6 % achieved.

In the European Union, the individual states develop their own system according to higher expectations. In the early 2000s, Slovenia stepped up its efforts to promote gender equality. Special measures have been introduced to ensure that women and men have equal access to public service positions, as part of which the Law on Equal Opportunities for Women and Men was adopted in 2002. One of the specific goals of the legislation was to create a legitimate basis for establishing the principle of gender-balanced representation within the state administration. In September 2004, in accordance with the provisions of the law, the government issued a decree on respecting the principle of balanced representation between the sexes, especially in the composition of the top management of state bodies. Within four years of the decree being issued, Slovenia reached the 50:50 ratio. Slovenia was then able to maintain parity, surpassing the average of the rest of the European Union, which was 35.3% in 2017 for senior management.

The participation rate of women in public administration can also be considered a government objective in Sweden, even though the country faces different types of challenges than the states presented so far: the Scandinavian state has a largely decentralized public administration; therefore, a survey was carried out in 2003, based on which it was found that 50% of employed women work in the public sector, while this proportion was only 18% for men. At that time, the proportion of female employees in local administrative bodies was particularly high, at 79%, but at the same time, the country was faced with an unexpected result: it turned out that comparatively, the proportion of women in management positions was only 13%. Therefore, although the public sector seemed to be an ideal field for maintaining favorable female employment rates, the "glass ceiling" phenomenon[332] had a strong effect. They tried to balance the negative indicators; thus, there was a city where the proportion of female managers reached 34% between 2011 and 2016. *Reviewing these efforts, I concluded that the goal set by the UN is ambitious in comparison with the states, and the mechanism behind it can serve as a model to be followed even by the EU member states.*

332 We call it the "glass ceiling" phenomenon, the higher you go in the organizational hierarchy, the fewer women there are in the given position (also known as "vertical segregation"). The concept describes that women (and other clearly distinguishable minorities) encounter a strong but invisible obstacle during their professional advancement, which they are unable to overcome. The glass ceiling metaphor does not necessarily only refer to the existence of an external, objective obstacle, but also to the fact that women do not choose certain occupations and jobs for themselves, even though they could; that is, they may be victims of "self-discrimination." Additionally, the "glass wall" phenomenon is also known, according to which women and men are not represented in the same proportion in some professions (also known as "horizontal segregation"). See more: Nagy and Primecz, 2010.

I believe that to conclude the topic, it is also worth addressing what exactly we consider to be the *gender of the applicant or the official*. The English literature consistently uses the term *gender parity* in the context of ensuring equal proportions between the sexes; consequently, we must not understand the individual's birth sex but rather his social gender when examining the objective scope of the regulation. Social gender determines what is expected, allowed, and valued for a woman or a man under certain circumstances. In most societies, there are differences and inequalities between women and men in terms of responsibilities assigned to them, activities performed, access to and control over resources, and decision-making opportunities. Social gender is part of the broader socio-cultural context, and the assumptions and expectations based on it usually put women at a disadvantage in the meaningful enjoyment of rights, including freedom of action and recognition as an independent, fully capable adult, in economic, social, and political development in terms of full participation and decision-making affecting their circumstances and situation.[333] Gender parity, therefore, wants to express the aspiration that women and men can be equal both in number and in their opportunities. The issue of gender parity should not be confused with the scope of gender identity. In the view of the UN, no legal source clarifies the question of what is decisive in the matter of the gender of the applicants. However, we can assume that equality can only be determined based on the gender that can be determined because of personal documents that are always valid, and the individual's belief about their own gender identity does not matter.

8. Opportunities for re-employment within the organization, internal applications

An additional aspect arises in connection with the appointment; we must make a fundamental distinction between *reapplying* and *reinstatement*. All appointments subsequent to the previous assignment are considered re-applications, which do not qualify as reinstatements. The significance of the classification lies in the fact that while re-employment is not considered continuous work, reinstatement is. The legal consequence of this is that in the latter case, the official must pay back all the sums he received in the form of severance pay, repatriation, and commutation of annual leave.[334]

333 See https://eige.europa.eu/thesaurus/terms/1141?lang=hu
334 *Staff Regulations*, Rule 4.17–4.18.

9. Basic principles of employment within the organization: Ethical principles and basic rights and obligations

Once the legal relationship is established between the UN organization and its official, just as in national civil service rights, there are certain legal principles that must prevail in all circumstances, which are the same in practically all legal states and organizations operating according to the idea of legal certainty. Legal principles can be regulated in a separate legal source and in the legal source regulating the legal status of civil servants.

Take, for example, the fact that *Hungary and Germany* have separate laws on the prohibition of discrimination. However, in Hungary, while the domestic legislator makes special mention of it in the employment code, among others, the Act on government administration does not even mention this prohibition. However, from the perspective of legal sources, the question is not even relevant, as anti-discrimination legislation is regulated both at the constitutional and statutory levels in all rule-of-law states; therefore, even if the principle is not specifically addressed in a special legislation, it still applies. The implementation in the text has more of a principal importance, with which the legislator can express how important the protection of any given right is to him.

In the case of the UN, the Charter does not contain an explicit provision regarding the fact that it is not possible to discriminate between staff members. The Charter only stipulates that staff members may be hired in accordance with the provisions of the relevant decisions of the General Assembly, during which the requirements of efficiency, competence, and integrity must be considered.[335] The prohibition of discrimination can be derived indirectly from the latter, because the organizational integrity of the UN is also determined by international legal principles; thus, even without an express provision, the basic principle is naturally incorporated into the internal legal framework, which must also be applied to maintain integrity.

At the same time, the General Assembly has already settled the issue directly with the Staff Regulations: the application of certain basic principles is formally and explicitly mandatory in the case of the UN, as Regulation 1.2. and Rule 1.2. both contain the basic rights and obligations of international officials.

According to the regulations, the international official must respect basic human rights, especially human dignity, and equality between men and women, as a result

335 *UN Charter*, Art. 101.

of which discrimination against any person or group with protected characteristics is expressly prohibited.

Efficiency-comprehension-integrity contained in the Charter also appears in the Staff Regulations, this is attributed to the fact that all public service systems must have a core principle that helps maintain unity in all circumstances. For the UN, *the principal core can be captured in this triple requirement*, which is why the organization shapes all programs and models related to staff development and organization along these lines. While the Charter does not elaborate on the meaning of integrity in this context, the Staff Regulations define it as a requirement that includes the virtues of integrity, impartiality, fairness, honesty, and credibility. We find similar expectations in the ethical codes at the national level, as we can observe in Canada,[336] Norway,[337] the United Kingdom,[338] and Hungary,[339] and we could list examples of rule of law states. It is characteristic that the public service is always organized along the same six basic values,[340] which proves that culturally and according to their purposes, the international and national public service systems are comparable and follow the same path.

Nowadays, increasing attention is being turned to the internal layer of the public service, because of which researchers and, in many cases, legal entities connected to the organization neither observe what the given administrative unit does nor how or why it does it that way. These studies contribute significantly to development and to the fact that public administration organizations can break free from the box in which they perform political functions in all circumstances.[341]

Rothstein and *Sorak* claim [342]that the change began with the 1985 edition of *Bringing the State Back In* edited by Peter B. Evans, but to this day there are still large gaps in the field: research is typically carried out in North American, European, and OECD countries,[343] with the latter also basically on Western states. The ethical mapping of South American and Asian states and the exploration of the basic principles of public service

336 Treasury Board of Canada Secretariat, 2003.
337 Department of Modernization, 2005.
338 Committee on Standards in Public Life, 2014.
339 See http://mkk.org.hu/hivatasetika
340 The ethical principles are generally the following: legality, serving the public interest, political neutrality, professionalism, impartiality, and loyalty.
341 This is also supported by the work of the Swedish research couple, *Bo Rothstein* and *Nicholas Sorak*: Rothstein and Sorak, 2017.
342 Rothstein and Sorak, 2017, p. 4.
343 OECD: Organization for Economic Co-operation and Development. It has thirty-eight member states, a list of which can be found at https://www.oecd.org/about/

also fall short of the presentation of Western countries, which are otherwise built on extremely similar schemes. Why is this important?

The *public service principles are* an important reflection of the given state's internal values, both past and to some extent the future, or, in the case of international public service, of the organization. For example, it is worth comparing the Finnish and Bulgarian civil service principles because they are two states with completely different characteristics: Finland has a dominant institutional ethics system, while Bulgaria has a dominant institutional corruption system.[344] If we look at the basic ethical expectations of the two countries in comparison, we find the following: for Finland, independence, impartiality, objectivity, government reliability, transparency, service, and a sense of responsibility are among the main values. In the case of Bulgaria, we see similar concepts, but the picture is not the same: legality, loyalty, responsibility, stability, political neutrality, hierarchical submission, openness, impartiality, and secrecy carry some significant differences. The juxtapositions of *independence versus hierarchical submission/loyalty* and *service orientation versus impartiality* lead to the conclusion that while Finland emphasizes public service, Bulgaria tends to bring its public administration closer to the current government.[345]

In Hungary, compared to the past, there are a considerable number of principles, and practically, twenty-one of those can be found in the repertoire of other states. With this, the Hungarian Faculty of Government Officials, which wrote the code, reflects on the fact that a large-scale transformation in the field of public service is currently underway in our country and that the backbone of the activity's innermost values will emerge in the future. Although each of the listed values is objectively necessary for the proper functioning of the public administration, there is no reason why only a few should be selected if all of them can be observed because of their uncontroversial content.[346]

In the course of the UN's activities, although it performs different tasks than the administrative bodies of the states, it follows the same values at the principle level: the Charter, the Staff Regulations, and the Standards of Conduct for the International Civil Service[347] shape the organization's own basic principles, which are independence, impar-

344 See https://cutt.ly/wSjrybq

345 Rothstein and Sorak, 2017, p. 18.

346 The twenty-one civil service values in Hungary are: loyalty to the Basic Law, keeping the national interest in mind, commitment, responsibility, professionalism, efficiency, fairness, dignity, impartiality, justice, fairness, proportionality, protection of rights and legitimate interests, freedom from prejudice, transparency, cooperation, conscientiousness, setting an example, support, holding legal and moral values to account, and validating professional aspects (https://mkk.org.hu/node/485).

347 International Civil Service Commission, 2013.

tiality, integrity, accountability, and respect for human rights.[348] Aninteresting fact to observe is that the wording of ethical codes in itself reflects the given environment: in the case of the UN and the general international public service, we can see that the ethical foundations were not formulated according to legislative methods. The already mentioned Standards of Conduct is practically a descriptive information booklet that informs about what exactly the provisions in the UN Charter and Staff Regulations cover. Ethical regulations of this kind appear in public services where the regulations affecting officials are based on stable foundations and the legal background is transparent and predictable. In addition to UN-type international organizations, Hungary, Brazil, the United Arab Emirates, the United Kingdom, the Netherlands, Canada, Mauritius, and Sweden belong to this group. In the opposite group are the states that use the code of ethics itself as a regulatory tool; they usually include post-socialist, African, and Asian states.[349]

The UN, therefore, establishes three main principles in the Charter, which already appear in the Staff Regulations in the form of general behavioral requirements under the title of "core values," along with several other general rights and obligations. The basic rights and obligations of officials are as follows (Regulation 1.2):

— The right of supervision over the officials is exercised by the Secretary-General;
— officials may not accept instructions from any government in the course of their duties;[350]

348 Within the UN organization, officials can usually find all the help they need to perform their tasks as professionally as possible and in a manner worthy of the organization. In this spirit, an information publication has been prepared for the practical implementation of the principles, which provides support for the interpretation of the principles during the performance of everyday tasks: United Nations Ethics Office, 2017.

349 Rothstein and Sorak, 2017, p. 42.

350 This principle is also contained in Art. 100 of the Charter, in which the UN expresses a general provision that can typically be found both in the internal regulatory structure of other inter-governmental organizations and in the prohibition present at the state level (in the case of the latter, in the vast majority of cases, it is a serious crime against the state and breaking the rule may have criminal consequences). The International Court of Justice (https://www.icj-cij.org/en/case/4) issued serious conclusions on the matter in the case of compensation for damages suffered in the service of the United Nations *(the Bernadotte case)*: in 1948, in Jerusalem, the then-*Count Folke Bernadotte* acted as mediator of the Arab-Israeli war on behalf of the UN. After the incident, the question arose as to whether the international organization could use a claim for damages against the injurious state on its own behalf and on behalf of the victim. The advisory opinion (https://cutt.ly/TSjrfHo) reflects the recognition-based concept that paved the way for non-state actors to become legal entities (see Kiss, 2019 for more on the issue). In its decision, the court also stated that to ensure the independence of the agent and the organization, it is a necessary condition that the agent can trust the protection of the organization that employs him under all circumstances, because if it must rely on the protection of its own state, its independence will inevitably be damaged (see Amerasinghe, 2005, p. 393–394).

— the officials are obliged to perform their duties considering the goals of the organization;
— the organization respects the personal beliefs of the officials; however, they cannot affect the work of the person concerned;
— officials may not use the knowledge acquired at the organization for personal gain;
— officials are free to exercise their voting rights, but any political activity is expected not to compromise their independence and impartiality;
— officials are obliged to observe the strictest confidentiality regarding any aspect of their legal relationship or work.

Rule 1.2. supplements all of the above with the following:
— Any sexual exploitation or abuse of any kind is prohibited;
— discrimination of any kind is prohibited;[351]
— obstructing the organization's work is prohibited;
— it is prohibited to misrepresent to third parties the nature of the function, title, or job held by the official;
— any abuse of official documents, their falsification, or destruction is prohibited;
— any abuse of the official position or acceptance of remuneration from an external party is prohibited.

10. Modification of appointment

In Hungary, the act on government administration came into effect on March 1, 2019, and it authorizes the employer to unilaterally change the appointment of a government

351 Unfortunately, there are (also) many cases of discrimination in the daily practice of the UN, but progress has recently been made within the organization. The story is worth sharing because many states are struggling with similar employer decisions, and the example indicates that it is indeed possible to break a bad habit in the labor market, namely that certain jobs can only be performed by representatives of one gender. In countries with a more advanced spirit, such as Sweden, this attitude is much less typical; it happens that, for example, typically female tasks in the catering industry are performed by men, and only female crew work on fishing boats. In the case of the UN, between 1958 and 2017, only men were hired in the organization's warehouse building in Vienna, except for one person, citing women's physical incapacity. In May of the mentioned year, the former seller of the organization's souvenir shop was taken over by the warehouse after a colleague drew the management's attention to the unjustified exclusion of women (see Zabaar, 2017).

official.[352] This provides the employer with a level of power that is unprecedented in the Hungarian labor law system and which raises many constitutional concerns: while the civil service relationship itself is created by the joint will of the two parties, the law still allows the employer to terminate the appointment at any time, at any element, and change it without justification. This eliminates the contractual nature of the legal relationship because, even if the parties agree on the tasks to be performed, the place of work, the salary, and the number of working hours, can be changed by the employer at will.[353] Of course, the issues raised by the domestic solution are also valid if we consider that the civil service has never enjoyed full contractual freedom for the parties thanks to the presence of grades and salary scales. At the same time, the act on government administration broke with the previous system in some ways, such as establishing salary bands within which the manager decides on the exact amount; in fact, it provided additional rights only to the employer, which deepened the existing inequality with this solution. Obviously, the fact that the law expressly allows the official to request his dismissal due to an undesirable change does not change this either.[354]

As much as these problems are raised by the domestic regulation, interestingly, the situation is even worse in the case of the UN, given that *no legal source settles* the issue of the amendment. The Staff Regulation recognizes the change of the official place of service as well as the transfer and redirection between organizations. Only in the latter case does the regulation mention that it can be accomplished at the request of the official with the approval of the General Secretary. It is particularly advantageous that, at least in this case, the bilateral nature has been stipulated; however, there is no such requirement for changing the duty location, and it generally applies that the manager can decide regarding the working conditions within the framework of the regulations. However, in many cases, these amendments are more similar to "temporary non-contractual employment" in domestic law, but at the same time, if we accept this, then the deadline is missing from the UN regulation, which, if exceeded, must be treated as an amendment to the new conditions included in the appointment.

352 Act on government administration (No. 125 of 2018), Art. 89, para. (1).

353 Kártyás, 2019.

354 See Bankó, 2019 for more information on the regulations affecting the forms of modification and their possible impact.

II. Working time and rest periods

Dogmatically, working time comprises basic and overtime work in both private and public sector labor laws. In this chapter, I will accordingly present the working time principles of the UN, with reference to the legal concept of "core time," which is also known in German law, and to the different types of leave.

Overall, leave consists of annual and additional leave, with the latter being dependent on age for officials and managers receiving a certain number of additional days because of their managerial capacity, with the proviso that the two types cannot be combined. In the case of the UN, we know of annual leave and different types of extraordinary leaves, but there is no specific additional leave in the regulations.

1. Possible forms of working time

The extent of working time is regulated in the labor codes and civil servants' law of the Francophone-Latin states, which are followed by Hungary and the Eastern European states in general. Contrastingly, the German model has a special working time panel law, but the detailed rules are laid down in sectoral or collective agreements,[355] for example, in Germany as well as in the Netherlands, on the basis of a balance between social and individual interests.[356] There is also the solution of including provisions on this legal instrument in an employment contract, for example in France, Spain, and Portugal, but no member state allows an increase in working time by contract.

From the 17th century onwards, the working hours of civil servants in the civil service generally began at 9:00 in accordance with the hours of reception of clients

355 The instrument used to regulate pay and working conditions is the tariff agreement, the content of which corresponds to the collective agreement known in Hungary.

356 Szászy, 1969, 335. o.

and lasted until noon or 13:00 and, after a lunch break of one or two hours, until the afternoon, from 14:00 until usually 16:00 or 16:30. Accordingly, the daily duty hours of state and local civil servants were generally six or six and a half hours. This was linked to the privileged, pragmatic nature of the civil service. This privilege, together with the security of status, was intended by the central state organization and, in imitation of it, by the local authority organization, to demonstrate the authority of the civil service to the bourgeoisie.[357] Over the centuries, working time has increased considerably in both the private and public sectors, with the current EU Directive 2003/88/EC setting the maximum working time at 48 hours per week as a general rule, with the part of this for exceptional work being between 40 and 48 hours.

The UN working time is regulated at the Staff Regulations level, which can be supplemented by various lower-level legal sources; that is, the Secretary-General has the authority to determine the working hours of officials in each duty station. As set out in the latest administrative instruction[358] dated April 16, 2019, the working week at the New York headquarters consists of *five days*, with *8.5-hour working days* during the Assembly session, including a *30-minute break*.[359] Outside this period, the working day for officials *consists of eight hours with a one-hour break*. The UN is characterized by long working weeks,[360] especially in comparison with countries such as the Netherlands, where the working week in public administration is 38 hours.[361] This is not surprising, however, given that the Secretary-General's communication refers to the New York headquarters in terms of its territorial scope and that the United States of

357 Prugberger, Jakab and Mélypataki, 2020, p. 239.

358 ST/AI/2019/2.

359 With the COVID-19 pandemic starting in 2020, the UN required new solutions, including the introduction of home working at the New York headquarters and the suspension of normal working hours for security staff, who were required to work for three consecutive days in 12-hour shifts and then six days at home (see UNDT/NY/2020/036).

360 Prugberger, Jakab, and Mélypataki, 2020, p. 245. In Hungary, Chapter 18 of the Act on Government Administration concerning working time, rest periods, and leave increased the working time of government officials, compared to the national civil servants who remained independent of the government and to the regional and local government officials. Previously, civil servants had the right to take their own breaks, but now the employer may interrupt them at any time and require government officials to work. Before the act came into force, if a government official had lunch at work, it was counted as part of his or her working time, and he or she did not have to work the so-called inter-work break separately—but now officials do, even though they must remain at work during the inter-work break and be available at a place where their superior can reach them at any time. Under the new rule, to continue to be able to go home at 14:00 on Fridays, government officials will have to work an average of nine hours every day from Monday to Thursday.

361 Prugberger, 2000, p. 276.

America has a slightly different working time arrangement from that of continental Europe.[362]

The UN employment law since 1995 has recognized the concept of "core hours," which requires all staff, except those on authorized absences or sick leave, to be present at the duty station between 10:00 and 16:00, with a guaranteed break somewhere between 11:30 and 15:00. The UN allows for flexible working hours; thus, hours worked in addition to the standard hours can be freely allocated before and/or after the standard hours.

The UN solution is similar to an amendment to the German *Arbeitszeitgesetz (ArbZG)*, which introduced the so-called "*staggered working time*," whereby workers are required to spend four hours a day at a fixed time in the workplace.[363] The aim of the system would be to allow working time to be adapted to the needs of the organization and, to some extent, the individual. In 2003, the UN again moved forward with the organization of working time, after the ideas had proved successful, and introduced a new system of flexible working time support within the Secretariat. Kofi Annan wrote in a report in 2002 that to increase the strength of the organization, it would be necessary to reconcile the private and working lives of officials and to allow more room for personal needs.[364]

The UN does not give anyone a substantive right to work flexible hours, but both managers and officials are entitled to consider how flexibility can help them be more effective. Of course, not all positions allow for different working hours from the norm, nor can a specific roster be maintained in all situations—an example of the latter is the meeting of an intergovernmental body, with which staff from related departments must adapt to the interests of the organization during the meeting. In such cases, flexibility is naturally replaced by normal working hours.[365]

In the wake of the coronavirus outbreak in 2020, many countries have introduced labor measures that have facilitated the rapid emergence of flexible working routines,[366] which is how many businesses, especially young ones, have now shifted to working from home. This system is advantageous because, although employees are isolated from each

362 Tamás Prugberger, in his comparative work mentioned in the previous footnote, points out that in the USA, for example, overtime in excess of eight hours of basic working time can be worked for any length of time, except for a few hazardous jobs, and the overtime pay is freely negotiable.

363 Prugberger, 2000.

364 A/57/387, para. (183).

365 ST/SGB/2003/4, p. 1.

366 On this issue see, inter alia, Spurk and Staub, 2020.

other, operating costs can be reduced,[367] which is an important aspect for a business in times of economic downturn. However, during the global crisis, the public sector has faced a particular challenge, as in many cases its employees not only could not dream of flexible working conditions but could not even really stay away from sickness (e.g., hospital staff). The issue has been addressed vigorously by the OECD,[368] especially as the public sector employs between 5 and 30% of the total employed population in the countries covered by the organization's statistics, compared to an OECD average of around 20%.[369]

While in Hungary, for example, we could not find a ministry or department that—if the nature of its tasks did not preclude it—was able to switch to active home working,[370] the UN explicitly allows *teleworking in crisis situations*, as is increasingly the case in German civil service law today.[371] It does so on the grounds that this form of assignment does not constitute a specific form of work as defined in the Secretary-General's communication on flexible working arrangements, ensuring that it does not need to be applied for and authorized under a procedure, and the necessary equipment is provided by the organization to the extent possible for its staff.[372]

1.1. Flexible working hours in the civil service

In the UK, 42% of public sector employees worked some form of flexible working hours in 2018, compared with only 21% of private sector employees.[373] In the public sector, there are many jobs that do not allow for substantial deviations from the prescribed

367 For example, the UN's *Capital Master Plan for the* renewal of the New York headquarters [for more information, see United Nations Committee on Contributions, no year; and United Nations Board of Auditors, 2014]. Over eight years, every 20 officials sharing ten desks saves the organization one million dollars (e.g., 200 people telecommuting saved the organization $10 million). See Office of the Special Adviser to the Secretary-General on Gender Issues and Advancement of Women, no year, p. 3.

368 Organization for Economic Co-operation and Development, 2020.

369 https://cutt.ly/hSjrcKF

370 Solutions that are common in Hungary can be found, for example, in the Slovak Republic, where strict hygiene measures have been introduced, attendance training has been postponed, but the work itself has not been adapted to the changed circumstances. Contrastingly, in Ireland and the United Kingdom, questionnaires were drawn up to assess the potential and abilities of officials and, accordingly, enable the optimal allocation of the available workforce. In Italy and the United States of America, teleworking has also become standard practice in the public sector; no special authorization is required, and guidelines are being issued to facilitate its effectiveness (see in detail at https://cutt.ly/2SjrT1C).

371 *Flexible working time models in the public sector;* https://cutt.ly/ESjrSJL

372 ST/SGB/2019/3, Point 1.3.

373 ONS (2019) Point 1.

working patterns (e.g., police and healthcare), but the mere fact that someone is in the public service does not deprive them of the opportunity to work in a position that is more suited to their personal needs. I would also add that an important aspect of such statistics could be what we mean when we mention flexible working. Indeed, in 2018, only 3% of respondents in the UK teleworked in the public sector, compared to 17% in the private sector. Almost every workplace has its own peculiarities along which flexibility can occur; for example, the UK education sector has a high degree of flexibility, but in practice this means that the vast majority of those working in these conditions are *TTOs (term-time only)*, with the other half working as lecturers on annual contracts with fixed hours.

There is very little flexibility in the health sector, and in practice, this is most prevalent in on-call work, with a smaller degree of sliding timetables and annual contracts similar to those of teachers.[374]

Along the same lines, the UN employment system also has its own specificities: the organization's latest report reveals that in 2017, 58% of women and 42% of men made use of flexible working arrangements,[375] the most frequent use of flexible working is in the professional category, while the least demand is naturally in the field service.[376] Statistics indicate that the UN Office for Drugs and Crime (UNODC) has the highest number of requests.[377]

Absences resulting from working under the flexible working hours[378] scheme compared with normal working hours should be distinguished from cases of absence without justification. Thus, if an official wishes to be released from the obligation to be on call in addition to the on-call time/off duty ratio resulting from the timetable applicable to him or her, he or she must request leave and have it approved by his or her manager.[379] The UN recognizes four options for implementing flexible working time in practice, none of which is implicitly available to officials, and their imposition is always at the discretion of the manager or by agreement between the parties.[380] These can be summarized as follows:[381]

374 ONS (2019) Point 2.
375 See https://hr.un.org/page/flexible-working-arrangements/reports-and-statistics
376 See https://cutt.ly/YSjrKr6
377 See https://cutt.ly/9SjrBIM
378 The dedicated side of flexible working hours at the UN HR team: https://hr.un.org/page/flexible-working-arrangements
379 ST/SGB/2019/3, Point 1.2.
380 ST/SGB/2019/3, Section 2.
381 ST/SGB/2019/3, Section 3.

— Staggered working hours: in addition to the standard working hours, officials can decide for themselves when to start and end their working day within the daily working hours.
— Compressed work schedule: in this case, the ten-day target is completed in nine days. Thus, every second week, the official may take the last working day of the working week off. The same can be done in half the time interval; thus, five scheduled working days can be worked in four and a half days, that is, half a day can be taken off. The reduced day or half-day concerned may be taken at any time within the ten- or five-day period, as agreed with the manager, and the hours taken off shall not be rolled over.
— Scheduled break for external learning activities: to attend training courses necessary for professional career development, an official may request six hours of time off per week, which must be worked during the week in question.
— Working away from the office—telecommuting: where the nature of the work allows, an official may work away from the office for three days, provided he or she has access to the necessary equipment, ensures availability by telephone or e-mail during normal working hours, and does not impose additional tasks or obligations on another member of staff.
— In certain personal circumstances, an official may be authorized by the manager to work remotely for a period of six months, which may be extended by three months in exceptional cases. In such cases, the change of place of employment shall not constitute a change of place of employment within the meaning of Rule 4.8(a) of the Staff Regulations.
— In the case of telecommuting, the methodology for evaluating the employee and for assigning and managing the work should not change.

Flexible working is a popular solution, with some segments of the market displaying steady growth and others losing their appeal.[382] This process depends on many factors, mainly the organization's resource system, the quantity and quality of tasks, and various external influences that affect the way an organization operates. The 2017 UN report reveals that the utilization of compressed work schedules has never been very high and has been steadily declining in recent years within its own organization. Interestingly, sliding working hours also started a serious decline after 2015; however, the trend is logical because teleworking has seen a surge at the same time, as summarized

382 For more on the specificities of flexible working hours, see Pál, 2020a; 2020b.

in the graph below. The graph demonstrates that in 2017, 4123 officials made use of some form of flexible working.[383, 384]

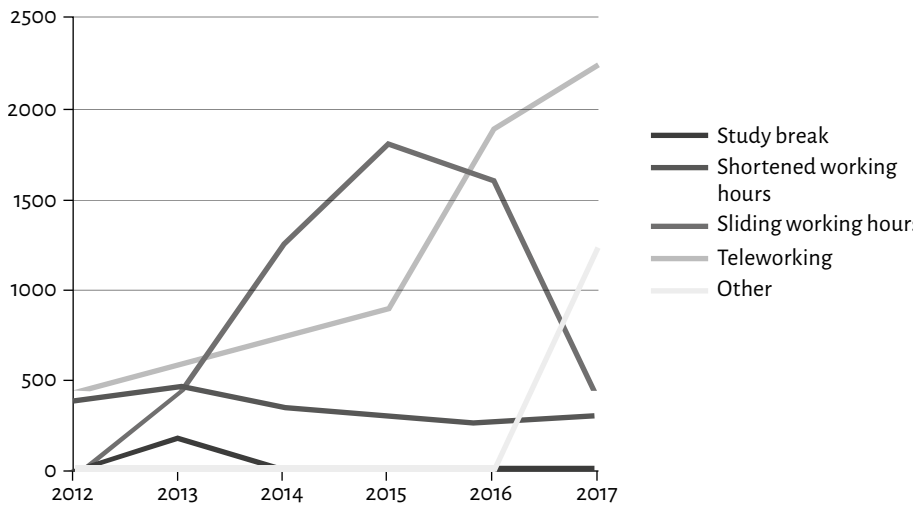

Figure 6. Flexible working arrangements at the UN

The UN has also developed a training app for effective flexible working practices, called Lynda, which is available to all employees in the organization through LinkedIn's e-learning system. The personal skills development training materials help employees with digital transformation, innovation, project management, data analytics, and teleworking.[385] In addition, the organization provides a range of support, including a management toolkit that brings together a range of management development knowledge that is also relevant in Hungary. This toolkit is more of a brief overview for managers; however, it is also available to those outside the organization and can be used as they see fit.[386]

383 The UN does not define the category "other" (seen in the figure). In practice it may basically include specific authorizations agreed with the manager, as well as various special leave arrangements, which are described in detail in the chapter on forms of leave.

384 Own figure. Data source: https://cutt.ly/qSjr9ie (Note: At the time of the graph's creation, in 2021, no data more recent than 2017 was available, and at the time of the manuscript's closure in 2022, the source page was closed to external viewing. Nevertheless, it may be worth monitoring the website for any available up-to-date indicators in the future. See https://hr.un.org/page/flexible-working-arrangements/reports-and-statistics).

385 See http://hr.un.org/linkedin-learning

386 See https://hr.un.org/page/managers-toolkit

1.2. Effects of flexible working arrangements in the civil service

In 2003, the Secretary-General's bulletin established the current conditions for flexible working, and there was a call for the UN to catch up with the good practices of individual states and introduce new working time conditions that could improve the working conditions of employees. In the view of the organization, flexibility is primarily a means of improving staff motivation and morale, and thus of promoting efficiency.

It is easy to question how much the civil service, which values morality and humanity considerably, can afford the "luxury" of allowing, for example, teleworking for its officials, whose individual performance and controllability will likely be reduced. The UN's position on this issue may be somewhat romantic; however, it is not far removed from the pragmatics of public service and the content of the ethos: according to the experts, responsibility and productivity are a matter of attitude, commitment, work ethic, and trust between managers and their subordinates, not a result of physical location or work schedules.[387]

An approach that can be applied to any state civil service recognizes that flexible working provides effective help in enabling the parties to concentrate on the results of the work, such that in practice *a well-chosen work schedule* or form of work *creates the basis for a success-oriented organizational operation*.

Flexible working hours may still be a little scary today.[388] Almost any civil servant in any public administration in any state may think that they would rather not initiate a change in their appointment, lest they be perceived as a problem worker. Managers, therefore, have an extreme responsibility to properly inform, encourage, and organize work to ensure that their subordinates do not fear what will happen if they exercise an entitlement.

In addition to normal working hours, alternative solutions seem to be gaining ground, whether in the public or private sector. Technological developments, other social obligations of the workforce (e.g., childcare and care for the elderly), the different needs of different generations working in the same workplace, the spread of the single-parent family model, and economic sustainability are all small factors that, taken together, point clearly in the direction of change, assuming that organizations are clear about their own operational objectives and are able to achieve open communication within their walls.[389]

387 Office of the Special Adviser to the Secretary-General on Gender Issues and Advancement of Women, no year, p. 4.

388 One reason for this is that the accounting system behind the timesheet, based on which the employer calculates pay, bonuses, and rest periods, often seems cumbersome. For more details, see Pál, 2018.

389 Society for Human Resource Management, 2009, pp. 2–4.

For the public sector, we can see that it is beneficial to create a more flexible working environment and to move away from the long-standing belief that public administration is an immutably rigid system and that civil servants are forced to work in necessarily uncompromising working conditions.[390]

The UN is a good model for flexible working arrangements, as almost all the typical solutions are recognized in some form in its Staff Regulations. There are possibilities for *teleworking, working in a variable location, working core hours, compressed working hours, and part-time working*.[391] An understanding of the functioning of the UN leads to the conclusion that, in addition to these options, staggered working hours without core hours could be applied; however, this would compromise the optimal predictability of the work of the Office and is therefore not a real option. Job-sharing as a possible flexibility option is useful in very few administrative positions; hence, it is understandable why it has not been widely adopted in the organization, and the same applies to "part-year" working, an example of which can be seen in the public education sector, which links employment to a specific period of the year. The *regulations are silent as to* whether certain special breaks are allowed, for example, *to work before a monitor* or for a medical need, but presumably, these can be granted as a result of an individual agreement with the manager.[392] The legal framework, which is a threat to the regeneration of officials, should be reviewed in this respect and the necessary provisions added, as in the present circumstances the people concerned do *not have enforceable legal guarantees*.

Hungarian civil service law recognizes the possibility of *part-time* employment for *officials with young children*, a flexibility so widely used that it is worth mentioning. This option is not available at the UN; a *much less advantageous* arrangement has been put in place at the organization: the appointment can be changed to part-time at *any time at the request of the official*; however, to regain full-time employment, it is necessary to spend at *least one year* working part-time and then apply for the vacant position at the time of the change back in accordance with the appropriate procedure. A regulatory element intended to facilitate this option is that in such a case, the part-time worker will have an advantage in the evaluation process because he or she will be considered an internal candidate.[393]

390 There are tangible business and human benefits in the private sector from the process of resilience, which, if properly applied in the public sector, can bring valuable new lessons to the public administration process. For more on this topic, see Richman, Johnson and Noble, 2011.

391 ST/AI/291/Rev.1.

392 For details on flexible work organization tools, see Society for Human Resource Management, 2009, p. 9.

393 The matter is governed by Regulation 4.4 of the *Staff Regulations* and by Point 30 of *ST/AI/291/Rev.1*.

A thought on the above is worthwhile in addition to the *working timeframe* or *reference period* as a solution, which is an important tool in today's efforts to introduce flexibility into the working pattern. Article 6(b) of Directive 2003/88/EC concerning certain aspects of the organization of working time provides that member states shall take the necessary measures to ensure that the *average working time, including overtime, does not exceed 48 hours* in any seven-day period, in accordance with the protection of the safety and health of workers. The Directive refers to the maximum time during which the "average working time" of 48 hours is to be interpreted as the reference period—this is the same as the legal concepts of the working time frame and the reference period as known in national labor law. Examining the flexible working arrangements in the UN, it may be noticed that there is no similar legal instrument to the reference period, but this does not mean that it is alien to the public sector. In France, for example, the European Court of Justice examined the legality and compatibility with the Directive of the fact that, in the case of officials working for the national police, the current public decree linked the maximum average weekly working time of 48 hours to a half-year in a calendar year (i.e., it applied a reference period).[394] In Hungary, based on Decree No. 30/2012 (III. 7.) on the working and rest time of civil servants, administrative holidays, certain obligations of civil servants and employers, and teleworking, the act on government administration, and the act on public servants (Act 199 of 2011), there is also the possibility for officials to work in a time frame without any additional restrictions.[395] The act on civil service (Act 33 of 1992) does not specify this method of work organization but allows the civil servant to propose unequal working hours, which the employer may refuse only if it would impose a significantly greater work organization burden.[396]

1.3. Regulation of overtime

In public jurisdictions, the maximum duration of overtime is fixed by law to ensure that the worker has the necessary recovery time. Moreover, in the case of the UN, Staff Regulations only stipulate that overtime may be accounted for in the general, security,

394 According to the Court, Art. 6(b), 16(b), and 19(1) of the Directive must be interpreted as not precluding national legislation, which provides for reference periods beginning and ending on specific calendar days for the purposes of calculating the average weekly working time. That legislation must include mechanisms to ensure that the maximum average weekly working time of 48 hours is observed during each six-month period, which is partly divided into two consecutive fixed reference periods.

395 For more on the domestic experience, see Bankó, 2016.

396 *Act on Government Administration* Art. 118; *Act on public servants* Art. 89–90; *Act on civil service* Art. 23/B.

trade and maintenance, and field service categories. In professional and higher categories, only the Secretary-General may authorize overtime in exceptional cases.[397]

The Secretary-General issued an administrative instruction for the UN *field service of the permanent missions*[398] that permits a maximum of 40 hours of overtime per month, but *no* dedicated overtime detail *is available* for the other categories of service.[399] On this basis, it is not clear whether, as an analogy, the field service regulations apply to all categories or there is a legal gap and simply a lack of definition of the maximum duration of overtime in the UN for general and related categories. Maintenance, commercial, and security staff are regulated in this respect, as they are involved as workers in the operation of the organization, and the labor law of the country of establishment applies.

According to the available regulations, officials working in the field service of permanent missions are entitled to one credit for work in excess of eight hours on each scheduled working day, one and a half times the credit if they work on the sixth day of the scheduled working week, and two times the credit on public holidays[400] and the seventh scheduled working day. A Sunday does not in itself give entitlement to double credit: if the Sunday is the seventh working day, double credit is awarded, but if the roster is such that the Sunday is somewhere else in the working week, only a multiplier of one or one and a half times the daily multiplier is awarded.[401] Overtime of less than half an hour shall not be credited.[402] A comparison of the relevant Administrative Instructions and the Staff Regulations also indicates that field officers in permanent missions receive compensatory time off equivalent to the number of hours credited, which they may use at any time during the four months following the month in which the overtime was worked.[403] At the general service and related categories, the officer may receive an unspecified amount of salary supplement or time off for the period of overtime, and at the professional and above categories, the organization will grant time off at an unspecified rate.

397 *Staff Regulations* Rule 3.11.

398 Duty stations where a service of one year or more qualifies for an appointment allowance.

399 The available legal sources state that the UN is kept up to date by the UN Department of Human Resources Management, so it is worth monitoring the website for future changes: https://hr.un.org/handbook/index/9568

400 The Secretary-General is authorized to declare a public holiday in an emergency. In this case, however, it is necessary to declare a day of rest (ST/AI/2000/3 – 3.1 (c) (ii)).

401 ST/AI/2000/3, Section 1–3.

402 ST/AI/2000/3, Point 3.2.

403 ST/AI/2000/3, Section 4.

2. The concept and types of rest periods

The rest period is the period during which the employee is released from his or her obligation to work to exercise his or her right to rest.[404] State and organizational law display some significant differences between types of rest periods and especially types of leave, but the systems are based on similar principles.

In the employment law of the states, a distinction is made *between breaks, daily rest periods, weekly rest days, and public holidays*. Germany, France, Belgium, Italy, Hungary, Luxembourg, the Netherlands, the United Kingdom, and the United States of America require a break of twenty or thirty minutes after a continuous period of work of more than five to six hours.[405] The UN allows officials to take a half-hour inter-sessional break during the main session of the General Assembly and one hour during other periods, but the relevant administrative instruction does not explicitly specify how many hours of consecutive work must be taken but provides for a fixed interval of three and a half hours to take inter-sessional breaks.[406]

Directive 2003/88/EC concerning certain aspects of the organization of working time in the member states of the European Union affirm that the rest period between two days *should not be less than 11 hours* (Article 3).[407] However, in the case of the UN, *there is no detailed rule, no higher legal source, or International Civil Service Commission guidelines on the* mandatory rest period between two scheduled working days.

In European countries, Sunday is the main mandatory weekly rest day, followed by Friday in Muslim countries and Saturday in Israel. The weekly rest day can be enforced in at least two ways: some states allow non-workers to be replaced by other workers, while others require the workplace to be closed completely. Where it is possible to work on a rostered basis on the designated mandatory rest day, workers are generally entitled to a wage supplement, the payment of which is often subject to criminal sanctions.[408]

404 Szászy, 1969, p. 352.

405 Prugberger, 2000, p. 277; https://www.gov.uk/rest-breaks-work

406 ST/AI/2019/2.

407 States are very flexible in the way they use the framework provided by the Directive, which may be because the European legal source itself does not provide a firm anchor. A good example of this is the fact that only in continental Europe has it become common law and included in the specific legal provisions on working time that overtime hours worked in excess of 40 hours per week and the corresponding monthly and annual working time should be remunerated, with overtime worked on weekdays receiving a 50% bonus and overtime worked on weekly rest days and public holidays a 100% bonus. This is not provided for in the Working Time Directive 2003/88/EC (see Prugberger, Jakab and Mélypataki, 2020, p. 242.)

408 Szászy, 1969, p. 355.

The UN legal sources on this issue only state that the normal working week is five days, but the relevant Secretary-General's communication does not specify that it runs from Monday to Friday, nor are there any other sources on this point.

Public holidays in states are holidays and related days on which, by virtue of a statutory provision issued by the designated legislative body, work is not compulsory and, if work is performed in accordance with the schedule, the employee is entitled to a wage supplement. The number of public holidays recognized by the state varies from one country to another, with eleven in Hungary[409] and Germany, where there are differences between the *Länder* according to the predominance of Catholic or Protestant religious holidays in the area. The UN limits the number to ten, with the proviso that if a public holiday falls on a rest day, the next working day must be officially declared a public holiday.[410]

In accordance with the statutes, the General Assembly decided to designate nine public holidays in 2022 and, in recognition of the diversity of its staff, eight additional religious holidays, of which officials are free to choose one for themselves.[411] This solution is of course unique in comparison with other states, given that, unlike international organizations, the state administration is basically united by common national and religious values.

3. The concept and forms of leave

Leave is a longer period of rest, usually involving several working days.[412] The UN employment law makes a distinction between ordinary annual leave, home leave or repatriation leave, and special leave, whereas the states has repatriation leave only for long-term foreign service but includes unpaid leave in their employment legislation, which is not found in this form at the UN.[413] The provisions on sick leave are presented in the chapter on social security (2/III/7).

409 *Labour Code* Art. 102, para. (1).

410 *Staff Regulations*, Rule 1.4. (This happens three times in 2022: New Year's Day falls on a Saturday, which is celebrated on a Monday; Eid al-Adha (Muslim sacrifice feast) falls on a Saturday, hence, the preceding Friday is a public holiday; and Christmas falls on a Sunday, therefore, the Secretary-General has ordered a public holiday on the following day, Monday.)

411 ST/IC/2021/14. Interestingly, this was the last year in which the General Assembly designated public holidays in an information circular, hence, from 2023 onward it will use a different—as yet unspecified—communication channel for this purpose.

412 Szászy, 1969, p. 359.

413 In my view, it is possible to take unpaid leave after consulting your supervisor, but there is no specific provision for this in the rules.

At the state level, the annual leave increases either according to the number of years of service with the employer (loyalty reward) or according to age (considering the time needed to recover). The first solution is somewhat conservative; the second is more rational.[414] The UN follows a very different method, similar to the one used in the Algiers regulation[415] for the calculation method: officials with a *short-term* mandate have 1.5 days of *leave per* month for the whole working time, that is, *18 days of leave per* year. Officials with a *fixed-term* or permanent appointment have 2.5 days of *leave per* month, that is, *30 days of leave,*[416] making the internal rules of the organization similar to those of Article 7 of Directive 2003/88/EC, which, following the recommendation of the Council of the Union in 1975, also sets the annual leave at four weeks. However, *there is no justification for* differentiating the amount of leave according to the duration of the assignments, and the reason for this is not clear from the rules.

The period for calculating leave runs from April 1 of each year to March 31 of the following year; however, only the *United Nations Development Programme (UNDP)* rules provide for the calculation of accrued annual leave, and there are no general rules on this issue.[417] According to UNDP practice, unused leave days can be redeemed when the employment is terminated.[418] In doing so, the organization follows the position of Hungary and the overwhelming majority of the international community, bearing in mind that leave is intended to regenerate the workforce. The legislation in EU countries has clearly taken on a paternalistic character, not allowing the employee the opportunity to decide whether he or she prefers rest or money.[419]

Nor does the organization follow the general rule that the *pro rata temporis* principle does not apply to part-time employees in respect of the duration of leave; that is, no distinction should be made between part-time and full-time employees as regards the period of leave. Among European countries, a similar solution can be found in Italy, where part-time workers in the private sector receive the same amount of leave as full-time workers if they work every day of the week (*horizontal part-time*). If they have fewer working days than this (*vertical part-time*), the amount of annual leave they are entitled to is reduced proportionately.[420] The distinction may of course be justified, as part-time

414 Prugberger. 2000, p. 280.
415 International Labour Organization, 2011.
416 *Staff Regulations*, Rule 5.1.
417 However, the case law of the UNAT also shows that this is a generally practiced legal instrument, as can be seen, for example, in decision 2014-UNAT-396.
418 United Nations Development Programme, 2009, para. (16).
419 Prugberger, 2000, p. 280.
420 *Le ferie nel contratto di lavoro part-time,* Diritti e Riposte; https://cutt.ly/XSjttoc

workers do not use the same amount of energy; therefore, it is not reasonable to assume that they have an equal need for regeneration. As a corollary, *part-time* officials are, according to the content of Administrative Instruction ST/AI/291/Rev.1, already cited, entitled to 1.25 days per month, that is, *15 days of leave*.

The UN thus provides eighteen to thirty days[421] of annual leave for its full-time civil servants, whereas in general[422] public service systems, the number of leaves increases in proportion to the number of years worked.[423] By comparison, in Hungary, annual leave in the civil service is divided into basic and additional leave, the latter depending on the level of seniority.[424] The other UN system organizations do not grant more leave than described above, except that they may grant up to four days of travel time.[425]

The UN, like Western European countries, *does not recognize the paid absence allowance*, which was introduced by a Hungarian legislator in 1995 when the previous Labor Code (Act 22 of 1992) was first amended. In the European countries and the UN, officials are paid their full salary during the period of annual leave, and, following the model developed in the Philippines in 1975, it is common in Western Europe for the state to provide a thirteenth or even a fourteenth month's salary as a bonus for annual leave and certain holidays (typically Christmas).[426] Thus, the legislator ensured that the employee is not penalized if he or she makes use of his or her entitlement to regeneration. The disadvantage of Hungarian private sector employment is that employees do not take the leave to which they are entitled if they still need their full pay. Given that this practice can at most be sanctioned by a labor inspection on the grounds that the employer has not fulfilled its obligation to grant leave, many days of leave may be left unused by employers in this way.[427] This practice is all the less justifiable in this country because, according to the Act on Government Administration, an official is entitled to full salary even during his or her leave days.[428]

421 *Staff Regulations*, Rule 5.1(a) and (c).

422 In this respect, it is interesting to note that in the Western countries, only the United States of America—where one of the UN headquarters is located—does not grant workers compulsory annual paid leave (see US Department of Labor, no year). In such an environment, the UN's otherwise objectionable leave policy is undermined.

423 International Civil Service Commission, 2015, section 170.

424 *Act on government administration*, Art. 128.

425 International Civil Service Commission, 2015, Section 171.

426 In Greece, employees receive a 14th month's pay and a holiday bonus, in Italy they receive a 13th month's pay at Christmas, in Portugal and Spain they receive a 13th month's pay during summer holidays and a 14th month's pay at Christmas (https://cutt.ly/bSjts1U). In addition, similarly, 13th month pay is customary for holidays and/or annual leave in Austria, Belgium, Croatia, the Czech Republic, France, Germany, Luxembourg, Slovakia, Finland, Switzerland and the Netherlands (see e.g., https://cutt.ly/ISjtl9a; https://cutt.ly/xSjtnKB).

427 For more on the critical comparison, see Prugberger, 2000, p. 284.

428 *Act on government administration*, Art. 135 (3) a).

3.1. Annual leave

Annual leave, which is the most important point in the chapter on rest periods, is also worth examining from a historical perspective. The International Civil Service Commission has itself taken decisions on the subject at various meetings on five occasions. At its 7th session (February–March 1978), the Commission examined the possibility of allowing officials to carry over unused leave to the following year and simultaneously acquire the right to cash commutation of the remaining period. As a general rule, it was confirmed that leave *should be taken in the year in which it is due,* to maintain *health and efficiency at work.* However, there have been questions on what should be done in cases where the official is unable to take the leave through no fault of his or her own and the organization is simply unable to grant the leave in question, for example, because of an exceptionally heavy workload, a lack of adequate staffing, or the calendar of projects in the field. In such circumstances, the Commission considered that it should be possible to *carry over* leave with a reasonable period of deferral and a carry-over period.[429] A legal instrument known as the *leave bank*, can be found in national legislation,[430] in which states provide for different levels of carryover days. Hungary does not have a maximum number of days that can be carried over, but as a general rule, the full period must be granted in the year in which it is due, and only in the case of a justified interest in the service may the employer grant it by March 31 of the following year (June 30, in the case of additional leave). [431]

In 1986, in a discussion regarding the financial situation of the UN, it was noted that salaries and additional costs of the service had reached a level that needed to be severely reduced. In 1987, the Commission decided that the 30-day-a-year system *did not need to be changed, and the* issue was not raised again.

In 2006, the Commission carried out a survey on the various payment and rest time allocation schemes of international organizations, based on cost observations. A year later, during the 65th session,[432] the Human Resources Network prepared a

429 Under the Staff Regulations and the provisions on part-time work, full-time officials may carry over sixty days' leave and part-time officials thirty days.

430 French law, for example, provides for a leave account *(le compte épargne-temps)*, which allows the employee to accumulate leave days in excess of twenty-four days by rolling them up, either for the purpose of a later usage or for commutation. A leave account may be set up for employees by agreement between the parties, by unilateral decision of the employer, by collective agreement, or by sectoral collective agreement (see *Code du Travail* – L3151-1 – L3151-4).

431 *Act on government administration*, Art. 129 (2).

432 http://icsc.un.org/compendium/display.asp?type=44.50&tyear=2007

note,[433] as requested by the Commission, which led the Commission to conclude that, rather than adopting detailed rules, it should focus on a broad framework for harmonization while encouraging international organizations to exchange information and share good practices.[434] For my part, I would consider it beneficial for the development of the law to have a *common international code of organization* that would lay down the internal regulatory basis and good practices. In this connection, a formal forum should be set up where good practices can be discussed between the various international organizations.

3.2. Home leave

Home leave has also been on the agenda of several meetings of the International Civil Service Commission.[435] All staff members whose home country or normal place of residence is not in the state of employment are entitled to home leave. According to UN regulations, the leave period is part of the normal period of leave and may be taken once every 24 months or once every 12 months for staff serving in a zone with difficult conditions (category D and E duty stations).[436] Under this scheme, the UN itself provides travel expenses for the staff member and his or her eligible family members, in addition to the conditions already mentioned. As a general rule, the period of home leave shall *not be less than one week*, not including the period of travel.[437]

The UN has laid down numerous detailed rules for the site to avoid abuse, as the cost of return travel is *borne by the organization to a certain extent*, unlike travel during normal annual leave.[438]

Eligibility is subject to *two conjunctive conditions*: first, as mentioned above, the official must have served *outside his or her home country* or be expected to continue to do so for *at least six months* from the date of return. If the official is taking such leave for the first time, the rule is changed such that the six months are counted from the date on which

433 ICSC/65/R3.

434 A/62/30, paras 57–59 (https://cutt.ly/GSjyxqQ)

435 See http://icsc.un.org/compendium/display.asp?type=44.60

436 *Staff Regulations*, Rule 5.2 (a) and (l).

437 *Staff Regulations* Rule 5.2 (k).

438 The conditions of travel include the most direct return economy class flight. The organization will bear the full cost of the approved travel to the destination. Staff members may also apply for a flat-rate allowance, in which case the UN will calculate the cost of the flight based on the shortest route and allocate 75% of the cost to the applicant. The advantage for the applicant is that he or she can plan his or her own travel [see https://cutt.ly/eSjyQcg (old website) and https://cutt.ly/CSjyUPe (new website). Detailed rules can also be found in the *Staff Regulations*, Rule 7.15(g)].

he or she has already completed a year's probationary service, known as "qualifying service."[439] Home leave may be taken under favorable conditions, as officials who, prior to their appointment, were already residents of a smaller municipality in the state where they were assigned and who, because of the duties they have to perform, are obliged to live away from home are not excluded.[440] However, it is a strict rule that a staff member who has changed his or her place of residence so that it is not that of the state of which he is a national loses the right to home leave. This provision, which is in line with the UN, is a narrow-minded and unjustified restriction on the part of the UN because it is possible for anyone to change his or her place of residence to another country, even if his or her relatives go with him or her. If we examine the legislator's objective, the purpose of home leave was to enable an official on international duty to meet his family members at regular intervals. Obviously, this is a value to be protected even if the family is not otherwise resident in the state of nationality at the time of home leave.

Therefore, in *exceptional and compelling circumstances, a country other than the country of nationality may be recognized* as a country of return. However, this requires the staff member to have resided in the country[441] for an extended period prior to the appointment and to maintain close family and personal ties with that country.[442] Furthermore, staff members on probation are not entitled to home leave until their permanent appointment is renewed or their probation period is extended. In some respects, this restriction may also appear unjustified for probationary officials, but it should be borne in mind that this type of leave is only granted to officials whose appointment is expected to continue for at least six months after their return—this is not known by the organization in the case of an official on probation. The other reason is that if there is an urgent need to return home, for example, because of illness or death, family leave is of course available to appointees in this category as well.

The UN has a separate document[443] on fast-track home leave, which, unlike the 24-month normal leave arrangements, allows officials to take home leave every 12 months. In this case, provision 5.2 of the Staff Regulations, according to which *special leave may be authorized by the Secretary-General,* applies. Additionally, the information circular ST/IC/2017/5 on special entitlements for staff members in designated duty

439 *Staff Regulations* Rule 5.2(b)(ii).
440 *Staff Regulations* Rule 5.2(b)(i/b).
441 One shortcoming of the regulation is that "for a longer period" is not defined, which creates legal uncertainty and leaves too much room for the discretionary powers of the employer.
442 *Staff Regulations* Rule 5.2(d)(iii/a).
443 ST/IC/2017/5 and ST/IC/2019/3.

stations[444] and the administrative instruction ST/AI/2019/3 on the allowances to be granted to officials in grades D and E in designated duty stations [445] applies.

This type of legal instrument may be present in the civil service when an official is ordered by the employing administration to go on a long-term foreign assignment. One of the fundamental principles of employment law is that the employer has a duty of care towards the employee and his or her family *(Fürsorgepflicht)*,[446] which implies a duty to inform the employee of the expected duration of employment other than the employment contract. Additionally, in the case of work abroad for more than fifteen days, the *employer* must provide information in writing, at least seven days before departure, on the place and duration of the work abroad, the benefits in cash and in kind, the currency of remuneration and other benefits, and the *rules governing the repatriation*. In relation to Hungary, the detailed rules on repatriation are also provided for in Act 73 of 2016 on foreign missions and permanent foreign service, according to which the secondee is entitled to one travel day each for the first departure to the place of posting and the final repatriation, including transfer to another place of posting, for the first departure to the place of posting within Europe, two-two days for the place of posting outside Europe, and three-three days for Australia and Oceania. In the calendar year in which the secondment begins and ends if the period of secondment in that year is less than nine months, the seconded staff member shall not be entitled to any additional travel days beyond those granted for departure and return home.[447]

3.3. Special leave

In addition to the annual leave, two types of special leave are recognized by the employment law of the EU member states: one type for absences related to professional or employee interests and the other for absences related to exceptional family and personal events (e.g., marriage, birth, illness, and death).[448] The UN follows this general approach in full, with the addition of a special form of absence due to the organization's hazardous missions. Exceptional leave thus includes leave for *research or study*, *family leave* (adoption leave, maternity leave, family sick leave, or leave upon the death of a member of the immediate family),[449] and *actual voluntary military service*, as well as spe-

444 ST/IC/2017/5; ST/IC/2020/9, for more information see https://cutt.ly/bSjyFd9
445 ST/AI/2019/3.
446 Prugberger, 2000, pp. 25 and 217.
447 Act 73 of 2016 Art. 31, para. (7).
448 Prugberger, 2000, p. 280.
449 *Staff Regulations*, Rule 5.3.

cial leave for *rest and recuperation*. With few exceptions, special leave is considered *unpaid leave*, but in exceptional cases, and essentially in the interests of the United Nations, the staff member is entitled to all or part of their salary.[450] Exceptional leave may be requested by the staff member for a period and under conditions laid down by the Secretary-General.[451]

An official who is on government service in a public political office or in a diplomatic or other representative position, or where the leave is incompatible with the need for continuity of status as an international civil servant, is not entitled to take special leave. In exceptional circumstances, unpaid leave may be granted to a staff member who is *temporarily* engaged by his government *to perform technical functions*.[452]

Periods of special leave, whether paid or unpaid, *do not constitute a break in the continuity of service* but *do not count* towards the length of service required *for sick leave, annual leave,* and *home leave, or for the purposes of salary increases, promotion, severance pay,* and *repatriation grants*. Additionally, the length of service required for a permanent post cannot be considered in the assessment of an official's length of service for a period of continuous service,[453] which may seriously impact the official's career. This circumstance is least understandable if the official would otherwise request study leave, as it is usually justified, at least indirectly, in the interests of the organization and arises in the context of the official's self-development obligations. There is no example in the state regulations of such an absence not being counted towards the required length of service.

3.3.1. Family leave[454]

Family leave is partly a form of adoption and maternity leave and partly a family-crisis clause, which allows an official to take a period of justified absence from duty, usually without pay, in the event of illness or death. As different legal systems have differing views on the extent to which an employee is entitled to remuneration in the event of illness, accident, pregnancy, or other incapacity,[455] it is not unique that under UN employment law, such absence is in principle considered unpaid leave. The problem is that we are dealing with private law obligations that are partially confirmed by public law. This

450 *Staff Regulations*, Rule 5.3(a)(ii) and (f).
451 *Staff Regulations*, Rule 5.3(a)(i).
452 *Staff Regulations*, Rule 5.3(b).
453 *Staff Regulations*, Rule 5.3(g).
454 The International Civil Service Commission addressed the issue in four meetings in the 2000s: http://icsc.un.org/compendium/display.asp?type=44.90
455 Szászy, 1969, p. 401.

specificity is recognized by the UN when it empowers the Secretary-General to use his discretionary power to grant paid leave within the scope of family leave. Moreover, as in the case of home leave, the UN bears the travel costs within reasonable limits.[456]

The nature of the rules is essentially determined by the fact that the staff member appointed under the international recruitment system is serving outside his home country or that the staff member to be considered for appointment under the local selection system is serving in a mission outside his home country. For this reason, there is no defined period of leave in family crisis situations, in which the UN practice differs from that of the civil service, because in Hungary, for example, a government official covered by the act on government administration is entitled to unpaid leave for the duration of the care of a relative to provide long-term personal care—expected to exceed 30 days—for a maximum of two years and[457] is exempted from the obligation to perform his or her duties for two working days in the event of the relative's death.[458]

Family leave for the adoption of a child is *available to* any eligible staff member *on full pay.* The UN regulations are extremely vague on this possibility; for example, there is no source on the exact duration of adoption leave. Under Hungarian civil service law, during the period of preparation for a statutory adoption, to meet the adoptable child in person, the official is exempt from his or her on-call duty and his or her work duties for a maximum of ten working days per year, which the employer is obliged to grant him or her in accordance with the conditions laid down at his or her request.[459] It is a marginal issue for both the UN and the specialized agencies, which all specialized bodies and agencies have granted to their officials since 2007, but it is practically a matter of individual discretion to assess and fill in the gaps in the Staff Regulation.[460] There is no reason why the organization should not have at least a minimum requirement for the employer to provide conditions of leave; however, it is a fair decision on the organization's part to fix the full payment of salary.

3.3.2. Maternity and parental leave

As with domestic legal background, UN law also recognizes the legal institutions of maternity and parental leave, following the general practice in international comparison

456 *Staff Regulations* Rule 7.1(a)(vii).
457 *Act on Government Administration,* Art. 157, para. (4).
458 *Act on Government Administration*. Art. 93, para. (2) f).
459 *Act on Government Administration,* Art. 93, para. (2) n) and (3).
460 For details on this issue, see the UN System Leaders Coordination Board: https://www.unsystem.org/content/adoption-leave

that *both the mother and the father may avail themselves of* these types of leave. The internal rules do not list maternity leave among the various types of leave but places it among the social security benefits and related benefits. This solution is not far removed from the Hungarian legislation in terms of dogma either, because if we look at the structure of the act on government administration, we can see that this legal institution occupies a similar place, being included in the additional provisions for government officials who have children and are starting a family. Nevertheless, I will present the application of this legal instrument by the United Nations here, under the heading of "special leave," because I consider that it fits more organically into this part of the text, for the sake of clarity.

Accepting the position of *Nóra Jakab*, we emphasize that the personal circumstances of the employee must, to a certain extent, be considered in the employment relationship, which is an obligation of the states under international and EU law. Accordingly, pregnancy, maternity leave, unpaid leave to care for a child at home, single status, age for young workers and for those entering the protected age, disability, incapacity for work in general and due to illness, care of a close relative, breastfeeding, working with a child, and legal incapacity may be considered as employment-related conditions. All of these may be relevant for the employer's unilateral determination of performance.[461]

In the development of Western European law, *parental leave* was first granted to mothers, and then, based on the principle of equal treatment and opportunities, it was also granted to fathers, who can take it alternately.[462] In contrast to the development of Soviet-Russian real socialist law, its aim is to care for and nurture the child and ensure the child's healthy upbringing. Directive (EU) 2019/1158 of the European Parliament and of the Council of June 20, 2019, on work-life balance for parents and caregivers and repealing Council Directive 2010/18/EU[463] provides at the EU level for the right of workers to parental leave in the event of the birth or adoption of a child. Parental leave can be taken up to the age of the child as defined in the national legislation and/or collective agreements, but no later than the age of eight. This Directive applies irrespective of the type of employment contract (permanent, fixed-term, part-time, or temporary agency workers) and applies equally to all female and male workers. Parental leave is a right that both parents have and must last at least four months. As a rule, all workers should be able to make full use of the leave; that is, one parent should not be able to transfer his or her leave entitlement to his or her parent. However, a transfer may be allowed if the transferring parent takes at least one month of the four months of leave to which

461 Jakab, 2018, p. 101.
462 Mélypataki and Prugberger, 2018, p. 14.
463 See https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32019L1158

he or she is entitled, with a view to encouraging a more equal take-up of leave by both parents. The Directive, similar to its predecessor, sets minimum requirements; thus, EU countries can apply or introduce more favorable provisions.[464]

Given that the fundamental rights associated with maternity leave are internationally recognized, the UN does not differ much from European standards in the content of its own internal rules. The *duration of maternity leave is 16 weeks*, of which the official can take *up to six weeks*[465] or *at least two weeks* before the actual due date of birth. The official shall receive *full pay for* the period of maternity leave. Fathers shall be entitled to four weeks' leave, which may be extended to a maximum of eight weeks in the case of staff serving in non-family-friendly locations or in special circumstances determined by the Secretary-General. The father may use the additional leave granted, either in one year or in stages, after the birth of the child, during which period he shall receive full pay. To avoid any confusion about entitlement to leave of absence, the possibility of taking annual leave is suspended during both maternity and paternity leave.[466] The United Nations has clearly developed legislation in line with Western European legal developments, with the exception of Switzerland, where paternity leave is not recognized, as is the case in the EU Directive, and the Germanic parental leave for both parents up to a certain age, which is characteristic of the German legal system.[467]

Notably, the UN internal legal system fully protects the posts of officials returning from maternity leave.[468] In my view, the UN is performing well in its role as a socially sensitive employer, and it appears to me that I cannot say this only with the disinterest of an outsider: there is general satisfaction among officials in this area because the legal possibilities in this area are being fully used by the organization.[469]

3.3.3. Active voluntary military service

According to the rules laid down by the Secretary-General, a staff member who has passed a competitive exam and obtained a fixed-term contract appointment, who

464 Jakab, 2018, p. 55.

465 To enable the employing organization to meet the requirements of healthy and safe working conditions, if the employed official does not wish to take early maternity leave, she must submit a medical or nursing opinion to the UN Director of the United Nations Medical Director, based on which the medical doctor or midwife treating the staff member shall declare that his or her medical condition permits the continuation of the employment (see ST/AI/2005/2, para. (6). 2).

466 *Staff Regulations* Rule 6.3.

467 Mélypataki and Prugberger, 2018, 19. o.

468 Rule 5.3(a)(iii/b) of the *Staff Regulations*.

469 On this topic, see e.g., Lewis-Lettington, 2021.

has already served one year or has a permanent appointment, and who, in addition, is called up by his or her country of nationality, may be granted unpaid leave for the period of military service.[470] The Convention on the Privileges and Immunities of the United Nations (1946), Article 18(c), provides that officers who are nationals of states party to the instrument shall be exempt from the obligation to serve as conscripts.[471] In the case of nationals of non-acceding states, if their service at the United Nations requires deferment or exemption, the Secretary-General may decide.[472] The rules in force in Hungary and at the United Nations are identical in that actual voluntary military service results in a ban on discharge; therefore, return is guaranteed by the Staff Regulations. However, the UN does not display complete acceptance of the need to return to military service in the interests of the state, because, unlike maternity leave, where care must always be taken to ensure that the official is reinstated in her original post, military service exposes the official to the risk of *redundancy and termination of the post in the* meantime.[473] In Hungary, according to the act on government administration,[474] the employer may not terminate the employment relationship by dismissal during the period of active voluntary military service, given the state's interest in such service.

3.3.4. Rest and Recuperation (R&R leave)

Both the international civil service and the national civil service are structured in such a way that a distinction is made between posts involving no or infrequent travel, or secondment, and posts where an official can be reassigned to a new place of employment on a recurring basis. Responsibility and the amount of work experience that can be gained may also vary with increasing internationalization, and the UN has developed a robust leave system for hazardous duty stations.

The UN *has developed a Rest and* Recuperation *(R&R) leave* scheme for officials in consultation with the International Civil Service Commission.[475] As part of this scheme, eligible officials may take five consecutive days of leave, during which they will receive their full salary or salary equivalent, as well as the period of leave and travel to and from

470 *Staff Regulations*, Rule 5.3(c).
471 See https://cutt.ly/aSjyXyE
472 *Staff Regulations*, Appendix C (b).
473 *Staff Regulations*, Appendix C (d).
474 *Act on Government Administration*, Art. 113 (1) (e).
475 *Rest and Recuperation at the United Nations* (https://cutt.ly/bSjyFd9).

the place of recuperation,[476] which is not included in the annual leave.[477] The benefit is available to officials and volunteers who are appointed or posted to the geographical regions[478] specified in the R&R Regulations. Under the R&R policy, services provided under the program are not available to family members whose presence is otherwise approved by the organization.[479] The list of destinations for rest and recuperation is designated by the UN Office of Human Resources Management in consultation with UN agencies.[480] The rules do not specify its regularity, but they do stipulate that the list of designated locations should be kept up-to-date, and the most up-to-date version should be communicated to officials.

An important concept in this area is the R&R cycle, which is the number of days of continuous service at each duty station that an officer must serve before he or she can request special leave. The length of the R&R cycle depends on the stress factor and how hazardous the location is; thus, the most vulnerable officers can request R&R every four weeks,[481] and those serving in the least problematic locations can request R&R every 12 weeks. War zones, natural disaster zones, and areas with serious health risks can also be added to the list. Before the R&R cycle is established, a risk assessment is performed by the UN to ensure the values communicated in the decision also provide an easy-to-understand indication of the current socio-political situation in the geographical area.

Significantly, the level and the rules for awarding certain allowances vary from one profession to another.[482] For example, in Hungary, among the additional leaves, we can consider rehabilitation leave as an administration-specific leave,[483] while recreational leave is considered a leave specific to law enforcement and defense, which is close to the UN's dogmatic approach.[484] Nóra Jakab, Tamás Prugberger, and Hilda Tóth, in their joint study entitled "The Evolution of Hungarian Labour and Public Service Law after the Regime Change," cited above, highlight that the previous act on public service (Act 23 of 1992) once also provided for a few days off per year as recreational leave, but this

476 According to Art. 4.1 of the *R&R Regulations*, the cost of travel, regardless of the level of classification, is paid by the UN on the shortest and lowest-priced route, economy class.

477 ST/AI/2018/10, Art. 12.

478 ST/IC/2020/9.

479 ST/IC/2020/9, Art. 1.4.

480 ST/IC/2020/9, Art. 2.1.

481 The four-week cycle is authorized by the Secretary-General in exceptional cases and these locations are subject to review every three months (see General Assembly resolution A/67/30, para. (231) b) – https://undocs.org/A/67/30) In September 2020, certain areas of Iraq, Libya, Mali, Somalia, Syria, and Yemen were designated as four-week cycles (see ST/IC/2020/9).

482 Krauss and Petró, 2014a, p. 48.

483 *Act on civil service*, Art. 128 (8).

484 *Act on the Status of Military Personnel*, Art. 109 (4).

was abolished and has since not been reinstated in the provisions of either the new act on public service or the act on government administration.[485]

3.3.5. Study leave

The UN recognizes several types of study leave under internal employment legislation, the primary one being registered study leave, which is the legal instrument of registered sabbatical leave. UN officials may choose to participate in a program of higher education or other training institutions to develop their professional skills, based on an agreement. The training must be related to their position; that is, an administrator, for example, cannot benefit from the organization's benefits if he or she is studying, for example, science or art. The registered study break may be granted up to a maximum of three hours of leave per week for two days per week, subject to the condition that the time spent on leave must be worked off during the week in question.[486]

The scheduled break for external learning activities, or study leave, is comparable to a study contract in both Hungarian and international law but is a dogmatically narrower legal institution because financial support is provided by the UN for such training, and there is no mention of a period of loyalty. According to the doctrine of domestic law, the closest possibility to the UN is the working time allowance under the study contract, as the trainee must be granted the time off necessary to continue his or her studies, is entitled to a salary for the period of the study leave, and is obliged to work the period of the study leave.[487] *The rules of the organization could be improved in this area, as the rules currently available do not differentiate between training for the benefit of the employer and voluntary study.* However, it is unfair to expect the same of the official in one case as in the other, and the system of interests behind the training relationship should be described in the relevant legislation.

A second form of study leave is *sabbatical leave*,[488] similar to that found in Romania or Poland for teachers in higher education institutions and similar in nature to Article 58/A(2) of the Hungarian act on civil servants, pursuant to which the employer, if the researcher has given his or her prior consent to work for an undertaking interested in exploiting the results of the research and development work, pursuant to this Act, may

485 Jakab, Prugberger and Tóth, 2020.
486 See https://hr.un.org/page/flexible-working-arrangements, Point 3.
487 *Act on government administration*, Art. 151, para. (14).
488 See https://hr.un.org/page/sabbatical-leave-programme.

grant the researcher unpaid leave for the period specified in the agreement on the basis of an agreement with the researcher.

These foreign states and the UN agree among themselves that during the period of sabbatical leave, the rightful claimant shall receive his salary. The UN has envisioned sabbatical leave as a program designed to diversify officials' career paths and encourage continuous learning and professional development among the official corps. Under the scheme, officials carry out research or study projects for up to four months on paid leave at a university or other independent institution. Significantly, participation, as at the beginning of the period of employment, is subject to a competitive examination among the candidates.[489]

The third type of study opportunity is "*Summer University*," held every July by the *Academic Council on the United Nations System (ACUNS)* and the *American Society of International Law (ASIL). The* aim of the workshop is to ensure professional development in the study of international organizations, encourage new directions in the study of international organizations, and develop and strengthen links between legal and international relations scholars and the United Nations practitioners. Participants are required to prepare and present a research article of publishable quality. Selected candidates will be entitled to leave with full pay during the workshop and related expenses, including airfare, will be covered by the *Office of Human Resources Management (OHRM) in* addition to ACUNS and the *Department of* Peacekeeping *Operations (DPO) for* field mission staff.

489 For more on creative freedom, see ST/AI/2015/5.

III. Remuneration and other benefits

The UN, as an employer, sets salary scales for the different categories of officials; the appointment or assignment does not include an agreed amount for basic salary. Individualization is possible by means of various allowances, whereby the official receives an allowance according to the place of employment, dependent family members, foreign language skills, and education of dependent children. In all cases, the payment of the time-based salary is made subsequently to the official or, in the event of his death, to his successor.

The salary grade of officials is fundamentally linked to the grade they hold. When appointed, the official will be in the lowest step of his or her grade, and on promotion, this step should be set at a level corresponding to an increase of at least two steps, considering the net salary and the salary steps of the previous grade.[490]

As a rule, international civil servants are paid in the currency of their place of employment, while employees in certain specific categories can choose to receive their salary in no more than two currencies—for example, 65% of their salary can be paid in local currency and 35% in national currency.[491] *This choice is generally available to professional and higher-category staff who are not based in headquarters (New York, Geneva).*

1. Salary scales

As I explained earlier, the International Civil Service Commission considers the "civil service salaries of the richest countries" when setting civil service salaries.[492] There are two reasons for this: first, it is important that highly qualified professionals from these countries apply for these posts. On the other hand, it reduces the possibility of corruption among officials and strengthens their independence. Following the example

490 *Staff Regulations* Rule 3.4
491 ST/AI/2001/1, 1.1–1.2.
492 See https://www.un.org/Depts/OHRM/salaries_allowances/salary.htm

of *Georges Noblemaire*, under whose leadership the secretariat salary system was developed in the League of Nations, this is *known as the Noblemaire principle*.[493] Additionally, the *Flemming principle*[494]—also based on the work of the ICSC—means that the salary rate for similar jobs in the state of the place of employment of the branch is the benchmark rate that the organization can allocate to an official (global rates are set for field officials). The pay system works in this way based on an apparent contradiction, but it is the different grades that decide whether officials receive their agreed salary on the basis of the Noblemaire or Flemming principles.

The ICSC reviews from time-to-time which countries' pay scales should be considered for the Noblemaire principle, so that we know that the United States of America currently has the highest civil service salary.[495]

The salary system is complicated by the fact that, in addition to the simultaneous application of the Noblemaire and the Flemming principles described above, the UN also distinguishes between salary levels for professionals and higher categories whose remuneration is based on the Noblemaire principle otherwise: five levels for the professional grade, two levels for the Director, Assistant Secretary-General, and Deputy Secretary-General grades. Based on these levels, an official in this higher category can earn a net annual salary of approximately USD 37,000 to USD 146,000.[496]

The Flemming principle is the basis for the salary of all officials in the *general service and in related categories*. In practice, this means that the organization checks the salaries of civil servants employed under comparable conditions in the state where the branch is located and calculates the reference amount on that basis. This means that in Hungary, a general service official can take home a net monthly amount of between HUF 3,00,000 and HUF 1,000,000.[497] National officers[498] can receive much higher salaries, ranging from HUF 1,000,000 net to nearly HUF 3,000,000 per month in Budapest.

Officers performing field work in peacekeeping operations also maintain UN telecommunications systems and are therefore considered internationally recruited officials and receive international category allowances. This means that they are not dependent on the level of the salary system in their place of employment but instead

493 Gömbös, 2008, p. 217.
494 See, for example, the case law of the ILO Administrative Tribunal: https://cutt.ly/eSjuqz3
495 https://cutt.ly/OSjutYM
496 Effective January 1, 2019 (https://cutt.ly/YSjupC7)
497 Effective October 1, 2019. (https://cutt.ly/tSjugsb)
498 National professional officials can work in countries that do not serve a UN member, and a minimum university degree is required to perform their duties.

receive a salary structure similar to that of the professional's category,[499] resulting in uniform remuneration in this field service category. There are seven levels of field service pay, similar to the US federal civil service law.[500] Field service staff are employed at a net salary of between USD 36,000 and USD 92,000 per year.[501]

In state remuneration systems, deductions have naturally been made from the salaries of civil servants. The UN is no different, even though the organization is tax-exempt in most member states. However, it may be noticed that both net and gross amounts are mentioned in the salary scales, and this is because salaries can be subject to two types of deductions in the organization: on the one hand, the UN operates its own system of contributions (staff *assessment*),[502] that is, it imposes a somewhat dubious internal tax on the amount of salary it pays itself. Perhaps the explanation lies in the fact that this gives the official the feeling that he is doing his bit for his own work and that his organization is more easily accepted. It may also be intended to ensure that the citizen who excels in classic national work does not become psychologically detached from the average tax-paying employee—but it would make more sense, in my view, to give officials a net amount in advance and to leave the "extra rounds" out of the system. The situation is different if the employing entity is in a country where the UN system does not have tax exemption. In the case of an external liability to pay contributions, the distinction between gross and net amounts is, of course, objectively justified.

What we know about minimum wages and guaranteed minimum wages[503] in most EU member states, does not apply at the UN. The organization has salary scales depending on the level of the official; however, the minimum and maximum amount to be allocated is determined by the host country as a result of the Flemming principle.

2. Special allowances

Special allowances are often available to civil servants in the public sector, typically housing allowances, employer's loans, childcare (e.g., for starting school), and travel allowances. An official at the UN can also count on several types of special allowances: for example, for officials seconded to the same place of employment for at least one year,

499 2022 salary scales for the expert category: https://cutt.ly/kSjulOO

500 https://www.un.org/Depts/OHRM/salaries_allowances/salary.htm (The Field Service Category)

501 Effective January 1, 2019. (https://cutt.ly/cSjubtM)

502 The basis for calculating the own contribution scheme is based on the state wage rates applicable in Geneva, London, Madrid, Montreal, New York, Paris, Rome, and Vienna (https://cutt.ly/nSjuWD7).

503 On this topic, see, for example, Köllő J. (2012) and Government Decree 703/2021 (XII. 15).

in the professional and higher categories and the field service category, the basic salary described in the previous point is "adjusted" by an amount *(post adjustment)* that takes into account the living conditions in the place of employment to ensure that the purchasing power of officials remains proportionately equal in all places of employment.[504]

The social nature of wages is an important element; therefore, the distinction between *real* and *nominal wages* is also a significant element in the practice of states' wage policies. The "consumer basket" is used as a base factor to determine the real value and, on this basis, the minimum wage to be paid. As in France or the Scandinavian countries, this amount is automatically adjusted from time-to-time to account for inflation;[505] the UN also reviews the level of the adjustment allowance on a monthly basis.[506] This legal instrument goes a long way toward meeting the requirement of equal treatment, as it is practically the only way for an international employer like the UN to ensure that its officials receive equal pay for equal work, not only on paper but in reality. The adjustment allowance is only granted to staff in the professional category and above as well as to staff in the field service category, because, we are dealing with a single salary scale in their case, as previously demonstrated, the UN pays the general service staff at the standard salary scale in the state where the service is located, therefore, there is no conceptual need for an allowance adjustment. This may lead to the question of whether this regulatory solution is not discriminatory. In the case of the general service, the advantage of ensuring a salary level in line with local conditions is that it guarantees that the problem of *laesio enormis*, that is, the official cannot request termination of his appointment on the grounds that the salary is less than half the local salary.[507]

In the case of officials with a spouse and/or a child, the residence of the members of the family concerned is not considered when determining the amount of the correction allowance; that is, the allowance is intended to cover only the official's subsistence. The official's dependent spouse and child are entitled to a separate *dependency allowance*,[508] which may also help to alleviate their living conditions.

Additionally, the language allowance, the education grant to facilitate children's education, the special post allowance, the overtime and compensatory time off, the night differential, the mobility incentive packages, the hardship allowance, the non-family

504 See Rule 3.7 of the *Staff Regulations* and https://cutt.ly/bSjuU9s
505 Prugberger, 2000, pp. 289–290.
506 See https://cutt.ly/FSjuHsF (How is post adjustment determined?)
507 On the question of *laesio enormis* see. Szászy, 1969, p. 393, point XIII.
508 *Staff Regulations* Rule 3.6.

service allowance, the repatriation grant, and the recruitment incentive are considered special allowances.[509]

3. Salary increase

A salary increase is possible if *two conditions* are met: first, the *possibility of* a *higher salary level* in the official's current grade, and second, *a positive proposal from* the *senior official*. A key requirement for a salary increase is the provision of adequate performance, the verification of which is governed by Administrative Instruction No. ST/AI/2010/5.[510] During the control period, an "outstanding" or "fully competent" rating is given if the official has exceeded or successfully met performance expectations since the last salary increase.

The service can be rated "requires development" if the official has been rated "partially meets performance expectations" once since the last pay rise and no performance development plan has been prepared. If such a plan has been adopted and, consequently, the official has been specifically rated as "successfully meets expectations," a satisfactory rating may also be given.

The service may be considered unsatisfactory if, as in the above case, a performance development plan has been adopted but has not achieved the maximum result, or if two consecutive evaluations have displayed partial compliance, or if the official has been rated as "not meeting expectations" on one occasion.[511] If this occurs, the salary increase will be withheld by the organization unless the official's manager recommends it with justification.[512] The decision to withhold a salary increase is effective until the date of the next salary increase is scheduled.

If the proposal is made during the period in which the official would otherwise have challenged his or her personal appraisal *(PAS: Performance Appraisal System)*,[513] the manager's proposal must be re-evaluated after the review process is complete. If the performance of the official is rated satisfactory at the end of the process, the salary increase should be granted retroactively to the date on which it became due.[514] From a dogmatic perspective,

509 *Staff Regulations* Rules 3.6–3.20.
510 See: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N10/338/99/PDF/N1033899.pdf?OpenElement
511 *Guidelines on within-grade salary increment*. 1. 0.
512 *Guidelines on withholding salary increment*. 1–2. 0.
513 ST/AI/2010/5.
514 *Guidelines on withholding salary increment*, p. 3.

by challenging the PAS, the official is not challenging the decision to withhold remuneration, as the latter is an administrative decision that is entirely separate from the PAS and can be appealed separately under Chapter XI of the Staff Regulations and Rules.[515]

The starting date for entitlement to the increased salary shall be the first day of the period in which the official fulfills the necessary conditions. The earliest date on which the salary of an official on long-term leave may be increased is the date of his or her return to work or the date of termination of service or termination of appointment; however, the decisive factor is whether the contract is terminated during the month or at the end of the month. The increase cannot be paid to officials whose employment ends in the month in which the increase is due, but must be paid to those who leave their employment at the end of the month in which the increase is due. Of course, in the case of termination of service for unsatisfactory performance, the official shall not be entitled to a salary increase.[516]

In Hungary, until the act on government administration was enforced, a similar system prevailed, which provided a more predictable and less subjective way of building up the salary progression of civil servants. The new salary scales may have had the purpose of bringing about a pay adjustment for those in government service, but this was in fact only to a limited extent. However, career progression, job motivation for government employees in the relevant grade, the career model, and the objectivity of salary determination may be seriously undermined by the current arrangements. This is because most of the possibilities for deviations from the salary threshold are based on subjective decisions by superiors or managers, which may lead to serious uncertainty in the long term as regards the salaries of the people concerned.[517] The system leaves the issue of pay increases equally uncertain, as the official cannot expect a fixed career progression, and any pay increase he or she may achieve is due to personal lobbying, as it would be for private sector employers.

4. Mobility incentive package

The UN mobility package aims to build the capacity of officials to fill vacant positions in international duty stations required for operations in a manner that compensates for the inherent risk in high-risk locations with added support. As part of the program

515 *Staff Regulations*, points 11.1–11.5.
516 *Guidelines on within-grade salary increment*. p. 3. and *Staff Regulations*, Rule 3.3.
517 Kerekes, 2019.

package, the officer will receive educational support, travel and relocation assistance, and support for basic medical examinations. [518]

4.1. Mobility incentive and hardship allowance

The mobility incentive scheme is open to officials in the professional category or higher, field service, and internationally recruited general service officers who are appointed to a category A to E duty station and have served at least five years; they are on their second appointment in an A to E duty station; the period of unpaid leave has not interrupted the continuity of service.

The mobility incentive may be granted to eligible officials with up to five (exceptionally six) years of service in the same place of employment.[519] The allowance amount will depend on the length of service completed by the official, the number of places of secondment exceeding one year, and the risk classification of the new secondment.

Field Service officers who perform their duties in a non-family-friendly duty station shall be entitled to an additional allowance on the grounds that they must perform the entire period of such service in the absence of their family members, unless exceptionally authorized by the Secretary-General. The purpose of the allowance is to compensate for the financial and psychological burden of being away from the family and to encourage service in such locations. As of January 1, 2017, the International Civil Service Commission has decided that Afghanistan, Gaza, Iraq, and Syria[520] are typical locations where the four-week R&R leave cycle applies.

The practical principle of the UN's mobility incentive package is the same as the multiplier system of the Hungarian Ministry of Foreign Affairs and Trade. Examining the salary scale of Decree 3/2017 (II. 28.) of the Ministry of Foreign Affairs on the classification of missions and the detailed rules for the calculation of the basic foreign currency salary and reimbursement of expenses for permanent foreign service staff, we can see that the different risk-rated duty stations are assigned different salary multipliers: low-risk stations are assigned a multiplier of 0–5%, while stations with a high-risk exposure are assigned a multiplier of 40–45%. We would like to add that the multipliers used by the Ministry are calculated based on the UN international risk classification system;[521] therefore, the risk assessment of the different duty stations is almost identical in the UN and in Hungary.

518 https://www.un.org/Depts/OHRM/salaries_allowances/allowances/mobility.htm
519 Rule 3.13 (a/iii) of the *Staff Regulations*.
520 https://www.un.org/Depts/OHRM/salaries_allowances/allowances/nfd201701.pdf
521 3/2017 (II. 28.) Decree of the Ministry of Foreign Affairs Art. 2, para. (1) a).

4.2. Children's education grant

The main purpose of the education grant is to help the children of officials receive a good education. There is also a special provision to support higher education of the official, the rules of which I have already described in detail in the chapter on working time.

In terms of education for children, the UN emphasizes that in certain duty stations, if the local schools do not provide education in the language and culture that the official would like for their child, they may be given a contribution to choose the appropriate educational institution.[522] Undoubtedly, places that have been granted "non-family" status are excluded from the list of places of employment.[523]

Local officials are naturally excluded from eligibility for the education grant; that is, international status is required to qualify for the allowance. Within this, the nature of the contract is irrelevant; that is, both officials with a fixed-term contract, those with a permanent contract, and those with a short-term contract can make use of the contribution.[524]

Study grants can be claimed for a child's full-time education at the general level or higher, normally from the age of five.[525] The allowance ends when the child ceases to be a full-time student or when the child has completed four years of higher education after completing secondary education. No additional support is granted after the child reaches the age of 25 (the last year of eligible studies in which the child reaches that age), except in the case of interruption of the child's education by compulsory national service for more than one year, sickness, or other compelling circumstances.[526]

The grant covers, among other things, tuition fees, school travel, textbooks that are not free, and private lessons. The latter is intended to enable children to effectively participate in studies in a language other than their mother tongue. Private lessons must therefore be given by a qualified teacher who speaks the language of instruction and cannot be a member of the official's family.[527]

Under the Hungarian scheme, an official on permanent secondment may also be entitled to a child-raising allowance multiplier based on the place of service, in

522 ST/AI/2018/1/Rev.1, Art. 1.
523 ST/AI/2018/1/Rev.1, Point 2.9.
524 ST/AI/2018/1/Rev.1, Point 2.2. b).
525 ST/AI/2018/1/Rev.1, Points 2.2(d) and 2.3.
526 ST/AI/2018/1/Rev.1, Point 2.10.
527 Eligible costs are set out in Point 3.1.

accordance with the aforementioned Decree 3/2017 (II. 28.). In determining the amount of this allowance, the Ministry of Foreign Affairs does not essentially assess the risk, but rather the cost of providing an adequate level of education in the foreign country. If the average education is sufficient, an official can expect a multiplier of around 60%; however, if there are difficulties in organizing the teaching work, a multiplier of 200% may be applied.[528]

5. Exceptional job aid

An official may carry out duties in his or her normal post without any increase in remuneration where the associated responsibilities and duties are those of a higher grade.[529] The *special post allowance* does not constitute a pension fund, and the supplement is payable from the fourth month of the post for officials with a fixed and continuous mandate. If an official is assigned to a missionary post or a post in a higher category, the allowance is payable as soon as the post is filled. The amount of the exceptional allowance shall be equivalent to the amount by which the official's salary would be increased if he were promoted from the level to which he is assigned. The Code does not clarify the question of whether the additional responsibilities are imposed by the employer based on a unilateral instruction or whether the parties must agree to extend or modify the duties in this way. Thus, the extension of tasks is analogous in this context; it is most likely to be placed, by analogy, between the legal instruments of employment other than a contract of employment, as known in Hungarian labour law, and the legal instrument of a specific task, as known in public service law, even if it does not share the characteristics of either legal instrument in a purely formal sense.

528 I note that the multipliers do not only depend on the actual severity of the situation; in Brussels, for example, the multiplier is 233%, while in Baghdad it is 65%. This can be attributed to the aggregate foreign representation multiplier, which is used as the basis for determining the foreign exchange allowances based on the livability classification of the locations, in addition to the relevance of the municipalities' location in the external relations system (see 3/2017 (28.II.) Decree of the Ministry of Foreign Affairs Art. 2, para. (3) 3. and 28/2019 (XII. 20.) Decree of the Ministry of Justice on the classification of the Permanent Representation of Hungary to the European Union as a foreign representation and on the detailed rules for calculating the basic foreign currency salary, the reimbursement of expenses, and the foreign currency allowance for permanent representatives, § 2).

529 *Staff Regulations* Rule 3.10.

6. Other benefits

6.1. Overtime compensation and night differential

On average, European countries pay overtime at 50% of the basic wage, while work on rest days, Sundays, and public holidays is paid at double the basic wage, that is, 100% of the basic wage, which can be converted into time off in proportion to the worker's wishes.[530] In contrast, under the Hungarian Labour Code,[531] it is up to the agreement between the employer and the employee, but in practice, it is up to the employer's will whether the employee receives additional pay or time-off. The regulation is in contrast to the majority of member states and also to the previous Hungarian regulation, which is in line with it, and this is a significant social disadvantage for workers, as the low basic wages in Hungary compared to Western European wages can in many cases only be supplemented by the supplementary allowance to a level that can come close to the modest living standards of Western Europe.[532] The act on government administration regulates the issue in a similar manner, in that it does not even provide for the possibility of cash compensation because the employing body can always compensate for extraordinary work by granting the employee a certain amount of time off, which is, as a rule, equal to the amount of extraordinary work.[533] At the same time, the maximum amount of overtime that can be worked is less than that allowed by the UN, both under the Labour Code and the act on government administration, as two hundred and fifty hours of extraordinary working time[534] can be ordered for employees and two hundred hours per calendar year for government officials working full time, representing an average of 20 and 16 hours per month respectively, compared to the 40 hours allowed for UN field duty and permanent duty stations.

As stated previously in Chapter II, overtime is rewarded with a salary supplement or compensatory time off equal to the number of hours credited, depending on the need for the service. In the expert and higher categories, the only compensation for overtime is compensatory time off[535] because the salaries of officials in this category

530 Prugberger, 2017b.
531 *Labour Code,* Art. 143.
532 Prugberger, 2017b, 41. o.
533 *Act on government administration,* Art. 124.
534 *Act on government administration,* Art. 122 (8).
535 *Staff Regulations* Rule 3.11.

are high and the organization argues that it is not in any way proportional to the hours worked.[536]

If a UN official is regularly assigned to night work, he or she must be granted a night shift allowance. As a rule, no night differential shall be granted for work for which the official is in receipt of overtime pay or for periods of leave or travel.[537] The main difference between the UN rules and the Hungarian rules on night pay is that the former requires regularity and the latter only irregularity. Article 141 (1) of the Labour Code states that if the starting time of the daily working time according to the schedule changes regularly, the working time from 18.00 to 6.00 the next day is considered extended night work. At the same time, Tamás Prugberger points out that the wording of the Labour Code is ambiguous and that in fact, is a matter of saying that those who work permanently between 2200 hours and 600 hours the next morning are entitled to a night shift allowance of only 15%, while those who work alternating shifts are entitled to an allowance of 30% because of the recurrent changes in biological rhythm, which place a strain on the body.[538] Article 2 of Directive 2003/88/EC makes it clear that a "night worker" is defined as a worker who regularly works at least three hours of his daily working time during the night.

The Act on Government Administration takes a particular position in this respect, as it considers all work performed between 2200 hours and 600 hours as night work but does not provide for shift premiums for this period, which is similar to the general Belgian legislation.[539] Instead, it merely stipulates that night work may not exceed eight hours where there is a risk of health hazards (which would be conceptually impossible given the time intervals provided for by law) and that a government official may not be assigned to night work from the time she becomes pregnant until the age of three or, in the case of a government official raising a child alone, until the age of three.[540]

6.2. Repatriation grant

The employer's caring function is reflected in this legal instrument, as a repatriation grant must be provided to staff members who are obliged to be repatriated by the

536 A summary brochure published in 2015 even stated that officials in the expert and higher categories are not entitled to any compensation because of this argument. At this point, we are witnessing a legal evolution; it is clear that, regardless of their higher salaries, officials in this category are also tired and need to regroup, hence, there is no reason they should not be entitled to compensatory time off (see https://cutt.ly/USjuMDo).

537 *Staff Regulations* Rule 3.12.

538 Prugberger, 2017b, p. 42.

539 See https://cutt.ly/eSju4cY

540 *Act on government administration*, Art. 127, para. (3) and Art. 152, para. (1) d).

organization after termination of their employment because the place of employment has changed from their country of residence. No repatriation allowance shall be paid to a staff member who is dismissed with immediate effect, who resigns his or her post, who was living in the country of residence at the time service was terminated, or who cannot prove that he has been repatriated.[541] The amount of the allowance depends on the length of service with the United Nations.[542]

Hungarian law does not have a similar legal institution; however, the solution described in Article 21 of Act 73 of 2016 on foreign missions and permanent foreign service is close to it. According to this, immediately after the termination of the permanent foreign service, the seconding head may, by unilaterally amending his or her appointment, transfer the government official appointed for an indefinite period to the appropriate post of the seconding body, if it has one, considering his or her education, professional qualifications, or vocational training.

6.3. Recruitment incentive

In areas requiring a high level of expertise, it is difficult to find suitable specialists, which is why the UN's human resources development efforts provide for a bonus of up to 25% of the annual net salary of the specialist who meets the criteria set by the Secretary-General when he or she takes up his or her post.

7. Social security and related benefits

Employment law in its broader sense must always include social security benefits for employers, which are designed to provide employees with existential security. In this area, there is not really much difference between private-sector employment law and public-sector employment law, as the realization of the need for social security in this respect cannot depend on the form of employment. There are discussions in all the member states and in the international arena, which brings them together, on how to

541 A careful study of the provision in question raises the question of whether the organization pays this grant amount in advance or in arrears—the last option assumes arrears in any case, but this would run counter to the legal policy objective of the grant. I therefore consider that, although there are no detailed rules on this, in the latter case, the official will have to repay the amount received; however, it will have to be paid in advance as a result of unjust enrichment.

542 See https://cutt.ly/0SjiwuL; *Staff Regulations* Rule 3.19

promote the situation of workers, who have limited means of supporting themselves in certain situations, particularly in times of illness and childbirth.

As far as the European Union is concerned, its policy measures have also sought to provide strong social protection through its legal sources, in addition to high employment rates, and through these measures to improve living and working standards and to protect social cohesion, as is its obligation under the preamble of the Treaty on the Functioning of the European Union.[543]

This social safety net is guaranteed in Central, Eastern, and Western European states because of the EU's legislative efforts as well. Its effectiveness will largely depend on the socio-economic situation of the state in question; however, the legal institutions are always in place. As Nóra Jakab also notes, the development of European social policy is closely linked to the European labour law because, in the EU since the 1970s, the employment and social policy objectives, that is, the economic and social dimensions, have complemented each other.[544]

In the UN, I find that, in accordance with the Wim Kok report[545] and the European Pillar of Social Rights, [546] same emphasis has been placed on their internal employment law on promoting women's full participation in the world of work, developing the necessary child and elderly care, and creating the previously mentioned legal institution of registered study leave with the need for lifelong learning. However, it would also be important to ensure that people who have not spent their entire career at the UN are not disadvantaged, for example, in terms of pension entitlements, because the principle of aggregation of periods as a basic coordination concept has not been applied.

7.1. Participation in the UN Joint Staff Pension Fund

In the Germanic model of human resource management, the employment of a civil servant has significant long-term financial implications during his or her service and subsequent retirement years, based on the so-called "care principle" *(Versorgunsprinzip)*. Under the new German legislation, the creation of the post means that there is a proper mandate for the state to cover the costs of employment and retirement throughout the entire period of employment.[547] At the state level, pension reforms have numerous common points. There is usually a tightening of pension eligibility conditions and

543 See https://ec.europa.eu/social/main.jsp?catId=157&langId=hu
544 James, 2018, p. 7.
545 Kok, 2004.
546 See https://cutt.ly/ASjiz9C
547 Linder, 2020, [86].

indexation of pensions paid, and some pension schemes link the level of benefits to changes in life expectancy. Many countries have also opened the possibility of privately owned pension funds, where pension benefits depend on the amount paid in and the return on investment.[548]

The *United Nations Joint Staff Pension Fund (UNJSPF)* is responsible for ensuring that officials receive an adequate income replacement benefit for family members or dependents after retirement, disability, or the death of the official. Interestingly, in 2003, Kofi Annan, the influential former UN Secretary-General, used the Nobel Peace Prize awarded to the UN in 2001 to establish the *UN Memorial and Recognition Fund*. This aims to provide a form of support to the surviving family members of officials who have died in the line of duty. In addition to a one-off financial award, the Fund also aims to preserve the memory of the official through annual events and meetings.[549]

A basic social policy guideline in the EU member states outlines that retired workers and self-employed individuals should be entitled to a pension that provides an adequate income in proportion to the contributions they have made, that women and men should have equal opportunities to acquire pension rights, and that, finally, everyone should have the right to the resources needed to live in dignity in old age.[550] These employee entitlements, which should be recognized in principle, can also be asserted by those serving in the UN, in accordance with the organization's internal rules: staff members whose appointment is for *a minimum period of six months* or who are on short-term fixed-term contract appointments of *six months or more* without a break in service of more than *30 calendar days* shall become members of the UNJSPF[551]—provided that their LOA does not preclude their participation. Established in 1948, the Fund is intended to provide pensions, disability benefits, and death-related expenses to members of the United Nations and twenty-four other United Nations family-related organizations, retired officials, and other beneficiaries.[552]

The UN Pension Fund is driven by *long-term investments:*[553] the entity invests deductions from staff salaries and resources provided by the General Assembly in various asset classes, such as global public equities, bonds, real estate, private equity, infrastructure,

548 Whiteford and Whitehouse, 2006.

549 See https://hr.un.org/page/support-survivors-and-families

550 James, 2018, p. 64.

551 UNJSPF: https://www.unjspf.org/

552 UNJSPF: Member organizations (https://www.unjspf.org/member-organizations/).

553 The Fund's experts are always thinking in terms of long-term investments, because this method guarantees that current market developments, such as the pandemic COVID-19 that started in 2020, will not have a negative impact on payments. (For more information, see https://cutt.ly/cSjibkx).

timber, agricultural land, cash, and short-term securities. The Fund mitigates risk by diversifying across asset classes, geographic regions and countries, currencies, sectors and industries, securities, investment strategies, and market capitalization. The department's latest report was published on February 24, 2022,[554] in which their experts reported on sustainable investments in 2020. In the spirit of sustainability and in line with the Paris Agreement on Climate Change (2015), the Pension Fund has already withdrawn its investment assets from the coal sector as of September 1, 2020, instead of the planned December 31, 2020.[555] The investments are managed by the Fund's *Office of Investment Management*, which is given full authority by the Secretary-General to determine how the investment portfolio is structured.[556] The investment guidelines are reviewed by the department every four years, most recently in 2019.[557]

The pension ranges from USD 78,000 to USD 300,000 (about HUF 22 million to HUF 88 million) per year for experts and above, and from USD 68,000 to USD 200,000 (about HUF 20 million to HUF 60 million) per year for field service.[558] In January 2019, the 2.6 million beneficiaries in Hungary received an average of HUF 122 614 in total benefits (main and supplementary benefits combined) after pension increases, which amounts to HUF 1 471 368 per year.[559] The large difference is due to the application of the Noblemaire principle because, as already mentioned in the previous chapter, the level of benefits for officials in these two categories is set according to the salary levels of the richest countries, which is reflected in the salary and, by definition, in the amount of the corresponding pension.

7.2. Health promotion programs

Workers' health risks are causing serious damage worldwide. Corporate health programs are a tool for managing this variety of operational risks, and the process of setting them up and running them has many parallels with corporate risk management programs. Although such well-being programs are popular in international practice, especially in multinational companies, they are still in their infancy in the private and public sectors.[560] At the UN, there are various ways of contributing to the health of civil servants and reducing the negative consequences in the event of illness or ill health.

554 United Nations Joint Staff Pension Fund, 2022.
555 See https://cutt.ly/pSjiQFI
556 See https://oim.unjspf.org/
557 United Nations Joint Staff Pension Fund, 2019a.
558 Accessed February 1, 2019. (https://cutt.ly/ZSjiIJa and https://cutt.ly/HSjiGnS)
559 Hungarian Central Statistical Office, 2019, p. 9.
560 Szabó and Juhász, 2019, p. 154.

Under the Staff Regulations,[561] officials with a short-term appointment are entitled to two days of sick leave a month, while fixed-term appointees and officials who have completed less than three years of continuous service may take sick leave at full pay for three months within a twelve-month period and at half pay for a further three months. Officials who have completed at least three years of continuous service or who have been with the organization for at least three years without interruption shall be entitled to sick leave with full pay for nine months and half pay for nine months in any four-year period. The periods specified may be exceeded only with the permission of the Secretary-General, failing which the official shall be deemed to be on absence without leave. Officials shall be entitled to seven working days of unexcused sick leave per year, which may be used for family emergencies (e.g., caring for a sick child).

Every year, 600 million working days are lost in the European Union owing to work-related health reasons. Most problems are caused by accidents, musculoskeletal disorders, and stress at work.[562] This is no different in proportion to the UN,[563] which is why it has a *Joint Medical Service* in Nairobi,[564] and care points around the world to ensure that officers can receive direct care in almost any duty station.[565] If a location does not yet have a branch of the Medical Service, the organization will arrange with local providers with sufficient capacity to receive its officers on a rota basis (such delegated care points are usually found on the African continent.)[566]

In addition to the stress and typical risks of field service, a typical problem for the UN, given the large administrative apparatus, is sedentary work and lack of movement. Continuous physical activity improves concentration and mood, both momentarily and permanently, and has a protective effect; it makes the hippocampus and prefrontal cortex larger and stronger, thus protecting against incurable diseases such as Alzheimer's and dementia. Despite all these benefits, partly because of the extra costs involved and

561 *Staff Regulations* Rule 6.2

562 Szabó and Juhász, 2019, p. 155.

563 The UN has made the mental health of civil servants a priority, if only because in 2017, 35% of staff reported some form of mental health impairment, and of these, the number who sought help from a professional was negligible (see https://hr.un.org/article/mental-health-workplace-priority-organization). But proving it as a workplace hazard and holding employers accountable for its consequences is still difficult. In Hungary, the Act on Occupational Safety (Act 93 of 1993) has included stress as a type of psychosocial risk in Art. 87, para. 1/H, since January 1, 2008. According to this provision, "psychosocial risk is the sum of the influences (conflicts, work organization, work schedules, insecurity of employment, etc.) affecting the worker at work, which influence his or her reactions to these influences and, in this context, stress, accidents at work, or psychosomatic illnesses."

564 See https://hr.un.org/page/joint-medical-service

565 See https://hr.un.org/page/medical-services-around-globe

566 See https://hr.un.org/sites/hr.un.org/files/MSD_Dir_Webpg_2020-8_UN_Clinic_0.pdf

partly because of time constraints, the 2010 Eurobarometer survey showed, for example, that only 5% of the Hungarian population took part in physical activity five times a week, but the proportion of people who exercised but not daily was still only 18%.[567]

In Hungary, the public sector does not provide the kind of comprehensive and continuous health care that we have at the UN. Non-civil servants in the public sector may be entitled to non-mandatory check-ups as a benefit; however, if they fall ill, the employing public administration does not guarantee the necessary care. However, this is not just a question of whether the budget of Hungary or the UN provides a proportionately larger amount for health care—while in a state the social security contributions are deducted from the salary of the civil servant and the state is therefore obliged to provide the care, in the case of the UN the cost of health care is not paid to any state body and the organization must therefore naturally provide the necessary services.

Additionally, there is also a[568] health and life insurance scheme[569] within the organization as part of the benefits package. The scheme is open to all officials, regardless of their type of appointment, who have completed at least three months of service with the organization. This type of benefits package is also not common within the public service.[570]

7.3. Compensation for damages arising from employment

The UN is based on the fact that, with the exception of officials who are specifically engaged in administrative duties, the lives of officials are often put at risk, and rules have been drawn up to compensate for this and to meet the needs of their dependents. The organization, as the employer, has two named specific liabilities to employees for compensation under the Staff Regulations. The organization is liable for any damage caused to the employee in connection with the work (accident at work, occupational disease, or death arising out of employment) and for any loss or damage to the employee's personal effects arising out of the employment.

To adjudicate on liability issues in cases of ill-health, accident, or death, the Secretary-General has established an *Advisory Board on Compensation Claims*,[571] whose composition follows international standards for employee and employer representation. The voting membership, appointed by the Secretary-General, is divided in a three-to-three

567 Szabó and Juhász, 2019, p. 160.

568 The Geneva and Vienna headquarters have their own health and life insurance schemes, with universal conditions for the other branches.

569 ST/IC/2019/14 and ST/AI/2015/3 (archived document).

570 For more on the Hungarian health insurance system, see Tóth, 2010.

571 *Staff Regulations*, Appendix D, Art. 1.4.

ratio between employer representatives and people delegated by employee representative organizations. In the case of *de minimis* claims,[572] the delegate appointed in place of the Board decides, but if the claim subsequently exceeds the de minimis threshold, the matter is referred to the Board for a new decision, and the previous decision is not binding.

The Medical Services Division[573] has an advisory and opinion-forming role on health and death matters and provides expert advice to the Board. Practically, the Division performs the same function in such proceedings as a medical expert or an occupational safety expert in the public justice system.

The Staff Regulations are vague about damage to employees' belongings brought into the workplace, stating that the organization must reasonably compensate for such damage.[574] In Hungary, this form of *custodial* liability applies if the employee stores the item in a locked place provided by the employer, if the item is expressly handed over to the employer for safekeeping, or if the item is not prohibited by the employer from being brought into the workplace.[575]

An administrative instruction from 1993[576] on the subject details the UN's responsibilities. According to this, the form of liability is conditional; unlike the domestic solution, it is not *custodial in* nature, that is, the employer does not have to retain the value of the liability for it to exist. The event giving rise to the damage must occur either in the course of the official's duties, when the official is on a site identified by the organization as dangerous or hazardous for the purpose of his or her assigned work and the risk there gives rise to the loss or damage, or when the loss or damage occurs during official travel.[577] Liability shall be excluded if the damage is caused by the injured person or if the damage occurs in a private vehicle.[578] The amount of compensation does not only depend on fault or contributory negligence; the relevant administrative instruction lists in detail the maximum amount of compensation that can be awarded for each item. However, given that the rule was promulgated by the Secretary-General in 1993 and has remained in force unchanged since then, problems may arise as to the applicability of the amounts in terms of inflation.[579]

572 *Staff Regulations*, Appendix D, Art. 1.6.
573 *Staff Regulations*, Appendix D, Art. 1.7.
574 *Staff Regulations*, Rule 6.5.
575 Prugberger, 2000, Annex 9.
576 ST/AI/149/Rev.4.
577 ST/AI/149/Rev.4, Point 3.
578 ST/AI/149/Rev.4, Point 4.
579 The UN the phenomenon can be observed that, because some of the sources of law are essentially comprehensible in their content and do not require updating of the legal issue in question, the source itself is not amended. Consequently, there are several cases of incorrect references to, for example, the Staff Regulations themselves, indicating an older version of the Staff Regulations.

7.4. Secondment and relocation expenses

A seconded official is posted by the organization to another duty station to carry out duties within the scope of his or her duties on a temporary basis. Moreover, a distinction is made between inter-service transfers and inter-organization transfers, both of which are intended to enable the organization to deal quickly with a shortage of staff or skills.

In European law, in the case of a posting, we are talking in dogmatic terms about a temporary modification of the employment contract, where the original employer continues to exercise the employer's rights to give instructions.[580] However, because this temporary modification of the employment contract is made unilaterally by the employer, the posting is clearly based on an employer's instruction.[581] This is no different in the UN—this is why it is reasonable for the organization to bear many of the expenses incurred in connection with the secondment and transfer, in particular, the travel expenses of the official and, in certain circumstances, those of his spouse and children, the settling-in grant, and the relocation of the official or his spouse and children who may have died during the secondment or transfer. The organization's practice in this area is essentially the same as that of the services provided by states to their officials on secondment or transfer.

7.4.1. Posting

In the European Union, the posting of workers is a very widespread and well-established legal instrument, regulated by Directive 96/71/EC of the European Parliament and of the Council of December 16, 1996, concerning the posting of workers in the framework of the provision of services. The amendment to the Directive was adopted by the European Parliament in May 2018, after seven rounds of conciliation, and the deadline for transposition of the amending Directive 2018/957/EU was July 30, 2020. The main problem with EU case-law is that employment and social security legislation can be circumvented, for example, by rotating postings or setting up so-called letterbox companies,[582] which is why it was very necessary for the amendment to provide for the alignment of posted workers' pay with that of local workers.

580 For more on the domestic dimension of the topic, see Zaccaria, Berke and Bankó, 2017.

581 Prugberger, 2013, 99–100. o.

582 A letterbox company is set up to take advantage of the posting rules. For example, a French company sets up a company in Hungary or Portugal and "posts" its employees to work in France (see Parliament's Office, 2019).

While posting is a common practice in EU member states, often leading to abusive practices, in the UN it is an essential element of its operation, and the organization cannot afford to be ambiguous in its application of the law in this regard. We have seen an imprint of this in the chapter on salaries, where we introduced the *Noblemaire* and *Flemming principles*, which guarantee officials that, whatever the place of posting to which they are assigned by the organization, the minimum standards specific to the employer are maintained.

With the exception of circumstances when the state has some kind of representational function, we generally notice that public sector employing bodies reduce their costs to a minimum in the case of *short and long*[583] missions and official travel at the state level. The UN also sets the minimum necessary,[584] and considers travel, transfers, per diem, and other incidental expenses (e.g., telephone, local transport, special equipment, luggage storage) as part of the costs, as is the general practice for states.

7.4.2. Settling-in grant

The grant is intended to assist professional and higher-level field officials or internationally recruited officials, other than those on temporary assignment, who are appointed for one year or more to a place of employment other than their current place of employment, beyond the commuting distance and involving a change of residence. The allowance comprises two components: a daily subsistence allowance of 30 days and an amount equivalent to one month's net salary.[585] Where the Secretary-General considers it necessary, he may fix a different amount from the normal daily subsistence allowance or, in special circumstances, extend the duration of the settling-in grant up to a maximum of 90 days, with the possibility of paying 60% of the amount initially due for a period of more than 30 days. This legal instrument is unique in international organizations compared with other states, the reason being that it is intended to be used primarily for tasks that may be carried out in the context of displacement, which is not a feature of the civil service.

583 Long-term posting can be equated to a referral, as was the terminology used in the past in this country, while short-term posting is the actual posting itself.

584 *Staff Regulations*, Rule 7.6.

585 *Staff Regulations* Rule 7.14.

IV. Fundamental rights and obligations; liability system and disciplinary measures

The basic rights and obligations of the organization and the official apparatus employed, whether a state or international public service, are shared. These are the legal instruments that provide guidance on the behavioral obligation that the parties owe to each other even in the absence of any specific legal regulations.

Public service officials are always under the supervision of a superior body or the manager responsible for their management; in the case of the UN, the authorized representative of the employer is the Secretary-General, who basically exercises the right to give instructions necessary for the day-to-day work through the managers. While the employer must ensure that the right to direct, instruct, and control is exercised in accordance with the objectives, efficient functioning, and safety of the organization, officials are also required to act in the best interests of the organization and demonstrate exceptional loyalty, integrity, independence, and impartiality in the performance of their duties.[586]

If the official fails to comply with the basic rights and obligations or the specific legal requirements, the organization may impose adverse legal consequences, disciplinary proceedings, and, in the last resort, dismissal. In relation to disciplinary legislation, it is common European practice to utilize disciplinary responsibility to counterbalance the privileges that come with the public service position; therefore, the culpable breach of duties and obligations is at the center of every case. None of the state regulations seek to exhaustively define disciplinary offenses; in individual cases, it is within the competence of the disciplinary authority or council to decide whether some behavior falls within this scope by considering the circumstances. The UN system is similar to this; basically, the organizational legal document related to disciplinary procedures and sanctions was created in the conceptual framework of classified breach of obligations. Overall, the disciplinary systems apply

586 *Staff regulations* Rule 1.2. and Regulation 1.2.

the same approaches regarding procedural deadlines, types of punishment, stages of the procedure, and the principles of the procedure, displaying differences only in minor sub-issues.

1. Basic rights and obligations of officials

The civil service legislation usually regulates the rights and obligations of officials only in basic terms in Western European states with developed civil service culture and traditions, and this is no different in the UN regulatory practice. The detailed regulatory background is provided by the civil service regulations drawn up by each civil servant or civil service faculty and approved by the relevant minister, the government, the head of government, or possibly the head of state or parliament.[587]

The rights and obligations existing in the public-service legal relationship are similar in nature to what we find in the labor law of the private sector: thus, the employer is responsible for creating healthy and safe working conditions, assigning tasks to employment, ensuring the acquisition of knowledge necessary for work, providing appropriate information, instructions, and guidance, and the obligation to pay wages and contributions. The employee is obliged to show up at the place of work at the prescribed time in a condition capable of working, to fill his or her working hours with work, to cooperate with his or her colleagues and superiors, to preserve company secrets and information, to perform his or her overtime in exchange for compensation, and to participate in further training prescribed by the employer.[588]

Tamás Prugberger classifies the rights and obligations of employees into four large groups. Therefore, the obligations detailed above belong to the general category; however, it is worth dealing separately with the right and obligation to refuse an instruction, the conditions for fulfilling an instruction to work outside the scope of work, and the conditions related to establishing a further employment relationship in terms of rights and obligations. All this also applies in the public sector, with the exception that some special circumstances characteristic of the legal relationship still affect the system of rights and obligations. Thus, during the performance of both international and national public service legal relationships, it is important to consider the laws, instructions of superiors, and public interest to the utmost extent; demonstrate behavior worthy of

587 Prugberger, 2000, p. 271.
588 See more in Prugberger, 2000, pp. 263–267.

public office both at work and in private life,[589] be an impartial-fair-cooperating administration, and preserve state and service secrets.[590]

Although it is a general phenomenon that civil service laws regulate the necessary rights and obligations in rather broad terms, in the case of the UN we can see that they provide even less support to officials; the basic principled approach known in the Hungarian regulations is also reflected in the Staff Regulations. However, *conflict of interest* is regulated in fourteen paragraphs within Article 95 in the Act on Government Administration; in the Act on the Legal Status and Remuneration of Judges within Articles 39–42 a total of nineteen paragraphs are devoted to the question; and the act on the status of military personnel (Act 205 of 2012) examines the possible cases and legal consequences through a total of twelve paragraphs in Articles 80–82. In comparison, *two paragraphs of the UN Staff Regulations* deal with the issue, furthermore, only broadly outlining the emerging legal situation—namely, what we learn from them is that if the official's personal interests come into conflict with the exercise of his or her functions in the organization, she or he must report this to the head of the office and everything must be done to resolve the situation.[591] Additionally, the regulations stipulate a[592] financial disclosure statement for positions above the director level.

On the one hand, the reason for this solution may be that the UN is not nearly as diverse an organization as the Hungarian public service system; thus, possible personal consequences are easier to see. In addition, a separate office within the UN deals with conflict-of-interest matters. The *United Nations Ethics Office* was set up by the organization to provide advice and information to the officials who contact it, typically under the obligation of confidentiality in matters of conflict of interest. The office considers all issues related to employment as a source of conflict of interest, primarily activities outside the organization, financial conflicts of interest, rewards, gift events, favors, any issues potentially violating integrity, promotion situations, and risk assessment procedures.[593] If we compare the content of the Staff Regulations and the practice of the Ethics Office, we do not feel a lack of regulation; even the UNDT consistently applies the

589 In the case of the UN, for example, there was an official who was dismissed by the organization in 2017 because he abused his family members (see https://cutt.ly/ySjiLHq).

590 Prugberger, 2000, p. 272.

591 In the Hungarian legal system, the equivalent solution is that if private interests collide or conflict with public interests, or if the official detects such a conflict, he or /she must report it to his or her manager. In case of a milder conflict of interest—if he or she can handle them separately—he or she can perform his or her tasks independently, but as a guarantee, he or she must ensure the publicity and review of the procedure and decisions and the appropriate legal remedies (see Veszprémi, 2012, p. 49).

592 *Staff Regulation* Rule 1.2. and provision "Conflict of interest."

593 See https://www.un.org/en/ethics/advice/index.shtml

conflict of interest legislation. One of the most recent decisions to raise the issue was *Grosse v. UN Secretary-General on October 1, 2020, in which the plaintiff official challenged in court a disciplinary measure* imposed on him for unauthorized non-organizational work.[594] The disciplinary action for the official working in the professional category (P-3) was a written warning, a five-grade reduction, and a fine of three months' net salary.[595] As we can see this time and in the highlighted cases at the end of the next chapter, the cumulative application of adverse legal consequences is not alien to the UN system; therefore, the practice of the organization in this area matches the trends known in European states.

1.1. The role of judicial practice in determining fundamental rights and obligations

In all cases, the Staff Regulations of the international organization provide the normative basis on which the internal courts act. According to the statute of the UN court, the body cannot directly apply the UN Charter or the Universal Declaration of Human Rights in its proceedings, and it has the right to review and even annul administrative decisions—unlike legislative products. In addition, the UN court judges according to the *stare decisis* principle to the extent[596] that the first-instance court is obliged to consider the previous decisions of the[597] appeals court in similar cases; *therefore,* the decisions can always contain guiding insights and principles that can later serve as a starting point for judicial and legislative work. In this regard—but not absolutely—the influence of Anglo-Saxon precedent-oriented jurisprudence prevails in the organization's internal legal practice. Below, we present some decisions that are relevant to current jurisprudence.[598]

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594 *Grosse* of the International Officials Automobile and Motorcycle Association *(CASBIA: Association Coopérative des Automobilistes et des motocyclistes des Secrétariats et Bureaux des organizations Internationales et des institutions Accrédités),* for which he received an annual allowance of 21,000 Swiss francs.

595 UNDT/2020/175.

596 The cornerstone of the precedent system is the *stare decisis* principle, which states that courts are bound by certain decisions and cannot deviate from them. In practice, it means that the judge must somehow reflect on the previous decision. Specifically, if the party or its representative refers to it, but also if a specific case is inextricably linked to the underlying case (landmark case) (see Ződi, 2021, [24]).

597 Igbinedion case: UNDT/2013/024. and 2014-UNAT-410.

598 *Zoltán Bankó* and *Georgina Naszladi*, in their work on fundamental labor law protection, referred to below, point out that the hierarchical characteristics of labor law relationships often put employees in a vulnerable position; therefore, it is especially important to think about the protection of fundamental rights in this context. Georgina Nasladi explained in her PhD thesis that the enforceability and protection of fundamental rights in the world of work, which can be directly linked to labor law, is of paramount importance from the perspective of employees and the state's obligation to protect

1.1.1. Freedom of Speech: The Crawford Case (1953)[599]

In a 1992 decision of the Hungarian Constitutional Court, it apostrophized the freedom of expression as a complex set of laws that enables the individual to participate in social and political processes. "Historical experience indicates that every time the freedom of expression was restricted, social justice and human creativity were harmed, and the possibility of the development of human potential was reduced," says the decision.[600] Given that it is an internationally recognized fundamental right, it receives the same protection at the UN as in the jurisprudence of any other legal state.

Accordingly, in the case where American citizen Crawford initiated proceedings before the UN internal court because his legal relationship was terminated, the court found that the Secretary-General made his decision on an illegal basis—he dismissed Crawford from his position because he knew that Crawford had been a member of the Communist Party for a year. Even then, the regulations stated that *officials do not have to give up their political position, regardless of this, they are expected to work independently and impartially.*

Freedom of expression[601] is still guaranteed by the Staff Regulations in accordance with international standards.[602] The legal source states that as long as membership in a political organization does not require an act contrary to the regulations, such activity is permitted.[603] This is consistent with the finding of the Hungarian Constitutional Court that the freedom of association has an essential relationship with the freedom of expression. The free establishment of the association and the exercise of the association's activities without coercion also ensure the freedom of belief, conscience, and expression of opinion.[604]

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institutions in this direction, and indirectly shows a picture of the operation of economic and employment policy. (See Bankó and Naszladi, 2015; Naszladi, 2016, p. 177).
Applying the same in the case of the UN, it can be said that the basic rights protection measures that stand out from judicial practice and the set of rules provide a clear insight into the situation of organizational employment policy. On the subject, see also Zaccaria, 2021.

599 Crawford vs. the Secretary-General of the United Nations. UNAT 42. (Case No. 26).

600 30/1992. (V.26.) Decision of the Hungarian Constitutional Court.

601 See e.g., Universal Declaration of Human Rights Art. 19: *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.*

602 *Staff regulations* Rule 1.2. (f).

603 *Staff regulations* Rule 1.2. (u).

604 6/2001 (III.14.) Decision of the Hungarian Constitutional Court.

1.1.2. Equal Treatment Requirement: The Oglesby Case (2019)[605]

A former official of the United Nations, whose legal relationship ended in December 1998 after twenty-five years of service, married his same-sex partner in New York in April 2018 after a thirty-six-year partnership. At the time of the marriage, the former official was 79 years old and was being treated for heart problems.

The legal problem arose from the fact that the official applied to the UN Pension Fund the day after the marriage, requesting that any possible benefits be paid to his surviving spouse in the event of his death. However, based on the regulations of the Pension Fund, for the use of widow's benefits

a) At the time of termination of the legal relationship, the parties should have already had a valid marriage,

b) Although in 2016, the regulation extended the eligibility conditions to spouses and registered partnerships, this new rule does not have a retroactive effect.

As a result of the above, the applicant could not benefit from the widow's benefits because, at the time of the termination of the legal relationship, same-sex partners could not validly marry each other in any country in the world, and the civil partnership amendment itself has only been applicable since 2016. Based on this, the Pension Fund advised the applicant to initiate the allocation of a life annuity in favor of his spouse, which, however, can be claimed eighteen months after the marriage. Because of the applicant's medical condition, this solution was not an option.

During the court proceedings, it was established that the regulations unlawfully discriminated against people living in same-sex relationships, but *the internal court does not have the right to act directly based on the UN Charter or the Universal Declaration of Human Rights, nor does it have the right to annul the regulations or oblige the General Assembly to enact new legislation.* In such situations, the court's decision can be a warning to the General Secretary or the General Assembly to change the content of a rule, but the court cannot do more.

1.1.3. Non-retroactivity and protection of acquired rights: Lloret Alcañiz et al. (2018)[606]

The decision regarding the unified salary scale that came into effect on January 1, 2017, was made regarding the protection of acquired rights. With the amendment of the

605 2019-UNAT-914.
606 UNDT/2017/097 and 2018-UNAT-840.

salary rules, following the decision of the General Assembly, the relevant officials must expect a six percent net salary reduction over six years.

The officials initiated proceedings in the internal court because, according to their point of view, the salary they have already received belongs to the category of "acquired rights," the withdrawal of which is illegal and goes against the principle of non-retroactivity.

The court of first-instance ruled that the salary reduction was illegal and ordered that the six percent reduction not be implemented in the salaries of those involved. At the same time, the court was unable to annul the decision because it was considered not an administrative decision but a legislative one; therefore, only the General Assembly could decide on it.

The court of second instance found that the case raised serious questions about what rights the organization must unilaterally determine the amount of the salary. The appellate panel discussed this case in full session, and the majority argued that this decision was more of an administrative one with "side effects" than a legislative one.

The court next examined whether the administrative decision contradicted the provisions of the internal legal sources on the withdrawal of acquired rights and determined *that only the remuneration received by the official for work already performed is considered as such*. The remark in the appointment that the salary may increase over time does not give rise to a legitimate claim. The parties concerned thus fell short of the total amount of remuneration established up to that point in the future for work that had not yet been performed because of the unified wage scale, and the negative retroactive effect could not be established according to the court's point of view.

In terms of the rules set forth in the court's ruling, this case is largely comparable to Hungarian Constitutional Court Case 3078/2017 (IV. 28.).[607] The Constitutional Court argued that the protection of acquired rights does not justify the annulment of the challenged legislation. The petitioner defined the right to a specific, fixed amount of salary as an acquired right, the reduction of which causes a *violation of the principle of respect for acquired rights*. However, according to the position of the Constitutional Court, the fact that during the structural reform of the local bodies of the state administration, the legislator requires the use of a uniform salary scale for the government officials who become part of the government offices cannot be related in respect to the acquired rights.

607 3078/2017. (IV. 28.) Decision of the Hungarian Constitutional Court.

1.1.4. Right to a fair trial: The case of Subramanian et al. (2016)[608]

The officials serving in New Delhi wanted to appeal the decision of the organization's *Office of Human Resources Management (OHRM)*, in which the organizational unit informed them that the salary level of locally recruited officials was above the 2013 Indian salary level. *(This is a problem because, as we know, due to the Flemming principle, the salary of local officials is adjusted to the domestic salary level.)*

The concerned officials asked the court of first instance for a deadline extension when it was thought that they would file a lawsuit against the administrative decision, but the court did not decide on the deadline extension but on the merits of the basis of the lawsuit and rejected it *ratione materiae*.[609] The appellate court ordered a new trial because, in its opinion, the first instance *exceeded its authority and violated the officials' right to a fair trial when, based on its own discretion, it transformed the parties' application for an extension of time into an action that contested the legal basis* of the OHRM's decision, which was subsequently rejected without scheduling a hearing.

In connection with another case, we can recall that the Hungarian Constitutional Court, in its decision 7/2013 (III. 1.), confirmed its previous practice regarding fair court proceedings, according to which "the *requirement of a fair trial*" also encompasses the enforcement of procedural guarantees and represents a quality that *can be achieved by considering the proceedings as a whole and the circumstances just to judge*. This vision is also reflected in the act of the judgment No. 2013-UNAT-302.

The concerned official filed an appeal against the disciplinary decision, but at the same time, the court of first instance ruled that the accusations were unfounded regarding the immediate dismissal and the accused's right to a fair trial was violated because the victim of the five-degree sexual harassment did not appear at the first-instance trial and thus no confrontation could take place.

At second instance, however, a judgment upholding the administrative decision was issued with the reasoning that in a harassment case, because of the mental burden, it is not always expedient to insist on a confrontation, and *failure to do so does not necessarily mean that the right to a fair trial is impaired, as long as the accused has every opportunity to present his defense*. As the accused in this proceeding was fully aware of all aspects of the proceeding and the accusations brought against him, including the

608 UNDT/2015/025 and 2016-UNAT-618.

609 The term means substantive jurisdiction, that is, the international court can only rule on cases that raise questions of fact and law defined in the founding document and/or in which one or more parties have agreed to adjudicate. (Proells, 2018).

identity of the victims and their allegations, no violation of the right to a fair trial could be established.[610]

1.2. Performance of officials

The UN's performance evaluation system is based on the division of responsibility between managers and subordinate officials, the starting point of which is a jointly created work plan. During the performance evaluation, the manager examines how effectively the official was able to implement the previously established work plan. The performance evaluation and qualification are continuous based on the duration of the process. Practically, this means different sections, also known as an "organic and uninterrupted succession of performance evaluation periods." All of this works in a cycle; hence, the evaluation meeting at the beginning of the year coincides with the evaluation tasks and activities at the end of the year.[611] The annual work plan cycle at the UN begins on April 1 of the current year, the leaders hold a mid-term evaluation in October-November, and then the cycle is closed between April and June.[612] Between the evaluations, both parties conduct continuous monitoring and correction activities. Two evaluators participate in the work-plan cycle: on the one hand, the "first-reporter," who directly supervises the official, and on the other hand, the managers of the immediate superiors, the "second-reporters." The system is similar to the way the Hungarian performance evaluation system (TÉR) operated and continues to operate (although now in an optional form): in the domestic central public administration, the exercise of the employer's authority is responsible for conducting the evaluation; however, the right of direct evaluation is delegated, and thus it is carried out by heads of departments, and performed on demand. The final work plan and evaluation are usually approved by the competent deputy state secretary or, failing that, by the competent state secretary.

In the *Sarwar case*,[613] the organization terminated the legal relationship of the plaintiff's official because the competent manager classified him as insufficient during his performance evaluation. At the same time, the first-instance court noted that the

610 UNDT/2012/054 and 2013-UNAT-302.

611 Ludányi, no year.

612 Timing can be important for the validity of the performance appraisal, as a late cycle suggests that the official will not be aware of the tasks ahead of him and the exact schedule, so he may perform less well during the appraisal than he would in a full cycle. See more: the Sarwar case that took place before the UN court in 2016–2017, which will be discussed in detail later in Chapter V. (UNDT/2016/178 and 2017-UNAT-757).

613 UNDT/2016/178; 2017-UNAT-757.

performance evaluation period did not fit within the prescribed deadlines (both the mid-term evaluation and the related first development plan were finalized shortly before the end of the cycle), making it difficult for the official to assess the exact expectations, and thus, the validity of its evaluation has become questionable. The court directly concluded that the organization *of the performance evaluation in this form influenced the official's poor results.*[614]

In the second-instance the court considered the above argument from the first instance to be formal and stated in its decision that *the failure or postponement of the mid-term evaluation cannot automatically result in the invalidity of an exemption announced based on the performance evaluation.* In his opinion, the official was constantly informed by his manager about what was expected regardless of the performance evaluation cycle; he was given the opportunity to develop, which unfortunately he did not take advantage of; and his work proved his inadequacy for the position. Contrary to the decision of the first-instance court, the second-instance judgment maintained the validity of the exemption.

Several tools can be used to prevent the development of conflicts of interest, and through these, the employing bodies are able to establish individual responsibility, measure, and evaluate the work of the individual, the organization, and the system, and, in the light of experience, make appropriate corrections if necessary. I agree with Bernadette Veszprémi that, after identifying conflicts of interest, it is not necessary to suppress private interests but to introduce legal regulations and counterbalances that can compensate for and resolve the tension between public and private interests.[615]

Cases such as the Sarwar case demonstrate that, in relation to performance evaluation, it is most important how well the expectations are understood by humans, which leads to a legally extremely difficult and complex problem because everyone has a different ability to perceive, and a talent for work. Performance evaluation is usually viewed as feedback on the evaluated person, but this legal institution is more than that: it also measures the capabilities of the manager because it is his responsibility to decide what type and complexity of work he assigns to which employees. In the case of poor performance on the part of the official, it is not worth looking for the reasons automatically in his area of responsibility, as it is quite simply possible that the manager did not properly assess the personal competences and, through the wrong assignment of tasks, he was wasting the motivation and work force of an otherwise qualified person.

614 In this case, the court of first instance ordered the restoration of the legal relationship and obliged the employing organization to pay compensation.

615 Veszprémi, 2012, p. 50.

György Gajduschek's position that the performance of each employee inherently influences the performance of the public administration. At the same time, the specialist also emphasizes how it can be challenging to clarify the relationship between individual performance and organizational performance. The difficulties are particularly significant in administrative work, even in the private sector, and they are more pronounced in the public sector. Gajduschek's important finding is that measurement is either impossible or meaningless, as what can often be measured is not important, what is important cannot be measured, or its measurement is too expensive. Practically, performance evaluation is essentially based on subjective judgment and not strictly on measurements.[616]

1.2.1. Internal training

The scope of civil service performance includes the structure of internal training, which is structured similarly to what we see in the Hungarian *Pro Bono* education system maintained by the National University of Public Service. In the case of the UN, the study portal is *called Inspira*.[617]

Based on the general secretary's notice on mandatory training,[618] officials must complete self-scheduled programs within six months of the issuance of the instruction, within six months of joining the organization, or within six months of the beginning of the study obligation, which period is extended by the legal source to one year in the case of instructor-led training.[619] The manager is responsible for ensuring that the mandatory study requirements are met—such as providing adequate time for the subordinate official—but it is the responsibility of the latter to check the training requirements applicable to him or her and to ensure that he or she is up-to-date with the programs.

616 Gajduschek, 2014, p. 107. For more on the subject, see Mélypataki, 2010; Balázs Árva, Barta and Veszprémi, 2020b.

617 See https://inspira.un.org/psp/PUNA1J/ ?cmd =login&languageCd=ENG&.

618 ST/SGB/2018/4.

619 The purpose of the mandatory training courses is to ensure, on the one hand, professional preparation and, on the other hand, as complete an acquisition of the organizational culture as possible. Accordingly, the program elements were announced on the following topics: prevention of sexual harassment, ethics and integrity, information security, and the UN's human rights responsibility. Mandatory training is in place for managers on performance evaluation and the prevention of workplace harassment; officials in the expert category complete a management development program; and at management levels, those involved must participate in a management theory program. There is a separate program for interviewing and public procurement; these are job-specific trainings. Field service officers must learn about information sensitivity and receive mission-specific induction training. (https://hr.un.org/page/mandatory-learning).

As a result, if an official does not comply with the training plan that governs him or her at the regulatory level, he or she can be held responsible for this.

The other internal training programs are basically organized by the *UN System Staff College*.[620] The task of the organizational unit is to strengthen cooperation between agencies of the UN system and to support continuous learning and staff development in cooperation with UN agencies, leaders, external experts, and academic institutions. Many courses are available to the staff, either via personal attendance or e-learning.

The organization provides further training opportunities beyond the mandatory education. Its own forum is the *United Nations Institute for Training and* Research *(UNITAR)*,[621] which conducts development and research activities all over the world in the fields of environmental protection, peace, security, diplomacy, and governance. UNITAR's online event catalog includes e-learning courses, workshops, seminars, informative lectures, conferences, and public lectures.

The key difference between the training structures of both the forums and the Pro Bono system is that, while in the domestic system, it is an integral part of the legal relationship for public administration bodies that the official regularly earn points of a specified value within the training structure on a mandatory basis, in the case of the UN these training options are not mandatory and also[622] involve serious costs. The official can apply for support to the appropriate department or office according to the performance of the service to cover the costs.[623]

The nature of the training and their high-cost ramifications suggest that the organization does not follow the same approach to internal training programs as state civil servant training. In the latter case, it is an obvious interest for the system to educate and produce a team with the highest possible level of expertise—as an illustration, I cite the Hungarian Magyary Zoltán Public Administration Development Program. Compared to this, the UN does not strive to provide lifelong learning for its officials; nor do we even observe any indication that the need for professional development, which is periodically

620 See https://www.unssc.org/

621 See https://hr.un.org/page/external-learning-opportunities

622 According to UNITAR's website, for example, the course *Pursuing Your Career in the UN*, which is limited to the basics and requires approximately two months of self-study, costs USD 750 (https://www.unssc.org/courses/pursuing-your-career-un -0/). While the four-month course on strategic planning, which also requires self-study (https://www.unssc.org/courses/strategic-decision-making-un-self-study-course-15/), costs 500 USD. The palette also includes training programs that are fashionable these days, such as a 300-minute coaching training for managers (https://www.unssc.org/courses/executive-coaching-package-alumni-5x-one-hour-sessions/). It costs USD 1200, which practically represents the market price for training courses.

623 ST/AI/2010/10.

mandatory and keeps the necessary knowledge constantly up-to-date, dominates. With this, the organization supports my conclusion that it follows *a non-pragmatized system regarding the legal relations of civil servants and views itself much more as a significant milestone in the personal career path than as an employment opportunity that provides a life-changing career path for the civil servant.*

Overall, I see that internal training is crucial to both economic labor law and public sector employment practices at the level of nations. If I take France as an example, both the employer and the trade unions maintain training places, that is, actors from both sides consider the continuous training of employees to be particularly important. It is also a generally observable phenomenon that employees are required to participate in the ongoing training courses—in the context of Germany, for example, it is worth mentioning the mandatory training courses for board members and mediators in the public sector. Tamás Prugberger and Nóra Jakab cite the German training system as an especially admirable model to be followed. In this system, sociologists were used to analyze the current employment areas and create programs such as retraining and further training for the unemployed within these areas.[624] From all of this, I came to the conclusion that the trainings are of fundamental importance if the public sector is to maintain its responsiveness to social needs and be able to consistently maintain its own efficiency.[625]

1.3. Obligation to provide information

The obligation to provide information, similar to domestic regulations and generally speaking in the case of legal sources on employment under the rule of law, is located in the series of basic principles because the relationship between the employee and the employer is fundamentally determined by the flow of information related to work.[626]

The UN Staff Regulations expressly establish the personal responsibility of the official with regard to the information communicated to the employer during the performance of the legal relationship; therefore, they are particularly obliged to inform the Secretary-General in writing if they wish to change their permanent residence from

624 See Prugberger and Jakab, 2013.

625 The difference between the sexes is also reflected in the training needs, a phenomenon that is related to the labor market presence of those concerned. For more on the equality of men and women in education, see Kövér, 2012.

626 For more information on the content of the obligation to provide information, see Sipka and Zaccaria, 2019.

their country of citizenship, if they wish to change their citizenship,[627] or if, with the exception of minor traffic offenses, infringement or criminal proceedings are initiated against them.[628] As stated in the Hungarian act on government administration, it is a general principle that the information must be provided at a time and in a manner that allows the exercise of the right and the fulfillment of the obligation.[629]

1.4. Other rights and obligations

In some cases, the UN Staff Regulations apply unique solutions related to rights and obligations that do not exist at all in the state civil service, but at the same time, we cannot specifically claim that these arise from the peculiarities of internationalism. In other cases, we are talking about special rights and obligations that can be perfectly matched to the regulations prevailing in national public service systems. Therefore, let us see what they are:

— Officials are entitled to name a beneficiary person or persons who may receive monetary benefits to be paid to them by the organization in the event of their death.[630] In this form, the provision practically bypasses the rules of inheritance law, so is it technically possible for the official to name a person who cannot be considered a legal or testamentary heir according to the law of the state of his or her nationality? The answer to the question can be found in the Regulations of the UN Pension Fund,[631] in Article 38. According to this, the settlement can really be carried out by anyone without restrictions, and only if the official's statement has been withdrawn in the meantime or the person named in it does not survive the official; in that case, the deceased official's regular rights to his or her property, the amount in question, are already covered by the appropriate inheritance rules applicable in the state inheritance procedure governing the deceased.[632]

627 The regulations specifically require information about the intention; it is considered illegal if the official informs the Secretary-General of the results of the process that has already taken place. This is objectionable because, due to the principle of geographical diversity, it is conceivable that the official may lose his job due to a change of citizenship, and as a rule, he also loses his right to the repatriation allowance if he lives permanently in a country other than his nationality. These legal consequences could only be enforced by the UN in the event of a legally binding administrative decision if it wished to act fairly.

628 *Staff Regulations*, Rule 1.5.

629 *Act on Government Administration* Art. 68, para. (6).

630 *Staff regulations*, Rule 1.6.

631 United Nations Joint Staff Pension Fund, 2021.

632 The rule may make sense mainly because of the payment of funeral expenses. Although the Staff Regulations, Appendix D, point 3.3, state that part of such expenses shall be borne by the organization, this only applies where the official died in the line of duty and the amount compensated is limited.

— During his or her activities, the official is naturally obliged to keep in mind the financial interests of the organization, and he or she must also protect his or her physical and human resources as well as the assets belonging to him or her.[633]
— It is an interesting provision that the Staff Regulations stipulate the existence of compulsory motor vehicle liability insurance for officials who own a car. The rule is therefore not necessarily justified, because the registration of cars is independent of the organization; they are registered in state registers and therefore the rules for motor vehicle liability insurance of the given state apply to them.
— The right to all intellectual creations created by the official in the course of his work—be it a copyright or a patent—belongs to the UN without special compensation. This provision complies with the Hungarian Act 76 of 1999 on copyright, Article 30, and Articles 9–12 of Act 33 of 1995 on the patent protection of inventions.

1.5. Privileges and Immunity

Among the rights and obligations, it is important to address the issue of immunity, which defines the framework for holding public officials accountable. Officials at the UN basically enjoy immunity from judicial proceedings in relation to their actions, which they have carried out in the course of their duties.[634] In addition, the Secretary-General and other high-level leaders enjoy full immunity.[635] The issue of immunity has arisen in several cases over the past decades, one of which was *Westchester County on Complaint of Donnely v. The Ranollo* Case (1946),[636] in which the personal driver of the UN Secretary-General was punished for speeding, and although the violation occurred while performing duties, it was judged as an act that does not closely follow from the nature of the job.[637] This case may have been fundamentally misjudged by the trial court; however, in the end, the fact is that even if the driver had driven faster on instructions, he should still have refused to carry out the instructions, citing a violation of the law, endangering the lives and physical integrity of others; therefore, the recognition of his responsibility can be understood. In the *Coplon and Gubitchev case* (1949),[638] the UN did

633 *Staff Regulations,* Rule 1.7.
634 See *Convention on the Privileges and Immunities of the United Nations (1946)*
635 Amerasinghe, 2005, p. 341.
636 *County of Westchester v. Ranollo,* 187 Misc. 777 (N.Y. City Ct. 1946).
637 Prussia, 1947.
638 See the case in detail: https://law.justia.com/cases/federal/appellate-courts/F2/191/749/91451/

not even request immunity because the proceedings were for espionage, and this act could not be related to any job duties.

However, in addition to immunity from criminal proceedings, there are other cases in connection with the employment of UN officials, in which they enjoy immunity. These include the obligation to pay state taxes, the fulfillment of citizenship obligations, immigration restrictions and registration (in addition to the official, his spouse, and children as well), and in the case of occupying a service location, the assets affected by the move can be brought into the territory of the given state duty-free. Privileges include the UN *laissez-passer* passport, which grants officials visa-free entry to countries that recognize it.

Privileges include provisions based on which, in the event of a crisis, UN officials, along with their spouses and children, receive the same protection as diplomats serving in a given location. Nevertheless, regarding the rules concerning immunity and privileges, it is important to emphasize that the rights belonging to them can be exercised by the official in the interest of the organization and not in his own interest. If this is not proven, the organization itself can withdraw these rights from the official.[639] This happened, for example, in the *Kozul-Wright* case in 2018, where the UN Secretary-General revoked the plaintiff official's immunity in a property rental compensation case pending before a Swiss court. The Court of Appeal emphasized in its judgment that the Secretary-General has the full right to decide in which cases he maintains the exemption, as he is able to have a sufficient overview of the goals, functions, and resources of the organization. In addition, he has the appropriate diplomatic position to explain to the state conducting the proceedings the justification for maintaining immunity based on the common interest in the smooth functioning of the organization.[640]

2. Disciplinary measures

I fully agree with *Eszter Dargay*'s position when she writes that the relationship between the holding of public administrative positions and public trust appears most clearly in disciplinary legislation. Regardless of any public service legal relationship, its special content that can be determined in comparison to the employment relationship is that the employee is the embodiment of the employer's sovereignty and state power during his or her work, and the official exercises coercive power over legal entities in

639 Amerasinghe, 2005, p. 343.
640 UNDT/2017/076/Corr. 1 and 2018-UNAT-843.

his or her own person. Given that the official becomes the embodiment and exerciser of state power during his or her work, the rights and obligations arising from his or her employment relationship must reflect this specific legal status under public law. By making the legal relationship of public servants stand out from other jobs and by creating a separate set of rules for the obligations arising from it, as well as for breaking them, the legislator builds trust. The exercise of public authority entails obligations and sets higher expectations for the given person.[641]

A generally valid model structure can be observed in the disciplinary legal material if we examine the individual state and organizational practices in comparison. Disciplinary investigations are ordered by the manager, and the procedure against the person subject to the investigation is performed by an official or body classified in the same or higher category, which finally makes a proposal to the manager to terminate the procedure or impose disciplinary measures. The person conducting the investigation generally does not take part in the later stage of the procedure, which is the decision-making stage. Additionally, the adversarial procedure and the principle of hearing witnesses are the other generally applicable principles. The standard solution is the suspension of the official involved in the procedure, as well as cumulative disciplinary penalties—warning, deprivation of title, deduction from salary[642]—and their existence.

Regarding public service responsibility in Europe, based on the traditions of the legal systems, we can separate the English, French, and German models. Moreover, the influence of the European Union is becoming increasingly prevalent, which, based on Article 152 and Article 153 (5) of the Treaty on the Functioning of the European Union, cannot directly regulate the civil service law of the member states but can nonetheless formulate recommendations and sectoral regulations. Therefore, it is common European practice to use disciplinary responsibility to counterbalance the privileges that come with a public service position, to ensure that in every case the culpable breach of duty is at the center. None of the regulations seek to exhaustively define disciplinary offenses; in the individual case, it is within the competence of the disciplinary authority or council to decide whether some behavior falls within this scope by considering the circumstances.[643]

641 Dargay (ed.), 2018, pp. 200–201.

642 The 1949 convention on the protection of wages applies to the rules for deductions from wages; see UNDT/NY/2019/020. "It is a general part of labor law and international labor standards or norms, particularly in the light of the 1949 Convention on the Protection of Wages, that wages must be protected against deductions to the extent necessary for the subsistence of the worker and his family."

643 Veszprémi, 2012, pp. 17–18.

In Austria, disciplinary liability serves to counter the immovability of civil servants. The legal framework does not contain a list of disciplinary offenses, the disciplinary punishment can range from a warning to a fine to dismissal; and the procedure takes place before a multi-level disciplinary authority. Generally, the procedure is often difficult, and the disciplinary authority has little latitude in imposing penalties.[644]

In Germany, the system is very similar to the one developed by the General Assembly at the UN: based on an independent law *(BDG: Bundesdisziplinargesetz)*, civil servants are required to report disciplinary offenses (see more details later), and disciplinary liability can be established in cases of culpable breach of duties and obligations. The two systems are also similar in terms of disciplinary actions, as the organization's disciplinary regulations include warnings, fines, reduction of service benefits, demotion, loss of office,[645] or other similar measures.

The UN disciplinary legislation is similar to the English system to the extent that both groups of officials can be punished in a separate procedure for minor breaches of duty (an informal or formal procedure concluded with a management decision) and for more serious violations (usually a formal procedure concluded with a disciplinary sanction). In the English system, suspension during the procedure is known,[646] which is not a disciplinary action but tries to promote the purpose of the procedure—this legal institution can also be found in the regulations of the UN.

Additionally, the French and Hungarian systems concur with the UN disciplinary law, which considers any behavior that violates any obligation arising from the public-service relationship as an explicit disciplinary offense.[647] At the same time, we see a significant difference because, unlike the French disciplinary council, which only proposes disciplinary sanctions for the employer, the UN's decision-making process involves high levels, such as undersecretaries and deputy-secretaries general; therefore, the employer is not only bound by the decision but also practically brings it about himself.

The Hungarian and UN regulations are also similar in their two-level nature: in the state, the act on government administration regulates the legal status of government officials, which is most similar to the status of UN officials. In addition to the act's relevant provisions, Government Decree No. 31/2012 (III. 7.) on the disciplinary

644 Veszprémi, 2012, p. 21.
645 Veszprémi, 2012, p. 24.
646 Veszprémi, 2012, p. 27.
647 Veszprémi, 2012, p. 29.

procedure against civil servants also contains procedural provisions based on the statutory authorization (Article 166, para. 12). Tamás Prugberger and György Kenderes maintained that the two-level regulation is not justified, as in terms of content, the law and the decree cannot be divided into substantive and procedural rules, and it cannot be stated that the law would regulate in general and the decree would regulate in detail.[648] On the other hand, the legal background is made difficult to see by the duality that has characterized the system for eight years now. I fully agree with what the two professors stated: that it would be worthwhile for the domestic civil service to provide a much more unified picture of the adverse legal consequences that can be sanctioned to those involved in the event of a breach of official duties, as the grouping of punishments imposed with and without trial into two sources of law is not justified at all. The UN regulates this issue simply and transparently; the jurisprudence itself is also consistent; there is nothing characteristic about the issue that would arise from the quality of the international organization, so it could even serve as a model for domestic legislation in the context of a possible reform. The regulation is similarly two-level to the Hungarian one, but the Staff Regulations, which can be compared to the legal level of statutory regulation, summarize the general, more important information, while the administrative instruction issued on the subject, which in its own right is at the legal source level of the government decree, contains the detailed rules.

2.1. Breach of duties

According to the UN Charter, the need to ensure the highest standards of merit, competence, and integrity should be the guiding criteria in the selection of officials and the determination of their conditions of employment.[649] Furthermore, the disciplinary legislation is based on Chapter 1, which contains the basic rights and obligations contained in the Staff Regulations.[650]

The staff policy is similar to the Hungarian act on government administration because of its regulatory nature in that it only broadly records what it considers to be a disciplinary offense. Hungarian law stipulates that a government official commits a disciplinary offense if he culpably violates his obligations arising from a government service relationship. Article 10 of the UN Staff Regulations provides for specific

648 Kenderes and Prugberger, 2012, p. 5.
649 Art. 101 (3) of the *UN Charter.*
650 *Staff Regulations*, Art. 1.

disciplinary law and states that the Secretary-General may take disciplinary action against any staff member who commits a breach of duty, and the General Assembly also states at this point that sexual harassment and abuse are serious offenses and are categorically classified as misdemeanors.[651] Breach of obligations can also be realized by non-compliance with the terms of any governing legal source, administrative measure, or appointment.[652] Given that the Staff Regulations fully refer to the competence of the Secretary-General and the delegates of the authority to decide what constitutes a breach of duty and whether it is necessary to initiate proceedings, the issued administrative instructions[653] and information circulars primarily[654] help officials navigate the governing practice. The practice of applying the law is facilitated by the fact that the UN also has a database containing previous cases, which I will talk about in more detail later in the chapter on case law. [655]

The administrative instruction on the disciplinary procedure distinguishes between insufficient performance and breach of duty, or disciplinary offense. Insufficient performance is considered any failure by which the official is unable to implement the provisions of the Charter, the Staff Regulations, the lower-level administrative legal sources, as well as those sufficiently serious behaviors that constitute a breach of service obligations. In the latter case, disciplinary proceedings can be initiated, compensation can be ordered, and an administrative or management decision can be taken. If the insufficient performance does not reach the level of a disciplinary offense, the official can only be sanctioned by an administrative or managerial decision. If a performance deficiency does not reach either level, the manager can indicate the deficiency within the framework of the regular performance evaluation.[656] To summarize, we can review the system of measures in the following figure:

651 *Staff Regulations*, Regulation 10.1.

652 *Staff Regulations*, Rule 10.1. (a).

653 ST/AI/2017/1.

654 A good example of this is the series of information circulars published annually on the General Secretary's disciplinary practice. (*Practice of the Secretary-General in disciplinary matters and cases of criminal behavior*). The most recent edition is a summary of proceedings from January 1 to December 31, 2018. (https://digitallibrary.un.org/record/3798767).

655 We also know a system similar to this in the domestic police, where the organization's employees are assisted in practice by a collection of examples of extraordinary events and disciplinary cases.

656 ST/AI/2017/1. Section 3, Point 3.1–3.3.

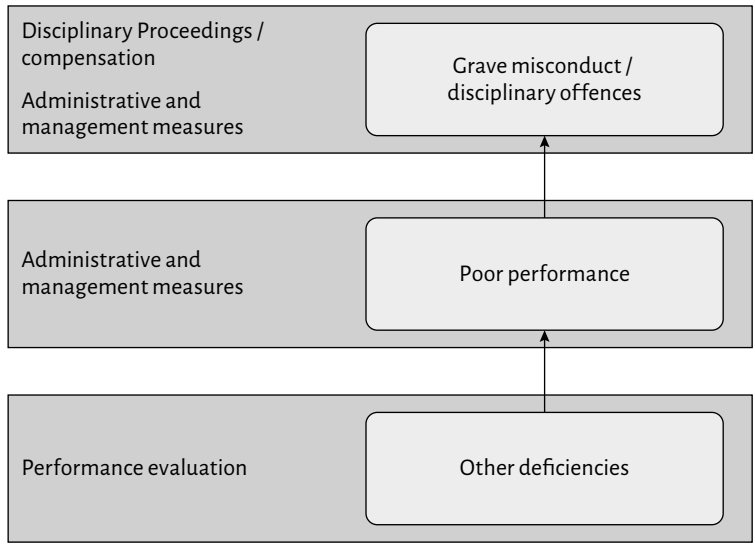

Figure 7. Three types of breach of duty behaviors classified by the UN[657]

Disciplinary offenses include the conduct listed in paragraph 3.5 of Administrative Instruction No. 2017/1 and the facilitation of such conduct, such as criminal offenses (e.g., smuggling, theft, fraud, forgery, and misconduct in office), discrimination, harassment, breach of organizational secrecy, abuse of the privileges and immunities of the United Nations, and defamation of the reputation of the organization.

2.2. The disciplinary procedure

The principles of procedural law pertaining to basic human rights apply in internal proceedings just as much as in state and international court practice. For the sake of a transparent procedure, it is precisely recorded when and who participates in which phase, so that the officials can also be aware of their case. Considering that the UN procedure is more complicated and consists of more actors than the precisely transparent German model or even the system of the domestic disciplinary procedure, I have summarized the exact process of the procedure in the diagram below for better clarity. In my opinion, the complex system is not justified; the possibility of referring the case here and there; the continuous feedback; and the fact that the procedure can be legally diverted at several points, either in the direction of termination or further investigations, make the

657 Own figure.

situation of the officials difficult. It is true that they can make comments orally and in writing on several occasions and to present a defense, but this does not change the fact that the person subject to the procedure can almost lose sight of their case when passing through the various levels of the professional bureaucracy.

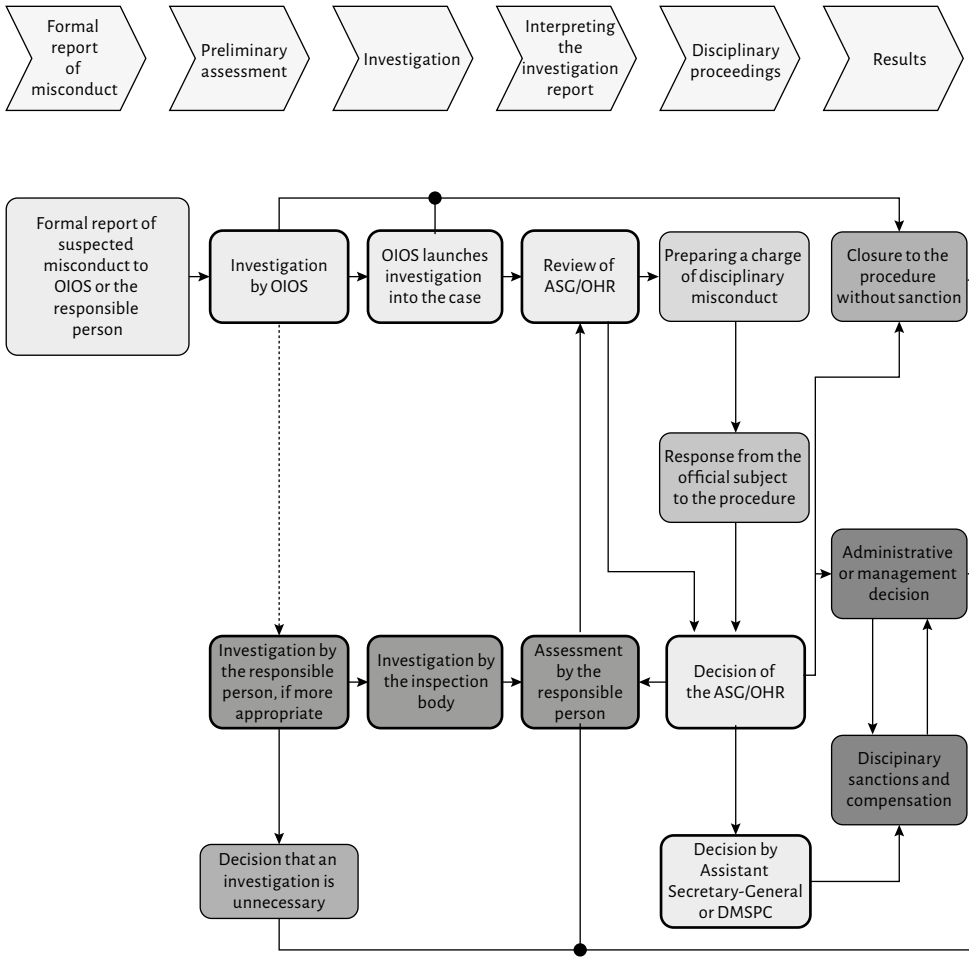

Figure 8. Disciplinary proceedings against UN officials[658]

658 Own figure, source: United Nations Office of Human Resources, 2020. The following abbreviations appear in the figure: *OIOS: Office of Internal Oversight Services, ASG: Assistant Secretary-General, OHR: Office for Human Resources, USG: Under Secretary-General, DMSPC: Department of Management Strategy, Policy and Compliance, that is, the Management, Strategic, Organizational Policy and Compliance Department*. The "responsible person" in the figure can be, according to ST/AI/2017/1, Section 2 Point 2.1.(a), the Secretary-General, the Head of Mission, the Registrar, the Deputy Secretary-General, and the Head

2.2.1. Obligation to report information about suspected unsatisfactory conduct

Every official within the organization is obliged to report the violations he or she detects as well as to cooperate with the competent organizational units in the subsequent procedure. The Staff Regulations, as well as the Hungarian act on equal treatment and the promotion of equal opportunities (Act 125 of 2003), specifically prohibit retaliation against an official for reporting. Retaliation is behavior that causes, aims to cause, or threatens to cause a violation of rights against a person who raises an objection, initiates a procedure, or participates in the procedure because of a violation of the requirements contained in the governing legal sources.[659]

In Hungary, the obligation to report basically applies to the instructions of the superior: if the official receives an instruction that is illegal, fundamentally contrary to professional ethics or professionalism, or that could lead to abuse, then in accordance with the relevant legislation, he or she must draw the attention of the issuer of the instruction. If the official maintains the instruction unchanged, he or she must report the risk of abuse to the integrity advisor at his or her workplace, to the person designated to receive reports by the head of the unit, or, failing that, to the head of the unit himself. However, it shall carry out instructions received from an authorized person, even if it would otherwise have to report them as abuses or risks of abuse—if not required by law to refuse to carry them out—after warning the person giving the instruction that the instruction is unlawful or in breach of the Code of Ethics for Government Officials.[660] Any breach of official duty can be reported by anyone (client, employee) even anonymously,[661] however, if the integrity consultant detects the fact of the violation, they must take corrective actions.

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of Department. The Heads of Department are responsible for the general civil service, while other senior officials deal with the people who are typically directly subordinate to them, such as the Secretary-General for the Deputy Secretary-General and the Under-Secretaries-General; the Heads of Mission for their field officers; the Registrar for the staff of the International Residual Mechanism and the International Criminal Tribunal for the former Yugoslavia; and the Deputy Secretary-General for the staff of the Internal Audit Service.

659 ST/AI/2017/1, Point 4.1.

660 Magyar Kormánytisztviselői Kar, 2018, Point III/1.1.

661 An anonymous report is only possible after careful consideration of all the circumstances, if they justify the initiation of the procedure ex officio, that is, if the reported act may represent a serious violation of professional ethical requirements and there is enough information available that offers a real chance to investigate the case. [File, no year, slide 19].

2.2.2. *Preliminary assessment of the information about unsatisfactory conduct*

During the preliminary assessment, the OIOS is free to decide whether the reported violation of obligations is of sufficient weight to initiate a disciplinary procedure. It may also decide whether to include the responsible person in the procedure to conduct the preliminary investigation independently or for the purpose of conducting the disciplinary procedure. During the preliminary investigation, several circumstances must be considered; therefore, it is necessary to consider, among other things, the gravity of the breach of obligation, the good faith and well-roundedness of the report, the available evidence, and the possibility of possible informal dispute resolution. After the preliminary investigation stage, the competent person in charge or the OIOS may decide to order an investigation, make an administrative or management decision, or close the procedure without ordering any further measures.

In Hungary, the preliminary assessment phase and the specific investigation cannot be separated in the same way as in the case of the UN. According to the government decree in force in Hungary, within three working days from the initiation of the procedure, the exerciser of the employer's authority appoints an investigating commissioner in writing from among the government officials of the state administrative body who have a higher classification than the one subject to the disciplinary procedure, or who, in the absence thereof, hold a managerial position. Subsequently, during the investigation, the practitioner of the employer's authority can extend the disciplinary procedure to other violations related to the original violation of obligations, in addition to the original violation of obligations that is the subject of the disciplinary procedure. At this stage, the investigating commissioner can hear the official, and, in the case of a simple judgment or in the case of the official's confession, he can even take disciplinary action.[662] At the UN, as we have seen, no such decisions or measures are taken at this stage.

The disciplinary procedures within the state and the international organization agree that the official is notified in writing of the initiation of the disciplinary procedure—simultaneously with the initiation of the disciplinary procedure—by the exercise of the employer's authority. The written notification must include the alleged breach of duty.

662 31/2012. (III. 7.) Government Decree, Art. 4–5.

2.2.3. Investigation

During the investigation phase, the acting internal auditor or the competent person in charge collects all mitigating and aggravating circumstances and evidence that can be used in the additional part of the procedure to judge the case. The person conducting the investigation cannot make any preliminary judgments based on the collected data. Of course, the officials participating as witnesses and being prosecuted are both obliged to cooperate with the person leading the investigation; a violation of the obligation to cooperate may result in disciplinary proceedings.

The competent person in charge nominates at least two people who are qualified to conduct workplace investigations to the inspection board. If these people are officials, then as a rule, the person in charge must choose at least one person who is on the same level as or above the subject of the procedure in terms of classification category. If the composition of the panel cannot meet these expectations, the reason must be recorded in the minutes in accordance with the principle of fair procedure.

A hearing may be part of the investigation phase, the transcript of which or the protocol signed by the interviewed official must be forwarded to the undersecretary responsible for human resource management to make the appropriate decision. It is important—at the same time, incompatible with the right of defense—that a third party on behalf of the official involved in the procedure, including a legal representative, cannot participate in the procedure during the interview phase.[663] Based on the principle of fair procedure, the official subject to the procedure must be notified in writing of the initiation of the investigation procedure, the nature of the alleged breach of duty, the hearing, and the identity of the person conducting it, and a copy of the minutes of the hearing must be given to him or her. During the hearing, it is necessary to provide the official with an actual opportunity to present his or her comments and reveal any additional circumstances relevant to the assessment of the case. Within two weeks of the hearing,[664] the official subject to the procedure can make his or her comments in writing, supported by the necessary documentary evidence.[665] The

663 The person leading the investigation makes an exception to this if the official's special situation justifies it (e.g., in the case of a minor under the age of eighteen, a "supporting person" may be present, who, however, may not take part in the proceedings either as a representative or as a consultant).

664 If necessary, at the written request of the official conducting the investigation, the deadline may be extended. In the absence of this, after the ineffective expiration of the two-week deadline, it shall be considered that the official did not wish to use the right to make a written comment.

665 Administrative instruction no. 2017/1, Point 6.1–6.10.

adversarial principle[666] is fulfilled at this stage; from now on, the organization itself will carry out the investigations and make the necessary decisions. The investigation process concludes with a report, which must contain the conclusions and the underlying documented evidence. If the breach of obligation caused financial damage to the organization, the report must also provide an account of this amount to ensure that it can form the basis of the compensation imposed later.

Regarding Hungarian regulations, we can find that the role of this stage of the procedure is practically fulfilled by the hearing, during which a three-member disciplinary council decides on the merits of the case. To clarify the facts, the disciplinary board can hear witnesses, obtain documents, use experts, and conduct inspections; and then, as a general rule, within thirty days of the first hearing at the latest, in a closed meeting, it decides by majority vote, and its decision is included in a justified written decision.[667] There can be three different results: terminate the procedure if there are reasons defined by law; waive the disciplinary penalty if even the lightest sanction is unjustified; and, in the case of a sufficiently serious breach of obligation, impose the disciplinary penalty deemed necessary.

In the case of the UN, the investigation department is not tasked with making a specific decision; it is only directed at determining whether the actual disciplinary procedure should be started at all, whether it is not necessary to take punitive measures, or perhaps it is sufficient to take some kind of administrative measure against the concerned official.

2.2.4. *Disciplinary procedure*

After evaluating the investigation report, the Assistant Secretary-General for Human Resource Management may decide to request a further investigation from the OIOS or the relevant person in charge or may decide based on the evidence submitted.

666 The principle of adversarial proceedings, as a fundamental legal principle, is part of the right to defense. It applies to all procedures that may lead to a decision that sensitively affects the interests of a person. The principle of adversarial proceedings does not, as a general rule, merely guarantee the right of each party to the proceedings to be informed of and discuss the submissions and observations of the opposing party submitted to the body competent to take a decision, nor does it merely preclude the body from taking its decision on the basis of facts and documents of which the parties or one of the parties could not have been aware and on which they were therefore unable to express their views. Generally, this principle also includes the right of the parties to learn about the legal grounds raised by the court ex officio, on which it intends to base its decision, and to discuss them. [European Court of Justice, C-89/08. P. (*European Commission v. Ireland and others*)]

667 31/2012. (III. 7.) Government decree, Art. 6–8.

Based on his or her decision, he or she can initiate the imposition of disciplinary sanctions, take managerial or administrative measures, or close the case.

If the Assistant Secretary-General orders the imposition of a disciplinary penalty, he or she must inform the official in writing, who has the[668] right to send further written comments within one month. In the next stage of the procedure, the official has the right to hire a legal representative from the organization's legal assistance *(Office of Staff Legal Assistance, OSLA)* or to request an independent lawyer at his or her own expense. A copy of the inspection report must be provided to the officer.

2.2.5. The outcome of the procedure

In connection with the procedure, we must mention the *principle of the standard of proof,* based on which the organization establishes a threshold value lower than beyond a reasonable doubt, known from criminal law, for the application of either an acquittal or other legal consequences. In the event of removal from office, the fact of the breach of duty must be clearly and convincingly proven, and for the application of other sanctions, it is only necessary to substantiate that the breach of duty is more likely than not to have occurred.[669] This legal principle was formulated in the Molari case,[670] when the UNAT needed more than presumptive evidence but less than beyond a reasonable doubt. The UNAT found that in the case in question, the facts are irrefutable based on the evidence submitted, and regardless of the regulations, the office fulfilled its obligation of proof.

The Assistant Secretary-General responsible for human resource management can make three decisions based on the investigation report: he or she does not take further measures in the case; the case is no longer treated as a disciplinary matter and an administrative or managerial measure is envisaged; or he or she makes a proposal to the Under-Secretary-General responsible for Management to make a decision on the adequacy of the evidence, impose disciplinary punishment, arrange for the necessary administrative and managerial sanctions, and, if necessary, impose the appropriate compensation.[671] The decision of the Under-Secretary-General will subsequently form part of the personal file of the official subject to the procedure.

668 If necessary, the Under-Secretary-General may authorize an extension of the deadline at the official's written request. In the absence of this, after the ineffective expiration of the one-month deadline, it shall be considered that the official did not wish to use the right to make a written comment.

669 ST/AI/2017/1, Point 9.1.

670 UNDT/2010/058 and 2011-UNAT-164.

671 ST/AI/2017/1, Point 9.2.

The end of the procedure is basically the same as what we know in domestic law; therefore, according to the decision made, additional sanction beyond disciplinary punishment such as the termination of the procedure or the imposition of a lighter sanction, may also be applied.

2.3. Adverse legal consequences that may be imposed

The Staff Regulations are entitled to regulate the types of penalties with which the organization can sanction the breach of obligations by officials. The source law in question provides a sufficiently efficient, transparent, and predictable system of disciplinary penalties with an exhaustive list that also mentions certain administrative or management measures.[672] The legality requirement of the imposed penalty is that it be proportionate to the gravity of the breach of duty.[673]

2.3.1. Disciplinary sanctions

The possible sanctions are set out in Rule 10.2 of the Staff Regulations, and the list is essentially identical to the disciplinary sanctions applied to civil servants in European countries.

It is an unavoidable guarantee requirement that the official be properly informed about the consequences of his or her disciplinary offense. In the labor law of the private sector, the legislation only provides the framework in this regard, within which the employer can—in some cases even with the cooperation of the employee—create the system that governs it and must provide information about it in an employment contract or collective agreement.[674] This is primarily because private labor law does not recognize the term "disciplinary law," and orders serious breaches of obligations to be sanctioned with "disadvantageous legal consequences." Moreover, the situation is different in the public sector in Hungary, generally in rule-of-law states, and, of course, in the case of the UN, as the legislators have created a well-defined system for disciplinary procedures that is described in detail by the relevant law (in the case of the UN and the Staff Regulations) in a way that does not allow for deviations.

The following disciplinary legal consequences can be applied at the UN:

— Written censure;

672 *Staff Regulations* Rule 10.2.
673 *Staff Regulations* Rule 10.3. (b).
674 See Labour Code, Art. 56.

— Loss of one or more steps in grade;
— Deferment, for a specified period, of eligibility for salary increment;
— Suspension without pay for a specified period;
— Fine;
— Deferment, for a specified period, of eligibility for consideration for promotion;
— Demotion with deferment, for a specified period, of eligibility for consideration for promotion;
— Separation from service, with notice or compensation in lieu of notice,[675] with or without severance pay;
— Dismissal.

If we look at the domestic legislation in relation to these types of measures, we can conclude that the UN has built a much more complex system than the Hungarian one regarding the process of the procedure and that the regulations regarding the types of measures are much more diverse. The act on government administration allows for the application of four types of adverse legal consequences (reprimand, salary reduction within a classification category, transfer from a managerial position to a non-managerial position, and separation from service),[676] which are, however, similar in nature to those known in international organizations. Compared to this, the German Federal Disciplinary Act *(Bundesdisziplinargesetz, BDG)*[677] is quantitatively between the two solutions, but in terms of its nature, it fully matches the sanctions system known both in Hungary and in the UN: in the form of a disciplinary measure, the official can receive a reprimand, a fine, a reduction in salary, a demotion, or suspension.

2.3.2. Other measures

The Staff Regulations also recognize certain administrative or management measures that go beyond the above (e.g., written or verbal reprimand), as well as liability for compensation and administrative leave, which, however, are not included in the scope of disciplinary sanctions.

Liability for damages is so strongly present in the UN disciplinary legislation that, on the instructions of the Deputy Secretary-General, the justified amount of money can be withheld from the official's salary until the conclusion of the procedure, and if

675 The compensation fee refers to the remuneration for the notice period.
676 *Act on government administration*, Art. 166.
677 See http://www.gesetze-im-internet.de/bdg/index.html

the official subject to the procedure does not cooperate during the procedure, a direct deduction can be made from the salary after the final decision.[678]

The compensation type of financial penalty, which was introduced in the UN, can also be found in the jurisprudence of states and has played an increasingly important role in the development of Hungarian law over the decades: based on Article 113 of the Labour Code of 1951, verbal reprimands, written reprimands, demotion from one month to one year, and immediate dismissal were the possible adverse legal consequences. Both theory and practice found this system of disciplinary measures to be incomplete, and the introduction of a fine was recommended.[679] If a possible violation of obligations can have financial consequences as part of the disciplinary procedure, the procedure itself has greater weight and greater deterrent power. Moreover, it is suitable for at least partially mitigating and compensating the damage to the organization. Accordingly, currently, the act on government administration also stipulates that the government official, if he or she did not act as is normally expected in the given situation, is liable for damages caused by breaching the obligation arising from the government service relationship.

Based on the provisions of the personnel regulations, the official may be sent on administrative leave for a period not exceeding three months at any stage of the procedure, until a date is fixed in advance in writing.[680] Generally, the concerned official is entitled to full salary for the duration of such leave, and the General-Secretary may decide on partial payment or complete non-payment in the event of special circumstances.[681]

2.4. Case law[682]

On the whole, the disciplinary law and its enforcement are very well characterized by a 1958 judgment of the UN Supreme Court, according to which it is conceivable that, despite their honest intentions, the international official, because of bad situational awareness or bad luck, finds themselves in a situation that is sufficient to make them forget the civil servant's merits up to that point and justify their dismissal.[683]

678 Administrative instruction no. 2017/1. Point 9.6.
679 Kenderes and Prugberger, 2012, pp. 3–4.
680 *Staff Regulations* Rule 10.4. (a)-(b).
681 *Staff Regulations* Rule 10.4. (c).
682 Examples can be found in the collection of the UN HR Department; (https://cutt.ly/5SjiMqD, https://cutt.ly/MSji93w).
683 UNAT Judgment No. 71 (1958), Mihajlov D. (1993c), p. 119.

The practice of the UN regarding the adoption of disciplinary decisions is indeed interesting, and if we examine it, as mentioned earlier, a picture of a well-proven and balanced system of sanctions emerges. In this subsection, I have selected some significant cases from 2019, when, out of 68 cases, three dismissals and 34 dismissals were[684] ordered by the competent organizational unit. The available case law materials indicate that in any disciplinary procedure, the competent body aims to impose the lowest possible level of measures, but the practice is still strict: out of 504 cases, 313 measures are dismissal (93) or separation from service (220), which is a 60% rate compared to the more favorable consequences.[685]

A co-worker created a hostile work environment for several employees by yelling at them and verbally abusing them, repeatedly calling them incompetent in the presence of several other employees, and threatening to lose their contract status. As a disciplinary measure, the employee received a written warning, a fine in the amount of one month's net basic salary, and a two-level demotion.

A similar penalty of demotion by one grade and a one-year deferral of promotion opportunities was imposed when an official created a hostile work environment for three employees by marginalizing them in work-related discussions and social gatherings and by advocating for one of them to be transferred to a remote duty station. Additionally, the official subject to the procedure did not report the irregularities that arose during his own recruitment process, which later resulted in his selection.

Demotion and postponement of the right to promotion were the punishments in the case when five employees did not declare in their job applications and/or in their statements about their family status that their relatives were employed by the organization. The behavior of the staff members was significantly mitigated by their early enlistment and very long service as general service personnel in a difficult mission environment.

684 *Applying the* framework of the domestic dogmatic system, we can establish an essential difference between dismissal and *separation from service*, according to which the latter can be roughly equated to loss of office in the context of disciplinary legislation (at the same time, the UN regulations do not contain such restrictions as Hungarian legislation, according to which the civil servant could not be employed again for a specified period of time—see Art. 166 (3) point (c) of *Act on government administration*. In addition, the termination legislation as a whole—as can be seen in the next chapter—also includes all forms of termination in which the official acts as the initiating party, as well as termination by mutual agreement, i.e., separation from service, which is much more summary in nature as a designation in the organization's personnel legal documents than as a specific form of termination. (See for this Chapter 9 of the Staff Regulations and Guidelines: Separation from Service, General Procedures (https://cutt.ly/nSjoqHl; and the summary of UNOPS also provides similar information: https://cutt.ly/bSjoi9V).

685 United Nations Office of Human Resources, 2020.

Without prior approval, the official under the procedure used his official UN e-mail account to conduct his external business activities with the help of a third party. The employee also made a false statement in favor of this third person; his punishment was two demotions and a written warning. Similarly, the competent organizational unit imposed a written warning, the loss of two grades, and a fine equal to two months' net basic salary when the employee engaged in unauthorized external activities related to one or more wine enterprises. In this case, the employee also had to reimburse the organization for financial losses related to the payment of certain security services. He also received a written warning and a demotion by two grades when an official signed vouchers for the destruction of jet fuel waste without permission, in violation of the organizational management policy and procedure. This conduct included forging another employee's signature as the recipient of the waste fuel. Mitigating factors included the official's early hiring and long service.

Examining the cases, we can conclude that, in general, all issues related to harassment, discrimination, and abuse of power fall into the category in which the disciplinary process ends with a decision on separation from service. In one case, the official engaged in prohibited conduct, including sexually harassing a subordinate and creating a hostile work environment. He also facilitated the promotion of another official with whom he had a personal relationship and concealed the resulting conflict of interest. The case in which a security employee sexually harassed another employee several times when he tried to kiss the employee while on duty had the same outcome. In another case, the official under the procedure also kissed his colleague without her consent and insulted her physical appearance. One aggravating factor was that the employee repeated the behaviors of a serious violation of obligations over a longer time. In these situations, after the termination of the legal relationship, the former employees were informed by the employer that, if their official status were maintained, at least separation from service should have been imposed with compensation for the period of relief, without severance pay. The organization registered the names of the incriminated employees in the Clear Check register, which means that these people cannot be appointed to the organization in the future.

There are other similar cases where the disciplinary board specifically decided to separate from the service. This includes situations in which an official served in an official capacity while sexually harassing an employee of a UN-affiliated organization. In another situation, an official was involved in fuel fraud activity. This incident was considered a mitigating circumstance as the official admitted the act he had committed and that he carried out false transactions only a few times over several months, while at the same time, the fact that the employee served as a driver for the organization,

thus abusing his position arising from his job, was considered an aggravating factor. In another case, an official took a mobile phone belonging to another employee without permission, deleted the information on the phone, and used the device for personal purposes. There was a case related to fraud when the official applied for the payment of educational support, filled with false information, to the organization. It was an unfortunate incident when one official drove his private vehicle under the influence of alcohol and collided with an armored vehicle of the UN contingent, causing significant damage to the armored vehicle. The staff's position as a security officer served as an aggravating factor, and long service with the organization was considered a mitigating factor. The punishment in these cases was separation from the service, with compensation for the period of exemption but without severance pay.

In the three cases where the organization expressly dismissed the official as a result of the decision, the person concerned committed an extremely serious breach of duty, and the case also contained significant moral aspects. In the first case, an official sexually abused a minor; in the second, the same thing happened to a member of the local population. In the third case, a superior official sexually harassed a subordinate official by offering help in a current hiring process in exchange for sexual compensation.

In relation to disciplinary measures, it is an essential obligation of the organization that if the breach of obligations committed results in criminal law (e.g., fraud, theft, vandalism, pornographic content depicting minors, road endangerment, attempted murder, etc.), the UN informs the member states within a short period of time about the measures, and they can take the necessary steps to conduct criminal proceedings.[686] In Hungarian administrative law, we speak of civil service officials and government officials, and in criminal law, these individuals are considered to be official individuals (Act 100 of 2012 on the Criminal Code, Article 459, Point 11). If a UN official commits a crime on the territory of a country, he is classified as a foreign official according to the definition of the Criminal Code (Article 459, Point 13/b).[687] The special responsibility of foreign officials appears in several places in the current Criminal Code; therefore, the rules on the responsibility of the supervisor or head of office, aiding and abetting, and accepting official bribes are situations where people belonging to this category are specifically mentioned.

Official crimes committed by foreign officials are treated as classified cases by the Civil Code in the same way as cases committed by state-appointed officials. The reason

686 ST/IC/2015/22. Item 76 (archived document).

687 A foreign official is: a) a person serving at an international organization established by an international treaty promulgated by law, whose activities belong to the proper functioning of the organization.

for this is that official crimes are characterized by the fact that their impact on the orderly and smooth operation of state administration and the judiciary is not caused "from outside," but from "inside," as one of the actors of the institutional systems performing political and public authority tasks. Offenses in the office attack social relations and are capable of shaking trust in the lawful and legal functioning of officials. The reason for the creation of these crimes is the official bodies, people in society, and the state apparatus,[688] and in the case of the UN, it arises from its special place and role in the international community.

688 Veszprémi, 2012, p. 234.

V. Termination of employment

In the public service, there are two prevailing trends in the issue of the removal of officials: on the one hand, the pragmatic systems—such as in the cases of Germany, France, and Austria—provide their officials with the opportunity to see their status as a predictable life path, from which they can only be removed as a sanction for a serious breach of duty. This environment is so safe that even when the job or position is terminated, transfer is preferred, and group downsizing is not typical in these systems.

Moreover, the Hungarian or, similar to it, the Dutch system—and this also includes the UN civil service—exposes officials to a certain degree of unpredictability, and even in our country, the loss of trust, such as the reason for exemption in the Civil Code, has loosened the limits for terminating the legal relationship to such an extent that in certain situations they are incapable of protecting the official who relies on them.

The area of termination also includes the regulation of reserve staff: while it is typical for state public services that after the termination of the appointment, for a certain period of time—in Hungary, the same period as the exemption period—the official can look for a new job without salary, with the continuation of the service period, the UN does not maintain such a personal list. As a result of the latter, appointments at the organization will cease permanently, and re-employment is possible only if the former official is hired in the same way as completely new entrants.

The closedness of the civil service systems, their arrangement resulting in pragmatic security of status,[689] results in the immovability of officials in the German and French-type civil service, which, because of the uniformity of the civil service, extends to the workers of the entire sphere. The benefit of such security is a predictable career path, during which the civil servant typically comes into closer contact with the state that employs him or her and identifies more intensely with the mediated value system

689 Pragmatized status security: If the institution or the position held there ceased, both the public employee and the civil servant had to be tried to be transferred to a suitable position, and only as the last resort could the employee be dismissed (see e.g., Jakab, Prugberger and Tóth, 2020).

than civil service employees of systems where the career model is not or less characterized by an uninterrupted and secure structure. In contrast to the Germanic model, along with Hungary, it is also characteristic of the Netherlands, for example, that the protection of civil servants has now been greatly relaxed, although we can still speak of relatively more secure positions compared to the practice of the private sector.

During the time of the Antall government, even in our country, the intention was to transfer officials rather than dismiss them, and this direction is still maintained in the Netherlands today. The reason for the loosening tendency is also to be found in the primary disadvantage of pragmatized status security, as the official in such a system may be less motivated, innovative, and solution-oriented because of his or her immovability. As the official does not feel the need to engage in activities that would make him or her stand out because of the sense of security, there is no competitive spirit and less performance pressure in the positive sense. Of course, at the same time, the state machinery cannot foreseeably operate with a constantly changing cadre of officials; thus, traditionally, even in non-pragmatized style systems, the rules of the public service and their enforcement are more binding than those of labor law, and consequently, the parties have less freedom of movement. The aim of the system is to maintain an efficient state administration with balanced human resource management.

This is also felt within the UN, although we cannot in any way consider the set of rules prevailing within the organization as a pragmatic system, given that the position can be terminated within a short time if the performance and behavioral expectations are not met. Additionally, the frequent change of service locations is a circumstance that presents officials with such a trial or challenge that it almost excludes an applicant from planning a lifelong career here.

According to what is customary in the UN civil service, we also distinguish between reasons for termination and termination: the former is caused by the parties' will, and the latter is caused by an independent legal fact, as a result of which the legal relationship is automatically terminated without further legal declaration.

1. The system of termination of assignment

In the case of Hungary, the uniform legal settlement of the termination of the legal relationship of public officials and civil servants engaged in official and non-official work is problem-free, just like the termination of the legal relationship of public service based on a legal fact (see the death of a public official) and based on mutual agreement, as well as the public official's or public employee's resignation. On the

other hand, the dismissal of a public official or public employee by a public institution raises a serious problem.[690] As I mentioned in the introduction, in the vast majority of Western European laws, as compensation for the limited public service remuneration system, public service status security prevails, based on which the public body employing a public employee or civil servant terminates the public service relationship only in cases of incapacity and serious disciplinary offenses, apart from retirement. According to Tamás Prugberger, the change in previous privileges and the decrease in security in the old member states of the European Union mainly affect the public officials and civil servants employed by contract rather than the appointed ones, which is why the collective downsizing of the civil service as we know it is unthinkable in these states.[691] I concur with Tamás Prugberger's assertion that the serious contradiction of the Hungarian regulation is its low public service remuneration, furthermore, it also provides a wide range of opportunities for layoffs and group downsizing, with which the legislator creates a system that harms the morale of the public service.[692]

In the law professor's opinion, the dismissal should be limited to a narrow range of cases to ensure that it should only be possible in the case of incapacity or termination of a job or institution, but in the latter case, the transfer should always be attempted.

690 Prugberger, 2013, pp. 356–357.

691 The act on government administration is not affected by the problem of collective redundancies; as a result, important guarantee elements are missing in the domestic regulations. While in the labor law of the private sector, the plan for collective redundancies must be discussed with the Works Council and the trade unions operating at the employer, the law does not contain such a requirement for government officials. The regulations of the UN are also of a similar nature, although unfortunately the organization does not follow the more advanced models: neither in the Staff Regulations nor in other, lower-level legal sources do the General Assembly or the Secretary-General specify what procedure should be followed in the event of mass layoffs. The missing provisions of the legal sources allow us to conclude that it is not unthinkable to initiate a collective layoff at the organization and that only the decisions of the current management are relevant.

692 In the already cited article of Nóra Jakab, Tamás Prugberger, and Hilda Tóth, published in Polgári Szemle, we also come across the perspective that, compared to the public service laws of Western European states, the security of the status of public servants has further weakened since the 2010s, and their dependence on their superiors has continued to grow stronger. The new act on public servants stipulated that the public servant must demonstrate loyal behavior towards his or her superior, but at the same time, the superior can dismiss the civil servant on the grounds of "loss of trust," which can lead to suppression of constructive criticism and counter-selection. Civil servant's status security is also weakened by the fact that the previously existing possibility to initiate disciplinary proceedings against the public servant at the request of the public servant, if they thereby want to clear themselves from baseless suspicions, has been removed from the code. At the same time, the new act weakens the position of the public servants by removing the effective reconciliation of interests with trade union participation, a collective civil service right existing in Western European laws, has been removed from the new act.

This means that a dismissal could only take place if the transfer is not possible or if the transfer is not accepted by the civil servant. Even in this case, however, the civil servant would be entitled to the full severance pay, as the institution and/or the termination of the job are not within his or her sphere of interest.

The fact that neither the act on government administration nor the act on public servants recognizes extraordinary resignation as an option is a controversial legal technical solution in the material of domestic government officials and civil service officials. As long as the legislator in the Civil Code gives the opportunity for civil servants to exercise the right to extraordinary resignation in the event of a valid reason, depriving any public official of the right to extraordinary resignation may lead to serious unfairness in cases where the superior humiliates them or creates an intolerable atmosphere for them.[693] At the same time, if we compare the legal backgrounds prevailing in Hungary and in the UN, we see that extraordinary resignation is not possible in either system. What could be the reason for this? As the primary objective of the UN is to improve the quality of communication between the parties, even in the termination legislation, it is conceivable that different factors led to this solution in the two organizational spheres. Based on this, the General Assembly wanted to avoid the situation where an official exercised the right to cancel without a special clarification hearing taking place. However, in terms of the Hungarian legal framework, we can consider that this solution resulted from minimizing the vulnerability of the state management machinery.

In the case of the UN, it is worth clarifying in advance a conceptual difference between state and UN employment law: the organization uses the term *separation from service;* therefore, the provisions related to termination relate to the fact of the end of the legal relationship itself and the termination of the special legal relationship they are tied to, not to whether it takes place automatically or by legal declaration. In this volume, in the spirit of using the usual concepts, for the sake of better understanding, I will use the phrase "termination of the legal relationship" if a general examination is performed.

The termination of the legal relationship can take place in six cases: by resignation, by leaving the office, by the end of the appointment, by retirement, dismissal, or by the death of the official.[694]

693 Prugberger, 2013, p. 357, and Horváth, 2006, p. 35.
694 *Staff Regulations* Rule 9.1.

In the Hungarian legal corpus, a practically similar system was originally developed,[695] and although due to the fragmentation of the civil service, the UN Staff Regulations can be compared with several legal sources, for the sake of the closest correspondence, we will look at the act on government administration. According to this, a government service appointment may be terminated by mutual agreement of the parties, resignation, dismissal, disciplinary punishment of loss of office, or immediately during the probationary period.[696]

The grounds for termination are extremely varied; therefore, in Hungary, the government service relationship is terminated, without claiming completeness,[697] upon the expiry of the fixed term of appointment, the death of the government official, reaching the retirement age but not exceeding 70 years of age, and upon the dissolution of the government administration without legal succession if the government official does not terminate the conflict of interest within thirty days of the delivery of the notice. These grounds are very similar to those observed at the UN and are also characteristic of careers in the civil service in general. To summarize, the grounds for termination or dismissal in both the organization and Hungary are resignation, dismissal, expiration of the fixed term, or death of the official.

You may be surprised to learn that mutual agreement termination is not listed as a ground for termination in the UN regulations; however, this is done on purpose by the organization's management to start fresh. By avoiding the legal institution of the mutual agreement, the circumstances of termination cannot be formed freely; however, the organization can avoid all kinds of concerns related to possible willful errors related to the mutual agreement. Thus, the number of subsequent legal disputes can be reduced, and inequities in the official's benefits package upon termination can also be avoided. The legal institution is included in the Staff Regulations, for example, in the clauses linked to severance compensation, despite the fact that there is no uniform consensus on the list, which is another anti-theologizing aspect of the legislative decision that needs to be mentioned.[698] From this, we conclude that

695 There have been many transformations in domestic labor law in the field of termination legislation, an excellent summary of which is provided by Zoltán Bankó in his article entitled "Evolution of the rules for the termination of the employment relationship in the Hungarian labor law codes." From the study, I concluded that historical processes and changes in legal sources have intensively affected this segment of private employment law. Given the fragmented domestic regulation of public service, these processes can be more or less observed and interpreted in the field of public service as well (see Bankó, 2017).

696 *Act on Government Administration*, Art. 105.

697 *Act on Government Administration*, Art. 104.

698 *Staff Regulations* 9.8. Rule (d).

termination by mutual agreement does exist,[699] even though it is unregulated, and that its existence can be traced back solely to the parties' freedom to enter into a contract.

The fixed-term appointment, which is characterized by the fact that the parties express their intention to terminate at the beginning of the legal relationship, may be considered the form of termination that is closest to mutual agreement. At the same time, as the appointment is a unilateral legal declaration, it does not in fact meet the requirement for a declaration of the same will imposed on the joint agreement, and it does not fulfill the free definition of content at all. In addition, in the case of the UN, the fixed-term appointment can be extended without limits, which, because of its characteristic reasons, loses its predictable character.

In the following section, we will examine in detail the individual methods of termination, paying attention to their possible differences compared with state practice.

1.1. Resignation

The resignation, as a unilateral, written legal declaration of the civil servant, has legal effect without justification and without the consent of the employer, that is, it terminates the legal relationship in Hungary with a two-month notice period. If the official wishes to withdraw their statement, the employer must accept it.[700]

In the case of the UN, the legal institution of resignation serves the same purpose, namely, that the [701]official's mandate can be terminated at the initiative of the official at any time by providing an adequate notice period. At the same time, the consent of the organization may be necessary, especially if the official wishes to leave his position with a shorter or longer notice period than prescribed.[702] If the mandate letter does not provide otherwise, the resignation period is divided as follows:

699 This is confirmed by the UNDT in UNDT/2010/090; the plaintiff in the case worked in the Geneva center and appealed the management decision that denied him the collective agreement.

700 György, 2007, p. 89.

701 *Staff Regulations* 9.2. Rule (a).

702 *Separation from service—Resignation*. p. 1. (https://cutt.ly/nSjoduY).

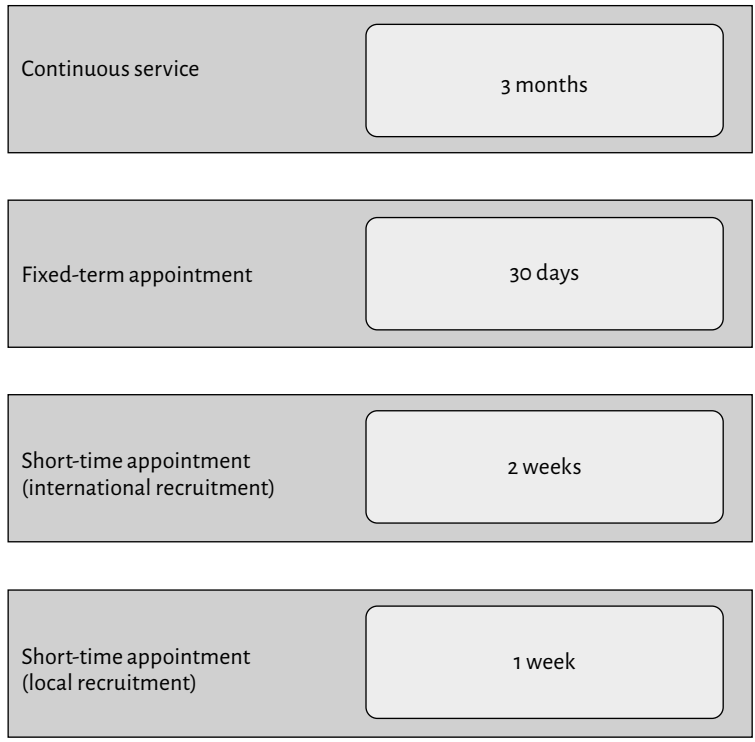

Figure 9. The length of the resignation period according to each assignment type[703]

The official's written resignation must be delivered to his or her superior, according to his or her position.[704] The mandatory content element of the resignation is the

703 Own figure.

704 The addressee of the resignation of the Deputy Secretary-General and the Under-Secretary is the Secretary-General, and a copy is given to the registrar, the executive or administrative clerk, or the clerk responsible for human resources.
In the case of directors at the D-2 level at headquarters and experts assigned up to the D-1 level, officials outside the headquarters, as well as those performing general duty in New York and belonging to related categories, the addressee is the registrar, and a copy is given to the supervisor, the executive or administrative official, or the official responsible for human resources.
The resignation of an expert category official with a fixed-term assignment or an official serving in the field must be addressed to the Field Administration and Logistics Division or Department of Peacekeeping Operations (FALD/DPKO), and a copy will be sent to the head of mission, the Chief Administrative Office, and the supervisor.
Locally recruited officials of area committees and special missions shall address their resignations to the Chief Administrative Office, with copies to the supervisor and chief of staff.

planned date of termination; a written acceptance statement is required from the organization,[705] in which the date must be confirmed by the competent supervisor.

1.2. Abandonment of post

This is a legal institution that is not unknown in domestic civil service law, and the domestic administrative bodies can sanction unauthorized absences with immediate dismissal.[706] The UN adopted it in 1994 and then amended the source law in 2005,[707] which regulates the small number of cases when an official voluntarily leaves his office.

Apart from resignation, the official's legal relationship can be terminated by leaving his or her office. This step is considered a unilateral refusal of the terms of the appointment, and the situation can be inferred from all the circumstances of the case, especially from the refusal of the obligation to work and be available.[708] If the official stays away from his or her work unchecked—that is, without using annual or special leave—the organization is entitled to evaluate this as a declaration of intent to leave the office. To avoid legal consequences, the official is obliged to prove that he was absent for reasons beyond his control.[709]

In the case of abandonment of office, it creates a special situation and entails a stricter assessment when the official establishes a second employment relationship during the period of unauthorized absence or extended sick leave. This is especially a problem if the official receives a salary from the organization while producing a medical certificate stating that he or she is unable to perform his or her duties. In this regard, however, it is important to state that simply applying for a job or sending a resume to another employer does not establish the presumption that the official wishes to leave office.[710]

Of course, in cases of unauthorized absence, the main role is played by the immediate superior official, who is obliged to report all unauthorized absences to the competent executive or administrative office unit or to the local personnel department in addition to the central units. The deadline for this is the end of the fourth day of the official's absence from work. After that, a two-round inquiry is made, the first of which may

705 *Separation from service—Resignation*. p. 2.
706 *Act on Public Service*, Art. 63, para. (2) b).
707 ST/AI/400, amended by ST/AI/2005/5.
708 ST/AI/400, para. (4).
709 ST/AI/400, para. (5).
710 ST/AI/400, para. (6).

be a simple telephone inquiry, while the second may be a written request for the official to provide some kind of proof of the reason for his absence within ten working days.[711]

Owing to the parties' obligation to cooperate and provide information, it is the responsibility of the official to inform the organization, specifically the superior, about his or her absence, and it is also his or her task to ensure that his or her contact details are kept up-to-date. It is also important to indicate the circle of people who can be notified in the event of an emergency. Everything is important because if the official cannot be reached by the organization either in person or by registered letter or through another reliable channel of written communication, or perhaps through his family or friends, then the previously mentioned notice is nonetheless considered to have been delivered, together with its legal consequences.[712]

The date of termination is the date of the decision of the Assistant Secretary-General responsible for human resource management to refuse to fulfill the employment contract or the date of expiry of the fixed-term contract, whichever is earlier.[713] Given that leaving the position does not constitute a resignation, the concerned official is naturally not entitled to a period of resignation, severance pay, or repatriation support.[714]

1.3. Expiration of appointment

As is known and common in state legal practice, fixed-term contracts and appointments result in the automatic termination of the legal relationship at the time specified in the document without notice. The fact that, in accordance with UN practice, fixed-term contracts longer than six months notify the official of the impending termination one month before the expiration date prevents the official from forgetting that he needs to look for a new job.

Pursuant to the terms of the mandate, the fixed-term appointment does not basically carry the expectation of renewal; however, nothing excludes the fact that the opposite follows from all the circumstances of the case. The expiration of the assignment is not considered termination; therefore, the relevant official is not entitled to a resignation period, severance pay, or repatriation support in this case either.[715] The specific legal

711 ST/AI/400, Point 9–10.
712 ST/AI/400, para. (11).
713 ST/AI/400, para. (12).
714 ST/AI/400, para. (16).
715 *Separation from service – Expiration of Appointment*, page 1 (https://cutt.ly/4Sjokdv).

source of the fixed-term assignment is the administrative instruction No. ST/AI/2013/1. according to which such an agreement can be concluded for five years at a time.[716]

The legal source also provides for possible reappointment, which can basically be ruled out in four cases: if the assignment is terminated by abandonment of office, breach of duty, dismissal as a result of insufficient service, or if the official submits his or her resignation during disciplinary proceedings related to the breach of duty initiated against him or her (except if he or she cooperates until the conclusion of the procedure).[717]

The fixed-term appointment can be extended at any time and any number of times for a maximum of two years,[718] and it can be renewed for a maximum of five years if the official:[719]

— has served at least five years of continuous service with fixed-term appointments;
— has a fixed-term assignment and was selected through a competitive examination;
— qualifies for personal work with at least "meets expectations" or an equivalent for the past five years;
— did not take more than six months of unpaid leave in total within five years;
— mandate has not been terminated and has received severance pay, repatriation support, or commutation of leave during the last five years.

As you can see, the conditions do not impose hard-to-fulfill expectations on the officials, and they basically serve the purpose of enabling those people whose work is characterized by long-term planning, both on the part of the organization and the official, to benefit from the renewal.

However, the question arises: is it not a problem that the UN does not regulate the illegal chain of fixed-term assignments, which is well-known in the literature and judicial practice? If we observe, the regulation only states that the assignment cannot last longer than five years at a time. It also imposes as a condition for renewal that the official must have worked for at least five years on a fixed-term contract to continue in this capacity.

The theory of the illegal chain is based on the idea that the employee is kept in an uncertain situation by the fact that instead of a permanent contract, he or she always

716 ST/AI/2013/1, Point 2.2.
717 ST/AI/2013/1, Point 3.9.
718 ST/AI/2013/1 Point 4.2.
719 ST/AI/2013/1, Point 4.2–4.3.

only has a legal relationship for shorter periods of time, and in many cases, he or she simply cannot be sure that he or she will remain at the previous workplace after the contract expires or look for a new option.[720] In the case of the UN, there are three cases where it is possible to employ officials on a fixed-term assignment:

— in the case of mandates that last for one year or longer but do not reach the multi-year time frame;
— in the case of an assignment for medium-long-term tasks that may last for years;
— for the performance of tasks that fall within the organization's general and continuously existing scope of activities.

Although it can be said that they basically plan for at least one year with the officials who have a fixed-term assignment and that there are no special termination rules that simplify the procedure in relation to this form of employment, uncertainty can be found here as well—especially in the last of the listed points. According to them, setting a limit could therefore be justified. At the same time, it is appropriate to clarify that the UN does not violate international labor law standards, as the ILO, for example, only states that a fixed-term contract cannot last for an indefinite period.[721]

In the countries of the world, there are significant differences regarding the number of years in which the maximum duration of fixed-term contracts is established.[722] In Chile, for example, such a legal relationship can last for one year, and the parties can extend the contract a maximum of two times. The legal relationship can also last for one year in the Philippines or Panama, but the contract can be extended an unlimited number of times even within this short period. In France, eighteen months are possible, within which the parties can extend three times. Among others, the Netherlands, Luxembourg, Sweden, and Slovakia recognize a two-year period with variable extension options, none of which, however, exceeds three occasions. Belgium allows three years, also with a maximum of three extensions. In Europe, according to the ILO register, ten years is the longest possible employment period covered by a fixed-term contract, and this is found in Estonia—it can be extended twice. At the same time, in my opinion, the ILO misinterprets the relevant Estonian regulations, because according to them, the parties can enter a maximum five-year contract, which can be extended once—the Estonian legal environment, therefore, complies with the regulations of the European

720 Aleksynska and Muller, 2015, p. 3.
721 International Labor Organization, 1982, Art. 3, para. (2).
722 For the most recent statistical data, see: https://eplex.ilo.org/fixed-term-contracts-ftcs/, but also the work of Aleksynska and Muller, 2015, a well-reviewed summary study on the topic.

Union, and the assumption of a ten-year limit is not correct. This is confirmed by the provision of the law, according to which the parties can exceed the five-year limit, but in this case, the legal relationship is transformed into an indefinite period.[723]

Ukraine, Armenia, Switzerland, Finland, Denmark, Turkey, and Austria do not have a relevant legal limit, but at the same time, of course, the five-year framework prescribed by the Union applies to the member states of the European Union. In countries where fixed-term contracts do not have a legal limit, the basic condition for concluding them is usually the proof of some objective interest.

In the case of the UN, all things considered, the regulations are similar to those of countries where there is no legal limit to the duration of fixed-term legal relationships, and there is also no obstacle for the parties to extend the legal relationship indefinitely, and it is not necessary to give an actual reason for this. According to the ILO's records, there are only four countries among the member states that have similar conditions; that is, the solution is by no means widespread and requires particularly strong legal certainty on the part of the legislator.

Attention must also be paid to the fact that without legal restrictions, not only is the official in a more vulnerable position, but it is also more difficult to establish the existence of an illegal chain, which can only be concluded by the law enforcement officer based on all the circumstances of the case.

1.4. Retirement

In Hungary, as in Germany and Austria, the civil service relationship is automatically terminated when the civil servant reaches the age of seventy, or the civil servant can be dismissed if he or she is retired.[724] In the case of the UN, this age limit is 65, but if the official retires at any time after reaching that age, his or her legal relationship will automatically be terminated. Officials appointed before January 1, 1990, can retire at age 60; officials appointed on or after January 1, 1990, can retire at age 62; and officials appointed after January 1, 2014, can retire at age 65.[725] Before reaching this age, early retirement is possible; the governing procedure for this will be discussed later. It is important to note that retirement is not considered termination; therefore, the concerned official is not entitled to a layoff period, severance pay, or repatriation support.

723 See Employment Contracts Act (Employment Contracts Act) Art. 9–10. (https://www.riigiteataja.ee/en/eli/520062016003/consolide).

724 *Act on Government Administration*, Art. 104 (1) Point c) and Art. 107 (1) Point e).

725 United Nations Joint Staff Pension Found, 2021, Art. 1. (n).

the main difference between the Hungarian regulations and the UN's internal regulations in this area is that retirement in our country is only a possible exemption in the general public service, while in the case of the organization, it is an automatic reason for termination.

In the case of retirement, the competent office unit (the executive/administrative office in centers, the head of field work or peacekeeping operations in the case of mission personnel, and the office responsible for local personnel affairs outside the centers) is obliged to inform the official concerned of the retirement age three months before the date of termination about his or her upcoming appointment, confirming the date of termination of the legal relationship (the last day of the month in which the official reaches the specified age). Additionally, the person in charge draws attention to the formalities related to the termination, and the competent office prepares a *letter of appreciation,* which includes the most significant steps in the official's career, personal characteristics, and skills—such as competencies, creativity, commitment to the office, mission assignment—together. In the case of twenty years or more of service, the letter is signed by the Secretary-General.[726]

As I indicated earlier, in the field of retirement, we must also examine the possibility of early retirement. This includes all cases where the official becomes a pensioner before the mandatory retirement age. The option is available to civil servants aged 55 or older if they wish to terminate their service and submit a related request to the UNJSPF. In terms of category, early retirement falls within the scope of resignation; therefore, its legal conditions and legal consequences must be applied.

The competent office unit (the executive/administrative office in centers, the head of field work or peacekeeping operations in the case of mission personnel, and the office responsible for local personnel affairs outside the centers) prepares the acknowledgment letter in this case as well, with the content and characteristics presented earlier.[727]

1.5. Dismissal

It has been observed in several cases that despite the differences in wording or categorization, the state and international public services display a high degree of similarity. In fact, we could formulate the phenomenon in such a manner that the national and international rules, practices, and expectations are no more different from each other than the public services of two arbitrarily selected states.

726 *Separation from service—Retirement.* Page 1 (https://cutt.ly/5SjocRy).
727 Early Retirement, page 1 (https://cutt.ly/RSjombD).

In the practice of international organizations, any termination initiated by the organization against an official is considered a dismissal. The UN Staff Regulations expressly emphasize that this does not include resignation, abandonment of office, expiration of appointment, retirement, or death—as we can see, none of them are realized as a result of a unilateral decision of the organization.[728]

As a reason for dismissal, the regulation accepts six exhaustively listed grounds; therefore, the UN exemption system can be considered binding. Officials over the age of 65 can only be employed in exceptional cases based on the decision of the Secretary-General, in addition to job termination or downsizing, insufficient service, insufficient health, failure to meet the requirement of personal integrity (e.g., disciplinary reasons), and the existence of a reason excluding employment. Additionally, the Secretary-General may terminate the official relationship citing reasons related to the general operation of the organization, which results in increased severance pay for the official, which may exceed the level that would otherwise be paid to the official by a maximum of 50%.[729]

Reduction in staff, lack of merit as a lack of integrity, unsatisfactory performance, disqualification from employment, and medical incapacity are also grounds for dismissal under domestic law, and in this respect, the two civil service systems are similar, which, as we have seen with the grounds for dismissal, means that we are talking about grounds that are intrinsic to the civil service—and to employment law in general.[730]

2. Procedure in case of termination of the mandate

In the event of termination of the assignment, the parties may and do have several claims for which it is necessary to provide a guarantee in accordance with legal regulations to a certain extent. This is where we need to talk about the provision of the resignation and release period, the rules for the payment of severance pay, the possibility of redeeming leave, and the obligation to issue an employer's certificate.

728 *Staff Regulations*, Rule 9.6. (b).

729 *Staff Regulations*, Regulation 9.1–9.3.

730 When issuing termination notices in all legal systems, care must be taken to ensure that the exercise of the right does not lead to discrimination against the employee. In many cases, this results in a difficult situation, as borderline situations are typical in this area, when the actual termination led to some personal conflict—even one not closely related to the employment relationship—in the absence of which the employee's lack of function would otherwise not necessarily lead to the end of the legal relationship (on the subject, see more details: Petrovics, 2021).

2.1. Resignation and notice period

In Hungary, the resignation and notice period is a uniform period of two months in the case of government officials within the scope of the act on government administration,[731]at least half of which, in the event of a resignation, the official must be exempted from the obligation to work.[732] However, the UN does not regulate uniformly: as we have already seen in the chapter discussing resignation, it makes the length of the leave period dependent on the type of contract, and, as can be seen in the figure below, it does the same in the case of a notice of termination.[733] An official who is dismissed as a disciplinary measure does not have a notice period.

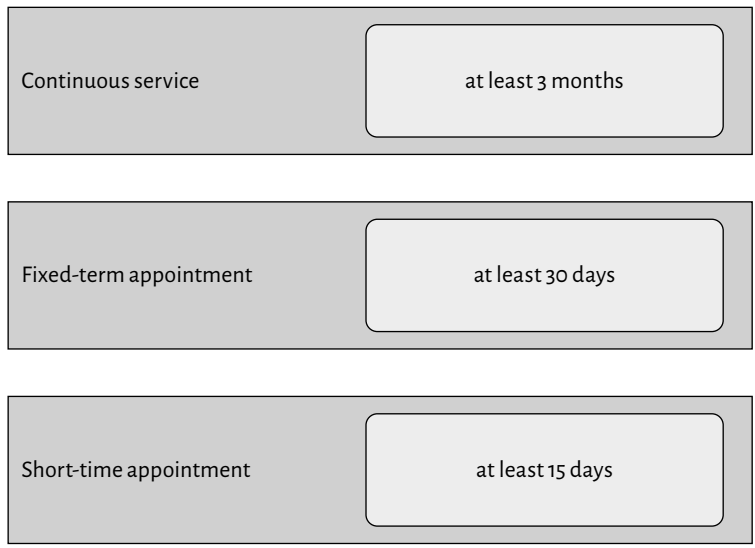

Figure 10. The length of the notice period according to each assignment type.[734]

2.2. Severance pay

The amount of salary the severance payment is based on is the official's gross salary (in general service and related categories supplemented by the amount of the language allowance), reduced by the amount of the mandatory staff contribution.[735]

731 *Act on Government Administration*, Art. 106 and 111.
732 *Act on Government Administration*, Art. 111.
733 *Staff Regulations*, Rule 9.7.
734 Own figure.
735 *Staff Regulations*, Rule 9.8.

The use of extraordinary leave does not interrupt the period of service on which the severance payment is based, even if service credits are not credited to the official during these periods. Additionally, similar to the Hungarian regulatory environment, if the official receives pension-related support or full disability support, he or she is not entitled to severance pay.[736]

At the request of an official who leaves because of mutual agreement, collective downsizing, or the termination of his or her position, the General Secretary may place the official on the staff on unpaid leave to ensure pension rights if he or she has twenty-five years of service and less than two years left until he or she reaches the age of 55, or if he or she is less than 55 and has two years left in his or her twenty-five years of service.[737] The Hungarian legal system does not know of a similar legal institution.

2.3. Commutation of accrued annual leave

In the event of termination of the legal relationship, a significant procedural step is the commutation of accrued annual leave. In the case of officials with a short-term assignment, 18 days can be redeemed in this manner; in the case of officials with a fixed-term or continuous service assignment, 60 days. The basis of the settlement varies by service category and is usually calculated from the net salary and the supplement associated with the position.[738] The regulation stipulates that if the official is relieved of his duties because of sexual harassment or violence, he is not entitled to redeem his leave.

If the official took more leave than he was entitled to, together with the accumulated values, he must return the value to the organization. The Secretary-General may, considering the circumstances, waive the latter condition, to a limited extent.[739]

Although the rules for commutation of leave apply in a similar way in developed legal systems, there are exceptions to the general practice. In France, for example, in the event of the termination of the employment relationship, as a general rule, unused leave does not form the basis of any accounting relationship, and as a result, it is not redeemed by the employer in the public sector.[740] In Italy, we can study a similar model: in the public sector, vacation days must be issued by the employing body; there is no possibility to redeem them. There is an exception to this only if the termination of the legal relationship is caused by the official's death or dismissal, or in other cases where

736 *Staff Regulations*, Rule 9.8.
737 *Staff Regulations*, Rule 9.8. Point (d).
738 *Staff Regulations*, Rule 9.9.
739 *Staff Regulations*, Rule 9.10.
740 https://www.service-public.fr/particuliers/vosdroits/F488

the failure to issue the relevant vacation days can be objectively justified.[741] Although this solution cannot be considered widespread, it still has its *raison d'être*, as it forces both the official and the employing body to manage their time more expediently. Despite this, the system allowing commutation is naturally closer to the Hungarian system, such as has been developed at the UN over the decades.

2.4. Employer certificate

Upon termination of the employment relationship, the employer is obliged to issue certificates and data sheets to the employee in addition to the payment of his benefits, for which the use of "exit papers" as a summary name is common in everyday language. In private employment relationships, the 2012 Labor Code omits the solution represented by its 1992 predecessor, which defined the mandatory content of the employment certificate to be issued by the employer. Thus, according to the currently effective legislation, it is not mandatory to issue an employment certificate, but based on experience, employers continue to issue the certificate, continuing the previous practice. The content of the certificate can be determined by the employer himself. However, the employer is also obliged to issue a certificate of the insurance relationship and health insurance benefits; the proof of income required to determine the health insurance cash benefits; proof of debt; the certificate required to determine the jobseeker's allowance; a certificate of the payments forming the basis of the paid individual contribution and the deducted contribution, as well as the validated family contribution discount; and about income from the employer, deduction of tax and tax advance, a data-sheet on the amount of the family discount taken into account. The same system is also mapped by the Act on Government Administration, which makes the reference to additional legislation[742]in Article 115, paragraph (2).

Considering that some of these certificates are for the employee to submit to the future employer (e.g., debt certificate and social insurance booklet), some are to be kept (employer's certificate), and some can be used later, if necessary (e.g., certificate to determine job search allowance), these certificates do not depend so much on the person of the employer as on the fact that the employment took place. This type of certificate is issued by the employing organization in the UN, Hungary, and European Union states,

741 Opinion No. 40033 of the Department of Public Administration (*Dipartimento della Funzione Pubblica) (10/08/2012);* https://cutt.ly/dSjoRGn

742 See Act 122 of 2019 on those entitled to social security benefits and the coverage of these benefits, Art. 75 (2); Act 53 of 1994 on judicial enforcement, Art. 78; 34/2009. (XII. 30) SZMM decree on the certificate required to determine the jobseeker's allowance; Act 150 of 2017 on the taxation system law.

as the purpose of issuing these documents is basically to maintain social security and taxation.

Regarding the UN, however, the regulation is not as detailed as it is in the domestic legal system. The personnel regulations provide for the issue at one point, and no other source of law can be found on the subject. According to this, every official has the right to request confirmation of his work either orally or in writing. The document to be issued by the employer will certify the nature and duration of the service. If the official also intends to have a certificate issued about the quality of their work, they must declare it in writing.[743]

3. Restrictions after the termination of the legal relationship

Within one year after the termination of the legal relationship, it is prohibited for any official involved in public procurement procedures to enter into an employment relationship with or accept financial benefits from UN contractual partners.[744] The prohibition formulated along the lines of conflict of interest requirements[745] also extends to communication: within two years of the termination, the official who had official responsibility for the public procurement activity in the last three years of his or her legal relationship may not contact the contractual partners.[746] During their employment, civil servants may not accept offers for the future, the use of which would violate the prohibition rules after the end of the service.[747] All these restrictions are in place to guarantee the purity of public procurement processes, as a result of which the officials involved[748] do not receive any consideration for this special "non-compete agreement."

If the former official breaches the prescribed prohibition, a description of the incident and a formal proposal against any future employment with the UN will be recorded

743 *Staff Regulations*, Rule 9.12.

744 ST/SGB/2006/15, Point 2.1. Every activity listed in point 1.2. is considered a procurement activity—including managing the database of contractual partners, signing contracts, and supervising the procurement process.

745 Although for different reasons due to the nature of the legal relationship, conflict of interest regulations in both public service and private employment law significantly restrict the parties' freedom of self-determination and contractual freedom. On the subject, see also Petrovics, 2015, pp. 93–99.

746 ST/SGB/2006/15, Point 2.2.

747 ST/SGB/2006/15, Point 2.3.

748 Given the essence of the non-compete agreement, the extension of the protection of the employer's legitimate economic interest after the termination of the employment relationship, that is, the employee is obliged to refrain from competing with his former employer for a maximum of two years in return for an appropriate consideration (see Ember, 2015).

in his or her personnel file.[749] If the official who is still on the payroll violates the public procurement principles governing the organization, this may lead to disciplinary action being taken against the official.[750] Breaking regulations extensively will have adverse legal consequences for the official. In the worst-case scenario, the UN might terminate its contractual relationship with the partner in question. If the official is unsure whether the provisions of the regulation apply to his or her situation—because these rules apply depending on the position, specifically for those involved in the public procurement procedure—the UN Office of Ethics can take a decision on this.[751]

749 ST/SGB/2006/15, Point 3.2.
750 ST/SGB/2006/15, Point 3.1.
751 ST/SGB/2006/15, Part 4.

Summary

Appointment dogmas can be approached from both a legal and personnel perspective. When the official's status is based on the *letter of assignment with relative bilaterality*, the legal relationship between the parties is based on the Staff Regulations. In cases where the organization concludes a contract with the employee, the source of employment law is the labor law rules of the place of recruitment. This should not be confused with the fact that the UN has employment standards based on contracts and regulations; the former can include personal aspects that the parties can agree on (e.g., salary, classification, and nature of the assignment), and the latter includes the characteristics that are an integral part of the organization's operation (e.g., types of leave, extent, and rules of responsibility).

No uniform global practice exists for defining the concepts of public service, public service employee, and civil servant, nor is the range of personnel associated with the same terms the same everywhere—in this area, Western countries represent a much more uniform picture, while, for example, in Hungary or the United States of America, the official categories have several types. The UN system basically follows the Germanic model, according to which staff performing administrative tasks are classified as civil servants, and service staff members are employed according to general labor law rules.

In the case of the UN, we know of a merit-based recruitment system, through which anyone who completes the mandatory application process and the competitive examination with the appropriate results can join the organization's official staff. The competitive examination plays a significant role in the operation of international organizations; however, in state public services, it can be observed that this option is not decisive.

After the successful recruitment procedure, the official receives a *letter of appointment*, which is practically the same legal declaration as the appointment known in European states. Its mandatory content elements and formal requirements also meet the general requirements in the public service at the state level. The duration of the assignment in the UN can be short-term, fixed-term, or continuous. The legal institution of

short-term assignment is considered unique because in state public services, the legislator does not differentiate between short-term and fixed-term.

In connection with the appointment, I must also mention the *classification of positions*, which is taken care of by the International Civil Service Commission. The positions can be divided into five categories; however, unlike the domestic system, the official can dispute the category and initiate a change.

Regarding *the modification of appointments*, it is typical that, *in theory, in the contractual aspects, the parties should make a declaration of intent to make the modification*. However, in some cases, the employing body can decide on the modification independently and unilaterally, as is typical in Francophone-Latin legal systems. In the Hungarian act on government administration (and similarly in the Act on Public Servants),[752] the legislator "protects" the civil servant against unilateral changes by the employer only by giving him the right to request immediate dismissal within four working days—in this case, moreover, the employer cannot even consider the request for dismissal,[753]therefore, there is almost no possibility of restoring the legal relationship. It appears that the UN is objectionable in that it does not regulate the mechanism of the amendment, and instead allows space for the employer's, that is, the Secretary-General's, unilateral declaration of rights in this matter.

752 According to the Act on Public Servants, as a general rule, the official's consent to the amendment is required; however, there are issues in which the employer is entitled to unilateral amendment: (a) advancement of the official in the salary grade, the determination of his or her salary according to the law; (b) determination of the examination requirement for the promotion of a government official under the act; (c) changing the place of work exclusively within the municipality; (d) if the change of job justifies a change of appointment; and (e) other cases specified in the act. (Art. 48, para. (1)–(2)).

753 See the Mfv.II.10.051/2017 case of the Curia of Hungary on the illegality of altering the appointment of a government official: "When the employer unilaterally terminates the government service relationship of the government official, the law does not provide him with discretion in all cases; in the cases listed in the law, it makes it mandatory to take exculpatory measures. These mandatory grounds for dismissal also include the case when the government official requests his dismissal within the five working days provided for by law because of a unilateral change in his appointment and the legal relationship is terminated at his request." (https://kuria-birosag.hu/hu/sajto/tajekoztato-kuria-targyalason-elbiralt-mfvii10 0512017-szamu-ugyerol-kormanytisztviseloi). In the case, the plaintiff later filed a constitutional complaint in the Constitutional Court based on Art. 27 of Act 151 of 2011 in the Constitutional Court because, in his view, it is contrary to the requirement of respect for human dignity to have a procedure whereby challenging the lawfulness of an employer's action automatically and without discretion results in the loss of his job. The loss of his job caused him a loss of income; therefore, the decision of the first-instance court and the Court are unconstitutional because they violate his human dignity and his right to property. The Constitutional Court rejected the complaint in its order No. 3079/2019. (IV. 10.), because, in its view, the petitioner challenged the establishment of the facts and the legal assessment of those facts and challenged questions of evidence falling within the jurisdiction of the courts to review the facts, which the Constitutional Court has no jurisdiction to do. {3079/2019. (IV. 10.) para. [20]; 3231/2012. (IX. 28.), para. [4]; subsequently confirmed by: 3392/2012. (XII. 30.), para. [6]; 3017/2013. (I. 28.), para. [3]}.

On the question of the legal institution of *working time*, the UN provides provisions at the personnel regulation level, which can be supplemented by various lower-level legal sources. The organization is characterized by long working weeks, especially compared with countries, such as the Netherlands.

The *concept of core time* has been recognized by the organization's employment law since 1995, and its solution is similar to the provisions of the German Working Time Act. The legislation put into practice the staggered working time schedule, based on which employees must be present at the workplace for a specified but short number of hours.

The legal institution of core time leads us to the issue of flexible working time organization, in relation to which we can see that the UN does not grant a subject right to such work organization, allowing this to fall under the discretionary authority of managers, except in crisis situations. The organization recognizes four options for flexible scheduling: staggered scheduling, compressed work schedules, scheduled study breaks, and remote working, and has been trying to catch up with the best practices of the states in this field since 2003. However, the attitude of the UN is certainly exemplary, according to which a well-chosen work order or form of work creates the foundations of success-oriented organizational functioning.

State and organizational law display certain significant differences between the types of rest periods and leaves, although the systems are based on similar foundations. At the same time, we also experience *deviations*: the UN regulations are particularly incomplete, for example, in the field of *special breaks between work*; thus, healthy and safe working is endangered by the fact that the regulations neither talk about working in front of a monitor nor about ensuring breaks between work for health purposes. Furthermore, I did not find any provision regarding the minimum daily rest period that the organization is obliged to provide for its officials.

In the area of *overtime*, field service officials appointed to permanent missions may perform a maximum of forty hours per month, and the concerned officials may claim compensation during their free time. Employees in the expert and above categories can only receive free time as compensation; however, overtime may take place in exceptional cases and only on the instructions of the General Secretary. Additionally, the fact that the regulatory background of the organization is incomplete cannot be ignored, as field service and maintenance, trade, and security services are covered by the legal sources available, but in the general and expert service categories, we find a legal gap regarding the maximum amount of overtime.

Regarding *leave*, I see that at the state level, the amount of *annual leave depends either on the length of service* spent at the employer or on the *age of* the official. In comparison,

the UN defined a *third form* when it made the amount of annual leave dependent on the duration of the *appointment—a distinction that is neither justified nor seems reasonable.*

The organizational regulation stipulates that leave must be taken in the year in which it is due, except for certain justified exceptions, but is silent on the possibility—other than at the termination of a legal relationship—of *commutation of accrued annual leave*. We can also find a source for this at the United Nations Development Program (UNDP); therefore, based on this, it seems that this is only possible when the *legal relationship is terminated*—in this area, the organization, therefore, follows the general practice of the states. The official does the same regarding the legal institution of the *absence fee*, which he or she is not familiar with in the same way as in Western European states, and therefore the official receives the full salary for the duration of the leave.

In the area of special leave, the UN basically agrees with the regulations of European states, thus distinguishing between professional and family leave. However, we already *encounter differences in the content of legal institutions.* Here we can mention the actual voluntary military service, which naturally means a ban on the exemption in the regulatory background of both the states and the organization, but the latter does not guarantee that the official will be able to return despite the reduction in staff or reorganization that has arisen in the meantime.

In the field of *recreational leave*, the organization provides officials with a rest period that is allocated to those concerned for rest and recovery, as in Western European states. It would also be worthwhile to consider adopting the relevant regulations in Hungary, because this form of absence already existed in our country; therefore, the relevant practice and theoretical background are available.

A significant component of the employment relationship is also the field of *salary regulation*. Based on the Noblemaire principle, when establishing the salary level for officials classified in the professional and higher categories, the *UN takes into account the civil service salary provided by the richest countries* (currently, the financial framework of the United States of America is the governing factor), thereby guaranteeing that even the most highly qualified professionals apply to the organization's vacant positions, thereby reducing the possibility of corruption against officials. For officials employed in the general service category, based on the Flemming principle, the organization establishes a salary corresponding to the standard of pay for similar positions in the state where the office is located. Officials providing field service receive a uniform salary, similar to the Noblemaire principle; however, the various salary classes are determined independently for them. At first glance, the categorization of salaries in this way may seem unjustified, but on closer reflection, it is a matter of a high level of enforcement of the principle of equal pay for equal work, as the organization does not only consider the individual

service categories as a group from this perspective but also takes those officials into account as a benchmark who perform similar tasks in the service of their own state, completely independent of the organization.

The organization is tax-exempt in most states, but this does *not mean that the officials do not have to pay contributions*. The UN requires officials to make a so-called "personnel contribution," which means, that *their salaries are subject to an internal tax*. In my opinion, the application of this legal institution is self-serving and can only be supported by ethical, moral, or social-psychological reasons.

As can be seen in France and the Scandinavian countries, civil service contributions are sometimes indexed to inflation; therefore, the real value of wages can be maintained. Every month, the UN reviews the differences between the real salary and the nominal salary from its perspective, and awards officials an adjustment allowance as necessary.

Through performance evaluation within the organization, managers ensure that everyone can advance in the salary categories corresponding to their professional performance. The system is very similar to the domestic systems; it is based on a jointly created work plan, which the parties can evaluate during the year and at the end of the evaluation period.

Similar to the European Union, the organization has developed various mobility incentive packages to achieve its organizational goals more effectively. In the case of the UN, it often happens that officials must work in dangerous locations, and the organization tries to compensate for this. The practical principle of the mobility incentive package is the same as what we see in the regulatory framework for foreign representation and long-term foreign service of the Hungarian Ministry of Foreign Trade and Foreign Affairs.

In accordance with the priorities experienced in the European Union, the UN emphasizes in its social law the improvement of the position of women in the world of work, child and elderly care, and the promotion of studies. All officials who have an appointment of at least six months or have served for at least six months with short-term appointments can be members of the organization's pension fund. The organizational unit makes long-term investments from the contributions paid and revises its guidelines every four years.

Corporate *health programs provide a solution for managing operational risks, and in this area, the UN is more similar to companies in the private sector,* as there are several options available to preserve the health of officials. In this section, we discuss the legal institution of sick leave, which the UN provides extremely generously for civil servants: civil servants with continuous appointments are granted a guaranteed leave of nine months

with full pay and nine months with half-monthly pay during a four-year period, which is supplemented by an additional seven days per year, which they can supplement with uncertified sick leave according to their needs. In this area, the organization provides its officials with orders of magnitude more opportunities than state public services.

For the welfare of its officials, the organization also maintains a *health and life insurance program*, which is also not a typical benefit within the state public service structure.

Similar to the domestic system, the UN is obliged to pay *for damages caused to the official in connection with the work* as well as for damages to the official's personal *belongings*. At the same time, in the latter case, the organizational regulation differs because the employer's responsibility is not custodial in nature, which means that the given thing does not have to be in the employer's custody when the damage occurs.

The organization is also obliged to pay for *posting and repatriation costs;* its practice is the same as the formulae used in the European Union. The organization covers the travel costs of the official and his or her spouse and children, provides integration support, and, in the event of the official's death, arranges for the official's spouse and children to be transported to their place of residence. We can see that, while in the case of states, deployment is a widespread practice, application problems still arise. In the case of the UN, *deployment* and *relocation* are legal institutions that are essential to the operation and that operate without any kind of malpractice at the organization.

In examining the set of *fundamental rights and obligations* that characterize the civil service, I have come to the conclusion that they are essentially the same in the UN and in the national public sector, where the specific nature of civil service systems means that the highest priority is given to the law, to superior instructions, to the public interest, to conducting oneself with dignity, to loyalty and integrity, to professional and impartial administration, and to the preservation of official secrets.

The UN has created few rules regarding exactly what obligations it expects its officials to fulfill, but at the same time, the Ethics Office is an organizational unit that, while maintaining confidentiality, helps those concerned adjust to what exactly would be the organizational norm that needs to be followed in given circumstances. If any adverse legal consequences are applied, the organization's practice is the same as the trend seen in European states in imposing these sanctions cumulatively against the official.

Judicial practice plays a major role in establishing fundamental rights and obligations; therefore, in this chapter, we find cases related to freedom of expression, the requirement of equal treatment, the prohibition of retroactive effect, the protection of acquired rights, and the right to a fair trial. Examining the decisions, we can conclude that in several places the decision made by the internal court is the same as the direction that the Hungarian Constitutional Court also claims to be its own.

As for the UN's practice of disciplinary procedure, it is very similar to the solutions observed in the public sector of the state. This is not surprising, as the organization developed its own internal rules, considering some elements of the existing German, French, and English models. It is similar to the German legal system in that there is an obligation to report if an official detects a breach of duty, and the types of penalties are also similar. According to the English system, an official can be punished in a separate procedure for a minor breach of duty, and more serious offenses are sanctioned in a separate procedure. The French and Hungarian systems agree with the UN's solution as there is no exhaustive list of disciplinary offenses, which may include anything by which the official violates his or her obligations arising from the public service relationship. At the same time, the UN is completely different from the procedure in France because, while in the state, the punishment imposed by the disciplinary council is only a proposal for the employing body, in the case of the UN, the decision has a binding force and must be implemented.

The stages and participants of the disciplinary procedure have a transparent relationship with each other, and officials can easily familiarize themselves with the regulations governing them; therefore, the internal law of the organization complies with the principle of the rule of law. Although they evaluated the process of the disciplinary procedure, they concluded that in some places the procedure is perhaps unnecessarily overcomplicated, with many more actors compared to the state procedures, and as a result, the participants can expect the procedure to be prolonged.

In this chapter, I also examine the governing case law through a few cases. From the decision-making practice, I see that the disciplinary body tries to choose the most proportionate measure possible, but it is usually typical that if a case reaches the disciplinary stage, the legal relationship between the official and the organization is terminated at the end of the procedure.

All this leads us to the last major topic discussed in the second part: the UN and its employment structure cannot be considered as providing status security; therefore, in this matter, the organization differs from the model of the Germanic and Francophone public service systems. Moreover, the reasons for the termination of the legal relationship are similar to the methods typical in state public services, but the personnel regulations do not list mutual agreement as a separate reason for termination. Organizational law is unique in this regard, as the existence of a collective agreement can only be inferred from the fact that it is otherwise referred to in the personnel regulations, and its applicability cannot be ruled out because of the contractual autonomy of the parties.

In the organization, the resignation and dismissal times differ according to the duration of the official's appointment. The longest periods characterize assignments for

continuous service, while those employed with fixed-term appointments can count on a shorter notice time, and the shortest periods characterize short-term assignments.

The UN pursues a questionable practice in that, in the case of fixed-term appointments, it does not place any legal obstacles against their renewal and related re-employment. That is, the organization does not establish the maximum duration of fixed-term appointments, nor does it provide for the illegal chain of appointments. In this, the regulatory background differs fundamentally from the legal standards typical of European states.

PART 3
LABOR RELATIONS AND DISPUTE SETTLEMENT

I. Labor relations

The philosophy of industrial relations is based on the creation of democracy in the workplace, the reconciliation of common interests, and thus the promotion of the positive development of the institution through peaceful cooperation and the protection of fundamental workers' rights. In light of this, differences of opinion must always be settled by negotiation, and to this end, a system of relations must be established and operated that allows the parties to participate on an equal footing in organizational decisions. In European countries, industrial relations law can be divided into two broad areas: the first is the system of forums for reconciling interests, which is typically bilateral or tripartite, and the second is the constitutional law of the workplace. In the West, the civil service has typically adopted this system. In the case of the UN, however, the mechanisms of working constitutional law, that is, the system of exercising participatory rights, are practically the only ones in existence, and there are no classical processes of interest conciliation.

The regulation of industrial relations generally tends to favor the weaker members of the workforce, a process that, in the long term, is in the interests of the employer, whether in the public or private sector, to achieve industrial peace and the early identification of workers. Institutionalization also clarifies the framework and the instruments to be used by both parties, making further cooperation more predictable and more relaxed.[754] *In my experience at the UN, the emphasis placed on good working relations through the development and activism of the various departments is a success for the organization, and the existing model could also be a model for the public service to follow.*

1. Social dialog within the organization of the UN

Social dialog rights derive from the rights of association and freedom of association, and therefore an important element of the 2030 framework of the UN Sustainable Development Goals[755] is the general development of social dialog to promote social cohe-

754 Kőmüves, 2015. Further details: HR Portál: A munkaügyi kapcsolatok fogalma; https://cutt.ly/VSjoDvs
755 United Nations, no year-c.

sion. The UN recognizes that as the quality of labor institutions deteriorate, the inequality of employment increases. According to the UN definition, social dialog is defined as any process of economic and social policy negotiation, consultation, and exchange of information between employers, workers, and legislators.[756] Dialog can happen at different levels: sectoral and intersectoral, national and regional.

In an international organizational setting, similar participatory, collective rights and obligations—typically co-decision,[757] consultation, and information rights—apply as in the public sector. Additionally, it is certain that within the UN organization, officials also need an organization to represent their interests to the General Assembly in relation to their working conditions.

Although trade union representation and employee participation have a broadly shared objective of protecting workers' rights, the two institutional systems differ significantly and can be considered as two sub-genres of employee representation. In the case of direct participation, which falls within the field of industrial constitutional law, employees exercise their rights from within the employer's organization through their elected representatives, whereas trade union representation is provided by an external organization separate from both the employer and the employee community. The trade union model of representation is traditionally characterized by opposition to the employer. The main feature of this type of representation is that it benefits the workers to the detriment of the employer. The traditional instruments of this representation are collective bargaining and, through this, establishing a collective agreement. Participation, however, is characterized by cooperation with the employer, based on the recognition that it is in the interests of both parties to ensure that the workplace is run competitively and effectively. In this spirit, the main instruments of participation are information and consultation with employees to ensure that decisions taken in the management of the company are in the interests of both parties. In practice, the right to co-decision is generally a minor issue,[758] and at the UN, such a possibility does not even arise.

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756 The organization's dogmatic approach is also reflected in the definition of its specialized agency, the ILO: In the ILO's conceptual structure, social dialog encompasses everything from the simplest exchange of information, through consultation processes, to the most diverse negotiations between employer and employee, and in these communication situations the actors are linked along economic and social policy interests (see Mélypataki, 2019, pp. 23–24).

757 Co-decision is not available to stakeholders in all countries—typically, for example, in France, it is not applicable. In addition, the institutional system is segmented and the same organizations are not to be found everywhere—the United Kingdom is a case in point, where, although there is no Works Council, the right to be heard is a fundamental principle, as in all constitutional states (see Prugberger, 2005).

758 Hungler, 2020, [5]–[6].

All this suggests that the process within an international organization is less multi-stakeholder than for a state. Given that the legislative role at the UN is played by the General Assembly and the Secretary-General, who is also the employer, it is to these bodies that comments on the improvement of working conditions should be addressed. We cannot expect a classic bipartite, tripartite[759] social dialog. Furthermore, from the representation of the parties' interests perspective, it is not insignificant that it is primarily the employees who can represent their interests within the organization, and that, given the aforementioned indirectness of the decision-making mechanism, it would be inappropriate to maintain a separate organizational unit for this purpose on the part of the employers.

Within the organization, we distinguish five categories of employees, whose working conditions vary widely, making it very difficult to represent their different needs in a uniform manner. The question is, then, what constitutes a collective claim within the UN? Is it even possible to achieve collective representation for staff employed along such divergent lines?

2. Staff representation in the organization

The UN's system of labor relations includes collective labor actors just as much as the public service systems of the member states, and in this respect too, we see that the UN can function as a state in terms of its employment legislation. The *Staff Council*, whose main function is to ensure the flow of information between the Secretary-General and

759 Labor relations are essentially bipartite but can also be tripartite with the involvement of the state. In bipartite negotiations, mainly the traditional elements of industrial relations (employment relationship, working conditions, wages, etc.) are settled between the employer and the union, while in tripartite negotiations, issues at the national level (income policy, taxes, and employment policy) are discussed with the active participation of the government.
The bipartite bargaining system is very typical of Germany, where national committees conclude collective agreements with each other, and the relationship between these agreements is determined by the *Günstigkeitsprinzip*. This principle prescribes the application of the more favorable norm; however, in labor law, it has an additional meaning: an individual employment contract can never conflict with a collective agreement, and a lower-level collective agreement cannot be in conflict with a higher-level one unless the prevailing source allows it *(Öffnungsklausel)*.
In France, the tripartite form of bargaining is common, where the legislator requires 50% employee coverage as a representativeness requirement. This solution leads to much fairer representation results than the 10% required in Hungary. However, there is no representativity requirement in all countries, where each participating trade union can be represented in the bargaining process in proportion to its membership. The expectation is that the negotiating unions are independent of the other parties, political parties, and the state.

the staff and the democratization of the decision-making mechanism, focusing primarily on administrative matters relating to staff welfare and staff policy, can be equated with the Works Council, which is also well known in domestic labor law.[760] Staff representatives and representatives of the Secretary-General meet regularly in the context of the organization's *decentralization consultation process*. If an issue cannot be resolved or if it has too wide an impact on the organization, the *Joint Advisory Committee (JAC)* is involved in the decision-making process to discuss the matter further. Staff members who serve on the Staff Committee are granted working time allowances, as is customary in national legislation, to enable them to carry out their duties effectively.[761] A further similarity between the domestic and the UN legislation on the work of representative organizations is the provision of the right to use premises, which in the case of the latter is granted to the people concerned by an administrative instruction of 1982.[762] In the following figure, I illustrate the UN's internal representative system:

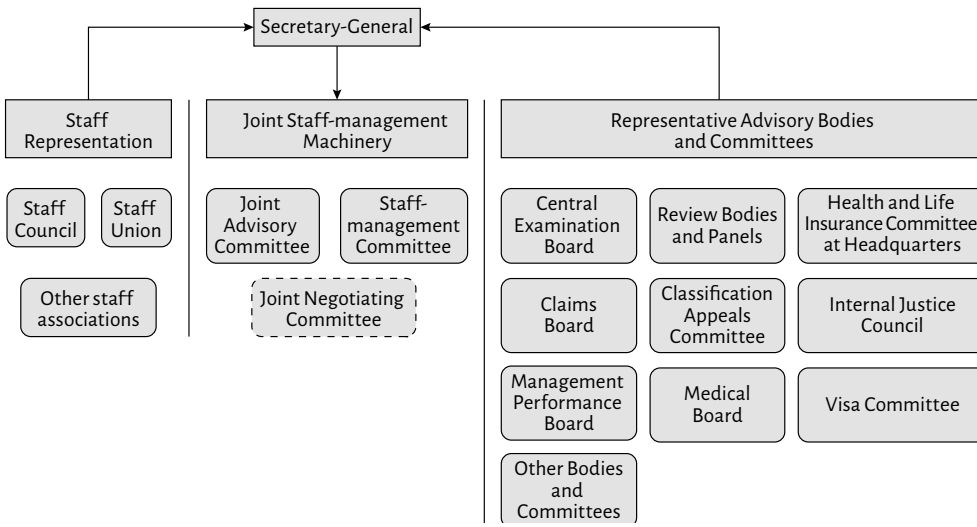

Figure 11. The Staff Representation System of the UN

760 An important role of the Staff Council is also to represent officials who apply to the Staff Union, which also has an advocacy function (see https://u-seek.org/). The Staff Union is an organization of which all officials automatically become members by appointment (as is the case with the Hungarian Faculty of Government Officials in Hungary) and can be supported by membership contributions on request (see, e.g., UNDT/2014/006).

761 ST/SGB/172.

762 ST/AI/293.

Regarding the JAC's activities, it is noteworthy that the departments and offices are required to meet quarterly to discuss the most relevant issues affecting staff. In fact, the system can best be compared with the Works Council (or public employees' council) conciliation, which is recognized under national law and whose major objective is to ensure the optimum transfer of information on employees to the parties concerned. I believe the same mechanism can be found here, where managers are obliged to discuss with the Committee the following:[763]

a) Identifying issues relating to staff welfare, working conditions, and efficiency, as well as the ways and means of improving them within the framework of established regulations, rules, and policies;
b) direct application of the Staff Regulations under the authority delegated by the Secretary-General to heads of departments or offices, including the implementation at the departmental or office level of policies and recommendations on staff welfare approved by the Secretary-General;
c) problems and crisis situations arising within the department or office with a view to resolving them at the appropriate level.

In the work of employee representative bodies, all officials have the right to vote and stand for election, in accordance with the principle of freedom of association, and may not be discriminated against on the grounds of their participation in or abstention from participation in the activities of the representative body.[764] In this respect, the UN jurisprudence is wholly in line with the regulatory framework expected and customary in the rule of law states.

Significantly, the *Staff Council*, *Staff-management Committee*, and *Joint Negotiating Committee*, which will be presented later, do not exhaust the possible lobbying activities: the Staff Regulations recognize freedom of association, that is, officials themselves may establish any lobby they wish, which can then express their views through the executive arm of the UN's own lobbying bodies.[765] In this way, the organization imposes a specific constraint on the exercise of these freedoms, which can be argued against: it is clear that to improve the transparency of processes and increase the specific weight of the voice of representation within the organization, communicating with decision-makers through the established departments is preferable. At the same time, if the UN department creating or maintaining the situation is not interested in making a difference,

763 ST/SGB/274.
764 *Staff Regulations*, Rule 8.1.
765 *Staff Regulations*, Rule 8.1. g).

then whatever the support for an official-led advocacy body, it will not achieve the result in a formal manner.

3. Joint staff-management machinery

The *joint staff-management machinery* within the UN organization comprises two main groups: on the one hand, there are advisory bodies and committees; within this category, there are currently twenty-nine different groups, bodies, or committees with a direct or indirect advocacy role (e.g., harassment prevention, visa issues, information technology provision, etc.).[766] This also includes the Staff-management Committee and a Joint Negotiating Committee, which are described in detail below.

3.1. Staff-management Committee

The work of the Staff-management Committee is reviewed in annual cycles. During this period, the Committee holds one annual meeting, up to three periodic meetings, and ad hoc meetings for urgent or unforeseen issues, at the discretion of the Committee Chair. The annual meetings are held in the presence of members in person, and the periodic and ad hoc meetings are held by videoconferencing online or by other similar means.[767]

The procedural arrangements, similar to those used in state-level regulations, require that members be notified of the issues to be discussed within predetermined deadlines. The topics to be discussed at the annual meeting, including the agenda and documents, must be circulated to all members, alternates, and external members at least six weeks prior to the meeting. Failing this, the matter in question shall not be discussed for lack of time for preparation.[768]

The annual meeting is held in April each year, unless otherwise agreed, and lasts for six consecutive days. The periodic meetings shall be preceded by a prior consultation at least two months before the date set and shall last one to two hours per working day, which may be extended by agreement between the participants. Ad hoc meetings shall be convened by the President after consulting the Commission at least two weeks in

766 See https://hr.un.org/handbook/category/7168

767 ST/AI/2014/3, Points 2.1–2.2.

768 ST/AI/2014/3, Point 2.3. Exceptions to the general rule are those topics that do not require a proposal from the Commission. These must be notified to the person designated at least two weeks before the date of the meeting.

advance. Their duration shall be the same as for the periodic meeting.[769] With this system, the UN has established a structure that is not at all similar to the arrangements in place in the practice of the states.

3.1.1. Contact Group

The two basic functional units of the Staff-management Committee are the *Contact Group* and the working group, of which more than one may be set up. The Contact Group has a one-year mandate and is responsible for assisting the work of the Staff-management Committee. It is made up of three representatives each from both the staff and the management, who are in constant consultation with the members who have given them a mandate. The Chair of the Contact Group is the same as the Chair of the Staff-management Committee and, in his or her absence, the Vice-Chair of the Staff-management Committee. Additional assistance is provided by the committee secretary. The Chairperson, the Vice-Chairperson, and the Secretary shall not be members of the Committee.[770]

The Contact Group shall be responsible for preparing the agenda, drawing up the annual program, preparing progress reports on the implementation of the program, preparing Committee proposals, coordinating the work of the working groups, and coordinating the administration of Committee tasks and meetings as instructed by the Chairperson.[771]

3.1.2. Working groups

The Staff-management Committee may designate working groups on subjects on which the Committee has additional responsibilities. The working groups shall, in principle, not meet face-to-face but shall use videoconferencing and other similar telecommunications facilities. Deadlines for the completion of the working groups' tasks shall be set by the Staff-management Committee.[772]

769 ST/AI/2014/3, Point 2.4.
770 ST/AI/2014/3, Point 3.3.
771 ST/AI/2014/3, Point 3.4.
772 ST/AI/2014/3, Points 4.1–4.3.

3.1.3. Staff-management Committee and its agreements

If the members of the Staff-management Committee reach an agreement, it is forwarded to the Secretary-General, who is responsible for approving the agreement and transposing it into the internal rules of procedure.[773] If the Secretary-General does not accept the proposal or does not transpose it within the time limit available to him, he shall inform the Committee, via his representatives, of this fact and the reasons for it within four weeks of the decision or the date of the delay.[774]

If the members of the committee are unable to reach an agreement, a working party shall be set up to consider the matter. Within two weeks, the working party shall either report to the committee on the agreement reached or a third-party mediator shall be asked to settle the matter. After a maximum of one week of mediation, the working group must report the results to the committee.[775]

The committee is obliged to bring the matter before the Secretary-General in light of the contents of the report produced, even if no such document is ultimately produced. If no agreement can be reached, the committee's report shall state this fact with a one-page explanation of the positions. If an agreement is reached in the face of dissent, the dissenting opinions shall be recorded in the document.[776]

3.2. Joint Negotiating Committee

The Joint Negotiating Committee (JNC) operates in two forms according to UN rules: at headquarters and in the field.[777] The JNC's primary responsibility is to ensure equitable and efficient staff management. In terms of its role, this unit most closely resembles another typical actor of collective labor law—the trade unions[778]—however, in terms of its nature, at the macro level, among the state-leveled institutions, those are similar in their work and share the common feature of mediating between the parties.[779]

773 ST/AI/2014/3, Point 5.2.
774 ST/AI/2014/3, Point 5.3.
775 ST/AI/2014/3, Point 5.5.
776 ST/AI/2014/3, Points 5.6–5.7.
777 *Staff Regulations*, Rule 8.2.
778 UN HR Handbook: Staff Relations.
779 For example, in Hungary these institutions are the Labour Advisory and Dispute Settlement Service (Munkaügyi Tanácsadó és Vitarendező Szolgálat), the National Economic and Social Council (Nemzeti Gazdasági és Társadalmi Tanács), and the sectoral dialog committees (ágazati párbeszéd bizottság) are similar in their work, as they all have the common feature of mediating between the parties. (See more Kun, Bankó és Szabó, 2019.).

3.2.1. Joint Negotiating Committee at headquarters

The JNC oversees mutual agreements that deal with staff welfare, including working conditions, living conditions, and other personal issues.[780] The committee is composed of a total of eight members: four representing the staff and four[781] representing the management.[782]

According to UN rules, the committee meets as appropriate,[783] but normally at least once every two months, with an agenda sent to all members concerned seven days before the meeting.[784] The committee shall meet according to its own established procedures and shall be entitled to set up departments to assist it in the conduct of its work.[785] The committee may, by its nature, only settle matters that, according to the Charter, fall within the competence of the Secretary-General, and agreements must be implemented by the responsible participants. The minutes of the meetings are therefore essential and must be made available on the committee's intranet, that is, on the UN iSeek[786] network, where they can be consulted and followed up at any time by the authorized participants.[787]

3.2.2. Joint Negotiating Committee for field services

The basic rules of the Field Service Committees are identical to those of the Joint Negotiating Committee at headquarters, with the exception that the field service staff are covered by the committee and the composition of the committee is different.[788] A further difference is that, because of the nature of the matter, it is not usually necessary to meet specifically on a regular basis in these duty stations; hence, the generally

780 ST/SGB/2007/9.
781 Generally, the four highest rated members of the Staff Council.
782 The Under-Secretary-General for Management, the Assistant Secretary-General for HR Management, the HR Director for Organizational Development, and the HR Director for Operations.
783 If either party considers that an ad hoc meeting is necessary, they shall have the right to convene a meeting of the commission.
784 ST/SGB/2007/9, Point 3.2.
785 ST/SGB/2007/9, Point 4.1.
786 See https://iseek-external.un.org/user/login?destination=main
787 ST/SGB/2007/9, Points 5.1–5.2.
788 Under-Secretary-General for Field Support, Assistant Secretary-General for Field Support, Director, Field Personnel Division, Department of Field Support, and the Assistant Secretary-General for Human Resources Management. ST/SGB/2008/11.

accepted frequency of meetings is two times a year.[789] Minutes need only be circulated among the members in the field or within the peacekeeping operations intranet.

4. Representation in practice

In terms of representation in the public sector, the EU member states can be divided into several groups. The Nordic countries are strongly oriented towards the improvement of a more developed and effective social dialog between the actors concerned, both in the private and public sectors. In the public sector, there is a general level of activation of the representation network and a high employment rate. The new public management countries (Cyprus, Ireland, Italy, and the Netherlands) present an evolving picture, which could allow them to develop a system similar to that of the Nordic countries; however, social dialog is also taking place at the organizational level, particularly in Italy, in addition to the sectoral level.[790] Central European countries have a medium level of representation in the public sector compared with their northern counterparts. Decentralization of social dialog does exist, but it is not generalized. In many cases, negotiations are initiated at the sectoral level; the final decision is taken by the government, which is also more active at the negotiation stage. As their category suggests, the public sector in centrally managed states (France, Greece, Malta, Portugal, and Spain) is organized through centralized decision-making mechanisms, with legislation, state agreements or inter-sectoral agreement being common features. Wage setting by the government is widespread in the group of Eastern European countries, including Hungary, and in some cases is complemented by the power of local administrations to set local wages. The presence of interest representation is poor, and the proportion of public service employees has long been below the EU average.

Internationally, the UN's representation system is most similar to that of countries where welfare decisions are taken by the central government, but where collective bargaining forums are actively involved in the decision-making process. This model is most typical of Western European countries.

789 ST/SGB/2008/11, Point 3.2.

790 See Brunetta reform (Decree-Law No. 150/2009) For more on this topic, see, International Labour Organization, 2015. We gave a joint presentation with Gábor Mélypataki on the topic, "The role of industrial relations and social dialog in the civil service" at the László Neumann Memorial Conference on October 26, 2020 (https://cutt.ly/NSjoJWG).

In Hungary, there are many fora;[791] however, in many cases, their functions overlap, and there are no adverse legal consequences if the decision-maker fails to consult and there is no regular activity. The domestic legislator may benefit from considering a process of reform, of which two possible models can be outlined. One could envisage the unification of the civil service from an interest representation perspective, which would have the advantage of a single organizational system but the disadvantage of a multi-stakeholder public sector, whose employees often have different rights and obligations and would prefer to have a specific level of specialized interest representation.

As we have seen, the diversity of interests, rights, and obligations is a common feature of the UN organization, which serves as a good model for the development of public service social dialog, and it is therefore an appropriate choice to create a universal system of representation with few actors but well-distributed tasks. The advantage of this would be that a dedicated organization with specific departments would operate according to the division of the civil service, thus creating a transparent system of representation. The disadvantage would be that it would be similar to the current system, except for the fragmentation, and therefore the reform might be more difficult to implement and would not involve a really large-scale change. Nevertheless, in any case, international organizational internal conciliation is a good model for states because it demonstrates, in a small way, how much the success of governance can depend on effective social dialog.

Within the UN organization, I have seen a generally positive attitude in my personal work as an expert delegate in New York and, to a lesser extent, in Vienna. The advocacy presence is characterized by a willingness to do something, and there is also a more informal aspect of belonging to the community (e.g., promotion of social activism by the advocacy body), which can be viewed as a step up in advocacy. Both external and internal

791 The National Civil Service Facilitator Council creates an institutional framework for the operation of a national-level social dialog and the conclusion of agreements on income policy, wage policy, labor, and employment issues affecting all civil service employees. It pays attention to the employment and wage situation of all those who provide human services in the fields of education, health, social services, and culture and who do not perform such public tasks as civil servants.
The Civil Service Conciliation Forum is a forum similar to the Faculty of Government Officials for reconciling the interests and aspirations of public service employers and civil servants, for the negotiated settlement of disputes, for the formulation of agreements and recommendations, and for the exchange of information and opinions on pay, social, and labor issues affecting employees.
National Labour Council of Public Employees: Its role and purpose are to promote the interests of public employees. It acts as a tripartite conciliation forum, but in the case of public employees, social dialog is severely limited by the size of the wage bill per sector in the budget.
Public Service Enterprises Consultative Forum: A tripartite forum for consultation, opinions, and proposals in the preparation of decisions.

circumstances have an impact on advocacy processes, and one of the most important responsibilities of the advocacy system in this context is to focus on keeping internal phenomena under control and exploiting their potential. The advocacy processes experienced in the organization can be applied in their entirety to the state context. In states where there is no culture of trusting officials to have their interests reflected in decision-making mechanisms through advocacy forums, it is particularly important to take these insights on board at the legislative and advocacy level.

The UN has the great advantage of being a relatively malleable whole, but it follows that workers at all levels must also be involved in this process. Another fortunate circumstance is that officials are critical and have a vision for the organization. Therefore, if the resources are available, those who have the capacity to shape the organization can really deliver. This kind of public service ethos is generally typical of northern and western European states.

In practice, the UN's advocacy mechanism applies in a number of areas. Most recently, the International Civil Service Commission proposed a pay cut, which the Staff-management Committee said was based on inadequate statistics and therefore objectionable.[792] In the past, the lobby has tried to negotiate with the Office of the Secretary-General to increase the security of officials on a mission, but the then-Secretary-General Ban Ki-moon[793] left the talks and returned to the negotiating table only after an extraordinary three-day meeting with member states, conducted by the lobby—revealing that not everything works perfectly in the organization and that there are issues on which decision-makers and lobbyists cannot agree.

Another topical issue at the UN is the *Global Service Delivery Model*, under which the General Assembly would like to outsource administration to duty stations where the cost of salaries would be lower. Advocacy has presented a calculation indicating that the cost of outsourcing would be much higher than the salary savings, and the Assembly has postponed the project for the time being.

In the summer of 2020, the question of how to put UN advisers in a more favorable legal position than the current one was raised in the advocacy system. In June, the online magazine UN Today published an important article about advisers serving in Geneva who were neither officials nor Swiss employees. They paid their own contributions to the state in full, were not allowed to enter the Swiss labor market, and had to leave Swiss territory within two months of the end of their assignment. They were therefore not entitled to unemployment benefits (for which they had paid the required

792 See https://untoday.org/3-questions-to-ian-richards/

793 Ban Ki-moon was UN Secretary-General from January 2007 to December 2016.

contributions during their employment).[794] The matter was brought before the Cantonal Ombudsman, who agreed with the inappropriateness of the situation and promised a solution, which is currently under way. Such a legal challenge is interesting because it concerns both UN domestic law (which states that all contributions must be paid by the consultant and prohibits continued employment) and the law of the country of residence (which, in turn, expels from its territory at short notice those who are not employed).

An interesting question in the area of advocacy and cooperation between policymakers is the UN's position in the context of the coronavirus pandemic. To reduce the costs of the organization and make it more flexible, it would seek to restructure the specialized apparatus by introducing an "agile" and "efficient" employment system[795]—in practice, it would opt for an absolute predominance of short-term appointments, which are already widespread, thus making the international civil service almost completely unpredictable.[796]

794 See https://untoday.org/dont-forget-the-consultants/
795 Chief Executive Board for Coordination, 2020.
796 Rubiano, 2021.

II. Forms of dispute settlement

The culture of informal dispute resolution is gaining ground in employment relationships, and this is undoubtedly the most effective way to resolve disputes. However, there is no uniform practice as to the extent to which alternative solutions (negotiation and mediation) are required in certain disputes before or instead of court. UN rules are in line with national rules where, in the case of labor disputes, the employee cannot go directly to court but is obliged to use an alternative dispute resolution (ADR) method. This process assists in both avoiding or reviewing possible wrong decisions and reducing the caseload in court.

Public jurisprudence is divided as to whether civil service labor disputes fall within the jurisdiction of an administrative court or a labor court or whether they should be heard by courts of general jurisdiction. Even among international organizations, there is no uniform practice in this respect. While the UN maintains a special tribunal for disputes relating to internal employment matters, the European Union abolished the Civil Service Tribunal in 2016 and transferred civil service proceedings to the General Court.

1. Informal dispute resolution in general

Successful conflict management requires knowledge of the basic characteristics, causes, and phases of conflicts. In the operation of institutions, there are often situations in which the parties involved must find an answer to a question or solve a problem of minor or major importance, which are always perceived as conflict situations.[797] Zoltán Németh, head of the Central European Mediation Institute, believes that managers […], trainers, HR professionals—everyone who deals with people—should learn to love conflict management. I should add that it is in the interests of employees to understand and embrace the "enjoyment" factor of conflict

797 Kaltenbach et al., 2007, p. 114.

management, as effective dispute resolution can be a fruitful exercise for the parties' future relationships.[798]

According to the *phenomenon-oriented approach*, a conflict situation may be a competition for the achievement of goals or the acquisition of goods that are actually or perceived to be limited by the parties concerned. The rivalry, in this case, is materially oriented, that is, it is based on real limits. In labor disputes, we observe a different version where the object of rivalry is intangible but still limited in nature. This typically involves a position in the institution, a job title, a career in the workplace, or personal esteem.[799]

The *opportunity-oriented approach* gives conflict an important role, viewing it as a key driver of development. In this view, conflict, by signaling the existence of a problem, also offers the possibility of a way out for the people involved. Thus, labor disputes arising within international organizations can also contribute to the development of useful interactions and reinforce the importance of common interests and common goals for the parties. The process of conflict resolution will reveal useful proposals for resolution, which may reduce the likelihood of the issue occurring again in the future.[800] It can also develop into an effective, customary conflict management and resolution process, as can be seen in the case of the UN. At any point in the judicial process, the use of alternative solutions may be allowed or even encouraged.

Conflicts can be divided into *eight phases*,[801] during which relations become increasingly acrimonious and then almost irresolvable. In international organizations, it is vital that the Staff Regulations allow the parties to approach each other as early as the third signaling phase, and in the fourth phase to employ the possibility of negotiation, which is otherwise mandatory, to reach a solution.

In international organizations five main types of conflict[802] can naturally arise in the internal disputes. The most common is the conflict of communication or information origin, which is based on too little information or different interpretations of the information available. Interpersonal disagreement cannot be excluded, as negative feelings towards each other may be expressed in management actions or employee behavior, which may then become the basis for a real dispute. Values-based conflicts may also be typical, as it is also the responsibility of managers to ensure that their own values

798 See, for example, my paper on this topic: Hrecska-Kovács, 2020b.

799 Kaltenbach et al., 2007, p. 115.

800 Kaltenbach et al., 2007, p. 117.

801 Kaltenbach et al., 2007, pp. 117–119. Latency → Manifestation → Signaling → Articulation → Polarization → Isolation → Hate-based → "Last chance."

802 Kaltenbach et al., 2007, p. 120. Communication/information conflicts → Interpersonal-based conflicts → Structural conflicts → Conflicts of interest → Conflicts of values.

and goals are accepted to some extent by their employees. Cases involving values-based discrimination are also often based on discrimination because they involve disputes between parties who have different approaches to life, different religious or political beliefs, or who judge certain events or actions based on different criteria.[803]

The potential for structural conflict is a particular feature of labor conflicts,[804] where the basis of the dispute is the unequal capacity to assert interests, unequal power positions, unequal resources, and time constraints. The possibility of interest-based conflicts is less likely because an international organization and its officials must essentially act in the same interests.

Looking also at the types of conflicts, I would like to stress that, particularly in labor law, the importance of amicable dispute resolution is paramount.[805] The following table summarizes the most common conflict resolution procedures in modern practice.

Negotiation[806] (positional, interest-based)	**Mediation in nature**	**Adjudication in nature**	**Mixed processes**
Negotiation	Mediation[807]	Litigation[808]	Mini-trial[809]

803 Kaltenbach et al., 2007, p. 121.

804 On the specificities of labor conflicts, see also Petrovics, 2020.

805 One of the most widespread and popular procedures in this field is mediation, which also has extra-legal links given that it is not exclusively used to resolve labor disputes. This feature can be attributed to the flexibility of the method (see Rúzs Molnár, 2007, p. 15).

806 The distinction between principled and positional negotiation was first defined by Roger Fisher and William Ury in their 1981 book "Getting to Yes" (Fisher, Ury and Patton, 2011), which has now gone through three editions, in which they argue that negotiators need to separate the human from the problem and focus on interests rather than position. In this way, they can find ways to achieve mutual gains while insisting on the use of objective criteria. Typically, the negotiation with the help of a legal representative is positional in nature, and the process using a mediator is interest-based.

807 A process based on the voluntariness of the parties, where an impartial person, the mediator, employs a systematic communication strategy to help the parties resolve their conflict and reach a settlement (Kulisity, N/A).

808 Litigation is one of the most important ways of settling disputes, alongside extra-judicial procedures. It is a means of enforcing the interests of the parties as permitted by the legal system. Litigation is a direct and public way of settling disputes through a court, mainly through a hearing in an adversarial procedure.

809 A legal procedure in which the parties to a conflict, with the assistance of their lawyers, present the substance of the dispute to a special "panel" consisting of a neutral, external expert (neutral advisor or mediator) and the parties' senior managers with the highest level of representation and decision-making authority. Following the presentation, the leaders of the parties try to resolve the dispute directly in a bilateral negotiation, and if the bilateral discussions are not successful, the expert mediator is called in to try to bring the parties' positions closer together. (In the United States, former state court judges are often called in to assist.) This solution would be most feasible in disputes where the official or employee is dealing with the international organization itself (e.g., as discussed in Part V). However, internal labor disputes are typically only against the head of a group or department; the organization is not involved.

Negotiation[806] (positional, interest-based)	Mediation in nature	Adjudication in nature	Mixed processes
	Conciliation[810]	Arbitration[811]	Med-Arb[812]
	Facilitation[813]	Single arbitration[814]	Neutral fact-finding[815]
		Expert decision[816]	Joint fact-finding[817]

810 They were set up to resolve disputes between the parties out of court, primarily by reaching a settlement between the two parties, and thus to help consumers enforce their rights simply, quickly, and effectively. This dispute resolution method has no place in the internal dispute resolution practice of the UN.

811 A major factor in the spread of arbitration is that the procedure is quick and inexpensive. Another advantage is the special expertise involved, the possibility to exclude the public, the fairness and neutrality of the arbitration procedure, and the relative ease of enforcing the decision. The aim of arbitration is to obtain a final and binding decision (judgment), which can be enforced if the appropriate conditions are met. There are several basic conditions for the recognition and enforcement of an arbitral award by an international organization. One of these is the requirement of a fair hearing—the equal treatment of the parties. A further condition is that the arbitral tribunal must have jurisdiction to decide the case. This is primarily determined by the arbitration agreement, in whose absence the proceedings cannot continue.

812 A combination of mediation and arbitration. If the parties agree to this procedure, they should first seek to settle their dispute amicably in mediation. If they do not reach an agreement within the time limit for mediation, they may, at the request of either party, take their dispute to arbitration.

813 Facilitation is a process that creates the right environment for safe and effective communication when a team discusses complex problems. The facilitator never influences the content of the discussion; the aim is to keep the process focused and to ensure that each participant contributes to the solution by expressing his or her own views.

814 The court will delegate the decision to an arbitrator chosen jointly by the parties. This procedure is also rare in the general legal context, and there are so many alternative options for international organizations that it is unlikely to take root. Given that international organizations are sensitive entities in terms of their functions and powers, it would not be appropriate to leave the decision in the hands of a single arbitrator.

815 A neutral third party, chosen by the parties or the court hearing the case, discovers a particular circumstance and presents it to the court. As with the use of an expert, this method is used primarily in complex scientific disputes where a question of fact arises. In international organizations' labor disputes, there is rarely a problem that would justify such a system.

816 The expert has specific expertise to assess the parties' submissions. It is not common in labor disputes in international organizations, although there are no provisions for their explicit exclusion.

817 As with neutral fact-finding, we are talking about a factual procedure. It involves a group of experts and decision-makers from both sides. The group's work is typically aimed at resolving scientific, technological, or historical disputes; in effect, a mediation within a mediation, the aim of which is to bring the parties to a resolution of the actual conflict by resolving certain sub-conflicts (Schultz, 2003). In theory, this method could also be applied in international organizations, but again, due to the nature of the disputes involved, it could be argued that there is no justification for its introduction.

Negotiation[806] (positional, interest-based)	Mediation in nature	Adjudication in nature	Mixed processes
		Administrative bodies[818]	Early Neutral Evaluation[819]
			Partnering[820]
			Dispute board, dispute review board, DRB/dispute adjudication board, DAB[821]

Table 3. Classification by type of dispute resolution procedures[822]

If we observe the UN's dispute resolution structure (see Figure 13: The UN's internal justice system), we can see that it complements conciliation, mediation, and litigation with an ombudsman institution—but it is striking that the alternative options are far from versatile. This is the case for all international organizations, as they may set up different types of institutions, but when looking at all the options, they typically choose only two or three. The question is: how much versatility is needed? In my opinion, efficiency is more important than choice in this area. In many cases, we do not see major differences between the different methods; thus, for the type of labor disputes that usually arise in international organizations, it is easy to identify the few legal instruments that are, by their purpose and nature, also suitable for facilitating dispute resolution.

818 Dispute settlement by administrative bodies cannot be interpreted in relation to international organizations.

819 The parties are given a non-binding expert assessment of their legal position, after which they are given the opportunity to negotiate a settlement based on an amicable solution (Permanent Bureau of the Hague Conference on Private International Law, 2012, p. 9). This method is not justified by the fact that in the internal labor disputes of international organizations, the legal positions of the parties are usually clear and transparent.

820 An ADR method developed specifically for the business sector, in which the parties work together to identify common goals and interests to facilitate the performance of the contract. The main element of a partnership is the conclusion of an agreement, which ensures that there are no "surprises" and that any future disputes are settled at the lowest possible level. In view of the target group, the option is not relevant for internal labor disputes in international organizations.

821 It offers a solution for the same target group as partnering, with ongoing supervision at the workplace. The contracting parties usually elect three neutral members to the board who can actively intervene in the process, helping to minimize potential friction. The method, which originated in the United States of America, was originally developed for the construction industry but has now spread to financial services, long-term concession contracts, and other contracts. Its efficiency is very high, estimated at 99% (Chern, 2008, p. 11.) Among others, such a panel was set up during the construction of the Channel Tunnel between Great Britain and France, where five people continuously supervised the works and the final decisions were taken by a panel of three.) However, given the target group and the nature of dispute resolution (the juxtaposition of parties), it is not an option for internal labor disputes in international organizations.

822 Rúzs Molnár, 2007, p. 30.

1.1. Bottom-up dispute resolution

Among the basic principles of international law is the principle of the peaceful settlement of disputes, which broadens the possibilities of the parties to resolve conflicts in a manner that, while speeding up the procedure as a rule, it helps to ensure that justice of one party prevails and a more active participation of the parties leads to a result that is acceptable to several or even all sides. As a matter of principle, this peaceful settlement is particularly important in disputes between states because the international community, as a result of the development of law in the 20th century, is now seeking to settle disputes between states non-violently.[823] However, peaceful forms of dispute settlement are as much a feature of civilization as wars themselves,[824] and not only of supra-human entities such as states. Rather, we might say that society itself has a need to find common ground through negotiation and compromise rather than warfare, which is a loss for all parties to a dispute.

Today's conflict management solutions are driven by modernization and the growing need to deal with cases out of court. According to *Ulrich Beck's* theory of reflexive modernization, society is undergoing a two-phase modernization process, with industrialization as the first step and individualization as the second. Initially, modern society still had feudal traits—the most striking feature of which was the emergence of large social groups and classes with similar lifestyles and values—but later, relations became looser, more formalized, and, even today, more organized around explicit goals.[825] Consequently, the individual has been freed from determinate social positions, and his or her identity is more often constructed and transformed in pursuit of goals through a series of choices. The de-socialized individual, on the other hand, is charged with insecurity, stress, and aggression, and people become atomized, isolated, and depersonalized.[826] Today, man cannot easily find a solution to his conflicts, and our age makes us more inclined to look to others to assert our truth. At the same time, the courts, as a provider of law rather than justice, are often a source of frustration for those involved in the process, with lengthy, unsuccessful trials widening the gulf between conflicting interests.

If we observe the interests and value systems behind conflict resolution, we find that a mechanism whose stability is rooted in its dynamic adaptability, is required.[827]

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823 Kovács, 2011b, p. 489.
824 Kovács, 2011b, p. 491.
825 Karkosková and Holá, 2013, p. 11.
826 Karkosková and Holá, 2013, p. 16.
827 According to the social psychologist *Shalom H. Schwartz*, the stability of values is not synonymous with their immutability, but rather expresses the set of rules along which these values are able to move dynamically (Karkosková and Holá, 2013, p. 99).

It is precisely this flexibility that formal conflict resolution is unable to provide, as there is a general demand for freedom from procedural constraints to give the parties' motivations, emotions, moral realities, and the possibility of knowing.[828]

While it is up to the parties in the legal disputes whether they prefer to pursue alternative options such as negotiation, mediation, or arbitration, in interest disputes only these informal procedures are available, as there is no legal issue for the court to decide. I would like to point out that, in contrast to the approaches of the United Kingdom and Ireland, this rigid distinction between legal disputes and interest disputes is essentially a feature of the German legal system[829] The bottom-up dispute resolution structure of interest disputes was designed by the 1992 Hungarian Labour Code such that mediation, conciliation, and arbitration offered the parties an equivalent dispute resolution. The system remains essentially unchanged today.

In Western societies, before the advent of mediation, there was no institutionalized form of dispute resolution in which parties could seek external assistance while retaining full control of their case. In Hungary, the mediation method became well known because of the 2002 Mediation Act and its increased presence in the new Code of Civil Procedure.[830] This time I will also focus on mediation because, although the range of ADR tools has become very diverse, mediation is the most widespread method of dispute resolution in the world and plays an almost dominant role in the UN system.

In the *Germanic legal system*, it is up to the parties to decide how to reach a solution, and the impartiality of the person conducting the hearing is ensured by the legislator by having each party choose a mediator. This system is advantageous, as is borne out by practical experience, which indicates that when the parties to an otherwise conflicting dispute must agree on a mediator, it is usually not successful. In Hungary, the two systems coexist because, under Article 23(1) of Act 55 of 2002, the parties may, by mutual agreement, initiate the request of a natural or legal person of their choice to act as a mediator, but may also request the simultaneous request of several natural or legal persons if they so wish.

In an international comparison, the *Franco-French model* is emphasized alongside the German model, the most important component of which is the participation of a state-maintained mediation organization in mediation proceedings. An example of this can be found in Spain, where labor mediation bodies in autonomous communities deal

828 The success of ADR depends on the relationship between values. *Ján Grác's* approach is in line with this: values are an important part of human action, acting as the building blocks of our attitudes, and *Max Weber* believes that emotions can determine the motivational power of values (Karkosková and Holá, 2013, p. 103). A close link can therefore be found between psychological attitudes and conflict outcomes.

829 Rácz, 2002, p. 82.

830 Rúzs Molnár, 2017, 1. o.

with disputes that do not fall within the competence of the autonomous communities' bodies and where the National Service for Mediation and Arbitration *(Servicio Interconfederal de Mediación y Arbitraje, SIMA)* provides free mediation services at the national level. In addition, mediation must be attempted before any labor dispute and can be done before the Mediation, Arbitration, and Conciliation Service *(Servicio de Mediación, Arbitraje y Conciliación, or SMAC)* or the body with this function under any collective agreement.[831]

Of course, other forms of ADR are also playing a significant role alongside mediation, and arbitration has typically gained more popularity in this area. However, this option, unlike mediation, is far from universally accepted. The *Advisory, Conciliation and Arbitration Service (ACAS)*, which is a government-funded organization that aims to improve the management of workplace disputes, has become a major player in this field. An important requirement is that parties must first make a compulsory referral to the ACAS before taking their dispute to court[832]— similar to the solution in France, where compulsory arbitration is present at both the county and national levels.

In the *United States of America*, arbitration is also very common in labor disputes, with private arbitrators, like lawyers, who can be approached freely by the parties and whose decisions can be challenged before a separate body, the *National Labor Relations Board (NLRB)*.[833] In contrast, in the UK, where the law allows an employee to take a matter to an industrial tribunal, the matter cannot be referred to arbitration as the only means of resolving the dispute.[834]

ADR, as described above, is understood as a system that offers a solution to the often slow, inflexible, and costly decision-making nature of litigation and arbitration.[835] I think it is important to stress that, at the international level as well as within national regulatory systems, the term "alternative" does not denote an "anti-judicial" perspective. The emphasis of the new procedures, which are gaining recognition, is on their use in addition to, rather than instead of, formalized decision-making procedures.[836]

In disputes involving international organizations, the parties usually go to the administrative tribunal of the organization, but the procedure of the administrative tribunal is often a barrier to resolution. This is because not only does the dispute between

831 See the relevant provisions of Act 36 of 2011 on labor courts.

832 See https://tell.acas.org.uk/

833 Although in the vast majority of cases, the NLRB finds no fault with the arbitrator's procedure and rejects the interested party's request. However, if the client's petition is still valid, the adverse decision typically marks the end of the private arbitrator's operation.

834 Clyde & Co LLP v. Bates van Winkelhof [2011] EWHC 668 (https://cutt.ly/SSjoV88; https://cutt.ly/CSjo8IQ).

835 Rúzs Molnár, 2007, p. 15.

836 Rúzs Molnár, 2007, p. 16.

the parties create a conflict between them, but the proceedings before the courts themselves perpetuate it. It is also very important that litigation is always limited to points of law. Consequently, it is often the case that, regardless of the relationship between the parties, legal representatives put the case on a legal footing, the parties play less of a role in the proceedings, and the real cause of the disagreement remains unexplored.[837]

1.2. Informal conflict resolution in the civil service

The inclusion of certain ADR methods is not mandatory; it is up to the discretion of the legislator to regulate the details of the options available. It is possible to envisage legislation that would rather provide for the applicability of procedures in broad terms, with the advantage of opening the way to sociological and legal developments without having to amend the norm. It is therefore up to the individual preferences of the parties to decide which informal conflict resolution is best suited to them.

If the text of the standard contains a taxonomy of the solutions that the parties may use, entities that are not so familiar with alternative solutions will have a better overview of the options available to them. Internal legislation, however, is less flexible and may require numerous revisions to reflect the way in which the organization itself considers most appropriate for its employees. In the civil service, it is a common phenomenon that more rigid systems have developed that are less open to individual solutions and that the legislator is more likely to list the informal dispute resolution tools available.

The UN, as an international organization, has developed a separate set of rules for settling disputes with its own officials, establishing a system that is complete. Thus, the organization's internal dispute settlement mechanism is equivalent to the internal solutions of individual states, and the international civil service can ultimately be seen as a mirror image of the national civil service in general and in this field. The opening up of ADR was the first step for the organization in building a modernized dispute resolution system, including the restructuring of the internal court system, when the institution of the Ombudsman was introduced in 2002. It is worth noting that the *United Nations High Commissioner for Refugees (UNHCR)* appointed its first mediator as early as 1993, which was also subsequently renamed "Ombudsman" in 2009.[838]

Public services have different results in this respect. Regarding Hungary, I will base my analysis on Act 55 of 2002 on Mediation, which allows the parties to initiate mediation proceedings and to enforce the terms of the agreement reached during the mediation

837 Rúzs Molnár, 2007, p. 17.
838 Buss et al., 2014, pp. 14–15.

proceedings by requesting the court or notary to include the agreement in a ruling (judgment) or in a notarial deed. Prior to court proceedings, there is no requirement for mediation; mediation is a voluntary procedure. However, in parental custody proceedings and child protection proceedings, the parties may be obliged to participate in mediation. The situation is similar in the Czech Republic, Latvia, and Slovenia, which offer mediation to the parties and give them the possibility to do so but do not oblige them to do so. The opposite is the case in Italy, where the court may order mediation on a mandatory basis. In France and Germany, the parties only have to be informed of the possibility; in the latter state, the information is compulsory for the parties to listen to, but participation is voluntary, which I believe is an advantage because it is an essential principle of the institution of mediation that both parties really want to make use of this alternative option.[839]

In Hungary, where ADR is in its infancy, even if the parties reach mediation, they are generally unaware of the other options; it is almost "natural" that the act on government administration itself does not even mention such dispute resolution solutions.[840] At the same time, the *Governmental Officials' Arbitration Committee (Kormánytisztviselői Döntőbizottság)* has an important role in the domestic civil service as a forum for pre-litigation redress in labor disputes.[841] The establishment of the Arbitration Committee was closely linked to the redefinition of the grounds for dismissal in the Civil Service Act (Act No. 199 of 2011) and the introduction of new types of personnel functions. The review of the validity of the employer's measures based on these grounds requires specific expertise and experience, as well as in-depth knowledge of the internal relations, procedures, and working methods of public administration.

ADR has struggled to gain ground because, in Hungary, for example, people generally prefer to leave their legal problems to a lawyer, whereas, in a mediation process, the parties should, as a rule, participate completely in the negotiation process. A simple, but very logical, solution to this problem is that some lawyers have started to develop an exercise in their practice whereby they act as legal advisers in addition to the mediator. This has several advantages; on the one hand, the mediation agreement will be legally sound, meaning that the judge will not rule it unenforceable when it comes time for the judge to recognize it. Moreover, such a lawyer can count on the personal benefit that he will be

839 Németh, no year.

840 In Hungary, the Act on Government Administration does not explicitly provide for the possibility to use mediation or any other alternative means of conflict resolution, but in the section on limitation periods, it states that the initiation of the use of a mediator or conciliator under a special law interrupts the limitation period. [Act. 98, para. (10)].

841 The independent body of civil service commissioners with outstanding expertise was created by a provision of the Act on Public Service that entered into force on July 1, 2012.

involved in his client's future contracts and negotiations, as he will be impressed by the short and successful procedure. The fact that the two parties are not completely turned against each other may be another general economic advantage of mediation; that is, it is more likely that they will be able to continue the business relationship at some point, and a potential partner will not withdraw simply because a conflict has arisen.

However, the situation is not so good in public administration. In addition to the fact that the possibility of using ADR is not yet widespread, another difficulty is overcoming the organizational hierarchy. Those who move up the hierarchy may simply fear for their authority if they sit down to discuss problems and do not immediately apply the designated sanction system. Therefore, informal dispute resolution includes transferring a person to another job or office. However, issues that cannot be resolved by such a step are much less often resolved informally. It is also worth noting, however, that the use of mediation is not explicitly precluded by the administrative nature of the procedure[842] but only by the need to ensure that enhanced data protection standards are respected. It is helpful in this respect that the mediator, like any lawyer, is obliged to keep the secrets he or she has learned. In the view of professionals involved in mediation, one of the conditions of trust in mediation is the way in which the mediator deals with the information entrusted to him. The mediator is bound by confidentiality even during the separate negotiation and cannot use information obtained during this process openly or manipulatively without the permission of the parties, although evaluative mediation[843] explicitly uses the latter as one of its methods. In this case, manipulation is acceptable if the parties are aware of the mediator's intention to do so.[844]

842 It should be added that mediation can even work in military settings. A good example of this is the US Navy (SECNAVINST 5800.13A), which started to develop its ADR forum (DON ADR program: https://www.secnav.navy.mil/ADR/Pages/default.aspx) in 1999, based on the Administrative Dispute Resolution Act of 1996. The goal is to promote ADR throughout the Navy, and to date, 95% of all employee claims submitted are resolved through this informal method, and 89% of those who use it would use it again in the event of a dispute. At the same time, the US Navy's program has developed the M3 system, which is designed to classify actors using human resource management and ADR methods and to mandate only those actors in the system who meet the business, legal, and efficiency standards for effective dispute resolution.

843 Evaluative mediation is the opposite of facilitative mediation: the latter's methodology is based on the mediator's role as a facilitator, whereas in the former, the mediator also plays an evaluative, advisory role. In this case, the mediator's task is not only to manage the conflict and bring the dispute between the parties to a resolution but also to participate effectively and efficiently as a professional in the process of reaching an agreement. This mediation process is rarely taught and, thus, rarely used in this country, and the provision of evaluative mediation procedures is not common in Europe. This form of mediation is most widespread in the US, with training usually provided in the form of post-graduate courses at law schools, not exclusively for lawyers (a high proportion of economists take such courses). Author not available, 2017.

844 Kertész, 2010, p. 257.

There is much positive criticism of mediation, but there is an unavoidable legal risk in the process that the mediator may facilitate an agreement that the court would not allow because it is unlawful. The mediator has a professional and ethical duty to ensure that no mediation agreement is reached in a meeting he or she conducts that is clearly or presumptively unlawful. The involvement of a legal expert is therefore required in all disputes.[845]

1.3. Mandatory negotiation as a first step to conflict resolution

The UN regulation is in line with national regulations—typically those of countries following the Francophone model—where, in the event of labor disputes, the employee cannot go directly to court but must first resort to an ADR method.[846] Generally, in the case of the organization, regardless of the official's complaint or claim, he or she must first go to his or her line manager prior to bringing the matter before an internal tribunal. This process helps in both preventing or revising potentially wrong decisions and helps in reducing the caseload in court. Looking at state jurisprudence, we conclude that there is no uniform policy on whether such cases require mandatory prior consultation. In Hungary, as the court decides disputes related to civil service in administrative proceedings, we have to take the provisions of Act 1 of 2017 on the Administrative Procedure Act as a starting point in this area. While the amendment of the formerly applicable Civil Procedure Code[847] in employment disputes as of January 1, 1999, made it mandatory for the labor court to attempt to reconcile differences between the parties after the dispute has been initiated,[848] under our current Administrative Procedure Code there is no such mandatory procedural stage designated for civil service disputes: the law narrowly provides that the court *may attempt* to reach an agreement between the parties before the hearing is scheduled.[849]

845 Kertész, 2010, p. 258.

846 The judicial way is also worth marginalizing in some respects because litigation is always limited to questions of law. Consequently, it is often the case that, regardless of the relationship between the parties, legal representatives put the case on a legal footing, the parties play less of a role in the proceedings and the real cause of the disagreement remains unexplored (Rúzs Molnár, 2007, p. 15).

847 Act 3 of 1952 (old Civil Procedure)

848 This is also provided for in the currently applicable Code of Civil Procedure (Act 130 of 2016) in general, making it also applicable in labour disputes. Compared to the previous legislation, however, conciliation is only an option, not an obligation, for the parties and the court. The court shall provide information on the possibility of using mediation, its methods and advantages, the possibility of including any agreement in a court settlement, and the rules on injunctions.

849 *Administrative Procedure Code*, Art. 64.

Historically, there is no consistency in this regards either, because, for example, the 1964 amendment to the Labour Code prioritized the alternative route compared to the previous legislation, as it gave general competence to labor arbitration committees (munkaügyi döntőbizottság) to decide labor disputes and allowed recourse to the courts only in exceptional cases—this is not a classic ADR method, of course, because although they helped to avoid court proceedings, they were in no way more procedural. The parties could appeal the labor arbitration board's ruling to the regional labor arbitration board. The legislation allowed parties to appeal the labor arbitration board's judgment to the district court in only four groups of cases, resulting in a significant atrophy of the judicial route.[850] We can therefore see that the different practices on this issue differ not only geographically but also across time.

2. Alternative solutions in UN dispute settlement practice

The courts' judgments are generally lacking in flexibility, and the parties participate in the proceedings with this in mind; in other words, the aim is usually to overcome one view by completely squeezing out the other. However, the UN Administrative Tribunal's rules and practices are particularly forward-looking in this respect, allowing and even encouraging the parties to compromise amicably at all stages of the procedure.[851]

The practice of the UN reveals that in some cases there is a withdrawal of the claim filed, which is often ensured by the possibility of recourse to ADR. In the Shristava case,[852] the parties reached a compromise through conciliation, and in the Hashimi case[853] through a settlement. As the Court of Justice has stated in several judgments, the purpose of the procedure is to bring the dispute to the fullest possible conclusion, and it, therefore, held in Hassanin that the mere fact of settlement implies the withdrawal of the action and does not require an active act on the part of the plaintiff to bring the court proceedings to an end. The court decided not to distinguish between the time when a compromise was reached in terms of whether it was reached before or after the filing of the action.[854] In its view, Article 8.2 applies to all cases where the parties reach an agreement in the course of an alternative procedure and quotes the well-known

850 Kengyel M. (2013) Chapter XXII.
851 Rúzs Molnár, 2007, p. 17.
852 UNDT/2014/031.
853 UNDT/2014/016-017.
854 UNDT/2014/038.

principle of Roman law: *ubi lex non distinguit, nec nos distinguere debemus*, according to which where the law does not distinguish, neither can its interpreter, that is, the judge.[855]

On April 27, 2012, the UNDT published its third methodological guide on mediation services.[856] In it, the court grants the parties the right to have recourse to the Ombudsman[857] and Mediation Service (OMS) at any stage of the proceedings, either on their own initiative or on the recommendation of a judge, with the obligation to inform the Registry of their decision without delay. Generally, once the case is received by the OMS, the Tribunal suspends the proceedings before it for no longer than three months. Within seven days of the end of the mediation procedure, the party concerned must withdraw their claim or, if unsuccessful, notify the Tribunal.

In addition to the OMS, there are other ways of resolving conflicts informally; the official can contact the Office of Staff Legal Assistance (OSLA) for advice on the legal status of the situation. They can also contact the head of the program, mission or office, the HR department, the Ethics Office, the officials' representative bodies, and the crisis counselor in the place of employment.[858] I view the UN as a very good model because it not only advocates alternative conflict resolution but actually, in practice, allows officials to consult with any manager on their case; that is, it keeps the option always within arm's reach of the person concerned.

In the organization of state public services, there is no example of the legislator establishing a dedicated mediation or ombudsman function. Where a public service system allows for the use of mediation, this can be done by civil servants and public administrations with the help of general practitioners. In the case of the United Nations, the Secretary-General has created a separate department, the OMS, following a General Assembly resolution[859] to formalize ADR within the internal justice system. The OMS serves not only the UN Secretariat but also the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), the Office of the High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the United Nations Office for Project Support (UNOPS), and the United Nations Women's Solidarity Movement (UN-Women).[860] Officials must be informed

855 UNDT/2014/038 Points 8–9.

856 See https://www.un.org/en/internaljustice/pdfs/UNDT_Practice_Direction_3.pdf

857 I think it is essential to note here that a conceptual distinction should be made between the Ombudsman as a general legal protection "office" and the Ombudsman as a form of ADR.

858 See https://www.un.org/en/internaljustice/overview/resolving-disputes-informally.shtml

859 ST/SGB/2016/7.

860 ST/SGB/2016/7, Point 1.2.

by their employing organization of the issues they can raise with the service, but the principle of voluntariness as a basic principle of the mediation process is also generally applied.[861]

2.1. The Ombudsman's Office

The Office of the Ombudsman of the Service operates in a three-pillar system: the Office of the Ombudsman of the United Nations, the Offices of the Ombudsmen of UNDP, UNFPA, UNICEF, UNOPS, and UN-Women, and the Office of the Ombudsman of the UNHCR. The Ombudsman Service also works with regional ombudsmen to ensure equal access to justice for all. All ombudsman services are subject to oversight by the UN Ombudsman, as is the Mediation Service, to which they are required to report. The UN Ombudsman liaises directly with the Secretary-General. The organization chart is presented below:

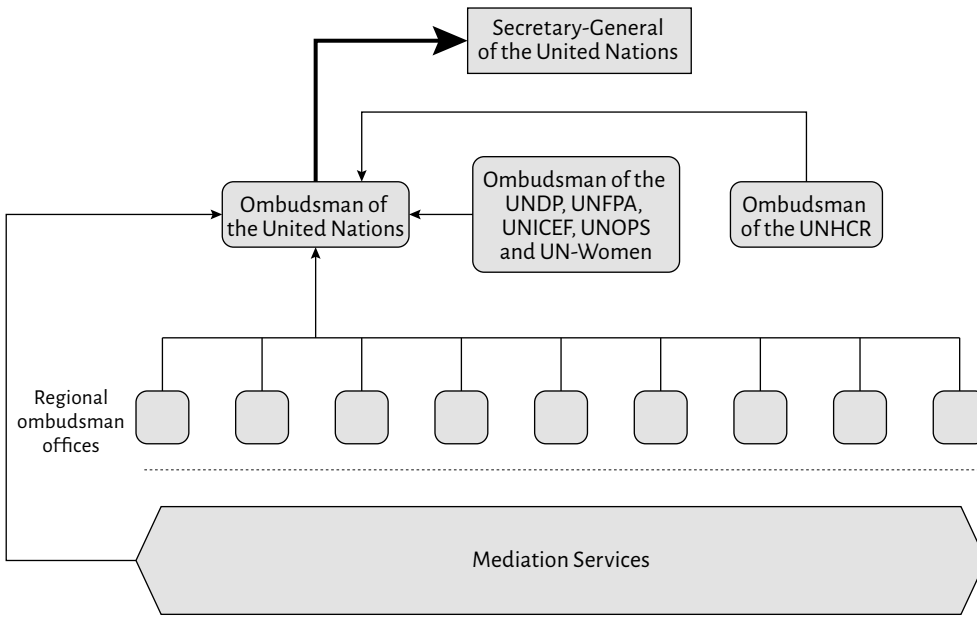

Figure 12. The structure of the OMS[862]

861 ST/SGB/2016/7, Point 1.4.
862 Own figure. Source: ST/SGB/2016/7, Points 1.5–1.9.

In Hungary, the Commissioner for Fundamental Rights and his or her deputies are elected by the Parliament for a term of six years by a two-thirds majority of its members.[863] The system is similar in the UN, where the UN Ombudsman is appointed for a five-year term, renewable for one additional year. The ombudsmen are required to deal with all conflicts concerning the organizations under their jurisdiction, including those relating to working conditions, remuneration, management practices, and professional and personnel matters. The Ombudsman's work, like that of the national fundamental rights commissioners, is based on a "constitutional rule," or in the case of the UN, the Charter. He or she must also consider Assembly resolutions, the Staff Regulations, applicable principles of practice and any other relevant internal sources of law.[864] It is a fundamental constraint on the work of the Ombudsman's Office that it must assist the parties who approach it impartially in resolving the conflict that has arisen.

The Ombudsman can access all documents during his proceedings as a general rule, with some exceptions for fundamental rights reasons. Thus, the Ombudsman may not consult the medical file of the official concerned without the official's express authorization to do so; investigative material without the authorization of the competent parties or authority; data covered by legal privilege without the authorization of the parties or authority; or statements concerning non-governmental property of an intangible value, as defined in Rule 1.2(n) of the Staff Regulations.[865] Cases before the Ombudsman's Office are covered by absolute secrecy, including the right not to disclose in any form the identity of the parties to the proceedings.[866]

An important limitation of the ombudsman's activity is that, although he or she may, with the official's permission, cooperate with the relevant departments to promote a better solution to the case, he or she cannot change management decisions, conditions of appointment, or participate in formal judicial proceedings except as an expert because of the independence criterion that applies to him or her. The Ombudsman has no discretionary powers, cannot determine entitlements and obligations, and cannot be instructed in any way in his or her proceedings.[867]

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863 See Art. 30 (3) of the Fundamental Law and Act 111 of 2011 on the Commissioner for Fundamental Rights.

864 ST/SGB/2016/7, Point 3.2.

865 "The Secretary-General may authorize staff members to accept from a non-governmental source or a university or a related institution, academic awards, distinctions, and tokens of a commemorative or honorary character, such as scrolls, certificates, trophies, or other items of essentially nominal monetary value."

866 ST/SGB/2016/7, Point 3.12.

867 ST/SGB/2016/7, Points 3.15–3.18.

2.2. The Mediation Service

The basic rules governing the work of the Mediation Service are set out in the same Secretary-General's bulletin, which also contains provisions describing the functioning of the Ombudsman's Office. The Ombudsman's Offices are required to provide a mediation service if the dispute between the parties so requires. Parties may request mediation at any stage of the proceedings before the Ombudsman's Office, but they must also be entitled to do so after[868] the formal judicial proceedings have been initiated. The mediation procedure is not conducted by the Ombudsman but by a qualified professional appointed for this purpose, who is bound to ensure the confidentiality of the proceedings and, in accordance with the generally accepted rules of the mediation procedure, has no decision-making power in the case before him and cannot create rights or obligations for either party. A mediation agreement is not, in principle, an enforceable settlement under Hungarian law, but UN law provides otherwise: on the one hand, an action cannot be brought before the court if the parties have already settled the matter in mediation (that is, it gives rise to res iudicata); moreover, if the agreement contains a time limit for performance, the interested party has the right to bring an enforcement action before the court of first instance within ninety days of the expiry of the time limit (that is, the settlement is automatically enforceable). If no such time limit is provided for, the parties have ninety days from the thirtieth day after the signature to bring an action for enforcement.[869] Although there is no UN provision requiring the mediator to have a legal qualification or to be represented by a legal representative, at least one of these two is strongly recommended for enforceability. Although the UN legal service, OSLA, is available free of charge in formal proceedings, it essentially only has an advisory role in informal dispute resolution, and the UN may wish to expand the unit's remit to include possible mediation representation.

3. Disputes before a specialized court

In Western European countries, except for the Netherlands and Denmark, in first-instance proceedings, the specialized labor judge hears cases with lay judges delegated by the social partners (trade unions and employers' associations), elected by the judicial bodies, and who receive specialized training at the Judicial Training Institute. In the second

868 In such a case, the court proceedings may be suspended pending the mediation (see Rule 11.2(c) and (d) and Rule 11.4 of the Staff Regulations).

869 *Staff Regulations*, Rule 11.1(d).

instance, a panel of specialized judges from either an autonomous labor tribunal or a labor college attached to the ordinary tribunal will sit. In the third instance, the Federal Labour Court in Germany handles the extraordinary appeal, while in the other states, it is a panel of specialized labor judges of the Labour Chamber of the Supreme Court.

In the Netherlands and Denmark, labor disputes are heard by civil courts, where the civil judge himself hears cases in the first instance without the participation of a lay judge; however, this is not a problem because these two countries have the strongest legal protection for workers. In Italy, Spain, and Portugal, the labor chamber of the district court—with the same status as the regional courts (törvényszék) in Hungary—is judged by a panel of specialized judges and two lay judges delegated by the social partners, while in the second instance, a panel of specialized judges from the labor chamber of the regional court—with the same status as the Hungarian regional court of appeal (ítélőtábla)—will decide. This latter system has been adopted by the neighboring former Comecon member states of the Czech Republic, Slovakia, Poland, and Romania.[870]

In Hungary, the Labour Court used to be a special court of first instance, later the Administrative and Labour Court, and then a general court of second instance—the same is the case in Sweden and Ireland. Currently, under the Civil Service Act, the court decides disputes relating to the civil service in an administrative lawsuit.[871] According to the Administrative Procedure Act (Act 1 of 2017), an administrative dispute is a dispute relating to a public service relationship; therefore, under the current rules, to ensure the "gap-free legal protection" of the judiciary, disputes arising from an administrative relationship are fully classified as administrative disputes, even though they do not specifically concern the legality of an administrative act.[872]

In the case of the UN, there is a separate, two-tier internal judicial forum for service disputes; that is, officials are not subject to the state justice mechanism of their place of employment for any disputes. This has the advantage of creating a uniform jurisprudence throughout the organization, which on the one hand allows for a well-tracked development of the law and on the other hand prevents unequal treatment of officials according to their place of employment. In all cases, the UN tribunal bases its decisions on the Staff Regulations and the various administrative instructions.

The basis for the operation of an autonomous judicial structure is the recognition of separate legal personalities. The vast majority of international organizations are created

870 Prugberger, 2016, pp. 1–2.

871 Act 1 of 2017, Art. 5, para. (4)

872 For more on whether specialized courts or courts of general jurisdiction are a more justified choice, see Prugberger and Wopera, 2008; and Rab, 2016.

through multilateral treaties and are therefore regarded as entities with autonomous legal personalities under international law. On this basis, international organizations are directly bound by the principles of public international law in the way they operate, as several decisions of the International Court of Justice (ICJ) have pointed out.[873] In 1949, in its advisory opinion on the obligation to make reparations for damage suffered in the service of the United Nations, the ICJ examined for the first time whether international organizations indeed have independent international legal personalities. The document states that the objects of any legal system are not necessarily identical in nature or in the entitlements assigned to them, their existence being determined by the needs of the community.[874] As it explains, the development of international law has clearly been influenced by the collective action of states, a fact that makes it essential that the international organizations that facilitate it be given genuine legal personality. The document also refers to the fact that the practice of international organizations has demonstrated the need for recognition of legal personality before the possibility of such recognition has even been considered.[875] However, the advisory opinion also stresses that international organizations are not identifiable with states, nor do they have the same rights and obligations as states. It also specifies that any international organization may be a party to an international dispute. It gives the example of a case where an agent of the organization suffers damage but its sending country is unable or unwilling to take diplomatic action on its behalf. In this case, the organization should be able to have active legal standing in litigation[876] to defend its agent.[877]

Importantly, passive legitimacy in litigation is limited by international law, thus ensuring the independence of these organizations. States often adopt specific agreements to grant immunity to certain international organizations. This has been the case, for example, with the UN Convention on Privileges and Immunities and the related document on specialized bodies.[878]

The immunity of international organizations from general court proceedings also implies that state labor courts and tribunals cannot rule on disputes between officials and international organizations. For this reason, international organizations have developed

873 Bretton Woods Law, no year, Point 1. For example, International Court of Justice, 1980, p. 21 (p. 90).
874 International Court of Justice, 1949, p. 8. (p. 178).
875 International Court of Justice, 1949, p. 9. (p. 179).
876 Active and passive legal standing in litigation is a procedural issue, expressing whether a lawsuit can only be brought by a person legally entitled to do so (active) or whether a particular action can only be brought against a specific person or persons (passive). Active and passive legal standing is a precondition for litigation, and the absence of active and passive legal standing is a bar to litigation (see Igazságügyi Minisztérium, 2020).
877 International Court of Justice, 1949, p. 181.
878 United Nations General Assembly, 1946; see more in Bretton Woods Law, no year, Point 1.2.

their own internal judicial structures, which, while differing from one organization to another, share several similar features. This includes the establishment of so-called administrative tribunals. It should be added, however, that these autonomous courts can only be considered legitimate if the international organization that maintains them ensures that human rights standards are unconditionally upheld in the proceedings before them.[879] In *Western European Union v. Siedler*, for example, the Belgian court ruled in this regard on the right to a fair trial, which must be guaranteed by an internal court of any international body under Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR).[880]

The principle of equality of arms is an essential principle, as the "David and Goliath effect" is perhaps less prevalent in state-level labor disputes than it is here.[881] Consider that an assistant at the UN who is harassed by her supervisor is faced with a potential dispute with an HR department that is advised by special lawyers in the organization's legal department. In addition, international organizations, such as the United Nations, also have separate legal teams whose primary task is to deal with staff labor disputes. At the UN, this task is carried out by OSLA, a department not to be confused with the Office for Legal Affairs (OLA).[882] Additionally, international organizations often engage external lawyers when specific advocacy issues arise. The unequal position of the parties is compounded by the fact that independent legal advice is by no means a matter of course for officials (except for the UN, as illustrated in Figure 13 on the judicial organization below), nor is the involvement of legal representation, mainly for financial reasons. This type of structural embeddedness is not found in national public services, where, in the event of a dispute between a public body and an official, both parties will seek, to the best of their abilities, to select the most appropriate external legal representation for a possible court hearing.

In many cases, there are problems with delays—up to fifteen years in exceptional cases—which can violate the right to an adequate remedy and the right to a fair trial.[883] Given that the inequality of the parties could, in extreme cases, call into question the legitimacy of the internal procedure, a solution could be to set up a legal insurance

879 *Western European Union v. Siedler*, Appeal judgment, Cass No S 04 0129 F, ILDC 1625 (BE 2009), December 21, 2009, Court of Cassation.

880 On the topic, see in detail Reinisch (szerk.), 2013; Klabbers and Wallendahl (szerk.), 2011, p. 145; Reinisch, 2008; Tzanakopolous, 2011; and Wouters, Ryngaert and Schmitt, 2011.

881 Bretton Woods Law, no year, Point 2.

882 See https://legal.un.org/ola/. The structure of the unit consists of a Treaty Section, an International Trade Law Division, a Division for Ocean Affairs and the Law of the Sea, a Codification Division, and a General Legal Division. These divisions are brought together in the Office of the Legal Counsel, which works under the supervision of the Assistant Secretary-General for Legal Affairs.

883 For more on the effectiveness of case management, see Elias, 2012.

scheme for all officials, similar to social, health, or pension insurance, to cover any future labor disputes that may arise.

According to the Bretton Woods law firm, which frequently represents civil servants, both the literature[884] and the practice of organizational representatives tend to suggest that it is not necessary to apply the various human rights declarations in their entirety in employment disputes, as this would put complainants in a more favorable position. This situation is also surprising because the body of law of international organizations is not characterized by transparency, which makes it almost impossible for a legally untrained official to effectively represent and defend his or her own interests. The legal status of international organizations is governed by the general principles of international law, their internal constitutions, and the international treaties to which they are parties. The layman may not automatically assume that things are reviewed and understood, but if they are not enforced, there is no semblance of legal certainty. It should be stressed that the guarantee of rights should be the task of the internal organs of international organizations and the member states of the organization, including the home state, should not turn a blind eye to procedural and implementation shortcomings.[885]

Moreover, the representative acting on behalf of the official may often encounter abuses of confidentiality. Many international organizations do not publish all court decisions; therefore, transparency is not guaranteed. First and second instance tribunals of the UN are ahead of the curve in this respect because published pdf files enable in-text searches and are searchable in English and, in some cases, French, going back years. The CJEU General Court (formerly the Civil Service Tribunal) has achieved similar results in terms of case retrieval. However, it is interesting to note that, if we look at other major international organizations, there may also be prohibitions in certain cases whereby an official may not discuss elements of the case or the appeal procedure with anyone. These rules were originally designed to guard against abuses that would undermine the internal unity of international organizations, but they do not provide sufficient safeguards against depriving an official of a fair trial.[886]

884 As an example, he cites the well-known Bowett's Law of International Institutions (Sands and Klein, 2009) by Philippe Sands and Pierre Klein, which surprisingly confirms the above position (p. 463, 14–037).

885 In this matter, of course, individual states have no express right to bring proceedings against an international organization, which otherwise has sovereign legal personality, unless (a) there is a breach on their territory or (b) a non-home state could take action against one of its nationals if the organization acts unlawfully against its nationals. However, in the absence of such remedies and the possibility for private individuals to sue organizations before the International Court of Justice, there is in practice no independent remedy available to officials.

886 In my view, the principle of a fair trial also includes the possibility for any party to fully explore the available options and to seek assistance in interpreting, for example, ethical or legal issues.

3.1. Structure of the UN internal justice system

UN system staff, wherever they work, are bound by the organization's Staff Regulations and Administrative Instructions, and, of course, must also comply with the local laws of the country where they work. However, UN staff cannot bring labor disputes before local courts and authorities because of the UN's privileges and immunities from state law. The special status of the UN places the responsibility on the organization to provide its own staff with a judicial system that is fair and impartial and that can effectively resolve disputes arising from the employment of its staff.

The UN's internal justice system is a means for UN staff to try to resolve disputes informally; and if informal means do not work, disputes are formally resolved through management evaluation,[887] the United Nations Dispute Tribunal (UNDT), and the United Nations Appeals Tribunal (UNAT). A diagram presenting the overall appeals process illustrates what the system looks like:

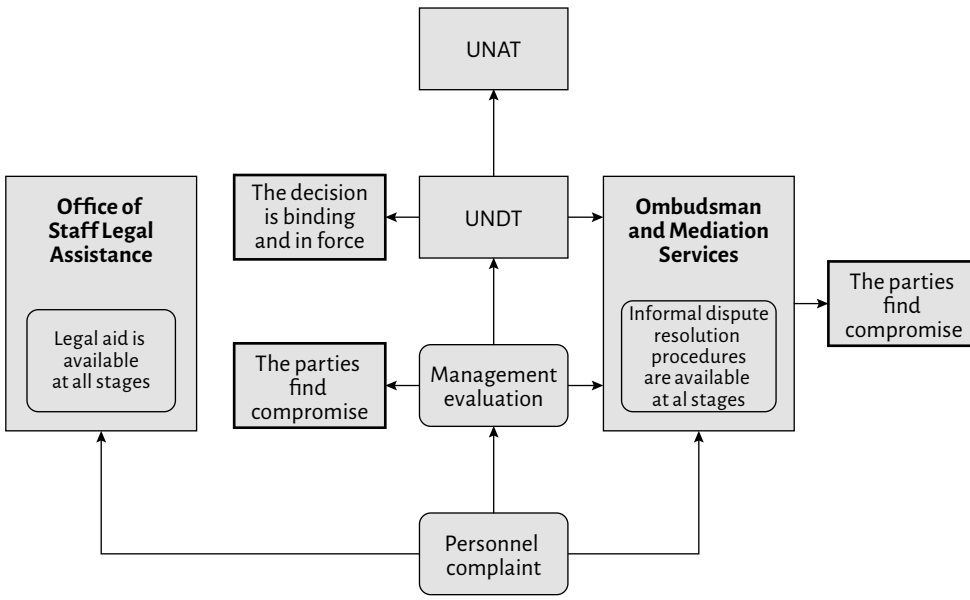

Figure 13. Structure of the internal justice system[888]

887 A management evaluation is not required if the contested measure involves a disciplinary sanction or if it was taken based on an expert or advisory panel opinion. In these cases, the complaint can be submitted directly to the UNDT.

888 Own figure. Source: https://www.un.org/en/internaljustice/overview/system-chart.shtml

The current internal justice system was approved by the General Assembly and came into force on July 1, 2009, with the aim of creating a properly resourced and decentralized system that is independent, transparent, and professional, with working methods that are in line with international law and the principles of the rule of law and due process. In setting up the system, the Assembly stressed the need to settle work-related disputes informally.

If informal attempts to resolve the problem do not lead to a satisfactory outcome for the employee, they have the possibility of initiating a formal procedure. If the staff member chooses to do so, he or she should be guaranteed access to the UN's internal justice system, to have their case heard by professional, independent judges, to receive a fair judgment, and to have access to professional legal advice.[889]

3.2. The UN formal dispute settlement mechanism

UNDT and UNAT aim to provide a harmonious working environment as a key to effective work. To this end, it creates a system of rules, and procedures to establish a standard of conduct and work ethics to ensure that all officials and employees act in the common interest of the organization.

The UN views the following goals as having global importance: peace and security, development and human rights. Nevertheless, it is still accurate to say that the labor disputes that emerge are not significantly different from those in any other work environment. For example, cases involving contract renewal, equal treatment, promotion, discrimination, harassment, disciplinary actions, etc. are presented before court. At the same time, the cultural diversity and geographical distribution of officials and employees in the UN are characteristic features of these disputes, which are otherwise considered to be general.

With the implementation of the internal system of remedies, the UN has attained the classic tripartite division of powers, with the governing bodies functioning as the executive branch, accountable to the General Assembly, which is the legislative body. The judicial system is no more subject to instructions or influence than the state courts, ensuring that the UN judicial system satisfies the requirements of the rule of law and the tripartite division is achieved.[890] Moreover, the currently prevalent adage that "the media is the fourth branch of power" is also reflected within the UN walls, as the organization's monthly magazine, Echo, serves as the organ of the advocacy bodies, which is

889 See https://www.un.org/en/internaljustice/overview/about-the-system.shtml
890 O'Fathartaigh, 2006.

responsible for raising general issues and communicating the results achieved among the staff. From this perspective too, the UN has all the organizational backing that today's states have.

Until December 31, 2009, the primary forum for settling the labor dispute between UN officials and the Secretary-General was a parity body, with different names for each organization, whose composition and powers were similar to those of the labor arbitration committees known from domestic labor law.[891] Both the Secretary-General and the official could appeal against a decision taken at this level to the internal courts, which perform the functions of domestic labor courts. In the event of an error in the interpretation of the law by the tribunal, the employer or the official could seek an opinion from the International Court of Justice (ICJ). If the ICJ found a decision to be in breach of the Statute or international law, it could order the administrative tribunal to reopen the case in a cassation procedure.[892] By 2010, the system of labor adjudication had been overhauled. In 2008, the UN General Assembly established a two-tier labor tribunal.[893] With this step, the parity arbitration panels were abolished, meaning that the official could now appeal directly to the tribunal, which in the case of the UN is the UNDT. Of course, the role of the ICJ has also been abolished by the two-stage procedure; that is, there is no longer any possibility of a cassation procedure.

Overall, the internal courts perform a similar function to the state-level courts, except that they do not exercise criminal or administrative jurisdiction. They are defined as a forum that protects and safeguards the order laid down in the norms and the rights and legitimate interests of officials. The internal courts thus represent both the force of order necessary for the functioning of international organizations vis-à-vis officials and the body that protects officials against unlawful practices on behalf of the organization.

3.2.1. Management evaluation

If an official disagrees with a management action or the failure to act, he or she must lodge a complaint with the Secretary-General, setting out the circumstances of the case and the grounds for his or her objection—a procedural step similar to the compulsory

891 Kovács, 2011b, p. 540.

892 Kovács, 2011b, p. 540, and see also Hwang, 2009. It gives important details about the history of the transformation: Buss et al., 2014.

893 United Nations General Assembly, 2009.

conciliation procedure in public law. In case an official wishes to challenge a decision taken by the competent authority under the terms of a specific technical department's advice or to appeal against a disciplinary decision, the management review stage may be waived and the official may go directly to the court of first instance. The same applies if the official concerned disagrees with the management review.

The official may request a management evaluation within sixty days of the notification of the decision complained of, which may be extended if the Ombudsman and Mediation Service have in the meantime attempted to apply an ADR solution to the case.

The Secretary-General shall respond to the substance of the complaint within thirty to forty-five days of receipt, depending on whether the official concerned is serving in New York or outside New York. If, during this period, the Ombudsman and Mediation Service initiates or pursues ADR proceedings, the time limit shall be extended by the Secretary-General pending the outcome of such proceedings.[894]

In an organization that appears to desire a balance between formal and informal means of conflict resolution, management evaluation seems a justified legal instrument. Additionally, this step also allows the organization to bring interests closer together, gives the party concerned an opportunity to express his or her views, or review the contested organizational decision. Thus, the Secretary-General is relieving the internal justice system with a solution that does not, in theory, limit the official's right to justice in any way.

3.2.2. Suspensive effect

Neither the request for a management evaluation nor the fact that an application is made to the court of first instance has a suspensive effect on the implementation of the contested measure or decision. However, where a management evaluation is mandatory, the official may apply to the court requesting a suspension of the enforcement of the decision in question pending the completion of the evaluation and communication of the result to him. In addition, the court may also order the suspension if the decision in question is manifestly unlawful or in an emergency; otherwise, the official would suffer serious and irreversible legal prejudice. The court's decision on suspension cannot be appealed.

894 *Staff Regulations*, Rule 11.2.

Another possible case concerns termination of employment. In the case where a decision to dismiss an official is to be implemented, the person concerned may request the Secretary-General to suspend the implementation of the decision pending an evaluation. The Secretary-General may grant this request in three cases: where the decision has not yet been implemented; where it is manifestly based on unlawful grounds; or where there is an emergency as described above. If the Secretary-General refuses the official's request, the latter may still apply to the court for suspension of the decision in the same way as above.[895]

3.2.3. The court of first instance (UNDT)

Staff members of the UN system can appeal to the UNDT when they wish to challenge a decision taken by an organization or department over which the tribunal has jurisdiction and which they consider to be in breach of their staff rights.

The UNDT has nine permanent and professional judges: three full-time judges (one each in Geneva, Nairobi, and New York) and six part-time judges, whose mandates last up to six months, depending on the caseload and occasional absences. The UNDT President, after consultation, will decide on a quarterly basis whether and to which duty stations part-time judges will be appointed. Permanent judges are appointed for a single, non-renewable term of seven years.

Cases at first instance are normally heard by a single judge; however, in particularly complex or important cases, a chamber of three judges may be convened. During its proceedings, the court of first instance conducts hearings, issues orders, and gives binding judgments. Both parties, the applicant and the defendant organization, have the right to appeal against the UNDT's judgment to the UN Appeal Tribunal (UNAT).[896]

3.2.4. The United Nations Appeal Tribunal (UNAT)

As the tribunal of second instance in the internal justice system, UNAT reviews judgments of the UNDT and the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in its own jurisdiction, as well as decisions of the Standing Committee acting on behalf of the UN Joint Staff Pension Fund (UNJSPF). Appeals against decisions of other organizations, agencies, and bodies accepting the jurisdiction of the UNAT are also made to this forum.

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895 *Staff Regulations*, Rule 11.3.

896 See https://www.un.org/en/internaljustice/undt/about-contact.shtml

UNAT normally meets three times a year, in the spring, summer, and autumn, in New York, Nairobi, or Geneva. The UNAT is composed of seven judges, and its President usually appoints panels of three judges to decide individual cases. However, significant circumstances may arise in which the UNAT will decide a case in a plenary session.[897] The judgments of UNAT are final and binding on the parties, and no third-tier tribunal has been established in UN internal judicial practice.

897 See e.g., 2021-UNAT-1148 (Previous cases: 2019-UNAT-949; 2019-UNAT-958). The importance of the decisions is reflected in the structure of international organizational adjudication.

Summary

In the international organizational environment, collective redress rights and obligations are similar to those in the public sector. This can be traced back to the fundamental rights nature of social dialog rights, which derive in part from the right to organize, freedom of association, and, in some respects, freedom of expression.

In the UN, as I have already explained, we distinguish five categories of services, which operate along different lines; thus, it is a particularly complex task for the organization to maintain a transparent and efficient structure for the management of industrial relations. The organization has developed four large departments—the Staff Council, the Joint Advisory Committee, the Staff-management Committee, and the Joint Negotiating Committee—with smaller committees, groups, and bodies sharing the work.

The UN's advocacy system is similar to that of countries where welfare decisions are taken by the central government, albeit where advocacy forums are actively involved in the decision-making process. This model is most typical of Western European countries. In my view, the organization is a good example of how a universal representation system with a small number of key players and well-distributed responsibilities could be an appropriate way to develop social dialog in public service.

The great advantage of the organization is that it is a malleable whole, unlike the rigidity that often characterizes public service systems. However, it also requires the cooperation of staff at all levels, leading to a type of public service ethos that is characteristic of Northern and Western European states.

However, despite the essentially positive and multi-stakeholder structural model, it is also worth noting that there is no real interest in conciliation in the classical sense within the organization, but rather the existing institutional system exercises the powers of the Works Council (or public employees' council), in that it seeks primarily to facilitate the exchange of information and the exercise of consultation rights between officials and the employer organization in various forms and at various levels.

Based on my research, it seems to me that the UN places emphasis on the need to settle conflicts at the lowest possible level and to allow the official to remain the equal

"master" of the matter as long as the nature of the conflict allows. In addition to the organization's mediation and ombudsman institutions, I would highlight compulsory conciliation between the parties as the primary form of out-of-court settlement of disagreements. It is advantageous that the organization is supportive of informal dispute resolution even if conciliation does not lead to a result, ensuring that parties can use the mediation service at any stage of the judicial process. In the organization, contrary to national practice, the mediation agreement is automatically considered an enforceable deed, and it is therefore of particular importance that the mediator be trained in domestic law.

Reviewing the Hungarian civil service law, I concluded that the international organization provides a good example by implementing informal conflict resolution tools in the administrative structure, as it makes officials aware of their options and ensures organizational integrity by excluding the use of external experts.

International comparisons reveal that a distinction can be made between the German and Francophone models of dispute resolution, the main difference being the mandatory nature of alternative conflict resolution. Under the German legal system, the parties are free to decide when to go to court and when to choose some other informal dispute resolution forum. The Francophone solution, on the other hand, builds into the system a compulsory informal recourse through which the parties can attempt to settle their disagreement or dispute in a state-sponsored manner, according to their own will and willingness to compromise. The UN has developed a structure close to the latter system.

In addition to informal dispute resolution, the UN operates a separate, two-tiered internal judicial forum to settle disputes arising from the service. Given its autonomous legal personality, the existence of this court guarantees that the jurisdiction of a foreign state does not arise in its internal affairs and that it can develop its own internal body of law through consistent jurisprudence in the event of conflicts.

The UN Administrative Tribunal is a two-tiered body comprising a first-instance panel and an appeals panel. There is no need for a lawyer in the proceedings, but the organization's office of personnel legal counsel provides free assistance to the official who approaches it with any question.

The main difference between the national civil service adjudication systems and the UN is the structural embeddedness of the latter, based on the autonomy of its legal personality: practically any service request that arises during the procedure—whether it is the request for mediation, legal advice, the possibility of a claim, or even an appeal—is met by a closed system of institutions.

CONCLUSION

In my work, I examined the characteristics that define public service through three major comparative aspects, regardless of whether we are examining international or national legal relations. The three major points of comparison are the internal service legal documents of the UN; the German, Francophone-Latin, occasionally English, and American legal backgrounds; and the Hungarian civil service regulations.

From what is presented in the volume, I conclude that in practically every aspect of the legal material, we find unavoidable features that affect both the international and the national public service. I also believe that I have discovered that individual systems present a certain degree of deficiencies in this field, but this does not change the fact that the regulatory space and the path that can be taken by the regulator is quite limited in the field of public service. The reason for the narrowness of the room for maneuver can be primarily traced back to professional work and subordination to the public interest.

Historically, the public service systems that still operate in a decisive manner today crystallized in a few hundred years: appropriate institutions were first set up in the 17th century, and then the states continuously discovered the positive effects of modern public administration on the functioning of the state. This path of development was extended by the Second World War to the extent that, after the peace agreements, joint work became more valuable for the states, which is why the dawn of international organizations has arrived. The UN also started operating around this time, and as a permanent intergovernmental organization, it was also necessary to create an internal personnel apparatus, the model of which was naturally the administration of states—within this, based on my research, primarily the Germanic legal system. *Overall, my first summary statement is that the currently known public administration personnel structures developed continuously over a period, not independently of each other, following a well-followed path. The most recent independent actors in this development are international organizations and their internal service systems.*

To me, it appears that the public administration is generally characterized by a view of functionality, according to which the employed class, whose members perform actual administrative work, are classified as officials. On the other hand, those staff members who help the organization's work in other ways are usually employed (under the Germanic legal system) or have a civil servant relationship (under the Francophone-Latin legal system) with the public institution. This trend is present in both Hungarian and UN regulations. *From this, I conclude that public service is closely related to the quality of the tasks to be performed, and the professional and ethical preparation of the employed staff, regardless of the legal entity of the employing body.*

My research reveals that the organizational culture of public service bodies determines what we consider to be the duties of a civil servant, what status rules we put behind this, and what we expect from the civil servant in everyday life. Clearly, no matter which public service structure we examine, the organizational culture permeates the entire system of rules and jurisprudence. Today, the priorities of both the examined states and the UN have changed, and traditional bureaucracy has basically been replaced by a results-oriented public administration culture. Consequently, *while legality is a fundamental requirement in thinking and acting today,* instead of its dominance in all areas, *efficiency is the defining spirit* along which the work organization of everyday life transpires. Typically, the management defines the regulations, rather than the officials carrying out their tasks according to the norms arising from their positions. Furthermore, an effective organization does not aim to standardize or regulate: it seeks out unique solutions to different problems, which may waste time; however it is much more in line with serving the public interest, and might result in a customer-oriented approach emerging. In the past, public administration could not be separated from politics, but today there is a need to expect neutral, professional work from officials. Whether a public administration capable of maintaining its integrity and independence is more important in the case of states or international organizations is debatable—however, it is beyond dispute that both legal entities must strive for the fullest possible application of professional aspects for the sake of organizational efficiency. Simultaneously, transparency gives the system's actors the opportunity to trust each other.[898] *During my investigation, I observed that organizational culture, regardless of age and perspective, appears equally behind the legal relations of UN officials and the examined states, considering that it is also part of the current organizational culture if the managers do not pay attention to it and also if they build it consciously into the organization's cultural background. I see that with the rise of*

898 Kiss and Csillag, 2014, p. 15.

today's management approach, the goal of regulation and legal practice is to create an efficient, agilely transformable administration in which the specific branding and team-building efforts of private sector enterprises can set a good example for the public administration—we can already see traces of this in the administration of the United Nations.

In terms of the sources of law, I observe that the legislator usually regulates the legal relationship of civil servants in a code-type legal source. In Hungary, this situation is more nuanced, because although in my entire research work, I find the Act on Government Administration to be the closest to the UN Staff Regulations based on personal and material scope, at the same time I cannot ignore the fact that the legal relationship of a group of civil servants is regulated by the Act on Public Servants. Accordingly, it can be stated that the domestic legislative solution is extremely rare, as not only does the regulation of public administrative employment legal relations shows a greater than desirable degree of fragmentation, but even the legal relations of the civil servant layer have not been settled in a single law. Essentially, in this area, *I concluded that the Hungarian regulation would need unification, and in this area I consider the solution of the German system to be followed*. At the same time, however, the role of lower-level sources of law should not be forgotten: in the case of the UN, the number of Secretary-General's bulletins, information circulars, and administrative instructions that I myself have dealt with in this research material can be put at around 30, and those in some form supplement or explain what is contained in the personnel regulations. Otherwise, the number of lower-level legal sources created over the past decades can be put at more than a thousand:[899] in the database containing all effective and some archived materials, we can count 140 administrative instructions and General Secretary announcements each, and 706 information circulars are available. The fact that there is less than this amount of effective regulatory instruments does not affect the fact that the Secretary-General and his delegates, as well as the General Assembly, apparently actively exercise the right of regulation in a shared manner and that higher-level personnel regulations are far from sufficient for the full mastery of employment conditions. *In my opinion, although instructions and decrees are typical sources of law for public administration employment in the public sector as well, this quantity is very large and weakens the legal certainty of the organization, as it limits the ability to know the exact content of the law.*

899 HR Handbook: Browse by source—Information Circulars (https://hr.un.org/handbook/archive/information-circulars/date); HR Handbook: Browse by source—Secretary-General's bulletins (https://hr.un.org/handbook/source/secretary-general%27s-bulletins/date); HR Handbook: Browse by source—Administrative instructions (https://cutt.ly/WSjppJI).

In all three investigated systems, the official relationship is established by appointment (or the corresponding LOA), and the official must accept the appointment, guaranteeing, as it were, that the creation of the legal relationship—if it is not necessarily based on the official's little or no bargaining power in its content—is based on the consent of the parties. In this area, my work did not reveal any good practices or shortcomings; my findings are limited to the fact that *the legal institution of appointment can be considered universal from the perspective of the creation of the civil servant legal relationship.*

The state of the regulation is not so transparent regarding the modification of the appointment: we can make an obvious difference between modification and amendment in state and international organizational regulations. Surprisingly, the UN does not specify the conditions under which the appointment can be changed: is the exercise of the employer's right entitled to do so unilaterally, or does it require the consent of the official, as well as whether there are cases where this can be different and whether there is a mandatory form when, at the request of the official, the Secretary-General is obliged to order the amendment of the contents of the appointment. *In this area, if there is regulation, it should be made more accessible, and if there is not, the General Assembly should amend the Staff Regulations in this regard.* For *the time being, based on the legal principles regarding agreements, I assume that the agreement of the two parties at the UN is basically necessary to modify the appointment.* Of course, the opposite solution would not be foreign to the law either, as we can see in domestic law when an Act on Government Administration entitles the employer to unilaterally change the appointment. *However, I personally dispute the justification and well-roundedness of this entitlement, and to respect the contractual autonomy of the parties, I strongly prefer prioritizing the amendment by mutual agreement for the Act on Government Administration, at least approximating the hybrid solution of the Act on Public Servants.*

In addition to the amendment issue, the UN does not have full-fledged regulations for rest time, overtime, and allowances. Although the regular schedule of working hours has been fixed, I am not aware of any provisions governing the amount of daily and weekly rest time, nor of any that would indicate whether a day must be covered by the weekly rest period. As a result all of these matters I have no source of salary supplements for work done during the rest period or on a day of rest. The issue of remuneration for overtime was similarly resolved by the UN; in many cases, we can only infer the content of the law in the absence of legal provisions. According to the law, a legal provision states that in professional and higher categories, overtime can only be worked with the permission of the Secretary-General, and the official is compensated with free time. Furthermore, detailed rules are provided in a dedicated administrative instruction for field service officials of permanent missions. From there, the situation changes: no resources are available for those providing general services, although for those employed in an

employment relationship, even in the absence of the UN provision, the law of the state of the place of employment applies in this regard as well. *In my opinion, the regulations of the UN in this area would need a major overhaul, and it is also true in this area that if there is any source of law, the organization must make it available.* Given that the overtime regulations apply to the entire staff, I do not believe that there is no provision for those performing general duties because they cannot be assigned to extraordinary work. If this is the case, then it would be necessary to record this in the regulations to facilitate interpretation.

With regard to granting annual leave, the practice of the UN is similar to what we know in the case of European states; however, the type of appointment appears as an influencing factor in the number of days of leave applicable to the official in an unjustified way—that is, the principle of time proportionality prevails in this regard as well, which the state regulation stipulates regarding the leave, but usually excludes. The UN annually provides 18 to 30 days of annual leave to its officials, calculated based on a given multiplier, in addition to paying the full amount of the salary. *I believe that the Hungarian legislator could also reconsider the application of the absence fee in terms of vacation days in private labor law, because in the public sector, in addition to the UN, European jurisprudence provides full wages and allowances to employees taking their legal paid leave.* It is also advantageous that the UN is familiar with the legal institution of the freedom bank, ensuring that full-time officials can take 60 days of leave and part-time employees can take 30 days, a distinction that, although it follows from the standard annual leave amount, also seems unjustified. *Overall, I do not feel that the legal solutions of the UN are mature in the matter of working time freedom; I see them as areas worthy of consideration by the General Assembly and the Secretary-General.*

With regard to rights and obligations, the UN applies a conventional approach, both in terms of the legal source level and the content contained therein. Non-compliance with rights and obligations leads us to disciplinary legislation, in relation to which we can witness an interesting legal development: the UN took samples from the practices of many states to create its own, independent system based on them. The German, English, and French legal backgrounds served as its sources, and as a result, in my opinion, it has a consistent, transparent procedural structure. The disciplinary decisions paint an interesting picture. The organization clearly views the termination of the legal

relationship as an[900] *ultima ratio and thus meets internationally recognized employee needs.* The negative aspect of the procedure is the many actors and the numerous branching possibilities of the case, which can make the official involved in the procedure unsure about his own case and his rights related to the expression. In a bureaucratic system, the procedure in question can simply be "lost from sight." Overall, disciplinary law is one of the most important sub-authorizations of the public administration employing body, which does not, by definition, belong to the actors of private labor law. Accordingly, it is necessary to develop the governing procedure in a responsible manner, in accordance with the expectations of the public service, the consequence of which is that any breach of the obligation arising from the public service legal relationship can be considered a disciplinary offense. This global approach is typical of the French and Hungarian civil services, *but at the same time, in my view, the UN follows a good practice by judging minor violations of obligations, even at the level of rules, in an informal procedure and leaving the disciplinary procedure exclusively for particularly serious violations.*

Regarding the termination of the legal relationship, there is no special feature that I need to highlight in terms of the organization, although the legal institution of the collective agreement would require a nominal record in the Staff Regulations or possible exclusion. The nature of the termination methods is identical to those contained in the regulations for state apparatuses, nonetheless, it can be noticed that the official leaving the system is not protected by the organization at all. The UN practices are in contrast to those states in which public service has taken on a pragmatic nature and is viewed as a life profession (this characterizes both Germanic and Francophone-Latin legal systems), the manifestation of which is that there is no obligation to relocate when a job or place of service ceases, and the legal institution of the proven reserve stock in state public services is also unknown in the organization. *According to my impression, the nature of the UN is more of an organization that believes in updating the workforce; therefore, those working in the specialized apparatus tend to stay in the service bond for a short time. At the management level, long-term collaborations are more typical, thanks to which the organization strengthens the image that, in terms of its organizational culture, it occupies a place between the large companies of the public sector and private employers. From my point of view, this is not a problem, although some of its solutions—as we have already seen—bring results that are somewhat alien to public*

900 The meaning of *ultima ratio* is "last resort." It is not primarily known as a constitutional principle but as a legal ethical principle, and it is mainly used in legal literature. It expresses that certain measures and regulatory elements are ordered to be applied by the legislator only as a last resort (in labor law, for example, the legal institution system for terminating the employment relationship, the immanent purpose of which is to be applied only when the employment relationship has definitively lost its purpose for a party or parties. (On the topic of ultima ratio, see e.g., Jareborg, 2005.)

administration. Nonetheless, the organization's practice in the field of fixed-term legal relationships is clearly erroneous because appointments can be renewed any number of times. In my opinion, in the case of fixed-term contracts, it is not only necessary to require the parties to record the expiration of the agreement but also to ensure that an indefinite number of contracts of this type cannot follow each other in the absence of a justified, legitimate interest on the part of the parties.

In terms of labor relations, we distinguish several models in European states; the UN basically does not follow any of them because of its special internal structure. Internal law does not recognize traditional bi- or tri-partite negotiations. However, there is nothing wrong with this, because we still see a high-quality, multi-actor system in front of us, in which the officials express their opinions—at least according to my observation, they are encouraged to do so during everyday life, built into the organizational culture. I see that if one area should be singled out from the set of regulations where the organization can serve as an example, then we should highlight the achievements of the organization in terms of the human aspect regarding labor relations. *Even if we assume that the well-organized staff and listening to their opinions are just a propaganda trick within the organization, it is still a fact that there is a need for the official to feel important. It would be worthwhile to implement this mentality in the domestic public service by setting up the appropriate internal representation forums and motivating the officials.*

Regarding disputes of interest, I have not experienced significant differences in the field of organizational and state conflict resolution, ensuring the mediation process primarily plays a role in these dispute resolutions. In the field of legal disputes, I consider it especially important that during the proceedings before the internal court forum, the parties can decide at any time to direct the resolution of the disputed issue to an informal path. Additionally, I feel that it is advantageous that the legal institution of mandatory consultation exists within the organization, but regarding the state level, I do not consider this to be an example to be followed, because employment within the organization creates much more direct relationships than working in the state administration. Negotiations lead to results if both parties unanimously wish to reach a compromise, which I do not view as guaranteed in the case of a legal dispute against a state administrative body. I would not go without saying that, even in the field of settling legal disputes, *the UN administrative court can only use the Staff Regulations, lower legal sources, and previous judgments as the basis for its decision, not the Charter, which is considered a "constitutional rule." This emphasizes the importance of the General Assembly or the Secretary-General developing reassuring rules on the issues I previously identified as deficiencies.*

Ultimately, I do not claim that the UN has chosen regulatory instruments that are suitable for providing an example for the domestic legislator to follow. In those areas

where we do find such organizations, it is not a question of the organization's unique solution but typically the adoption of a practice that is already found in another state.

In my opinion, the UN has the same ambivalent administrative system that characterizes individual state administrations. In every unique system, there are strengths that facilitate operation and shortcomings that impair the quality of (state) administration, but those who enter the regulatory circle later have more opportunities to eliminate the latter. This assumption of mine is confirmed by the UN from the perspective that, with its regulatory system, it apparently does not copy a state or a typical solution but has consistently selected over the decades from the existing legal technical solutions those that are necessary for the highest possible level of operation of its own apparatus. The major shortcomings are present in small numbers—although they should be remedied urgently—and we have learned about a full-fledged administrative model.

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