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**Comparison of the Possible Forms of Territorial Administration
in the Countries of the European Union**

Master Thesis

Olomouc 2019

„I declare that I am the sole author of the master thesis with the topic *Comparison of the possible forms of territorial administration in the countries of the EU* and that I quoted all the used sources.“

„Prohlašuji, že jsem diplomovou práci na téma *Komparace možných forem územní správy v zemích Evropské unie* vypracovala samostatně a citovala jsem všechny použité zdroje.“

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.....

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Abbreviations and explanations

EU	European union
EC	European Communities
Constitution of the CR	Constitutional Act No. 1/1993 Coll., Constitution of the Czech Republic, as amended
Constitution of the SR	Constitutional Act no. 460/1992 Coll., Constitution of the Slovak Republic, as amended
Constitution of AT	Federal Constitutional Act No. 153/2004 Coll., Constitution of the Republic of Austria, as amended
LZPS CR	Charter of Fundamental Rights and Freedoms, promulgated by Resolution of the Presidency of the Czech National Council No. 2/1993 Coll., On the proclamation of the Charter of Fundamental Rights and Freedoms as a part of the constitutional order of the Czech Republic
MICR	Ministry of the Interior of the Czech Republic
Czechia, CR	Czech Republic
Slovakia, SR	Slovak Republic
Austria, AT	Republic of Austria
TSU	Territorial selfgoverning units
HTU	Higher territorial self-governing unit, region
LTU	Lower territorial self-governing unit, municipalities
SNC	Slovak National Council
IE	Individual entity
LE	Legal entity
RaO	Rights and Obligations
OLR	Olomouc region
ŽLR	Žilina region
Länder	Federal states in AT
PA	Public Administration
TPA	Territorial Public Administration

Introduction

My diploma thesis entitled “*Comparison of Possible Forms of Territorial Administration in European Union Countries*” deals with the issue of territorial administrative division of selected countries. It is the main goal of this diploma thesis to analyze and clarify the similarities or differences of the systems of territorial public administration in selected European states. In terms of a territorial perspective, three countries, today all Member States of the European Union, have been selected for a subsequent analysis. These are the Czech Republic, the Slovak Republic, and the Republic of Austria. The reason for choosing these countries a priori, is rooted in their historical interdependence within the former Austro-Hungarian Empire, Czechoslovakia and the current cooperation within the EU sui generis group.

With regard to the content of the thesis, I would like to focus predominantly on the subject of territorial administration in the countries chosen, and above all on the issue of comparing the different competences of local authorities across the selected states. Given the area of the chosen topic and issue, I would like to focus in detail on the analysis of entrusted competencies, respectively their delegation from the central level of state management to local authorities. An analysis of the issue of the amount and power of the competencies entrusted will be carried out for the Czech, Austrian and Slovak Republic respectively. I will look at the differentiation in the selected countries and the possible reasons why there may be an unequal distribution of competencies of local authorities or insufficient legal regulation between Czechia, Slovakia, and Austria – the more so as there had been an age-long shared past of these countries within the former Austro-Hungarian Empire.

As for the concept of territorial administration itself, the existence of territorial administration is already enshrined in the primary law of the individual states - among other things in laws with constitutional power. Nevertheless, we can also find it in supranational documents, for example in the European Charter of Local Self-Government. The text of my master thesis includes a short analysis of this charter, especially with the aim of providing a better understanding of the system of those legal regulations which have an impact on the territorial administration of selected states. The European Charter of Local Self-Government is an important piece of legislation with a transnational character, and crucial for this thesis as its text deals exclusively with the unification of the rules and principles of local self-government of its signatory states to accede to the selected provision. States thus express their interest in being open to some form of "centralization" and unity in selected, not just legal areas.

In the introduction to the context of the thesis and its first chapter, I would like to provide a short historical overview of the development of individual territories of the selected Republics, their mutual historical interconnection - especially the connection within the former Austro – Hungarian Empire - and the subsequent development into the current form of administration of their territories. In this chapter, I want to further clarify the importance of the concept of territorial public administration for Central European states and their attitude to the municipal level of governance. The system of public administration in the three countries chosen is not entirely uniform, this is mainly due to the different character of these states. The Czech Republic is, as we can infer from Title I of Constitutional Act No. 1/1993, the Constitution of the Czech Republic (as amended) a unified, sovereign and democratic state founded on the rule of law, and hence based on respect for the rights and freedoms of man and citizen. The political system of the state is based on the voluntary establishment and free competition of political parties. In all circumstances, it is necessary to respect the fundamental democratic principles laid down in the Charter of Fundamental Rights and Freedoms.¹ However, the Czech Republic is also obliged to comply with all obligations arising from it under international law. This constitutional law also includes the basic division of territorial self-government and its existence in general, from which we can deduce the importance of governance at the local level and the delegation of competences from the center to the territorial unit.² The Constitution of the Slovak Republic and the nature of power in this state can be described as essentially identical with merely slight modifications in the territorial division of the country and differences in nomenclature. In its provisions, the Austrian Constitution comprehensively encompasses the division of the whole territory of the Republic into individual units and stipulates a specific amount of competences and their relatively detailed delineation, by which the authorities of territorial units are gifted. After clarifying the historical circumstances of the development and the interdependence of the individual states compared, I will proceed to the main theoretical basis of the whole work.

In the second chapter, I will a priori define the most important concepts related to the area of state administration, or self-government of individual countries, which will be important for processing the entire text of the thesis. The analysis of administrative systems will be performed separately for Czechia, Slovakia, and Austria. However, I will emphasize here in

¹ Charter of Fundamental Rights and Freedoms, promulgated by Resolution of the Presidency of the Czech National Council No. 2/1993 Coll., On the proclamation of the Charter of Fundamental Rights and Freedoms as a part of the constitutional order of the Czech Republic, as amended and its relevant provisions.

² Constitution of the CR, and its relevant provisions.

particular the areas in which the selected states differ (or resemble each other) and why these differentiations exist, respectively what causes them. Each of the elaborated chapters will conclude with a brief summary and an overview of why the Austrian system of territorial administration, for example, may operate more effectively, or be closer to the citizens than the systems of territorial administration in the Czech Republic and Slovakia. This theoretical overview should serve as a basis for processing the practical part of the thesis, where I want to clarify in particular the shortcomings of the analyzed areas within the territory administration in selected countries of the European Union. The main issue here will be the interconnection of these countries and the EU. Have there been changes in the administration of their territories in any way since these countries joined the EU? For that matter, I would like to analyze these states in the context of European law and substantiate conclusions drawn by relevant case-law. In this practical part of the work, I would like to include a specific analysis or comparison of administration within territorial units in selected EU countries.

As far as the object of analysis is concerned, I will also focus on the differences in the political system of the states compared and their possible influence on the territorial administration of countries. For the sake of the complexity of this research, it will also be necessary to clarify the concept of democracy, which is closely linked to the issue of territorial self-government, respectively whether democracy is understood in the same way in individual states. Due to the existing diversity in democracy between states, I want to answer the question “in which way and why” systems may differ.³ In the same way, I will analyze the concept of administration for selected states, and, in line with this, their way of understanding and interpreting this concept. The merit of the matter analyzed in the practical part of this work will be the question of competencies entrusted by the central government or delegated by the state to the local level. In the third chapter I will explain the intensity of these competencies and how they are delegated under the legal authority. The fourth (and final), chapter will contain an evaluation of the analyzed issue, where I am providing examples of local government of individual territorial units in the states selected. What is more, I will also summarize possible shortcomings, for example in the legislation of a selected area and, eventually, provide proposals *de lege ferenda* how to avoid these shortcomings in the future. Given the extensive content of the issue of territorial administration, respectively self-government in selected

³ Cf. PRATCHETT, Lawrence and WILSON, David. *Local Democracy and Local Government*. 1. edition. London: Macmillan Distribution Ltd. 1996. p 153-210.

countries, I want to arrange my work in a more practical way by providing examples in order to clarify which influences on public - territorial administration exist.

As far as the methods used for word processing are concerned, I intend to make use of the comparative method, which will be the main method of the entire thesis. In the first part devoted to the historical perspective of the issue, the diachronic approach will be used. In the subsequent comparison of selected EU countries, I will use the synchronous approach. The text of my diploma thesis will be processed mainly on the basis of a neutral, empirical-analytical approach, thanks to which I would like to achieve more significant findings in comparison to other political science approaches.⁴ In the relevant part of the introductory chapter, I will also make use of the historical-comparative approach, given the choice of several different states of the Union and the need to compare them and justify their choice in detail.

As sources of my work I would like to mention above all the professional literature and relevant case law of the Czech or foreign judiciary, which constitutes the basis of my work. Since this master thesis is evenly divided into a theoretical and a practical part, I have also chosen the relevant literature adjusted to the features of the respective chapters. For obtaining crucial information dealing with the concepts of public administration in general, and the territorial public administration in selected countries in particular, I used a limited number of books which I consider to discuss the issue appropriately and in detail. The main publication of the theoretical part of the work is a publication by *Hendrych Dušan et al.*, named *Správní právo*, published by C.H. Beck in 2012. Even in terms of timing and timeliness, this publication is a relevant source, this is mainly due to frequent amendments in the field of administrative law in the Czech Republic.⁵ In *Správní právo*, the authors deal with the detailed regulation of understanding and functioning of the system of administrative law in European countries, with a specific focus on the Czech Republic. As an accompanying publication of this part of my work I draw on the contents of *Komunální politika*, a book by *Stanislav Balík* published in 2009, which describes in detail the public administration in Central European countries and its gradual development over the last few years, including relevant reforms in the area of public administration. Among foreign language publications, I would like to highlight, among others,

⁴ EASTON, David. *The New Revolution in Political Science*. The American Political Science Review. 1969. 4/63, 1051-1061. Cf. ŘÍCHOVÁ, Blanka. *Přehled moderních politologických teorií*. 3. edition. Praha: Portál, 2014 and HEYWOOD, Andrew. *Politologie*. 1. edition. Praha: Eurolex Bohemia, 2002 and ZBÍRAL, Robert. *Vědecká propedeutika*. Olomouc: Univerzita Palackého v Olomouci, 2014 and cf. MALANÍK, Michal. Empirické zkoumání metodologie interpretace práva. *Časopis pro právní vědu a praxi*. 2019, nr. 2, p. 169–188.

⁵ PRŮCHA, Petr. Dušan Hendrych et al.: *Správní právo, obecná část*. *Časopis pro právní vědu a praxi*. 2007, nr. 1, p. 97-100.

the Global Encyclopedia of Public Administration, Public Policy, and Governance by Ali Farazmand, published in the US in 2018, in which the author comprehensively deals with public administrative issues from a global perspective. Therefore, his work will be used especially in processing the theoretical part of the thesis. A publication which provided me with essential information on Austrian federalism, is a book by *Ludwig K. Adamowitsch et al.* entitled *Die Kompetenzverteilung zwischen Bund und Ländern*. This book provided me with in-depth knowledge about the transfer of competences from the center to the territorial units in Austria. The selected literature provides a detailed description of the functioning of public administration in EU countries. However, none of the publications deals with a more detailed elaboration of its comparison across selected countries. For the more practically oriented part of the thesis, I try to draw on rather “timely” resources, i.e. articles and Internet resources from which I can obtain high-quality and timely information on the state of local public administration in the respective country, e.g. the attitude of a state’s current government to the amount of competencies entrusted to its individual territorial units. The crucial aspect of the practical part of my text is the case law of the European and foreign judiciary, on the basis of which I will try to demonstrate possible shortcomings of the legislation affecting the area of territorial public administration in selected states and territorial units. At the end of the thesis, based on these judgments, I will evaluate the answer to the main research question presented.

Before elaborating this text, I set up several hypotheses, which I want to follow when processing the text, and at the end of my work, I would like to provide adequate answers for them. The main hypothesis for this thesis is set as follows:

- 1) The more competencies a local authority of a given country or territorial unit has, the closer it is to its citizens.

Followed by the complementary hypothesis of the thesis:

- 2) The Austrian system of public administration (territorial administration) is more efficient than the “identical” system in Slovakia and the Czech Republic. *In order to confirm the second hypothesis, I will carry into execution a comparison between these three countries with regard to the efficiency of their public administration in terms of - amongst others - division, design, and financial demands within the respective systems.*

The content of the work will a priori be within the boundaries of the administrative law⁶ sector of selected EU Member States, Community law, but it will also include elements of

⁶ Cf. HALML, František. KOPECKÝ, Martin. Správní právo. Obecná část. *Časopis pro právní vědu a praxi*. 2019, nr. 2, p 285–288.

international law with reference to the choice of individual comparative states. I prepared my master thesis according to the legal status as of 18 April, 2019.

1. The territorial administration of the selected states and its development from a historical point of view

This chapter forms the historical-theoretical basis for the whole thesis. The following subchapters will present in detail the individual terms with regard to public administration in the selected area with a focus on the concept of territorial self-government and territorial division. In the first subchapter, the historical context between the selected states will be explained. Since territorial self-government has undergone many changes from the times of the “alliance of selected states”, I want to at least briefly at the beginning of the first chapter mention the issue of territorial public administration in the states selected already during the time of Austria-Hungary. In this subchapter, I will further explain which specific changes and developments have been made by public administration since then. I will therefore provide detailed explanations for Austria, Czechia, and Slovakia, respectively.

1.1 Historical context, territorial division

In the introduction of the first chapter, I include a short historical overview and background information on the connection between the three selected countries - the Czech Republic, the Slovak Republic, and the Republic of Austria - and the development of territorial public administration in their territories. Between 1526 and 1918 these countries⁷ were made up of one common state, a group called the Austrian respectively the Austro-Hungarian Empire.⁸ Within the framework of this “State Union”, the territorial self-government has already been modified, for example by means of the so-called Imperial Framework Municipal Law of 1862⁹, and subsequently by the imperial laws on municipal establishment of 1863 and 1864. Despite the existence of certain forms of territorial self-government, the issues related to state administration had predominantly been managed via Vienna, capital and center of

⁷ Slovakia since 1526 as part of Hungary within the Austrian Empire, Czech lands since 1526 as part of Austria.

⁸ BELLER, Steven. *The Habsburg Monarchy 1815-1918*. 1. edition. Cambridge, NY: Cambridge University Press, 2018. p 192-286.

Cf. *Arcivévoda František Ferdinand Rakouský – vznik říše* [online]. franzferdinand.cz, 12. April 2011 [cit. 16. December 2018]. Available from

<<https://web.archive.org/web/20110718172232/http://www.franzferdinand.cz/cz/Rakousko-Uhersko/>>. (*These countries were part of the multiethnic Austrian (later: Austro-Hungarian) Empire.*)

⁹ *Virtuální knihovna – Říšská sbírka zákonů* [online]. is.muni.cz, 19. June 2019 [cit. 23. December 2018].

Available from <<https://is.muni.cz/do/1499/el/estud/praf/ps09/dlibrary/web/rs.html>>. Cf. *Historische Rechts* [online]. alex.onb.ac.at, 3. January 2019 [cit. 24. December 2018]. Available from <<http://alex.onb.ac.at/cgi-content/alex?apm=0&aid=sgb&datum=19180000&page=26>>.

authority of the Habsburg monarchy.¹⁰ Subsequently, the successor states, after the collapse of the Austro-Hungarian Empire, assumed the structure of TPA together with the manner of local government.¹¹ The character of PA was generally preserved in this form until the so-called Czechoslovakian First Republic.¹² The above-mentioned rule of laws dealing with the municipal level of governance have been incorporated into its legal order. After the establishment of Czechoslovakia in 1918 a new law was passed, which would regulate the issue of municipal self-government, and hence state administration entrusted to municipalities. During this period, only existing, adopted regulations from the times of Austria-Hungary were amended. Initial amendments mainly concerned changes in the names of municipal authorities, regulation of their mutual relations, but also relations of municipal authorities with state administration authorities. Since the beginning of the First Republic, tendencies towards centralization have been more apparent than the decentralizing character of the state structure.¹³

Subsequently, during the period of the so-called Czechoslovakian Second Republic, the function of secretary was newly established at the municipal level. In this period, which lasted only 167 days¹⁴ however, due to the promotion of certain leadership principle forms, the territorial self-government was gradually liquidated. This fact was subsequently helped by the German occupation in 1939. In the first half of 1939, the so-called Protektorat Böhmen und Mähren was created under the leadership of Adolf Hitler. When it was established, the Protectorate enjoyed a municipal character and thus managed itself. However, municipal self-government during the time of the Protectorate declined. In general, it did not enjoy much echo, significance, or authority. During this period, caused by the occupation¹⁵, the concept of municipal self-government became more and more of an illusion, rather than a reality.

In the postwar period between 1945 and 1989, there was a gradual attempt to decentralize Czechoslovakia. The so-called National Committees were newly established to fulfill the function of state administration and represent a new type of PA bodies.¹⁶ They were established at all levels within the territorial division of the then-public administration. The left-

¹⁰ Cf. MAGRIS, Claudio. *Habsburský mýtus v moderní rakouské literatuře*. 2. edition. Praha: Instituto Italiano di Cultura. 2001. p 15.

¹¹ Cf. *Austria Country Study Guide* [online]. books.google.lv, 28. May 2017 [cit. 16. January 2018]. Available from <https://books.google.lv/books?id=uomTBQAAQBAJ&pg=PA100&dq=public+of+germany-austria+1918&hl=lv&sa=X&ved=0ahUKEwig_4af8KrOAhVFFywKHTSUAuEQ6AEIHZA#v=onepage&q=public%20of%20germany-austria%201918&f=true>.

¹² *The First Republic is a term referring to the countries of Czechoslovakia, from 1918 to 1938.*

¹³ BALÍK, Stanislav. *Komunální politika*. 1. edition. Praha: Grada Publishing, a.s., 2009. p 46-47.

¹⁴ *The Second Republic and its political system were established on October 1, 1938 and were wound up on March 14, 1939.*

¹⁵ BALÍK, Stanislav. *Komunální politika*, 2009. p 53-56.

¹⁶ KULÍK, Jan et al. *Dějiny československého práva 1945-1989*. 1. edition. Praha: Auditorium, 2011. p 38-251.

wing Communist Party of Bohemia and Moravia played a dominant role here. According to the territorial character of PA, the state was divided into Local National Committees and since 1949, National and Regional Committees.¹⁷ National committees maintained the distinction between state administration and self-government. They were given powers in both areas of competence. However, in their real form and practice, they performed only delegated powers within the functions assigned to them. This included all areas that are otherwise entrusted to democratically oriented states.¹⁸ The existence of National Committees was maintained after the adoption of the new Constitution in 1960 (Title VII).¹⁹

Since 1990, there has been a gradual transition to local democracy. The original preferred unilateral or monorail system of PA, which applied only the promotion of the power of state administration, was removed. The original two-track system of PA was returned to the CR, which entrusts municipalities both with the state administration and with the authority to administer matters within its area of competence independently at the local level. The cornerstone of local government is the municipality (town, township, statutory city). Between 1990 and 1992, the system of territorial division of the Czech state into the form we know today was formed.²⁰ In 1993, the independent Czech and Slovak Republics were established, thus completing the common development of TPA in these states and each of the states started to develop the division of their territory independently, especially by creating new regulations related to TPA issues.²¹

After the collapse of the Empire, the Republic of Austria also retained in its legal system the previously applied system of double-track PA, which has essentially continued to this day. Initially, after 1918 there was extensive communication between the state as the bearer of power and the territorial units. The Republic of Austria has gradually begun to move towards its federal character as we know it today. Shortly after the establishment of the Republic of Austria,

¹⁷ Cf. Constitutional Act No. 150/1948 Coll., Constitution of the Czechoslovak Republic, Title IV.

¹⁸ BALÍK, Stanislav. *Komunální politika*, 2009. p 55-57.

Cf. Government Regulation No. 4/1945 Coll. of 5 May 1945, on the election and powers of national committees, as amended by Government Regulation No. 44/1945 Coll. of 7 August 1945. *Note: "The regulation regulated the establishment and operation of national committees in the CR, for Czech countries. In Slovakia, the policy and functioning of the national committees were governed, in particular, by the Decree of the Presidium of the Slovak National Council of 7 April 1945. The national committees in the Czech Republic and Slovakia enjoyed different legal regulations which they managed. In Slovakia, the SNC took over some of the tasks of the provincial national committees and their internal organization also differed from the national committees in the CR."*

¹⁹ Cf. Act No. 36/1960 Coll., On the territorial division of the state. *Note: "It set new boundaries of regions and districts. New territorial changes - creation of regions: East Slovak, Central Slovak, West Slovak and in the Czech Republic the regions of Central Bohemia, South Bohemia, West Bohemia, East Bohemia, North Bohemia, South Moravia and North Moravia."*

²⁰ BALÍK, Stanislav. *Komunální politika*, 2009. p 57-58.

²¹ NOVOTNÝ, Vladimír et al. *Veřejná správa v zemích Visegrádské čtyřky*. 1. edition. Praha: Leges, 2017. p 147.

individual Austrian countries had difficulty in enforcing their legal character, which was mainly due to the lack of relevant legislation. Territorial units wanted to achieve legal recognition at the state level to officially become part of the “new republic”. By that time, the Länder already wanted to cooperate in areas such as peaceful coexistence, and-mutual solidarity. Nonetheless, the countries could still not be considered as independent entities. At the beginning of 1918, after the formation of the united state of the Republic of Austria, the so-called Provisional National Assembly adopted an important document entitled “Act on the Takeover of Power in the Länder”, whose signing recognized the institutional provisional parliaments and governments of the Länder from an institutional point of view, thus giving territorial autonomy to the state. After the signing of this law, several significant shortcomings became apparent. The state could still not be referred to as a federation because it did not meet the indispensable elements qualifying it as such. So far, it has not been entirely clear how the boundaries of the whole state or individual Länder are delineated. Following the subsequent adoption of other legal acts concerning the territorial division of the Republic, it took several years to define the precise boundaries of the national territory and the number of territories of the current nine Länder.²² After the collapse of the empire into individual states, each of them, through national legislation, led the agenda associated with the TPA separately.²³

1.2 The concept of territorial public administration in democratic states of Central Europe

The issue of TPA is nowadays feasible within the state structure, while the state has sovereign power.²⁴ Within the state grouping, the so-called public power is also realized, which represents a general ability of authoritative decision-making on rights but also on the obligations of subjects. It is based on inequality of relations and is exercised by those to whom the state has delegated this power.²⁵ State power is exercised mainly through legislative and executive power. In this respect, it is important to mention that, even though the state holds all

²² Cf. *100 Years od Austrian Fedaralism?* [online]. iconnectblog.com, 30 October, 2018 [cit. 14 February, 2019]. Available from <<http://www.iconnectblog.com/2018/10/100-years-of-austrian-republicanism-100-years-of-austrian-federalism/>>.

²³ *Kapitoly z dějin československého vojenství (1914-1992)* [online]. valka.cz, 23 December, 2006 [cit. 18 February, 2019]. Available from <https://www.valka.cz/clanek_11909.html> and *Dějiny zemí koruny české v datech* [online]. libri.cz, 6 September, 2008 [cit. 23 February, 2019]. Available from <<http://www.libri.cz/database/dejiny/text/t80.html>>.

²⁴ Cf. KAŇA, Pavel. *Základy veřejné správy*. 2. edition. Ostrava: Montanex, 2007. p 267-296 and GROSPÍŠ, Jiří et al. *Úvod do regionálních věd a veřejné správy*. 4. edition. Plzeň: Aleš Čeněk s. r. o., 2004. p 316-328.

²⁵ Srov. LOUGHLIN, John. *Subnational Democracy in the European Union*. 1. edition. New York: Oxford University Press, 2004. p 24-31.

public power, it may delegate some of its powers in this area to other non-state entities.²⁶ This area is the territorial self-government, which through its authorities participates in the so-called “remaining public power”.²⁷ The scope of PA generally covers precisely those matters that are not within the competence of the legislative and judicial authorities.²⁸

Self-governing power is entrusted by the state to entities of a non-state nature in order to be able to manage certain matters independently in the given area.²⁹ Self-government is a priori derived from the state administration and cannot be in conflict with it. Non-state entities are public corporations³⁰ that derive their subjective character from the state. Given the possible scope of the thesis, I will deal more closely only with territorial public corporations, which in the CR form municipal and regional establishments. In Central Europe there are also districts, countries and in the case of Slovakia where districts were formerly known as “župy“, these territorial entities are now also called “regions“ due to a relevant amendment of the Slovak legislation.³¹

Self-government is generally characterized by several basic features. They are:

1. existence of self-government as a legal entity of public law;
2. specific territory or activity for which they operate;
3. persons, citizens who are subordinate to self-government;
4. existence of a system of self-government bodies;
5. the possibility of owning property and managing it further;
6. autonomous budget.³²

Municipal self-government has a clear task. This is the self-management of one's own affairs. However, it cannot function as a fragmented structure. For each municipality, an internal structure must be established to manage it. Only in this way can the self-government create efficient management within the framework of “self-management”. We can speak of a fully democratic state and a free system of governance only after the creation of a system of self-government. The existence of the principle of subsidiarity ensures that decisions and other measures are taken at the lowest possible level, as close to the citizen as possible, which is the

²⁶ CHANDLER, J.A. *Místní správa v liberálních demokraciích*. 1. edition. Brno: Doplněk, 1998. p 9-15. Cf. FARAZMAND, Ali. *Global Encyclopedia of Public Administration, Public Policy, and Governance*. 1. edition. Springer International Publishing AG, part of Springer Nature 2018. p 613-688.

²⁷ BALÍK, Stanislav. *Komunální politika*, 2009. p 11.

²⁸ Srov. HENDRYCH, Dušan et al. *Správní právo, Obecná část*. 8. edition. Praha: C. H. Beck, 2012. p 3-13.

²⁹ Cf. FARAZMAND, Ali. *Global Encyclopedia of Public Administration, Public Policy, and Governance*. 1. edition. Springer International Publishing AG, part of Springer Nature 2018. p 198-399.

³⁰ MATĚJKA, Jan. *Pojem veřejnoprávní korporace*. 1. edition. Praha: Knihovna sborníku věd, 1929. p 92.

³¹ BALÍK, Stanislav. *Komunální politika*, 2009. p 11-12.

³² BALÍK, Stanislav. *Komunální politika*, 2009. p 12.

main and indispensable objective of local government. Modern democratic states are neither able to provide central administration of all state affairs, nor is this in any way desirable. In every state characterized in this way, the exercise of public authority must be ensured throughout the territory of that state, and not merely controlled from one central authority, as was the case in the countries of the Austro-Hungarian Empire. The relationship between state administration and self-government can be clearly characterized by a system called mixed PA, which is currently applied in the CR, Austria, and Slovakia. Within this system, we can speak of a dual concept of power or its exercise, namely delegated and independent competence. We talk about **delegated powers** when certain powers in the area of state administration are entrusted to self-government bodies. In such situations, local authorities do not act as self-governing bodies, but as state administration bodies which are managed by the state, respectively. There is a delegation of a certain part of state powers to municipal authorities. In such situations, municipalities perform the so-called delegated state administration. All matters relating to the operation of the municipality and its personal interest then fall under its **independent competence**.³³

To distinguish relations in the area of state administration and self-government, we can divide states into two basic systems and types. Despite the existence of “only” two types of possible division of states into a monistic or dualistic system, there is also a third possibility and form of functioning of municipal authorities in the state, which is mutual intersection of both these systems.

The first of these is a system of so-called **monistic type**, which recognizes the existence of one main municipal authority, which is a priori competent for decision-making within the public power and competence of the municipality. In most cases, it is a body democratically elected by the citizens of a given municipality, called for example a municipal council, a council, or a municipal committee. The legitimacy of other elected bodies or officials must derive their legitimacy from, be subordinate to, and accountable to the principal body.³⁴

The second system represents a **dualistic system** which accepts the existence of two municipal authorities, which have power in the municipality. This type can be further divided into monocratic or collegial. In the case of a **monocratic authority**, we register the function of the council and mayor, in most cases both functions of municipal authorities are elected directly by citizens. They have certain competencies that must not overlap. The mayor is not a full

³³ BALÍK, Stanislav. *Komunální politika*, 2009. p 12-13. Cf. HENDRYCH, Dušan et al. *Správní právo, Obecná část*, 2012. p 147-154.

³⁴ BALÍK, Stanislav. *Komunální politika*, 2009. p 15.

member of the municipal council. The **collegial type** of dualist concept also divides competencies between two municipal authorities, but both are collective bodies. In the area of competencies, the two bodies are essentially independent of each other, but the mayor of the municipality no longer holds the position of *primus inter pares*, but the decision-making and fulfillment of the powers entrusted to him is assisted by the second municipal authority.³⁵

We cannot strictly assign the Czech, Slovak or Austrian system of TPA to any of the above-mentioned types of administration and division of power at the local level, because in these cases it is precisely the above-mentioned intermingling of both systems. When we look at the fundamental law of the state, that is, the constitution of each state, we find here the basic character of the division of power at the local level.

In the CR we are talking about the existence of regions and municipalities as higher and lower territorial self-governing units. The municipality or region is independently administered by its assembly, which has certain competences to exercise its powers.³⁶ The assembly also elects the members of the municipal council, establishes committees as well as commissions, and appoints the mayor of the municipality, which clarifies the monocratic approach to the division of power in the municipality or region. On the other hand, the municipal council elected by the assembly also has powers that the assembly cannot interfere with, which suggests a dualist system of collegial type.³⁷

The situation is similar in Slovakia, where territorial self-government is divided into local and regional areas, represented by municipalities and regions. Both municipalities and regions have their elected councils and possibly other bodies whose powers are strictly given. Both types of dualistic system are intertwined in their application, as each of the institutions is accountable to the superior body and cannot make arbitrary decisions.³⁸

The principle of the intermingling of a monocratic and collegial type of dualist system of power, as in the previous countries, also applies to Austria, with only a different territorial division of the state. From a territorial point of view, the Republic of Austria is divided into federal states and municipalities. In this case, the Länder represent the same arrangements as the regions in the CR and regions in Slovakia. The legal basis of the powers and competences

³⁵ BALÍK, Stanislav. *Komunální politika*, 2009. p 15-16.

³⁶ Constitutional Act No. 1/1993 Coll., Constitution of the Czech Republic, Title VII.

³⁷ BALÍK, Stanislav. *Komunální politika*, 2009. p 14-16.

³⁸ Constitutional Act no. 460/1992 Coll., Constitution of the Slovak Republic, as amended, Title IV. Cf. Act No. 367/1990 Coll., Act of the Czech National Council on Municipalities, as amended and in Act of the National Council of the Slovak Republic No. 221/1996 Coll., on Territorial and Administrative Organization of the Slovak Republic, as amended also Act of the Slovak National Council No. 369/1990 Coll. on municipal establishment, as amended.

of individual countries flows a priori from the Constitution, while powers are also vested in self-governing municipalities, suggesting the existence of a hierarchical element. From a legal and formal point of view, the Austrian countries enjoy stronger competences than regional establishments in the CR and Slovakia. There is also the establishment of a judge who is competent for decision-making within the jurisdiction of a given Land. Since Austria is a federal parliamentary republic from the point of view of the government system, these differences are, so to speak, desirable.³⁹

1.3 Summary

The first chapter deals with the general legal basis and organization of PA with an emphasis on its territorial character in the three selected states. The existence of territorial self-government and the power entrusted to it by the state to decide and deal with matters at the local level arises for all three states primarily from their respective basic law or constitution. In the national legal systems of the selected states exists the feature of self-government, a hierarchical element of the organization of power in the state, since, as stated above, the very existence of a self-governing element underlines a state's democratic nature. In recent years, the concept of decentralization has become a tool of strengthening democracy in Western and Central European countries.⁴⁰ The competences entrusted to deconcentrated powers are subsequently governed by the relevant legislation, which specifies in more detail under what conditions the self-government can operate, what competencies and to what extent they are entrusted to it, and under what conditions it manages on its territory. These details and the analysis of the relevant legislation for selected countries are discussed in more detail in the next chapter.

³⁹ ERK, Jan. *Austria: A Federation without Federalism*. University of Toronto. 2004. p 1-5.

⁴⁰ FIALA, Vlastimil and ŘÍCHOVÁ, Blanka. *Úloha politických aktérů v procesu decentralizace*. Praha/Olomouc: Moneta FM, 2002. p 10.

2. Legal anchoring of the system of territorial public administration in selected states

This chapter, devoted to the specific entrusted competencies of given territorial units in the three selected countries, forms the main theoretical and conceptual basis of the thesis. For that matter, it will provide an overview of the basic terminology used by the chosen Central European states in connection with their respective local structure of territorial administration. Hence, the institutional structure of the municipal level as well as its legal anchoring in the Czech Republic, Austria, and Slovakia will be presented. For the sake of better clarification concerning the territorial systems in the selected countries, the analysis will be performed for each of the areas separately in the subchapters of this part of the thesis. The comparison of the systems of these Central European countries is interesting, as all three countries had in common a shared history and legal system (within the Austro-Hungarian Empire).⁴¹ As already mentioned in the previous chapter, all selected states are representative for the model of mixed public administration. Therefore, comparing them might prove useful.⁴² At the beginning of this chapter, I will briefly mention the content of the concept of territorial public administration as such with reference to the legal regulation of the issue within the analyzed systems of all selected countries. In the first part, I will introduce a transnational level regulation, which is the Charter of Local Self-Government, whose provisions affect the territorial administration of selected states. In the following subchapters I will then present the way of territorial public administration in the Czech Republic, Slovakia and Austria.

For the analytical part of the thesis, where the method of comparison will be applied, it is necessary to clarify and define the terminology that relates to the issue of territorial self-government in the selected countries.

2.1 European Charter of Local Government

Concerning the introduction to the practical part of this thesis, it is necessary to put the whole analyzed issue into the legal basis on which it is based. Given the whole context of the work, I decided here a priori to the European Charter of Local Self-Government, a transnational

⁴¹ “Austria with the Czech Republic until 1918 and the collapse of the Austro-Hungarian Empire and Slovakia subsequently in 1918-1982, as a common Czech-Slovak state.”

⁴² BALÍK, Stanislav. *Komunální politika*, 2009. p 113. Cf. FARAZMAND, Ali. *Global Encyclopedia of Public Administration, Public Policy, and Governance*. 1. edition. Springer International Publishing AG, part of Springer Nature 2018. p 502-518.

document agreed and signed by selected states, as well as the Charter of Local Self-Government in Austria, and the rights and obligations arising from it.⁴³ The constitutional standard of local self-government of selected states is supplemented and enriched by a standard that follows from the international obligations of analyzed states, namely the Charter of Local Self-Government.⁴⁴

The Charter of Local Self-Government, a generally valid document about local self-government and its principles, is a document dealing with several areas and is divided into obligatory parts, which all acceding states of the Charter have to agree with. It also includes parts with which states do not have to agree, meaning that they are not acceding to these parts. Certain provisions may be subject to reservations by states and therefore do not transpose these articles of the Charter into their national legal system.

As for the content of the document and its individual provisions, opinions on them differ across states. So-called ideal conditions, the Local Government Charter sets out the Central European type of local government model mentioned above, which includes the countries analyzed by us. This fact is also supported by the circumstance that Austria, the CR, and Slovakia had no objections to ratifying and signing the Charter.⁴⁵

This document has been available for acceptance by all member states of the Council of Europe since October 15, 1985. The SR decided to sign the Charter in 1999 subject to some of its articles. The CR adopted the Charter's provisions on September 1, 1999 but is not bound by all its provisions. Certain reservations concern, in particular, the differences in the legislation applicable and applied in the CR, as the Czech legislation does not reflect all the requirements contained in the Charter, but also the lack of national legislation that would make the provisions applicable in national law. Even though Austria was one of the first states to ratify the Charter of Local Self-Government it does not feel bound by its full text.⁴⁶

The Local Government Charter sets out two initial areas of local government for the acceding states and their democratic character. These are local communities, as the main basis of the democratic system of a member state of the Council of Europe, but also the citizen's right to participate in governance. Member States consequently assume that the right of local self-

⁴³ Communication of the Ministry of Foreign Affairs of the Czech Republic on the adoption of the European Charter of Local Self-Government, No. 181/1999 Coll., as amended.

⁴⁴ “*The Charter of Local Self-Government for the Czech Republic entered into force on 1 September 1999. It is a document negotiated on 15 October 1985, published in the Council of Europe under No. 122 ETS.*”

⁴⁵ *Evropská charta místní samosprávy* [online]. epravo.cz, 16 September, 2001 [cit. 2 March, 2019]. Available from <<https://www.epravo.cz/top/clanky/evropska-charta-mistni-samospravy-13600.html>>.

⁴⁶ *Deník veřejné právy – ratifikace s výhradou* [online]. denik.obce.cz, 29 March, 1999 [cit. 2 March, 2019]. Available from <<http://denik.obce.cz/clanek.asp?id=1692>>.

government, under which local matters are to be administered, is most easily exercised by the authorities that are established at the local level and exercise their competence there. This is precisely because of the closeness to the citizen, knowledge of local affairs, and the real situation of the territorial unit. Only in this way can effective local level management and efficient management be ensured.

The existence and mentioned effective functioning of territorial administration is a manifestation of the decentralization character of the power of democratic states, especially of the EU member states. The primary objective is to achieve a state where the citizen can participate as much as possible and interfere in governance. The Charter of Local Self-Government emphasizes primarily the existence of decentralization of power in the state, the necessity of local self-government, and its bodies with a high degree of autonomy; what is more, powers are delegated to the states for the sake of potential decision-making at the local level.⁴⁷

Given the content of these relevant provisions, the Charter of Local Self-Government becomes a pivotal document that affects all the countries under comparison, from which I will draw upon the practical part of the work. The relevant provisions of the Charter should assist me in answering the research question set out, and *whether the *acquis communautaire* can affect the competences conferred on the territorial self-government of the selected states* on the basis of which the text of this work is based.⁴⁸ In terms of analyzing the legislation of the states in question, I consider the Charter of Local Self-Government an ideal theoretical concept to which states should aim when formulating their national legislation.

2.1.1 Charter of Local Self-Government in the EU territory

The Charter of Local Self-Government is not a standard document dealing with the area of human rights,⁴⁹ as it deals with the community of citizens and establishing collective rights. This, in turn, implies special obligations of its interpretation and application. The rules set out in the Charter constitute the general European standard of local government. This is expressed by the characteristics to be fulfilled by the self-government of the contracting party. The rules contained therein are of a general nature. As regards the national legislation of the acceding parties, each state which accedes to the Charter of Local Self-Government shall regulate the

⁴⁷ E.g. Possibility to deal with basic things that are under the responsibility of public administration at the local level and not at the central level.

⁴⁸ Research question: “The more competencies a local authority of a given country or territorial unit has, the closer it is to its citizens.”

⁴⁹ Charter of Fundamental Rights of the European Union No. 2012/326 from the day 26 October, 2012, C 326.

details of the embedding of territorial self-government in its own national territory. Laws and other national regulations set out in detail the range of matters for which local and regional authorities are competent to manage and deal with, both in delegated and autonomous areas.⁵⁰

Strengthening regional self-government is a primary objective not only of the member states of the Council of Europe, but - above all - of the EU as a whole.⁵¹ We can already read from the Treaty of the European Union that the state structure of the EU Member States is partly subject to the character and requirements of the EU.⁵² Referring to Article 198 TEU, we can conclude that, although the EU aims to ensure that the interest of local and regional communities is taken into account in the legislative process, the system is centralized with the broadening powers of the EU institutions.⁵³

2.2 Public administration and territorial self-government of Central European states

In terms of the concept of PA according to contemporary literature, we find several meanings in this term. One possible interpretation of this concept is that it is a kind of activity and administration, or it may refer to a specific institution, organization, or authority that performs PA. The former is a material concept of administration,⁵⁴ while the latter is an organizational conception.⁵⁵

For the purpose of the analysis in this thesis, I am principally interested in the concept and definition of TPA. Territorial public administration can be different in each state, both in terms of division of power in the state, and especially in terms of territorial division and decentralization of the state into sub-units.

⁵⁰ PODHRÁZKÝ, Milan. *Přehled judikatury z oblasti samosprávy (územní a profesní)*. 1. edition. Praha: Wolters Kluwer ČR, a.s., 2011. p 19.

⁵¹ Cf. MRKÝVKA, P. Evropský základ územní samosprávy. *Časopis pro právní vědu a praxi*, nr. 3. 1999.

⁵² *Evropská charta místní samosprávy* [online]. epravo.cz, 16 September, 2001 [cit. 2 March, 2019]. Available from <<https://www.epravo.cz/top/clanky/evropska-charta-mistni-samospravy-13600.html>>.

⁵³ *Evropská charta místní samosprávy* [online]. epravo.cz, 6 September, 2001 [cit. 2 March, 2019]. Available from <<https://www.epravo.cz/top/clanky/evropska-charta-mistni-samospravy-12995.html>>.

⁵⁴ “Public administration is understood as an activity of state or other public institutions, which is not the content of activities of legislative or judicial body, which represents a negative definition of public administration. The negative definition is based on the principle of subtraction (an activity that cannot be classified as legislative and judicial power). Some foreign authors agree that public administration can be described but not precisely defined. In its positive definition, we understand it as a set of administrative activities.” Cf. MAYER, Franz, KOPP, O. Fedrinand. *Allgemeines Verwaltungsrecht*. 5. edition Stuttgart, München, Hannover. R. Boorberg, 1985. p 33.

⁵⁵ “In clarifying the concept of public administration in the organizational concept, emphasis is placed on institutions and other bodies that have the power and competence conferred on them in predefined areas and thus become executors of public authority.”

In the comparative countries, territorial administration is divided into three basic levels, namely the central (state/government), regional (regional/provincial), and local (municipal) areas. The continental system of law is based on the fact that the original bearer of PA is the state, which can delegate it to other entities. Other PA holders are bound by the constitution and legal order of the state. The territorial aspect of the division of public administration and the powers entrusted to it to exercise authority are the merits of this thesis. Territorial public administration is one of the types of division of PA in the state.⁵⁶ Detailed explanation of the concept of TPA in individual states will be provided in the following three subchapters. Given the greater clarity and the need for subsequent comparison-of states, this term will be analyzed individually for the selected states.

2.3 Territorial public administration in the Czech Republic

Regarding the position of territorial self-government within the constitutional system of the CR and the Czech legal order⁵⁷ in general, we deduce from Art. 8 of the Constitution of the CR that local self-government is an irreplaceable component of the development of democracy. Local self-government is an expression of the law, but also of the ability of local authorities, within the limits conferred by the law, to regulate and manage parts of public affairs independently within the limits of their responsibility and the interests of the local population.⁵⁸ Since, January 1, 1993, the constitutional foundations of territorial self-government have been enshrined in the Constitution of the CR.⁵⁹ Details concerning the division of territorial administration in the CR can be found in Title VII of the Constitution of the CR. The CR is divided into HTUs and LTUs, i.e. regions⁶⁰ and municipalities, which have the constitutional right to self-government. They are territorial communities of citizens, which are independently managed by the assembly, which have certain powers to exercise their powers and powers in the given territory. The competencies of the assemblies are always stipulated by law. The

⁵⁶ HENDRYCH, Dušan et al. *Správní právo, Obecná část*, 2012. p 3-13.

⁵⁷ Cf. Usnesení Ústavního soudu ze dne 7. 12. 2000, sp. zn. Pl. ÚS 38/2000.

⁵⁸ Cf. Nález Ústavního soudu ze dne 3.12. 1996, sp.zn. Pl. ÚS 1/96.

⁵⁹ Constitution of the CR. Cf. POMAHAČ, Richard. *Základy teorie veřejné správy*. 1. edition. Plzeň: Aleš Čeněk s. r. o. 2011. p 44-148.

⁶⁰ "There are 14 regions in the Czech Republic (13 regions + the Capital City of Prague, which is also a municipality). These are the Olomouc, Moravian-Silesian, South Moravian, Central Bohemian, South Bohemian, Plzen, Usti, Zlín, Karlovy Vary, Liberec, Hradec Králové, Pardubice, Vysočina and Prague." See in graphical form Annex No. 1.

municipal assembly is authorized to decide matters falling within the area of self-government only and only in cases when this activity is not entrusted to the assembly.⁶¹

2.3.1 Legal personality and the territorial basis of municipalities

The competence of the TSU is exercised within the territory that is delimited by boundaries that separate it from another TSU.⁶² Within this space, municipalities and regions implement state administration and self-government. In cases defined by law, the authorities of some municipalities may perform certain tasks of state administration for a district that includes several municipalities. The whole territory of the CR is divided into HTU and LTU, each part of the territory of the Czech Republic is part of a municipality.⁶³ Only with its consent can the boundaries of the municipality be changed.⁶⁴ The boundaries of local administrative units cannot be changed without prior consultation of the population, which is feasible by referendum where national law permits.⁶⁵ The territory of the region is delimited by the districts, in the same way as the districts were delimited as of January 1, 2000. Its borders can only be changed by law.⁶⁶ Each municipality and region has a personal basis laid down by law. In principle, it covers all persons who are within their territory and who are subject to the jurisdiction of the relevant TSU.⁶⁷

The Constitution of the CR guarantees territorial self-government legal personality.⁶⁸ This can be characterized as a constitutional and statutory scope of PA tasks, which the municipality and the region perform in their own name and are responsible for it.⁶⁹ Municipalities are equal in the CR. This fact is based on the principle of uniform legislation, whose legal standards set the foundations of organization and internal administration of municipalities. Municipalities of the CR can be divided according to the extent of their

⁶¹ Cf. Constitution of the CR, Title VII and VEDRAL, J. Právní úprava postavení územně samosprávných celků (K ideovým zdrojům právní úpravy územní samosprávy v ČR). Právník, nr. 1. 2006.

⁶² § 1 and § 8 Act No. 128/2000 Coll., municipal establishment and cf. § 1 Act No. 36/1960 Coll., On the territorial division of the state.

⁶³ *“The only exceptions are the territories of military areas, which are defined by law as parts of the territory of the Czech Republic serving for the defense of the state and training of the armed forces.”*

⁶⁴ Cf. Constitutional Act No. 294/1990 Coll., Amending and supplementing Constitutional Act No. 100/1960 Coll., Constitution of the Czechoslovak Socialist Republic, and Constitutional Act No. 143/1968 Coll., On the Czechoslovak Federation, and shortening the election period of national committees, as amended.

⁶⁵ Cf. art. 5 Communication of the Ministry of Foreign Affairs of the Czech Republic on the adoption of the European Charter of Local Self-Government, No. 181/1999 Coll., as amended.

⁶⁶ Cf. Act No. 347/1997 Coll., On the Creation of Higher Territorial Self-Governing Units.

⁶⁷ § 16 art. 3 Act No. 128/2000 Coll., On municipalities (municipal establishment), as amended and §12 art. 3 Act No. 129/2000 Coll., On regions (regional establishment), as amended.

⁶⁸ Cf. Usnesení Ústavního soudu ze dne 26. 04. 2007, sp. zn. III. ÚS 218/07, svazek 47.

⁶⁹ Cf. Nález Ústavního soudu ze dne 2.7.2003, sp. zn. Pl. ÚS 18/03 and also Nález Ústavního soudu ze dne 26. 1. 1996, sp. zn. III ÚS 120/96.

competence into basic municipalities, towns, statutory towns⁷⁰ and townships. The internal organization and scope are basically the same for all four types. Municipalities are distinguished mainly in terms of the extent of state administration they perform. The internal organization is different in municipalities where the municipal council is elected⁷¹ and where the mayor of the municipality exercises the powers of the council.⁷²

2.3.2 Separate and delegated powers of community

Municipalities and regions of the CR are holders of PA with public authority.⁷³ Some of the tasks entrusted may take the form of so-called care forms of administration, which include, for example, the establishment of schools and school facilities. TSUs can also act in private-law relationships, for example when concluding business contracts with other entities.⁷⁴ TSUs are entitled to issue legal regulations in the form of generally binding ordinances and regulations.⁷⁵

The TSU is governed by law in the exercise of its powers. It is a subjective right, within the framework of which the state and its authorities may intervene, especially in cases where the right to self-government is violated or e.g. a conflict of jurisdiction. In such cases, the state is entitled to intervene if so required by law and required by law protection.⁷⁶ The TSU has the means of legal protection, especially in administrative and constitutional justice.⁷⁷ The TSUs are endowed with two types of duties - obligatory and voluntary.⁷⁸ Supervision of the exercise of independent competence lies with the MICR or another administrative authority. For the supervision of delegated authorities, this is the responsibility of the regional authority.⁷⁹

2.4 System of territorial administration in the Republic of Austria

The local level of PA in Austria has much in common with the applied system in the CR. Both systems were in the past formed by a common imperial law of 1862, which after the collapse of the Empire followed the practice of the Republic of Austria. The mixed PA model

⁷⁰ Cf. Act No. 131/2000 Coll., On the City of Prague, as amended.

⁷¹ Closer § 99 art. 3 and § 67 and 68 Act No. 128/2000 Coll., municipal establishment.

⁷² HENDRYCH, Dušan et al. *Správní právo, Obecná část*, 2012. p 134-145.

⁷³ “*This can be applied to both LE and IE.*”

⁷⁴ HENDRYCH, Dušan et al. *Správní právo, Obecná část*, 2012. p 147.

⁷⁵ Constitution of the CR art. 104/3. Rozhodnutí Ústavního soudu ze dne 11. 2. 2009, sp. zn. Pl. ÚS 6/08 and rozhodnutí Ústavního soudu ze dne 22. 3. 2005, sp. zn. Pl. ÚS 63/04.

⁷⁶ Constitution of the CR art. 101/4 – *legal interference of the state in the right to self-government*

⁷⁷ Cf. Constitution of the CR art. 87/1 let. c) – *constitutional complaint of the self-government body*

⁷⁸ “*Detailed analysis in the following chapter.*”

⁷⁹ HENDRYCH, Dušan et al. *Správní právo, Obecná část*, 2012. p 165-170.

is applicable,⁸⁰ thanks to which both autonomous and delegated powers appear at the municipal level. In the last century, it was common practice in Austria to alienate the citizen and the leadership of the municipality to strengthen bureaucratic values, which changed fundamentally after the country's accession to the European Union. The organization and structure of the municipal authorities is not fundamentally different across the analyzed country. The primary organization is the responsibility of the Länder. The legal enshrining flows in the same way as in the CR and Slovakia from the constitution, which in this case stipulates that each municipality must have at least three basic bodies. That is, the municipal council, the municipal board, and the mayor, who officially head the entire local organization system.⁸¹

As regards the organization of the Austrian administration system, it is based on two principles. One is the constitutional foundation of the federal state and the other is based on the principle of local government in Austria. The tasks of the state are therefore equally divided between it and the various Länder. The state is equated with the Länder.⁸² Like the Czech and Slovak Republics, the government is the highest point of the system.⁸³ The lower level is represented by the individual provinces into which the state is divided. They are the so-called Länder, of which there are nine.⁸⁴ The lowest structures are the individual municipalities - the level of local government. Across Austria there is a network of 99 administrative districts, the organization of which falls under individual provincial administrations - district offices. Local government in Austria has a four-tier structure, federal government, federal provinces, districts and municipalities.⁸⁵

2.4.1 Legal personality and the territorial basis of municipalities

Public administration in Austria in general and its character in recent years is more and more approaching international standards. Referring to the Charter of Local Self-Government and its provisions to which Austria is committed, it seeks to bring PA as close as possible to the

⁸⁰ Cf. SALÁK, Pavel, TAUCHEN, Jaromír. *Říšská sbírka zákonů 1848-1918*. 1. edition. Brno: Masarykova Univerzita, 2009.

⁸¹ BALÍK, Stanislav. *Komunální politika*, 2009. p 116. Cf. Federal Constitutional Act No. 153/2004 Coll., Constitution of the Republic of Austria, as amended. Cf. ADAMOWITSCH, Ludwig K. et al. *Die Kompetenzverteilung zwischen Bund und Ländern*. 1. edition. Springer-Verlag Vienna 2011. p 39-128.

⁸² ADAMOWITSCH, Ludwig K. et al. *Die Kompetenzverteilung zwischen Bund und Ländern*. 1. edition. Springer-Verlag Vienna 2011. p 204-251. And Constitution of Austria and its relevant revisions.

⁸³ "In the case of Austria, the official name is the Federal government."

⁸⁴ "These include Lower Austria, Upper Austria, Tyrol, Salzburg, Styria, Vienna, Carinthia, Burgenland and Vorarlberg." See in graphical form Annex No. 1.

⁸⁵ *Administration in Austria* [online]. oeffentlicherdienst.gv.at, 18 January, 2018 [cit. 15 March, 2019]. Available from <https://www.oeffentlicherdienst.gv.at/fakten/publikationen/verwaltung_in_oesterreich_2011_en.pdf?3sfue1>.

citizen, therefore even the smallest Austrian municipalities have certain powers to exercise their powers.

In the past, decisions on municipalities were taken at national level, which over time proved to be highly ineffective. Now the PA is really close to the citizen. Within municipalities or provinces, it is possible to manage service-related matters in different areas. For example, culture, health, social or educational. The manifestation of high decentralization of the country is now very important. In general, the division of competencies between the national and municipal levels has a decisive role in the state. The Austrian Constitution provides for the exception that the Länder are responsible for legislation and its enforcement in all areas, unless the Austrian Constitution explicitly transposes this to the state level. This exception is in most cases the rule, as most of the legislature and legislative competences belong to the state. The Länder are subsequently given the power of legislative at local level, which concerns matters of the local municipal level.⁸⁶

2.4.2 Separate and delegated powers of community

With the current application of their powers, municipal authorities in Austria distinguish between two types of tasks of municipalities. There are voluntary and prescribed tasks. The prescribed tasks include, in particular, the establishment of self-governing bodies, but also local police, fire protection and, for example, the administration of the transport network in a given municipality, spatial planning and dispute settlement among citizens out of court. The tasks of delegated powers include the provision of national and provincial elections and the administration of the register. As regards the area of voluntary tasks, this includes, for example, the area of construction and subsequent maintenance of municipal flats, water supply or sewerage. Recent analyzes of the local system and its expenditures show that up to ninety percent of the municipal budget expenditure is attributable to services provided by the municipality to its citizens. These include, among others, school facilities, leisure centers, and retirement homes.⁸⁷

⁸⁶ Constitution of Austria and REGIONALMANAGEMENT Österreich, Veřejná správa v Horním Rakousku, Jihočeském kraji a Bavorsku. rmooe.at. 2014, 1. edition. *See the next chapter for details.*

⁸⁷ BALÍK, Stanislav. *Komunální politika*, 2009. p 116.

2.5 System of territorial administration in the Slovak Republic

The existence of TPA in Slovakia, as in the previous countries, is a priori enshrined in the Constitution of the Slovak Republic. Chapter four of the Constitution of the SR deals more closely with the system of territorial administration. The basis of territorial self-government consists of municipalities, which are the basic territorial administrative units, which associates persons who have permanent residence in its territory. It is thus characterized in the same way as in the CR by the territorial division into HTU and LTU. The competence of the municipal self-government is further regulated by law.⁸⁸ Municipalities and regions have both independent and delegated powers. The origin of the regions dates back to 1996, when the whole republic was divided into a total of eight HTU.⁸⁹ As far as local government officials are concerned, we can find them in larger quantities in Slovakia compared to the CR, in terms of the different administration of the country. The elected representatives of the TSU in Slovakia include the council, the mayor and, moreover, the function of the chairman of local governments, with the National Council at the top.

2.5.1 Legal personality and the territorial basis of municipalities

In Slovakia, according to the current legislation, there are basically two or three divisions of the TSU. The highest units of territorial self-government in the SR are self-governing regions whose territories and borders are identical with the territories of individual regions. Regional authorities are established to exercise their powers. The lowest level of division is represented by municipalities.

Within the scope of their competence, TSUs are also endowed with legislative power, which is manifested at local level in the form of issuing opinions and generally binding regulations.⁹⁰ The Constitution of the SR guarantees TSUs the basic character and its position in the state. It lists the municipal authorities in general to which a special law confers their powers. About HTU the Constitution establishes only the existence of them but does not discuss them more closely. In this case, the Government of the Republic shall have supervisory powers.⁹¹

⁸⁸ Act of the Slovak National Council No. 369/1990 Coll. on municipal establishment, as amended.

⁸⁹ “*These are Bratislava, Košice, Prešov, Trenčín, Nitra, Trnava, Žilina and Banská Bystrica regions.*” See in graphical form Annex No. 1. Cf. ŠKULTÉTY, Petr. *Základy miestnej správy*. Bratislava: PF UK. 1. edition. 1999. p 116-138.

⁹⁰ *Novela Ústavy Slovenskej republiky o územní samosprávě* [online]. moderniobec.cz, 14 November, 2001 [cit. 16 March, 2019]. Available from <<https://www.moderniobec.cz/novela-ustavy-slovenske-republiky-o-uzemni-samosprave/>>.

⁹¹ Constitution of Slovakia, Title IV.

2.5.2 Separate and delegated powers of community

Primary tasks to be performed by the municipal administration in the exercise of its independent powers include, among others, the environment and landscape protection, pre-school and school facilities, hospitals, culture, registrars, local roads, public spaces, local police, tax and local charges, as well as participation in regional cooperation. In certain areas of national interest, it is theoretically anchored in the previous chapters that it is more advantageous and more efficient for the state to entrust municipalities with the exercise of delegated powers. The performance of state administration at the municipal level includes, inter alia, competences in the field of education, registries, and building authorities. The aim of delegating part of the power to decide on selected matters is to bring the state administration closer to the citizen.⁹²

The HTU has specified by law the precise tasks it is given in the exercise of self-government. The main objective is to care for the universal development of its territory and the needs of its inhabitants. As mentioned above, the region can, within the scope of its competence, ensure the development and support of its area. Within the scope of this competence, the region is entrusted with the possibility to handle matters relating to the environment and the creation of suitable conditions for the development of education in its territory. The region cooperates with municipalities in economic and social development, helping them to solve problems that concern them and fall within the territory of the given region. In exercising these powers, the region is bound by law or international treaties.⁹³

2.6 Summary

In comparison with the CR, the territorial self-government of the SR is different. In the SR, the regional administration is based on an organizational model. In individual regions there are regional authorities (offices), which are state administration bodies. Furthermore, we find there the authorities of the self-governing region as another unit, which is gifted with the appropriate competence. In addition, district offices have been preserved throughout the territory of the SR, which were removed in the CR by amending the relevant legislation.⁹⁴

⁹² *Základní informace Slovensko* [online]. podporaprocessu.cz, 3 January, 2013 [cit. 18 March, 2019]. Available from <http://podporaprocessu.cz/wp-content/uploads/2013/01/3_Slovensko.pdf>.

⁹³ *Vyšší územní celky na Slovensku* [online]. moderniobec.cz, 4 July, 2002 [cit. 18 March, 2019]. Available from <<https://www.moderniobec.cz/vyssi-uzemni-celky-na-slovensku-1/>>.

⁹⁴ *Vyšší územní celky na Slovensku* [online]. moderniobec.cz, 4 July, 2002 [cit. 18 March, 2019]. Available from <<https://www.moderniobec.cz/vyssi-uzemni-celky-na-slovensku-1/>>.

In the example of Austria, as mentioned above, we can find differences especially in terms of legislation. Both the CR and Austria have constitutionally enshrined the right of the TSU to standardize. In the CR, this right is a priori entrusted to the state and subsequently to the territorial units. They can also participate in the legislation, but only in those cases where they are legally gifted. As has been shown, the Austrian Constitution lays down these differently. Territorial units are those entities primarily vested in legislative power, only then followed by the state. In practice, this rule is not strictly applied, as the actual practice shows that the legislation is primarily under the auspices of the state and then territorial units, as in the CR. Specific examples of how this issue can be demonstrated in more detail are provided in the following chapter dealing with the specific competencies of the TSU in selected countries. I find it useful here to supplement, in particular, the relevant case-law, on the basis of which it is possible to explain and present to the reader factual information concerning areas to which the territorial self-government in selected states is gifted by law.

3. Competences entrusted to territorial self-governing units

This chapter called “*entrusted competence of the TSU*” shall be referred to as practically focused. First of all, in the introduction, the facts concerning the scope of the competences entrusted, as well as their comparison across territorial units in the selected countries will be clarified. Second, within the individual sub-chapters, the issue of legislation dealing with the specific areas of TSU competence in Czechia, Austria, and Slovakia will be analyzed in the aggregate. Finally, in the last part of this chapter, the results of the individual sub-chapters and the most significant differences arising thereof will be summarized.

As the legislation dealing with the territorial self-government and its powers may not be uniform in the selected countries and always contain an absolute list of state-delegated powers in different areas of local administration of the territory, proposals will be provided *de lege ferenda*. Based on part three, the fourth and final chapter will evaluate and draw conclusions on the state of territorial public administration in the selected EU countries and determine the impact of the Charter of Local Self-Government on the intensity of governance at the local level.

3.1 Breaking down the scope

Self-government in the analyzed states is characterized by law as a set of powers, exercised by a self-governing corporation that is not established by the state. It carries out matters on its own behalf and under its responsibility. The holder of the self-government is in no way subordinated to or led by the state or its authorities. However, the state is entitled to supervise this activity. The specific scope entrusted to individual governments is governed by their legislation.⁹⁵ In all three selected countries, there is a division of the competence of territorial units - respectively their bodies - into two basic categories: territorial and material competence.

Territorial competence is determined by the boundary of the given territorial unit within which the territorial unit can carry out its tasks. It is also possible to extend this power based on the statutory authorization, which applies especially to LTU, which within the administrative district of the municipality can also provide agenda for other municipalities. For example, there are no institutions such as postal services, doctors, municipal police, etc.

⁹⁵ HENDRYCH, Dušan et al. *Správní právo, Obecná část*, 2012. p 141. Cf. KOTÁBOVÁ, Věra et al. *Institucionalizace a decentralizace v Evropské unii*. 1. edition. Praha: IPS FSV UK. 2006. p 34-58.

established in every small town, especially in the CR and Slovakia. These issues at local level are therefore set up by one municipality within the given administrative district, known as the so-called “catchment area” for smaller municipalities, which do not provide these matters, mainly because of the very low population density and the resulting inefficient use of such services. On the other hand, in Czechia and Slovakia local trade services have recently become established even in the smallest municipalities all over the country. The establishment of those services falls under the independent competence of the municipality, or - in case the municipality is not directly responsible - under the contractual relationship with a third party.⁹⁶

Material competence is consequently more applicable in the area of public law in the exercise of the competence of the TSU, for example when municipalities or regions act as legal entities of public law in relation to their citizens, in cases where they issue legal regulations. Within the scope of independent competence, municipalities and regions in the CR and Slovakia are authorized to issue generally binding regulations.⁹⁷ The authorities of territorial units in Austria are also gifted with normative power. This category also includes, for example, form of care administration, where the TSUs are for instance endowed with competencies to establish schools in their territory. Not only do TSUs have a “power character”, they also have the power to move in the area of private law when they conclude contracts with other entities. An example therefore is the conclusion of business contracts.⁹⁸

The Austrian system of territorial self-government makes it possible to increase the efficiency of the legal system in the area of administrative law, as in all the analyzed countries, since in the form of the so-called indirect federal administration it abandons a separate system of state administration and self-government. As in the CR and Slovakia, only unified bodies within the given structure are created at the municipal level, with the help of which both the state administration and self-government within the same institution are performed. In practice, most of the tasks are carried out through the provincial authorities, apart from e.g., security, police or finance, which are carried out directly by the federal authorities.⁹⁹

Depending on the states’ individual legislation, its TSUs can exercise powers directly or through their elected representatives. In scientific literature, e.g. in a publication by R.

⁹⁶ HENDRYCH, Dušan et al. *Správní právo, Obecná část*, 2012. p 147 and cf. MATĚJKA, Jan. *Principy organizace veřejné správy*. Praha: Knihovna Sborníku věd právních a státních, 1938. p 40-57.

⁹⁷ Constitution of the CR art. 104/3, Cf. nález ÚS 218/07 svazek 47, also 112/99 USN and also 39/10 ze dne 8.12.2010.

⁹⁸ HENDRYCH, Dušan et al. *Správní právo, Obecná část*, 2012. p 147 and cf. MATĚJKA, Jan. *Principy organizace veřejné správy*. Praha: Knihovna Sborníku věd právních a státních, 1938. p 40-57.

⁹⁹ REGIONALMANAGEMENT Österreich, *Veřejná správa v Horním Rakousku, Jihočeském kraji a Bavorsku*. rmoee.at. 2014, 1. edition.

Stober¹⁰⁰ the main subject of the legislation is primarily the area of delineation of the TSU's internal organization. The relevant legal regulation of the Central European states deals in particular with the delimitation of individual municipal authorities, the way of their establishment, as well as their activities and mutual relations.¹⁰¹

3.2 Influence of the extent of the powers conferred upon the municipal authority on its position in the organizational system

Within the organizational structure of the PA in the three analyzed countries, the power and authority vested in it, has a significant influence on the position of the leading body of TPA. Therefore, the internal organization of each municipal, regional, or provincial authority cannot be identical. Public administration entities, which are public corporations, have a specific form of their structure. In the case of the CR and SR, these are the regional and municipal authorities, while in Austria, in addition, exist the provincial authorities. The principle of democracy, where individual members of municipal bodies are elected to representative bodies, plays an irreplaceable role.¹⁰² The internal organization of such offices is hierarchical. Conversely, in cases where the hierarchical structure of the local authority does not or not fully apply, the principle of subsidiarity may apply between the different levels of composition of the municipal authority, which may have a dual definition. It is a relationship between two self-governing units, municipalities, regions, or countries. In the selected countries, the hierarchical structure applies exclusively to the internal composition of a regional, municipal, provincial or district authority. The principle of subsidiarity, on the other hand, applies between territorial units, as the region or Land is always in a higher position than the municipality or, in the case of Austria, the district.

In a positive sense, it can be understood as any action of a higher community to assist the lower community or the individual directly. As an example, the application of the principle of subsidiarity to the authorities of the HTUs and LTUs in the CR can be mentioned. Within the hierarchical structure of the territorial division of the state, given primarily by the

¹⁰⁰ STOBER, Rolf. *Kommunalrecht in der Bundesrepublik Deutschland*. 2. edition. Stuttgart, Berlin, Köln: Verlag W. Kohlhammer, 1996. p 78-79.

¹⁰¹ Note: "Missing or problematic part of legal regulations in this area is, among other things, situations where the state is authorized by its bodies influencing their composition or elected representative." Cf. HENDRYCH, Dušan et al. *Správní právo, Obecná část*, 2012. p 154.

¹⁰² For example: "A municipality whose representative body is elected by all members of the local authority, the municipal council is elected in the same way as the Mayor of the municipality by its municipal assembly from among its members." Cf. HENDRYCH, Dušan et al. *Správní právo, Obecná část*, 2012. p 112-113.

Constitution of the CR, the region is in a higher position than the municipality. Therefore, within the positive definition of the principle of subsidiarity, any decision of a region that may affect matters in the region should also benefit individual municipalities. It cannot come from it solely and only for the benefit of the region.¹⁰³

In a negative sense, the principle of subsidiarity expresses assistance or substitute behavior of the HTU in relation to the lower one, for example in a situation when the municipality is not able to solve the problem or situation when exercising its powers independently. As a practical example of such a behavior by a region in the CR can be regarded a situation when a municipality is not able to carry out a certain activity, even though it is gifted by the state or by a given competence in a certain area. The municipality may therefore ask for help from the regional authority - especially the methodical one, when the regional authority is able and authorized to help the municipality with the execution of its entrusted agenda, so that it can advise how to correct the situation accurately and by law.¹⁰⁴ In such “auxiliary” conduct, the region can intervene in the activities of the municipality only on the basis and within the limits set by the law. If it does so beyond the scope, the municipality may file an action against it.¹⁰⁵ Local self-government is an expression of the right of the authorities of territorial units, within the limits set by law to manage part of public affairs. It is the legislator's responsibility to decide about which issues have a national or a local impact. For example, the Constitutional Court of the Czech Republic stipulated in one of its decisions that the decision-making on the competencies of the TSU is always political.¹⁰⁶

3.3 Delegated competence of the TSU

States use the existence of the TSU to guide them through the agenda of the state administration. It is precisely for the effective functioning of the state that it is appropriate to delegate parts of the power to the territorial unit and bring the performance of this administration closer to the citizen.

The first state analyzed is the **Czech Republic**, which in terms of its territorial structure is divided into the so-called two-tier structure of TPA, represented in its territory by HUTs, called regions and LTUs called municipalities. Municipalities represent the lowest level of

¹⁰³ HENDRYCH, Dušan et al. *Správní právo, Obecná část*, 2012. p 112-113.

¹⁰⁴ HENDRYCH, Dušan et al. *Správní právo, Obecná část*, 2012. p 113.

¹⁰⁵ §14 art. 4 Act No. 129/2000 Coll., On regions (regional establishment), as amended.

¹⁰⁶ Cf. Nález Ústavního soudu ze dne 2.7.2003, sp. zn. Pl. ÚS 18/03 and also HENDRYCH, Dušan et al. *Správní právo, Obecná část*. 8. edition. Praha: C. H. Beck, 2012. p 141.

territorial division of the state within which it is possible to carry out state administration in the given territory.¹⁰⁷ Regional territory always includes municipalities located within it. From the point of view of the legal position in the system of the Czech legal order, the TSUs are public corporations that are authorized to own property and further manage it.¹⁰⁸ The scope of municipal self-government is not only determined by the constitution, but is defined by the legislator in detail.¹⁰⁹ The Constitutional Court of the Czech Republic, which is entrusted with the given tasks, also plays an indispensable role in the local administration system, including:

1. to decide on the municipal constitutional complaint of the bodies of territorial self-government, under the conditions when the state unlawfully interfered in the exercise of the power entrusted to it;¹¹⁰
2. decide in disputes over the extent of the powers entrusted to state authorities, but also to local self-government authorities, in cases where this is not the responsibility of another body by law.¹¹¹

The agenda of matters falling within the scope of delegated powers is carried out by the authorities of the TSU from the position of another bearer of public administration, i.e. the state, which entrusts this administration exclusively to the bodies of self-governing units, not the TSUs itself.¹¹² In the area of delegated powers, the municipalities of the CR are endowed with powers that are important for the purpose of elaboration of this thesis, especially in larger cities, to which the state entrusts a wider agenda of opportunities to approach its citizens. For the purposes of this analysis, it is worth noting that territorial self-government authorities may have a different scope of competence and are therefore subdivided into municipal authorities at first instance, delegated municipal authorities at second instance, and municipal authorities with extended powers at third level.¹¹³ In the case of a **specific exercise of delegated powers in the**

¹⁰⁷ “One of the other units that must be mentioned due to their indispensable existence are the territories of military areas, which, however, I do not discuss in the text of this work, due to their specific nature specified in Act No. 15/2015 Coll. (*Zákon o hranicích vojenských újezdů*), as amended.” Cf. FILIP, J. Vojenské újezdy a realizace práva na samosprávu. *Časopis pro právní vědu a praxi*, nr. 3. 2001.

¹⁰⁸ Constitution of the CR art. 101/ 3 and §19 art. 2 letter c) Act No. 89/2012 Coll., The Civil Code, as amended. Cf. Act No. 250/2000 Coll., on Budgetary Rules of Territorial Budgets, as amended. Cf. KOPECKÝ, Martin. *Právní postavení obcí. Základy obecního práva*. 1. edition. Praha: CODEX Bohemia, s. r. o., 1998. p 90-101.

¹⁰⁹ Cf. Rozhodnutí Ústavního soudu ze dne 5. 2. 2003, sp. zn. Pl. ÚS 34/02.

¹¹⁰ Cf. FILIP, J. Ústavní stížnost dle čl. 87 odst. 1 písm. c) Ústavy ČR. *Časopis pro právní vědu a praxi*, nr. 2. 1995. p 19-26.

¹¹¹ JIRÁSEK, Jiří et al. *Ústavní základy organizace státu*. 1. edition. Praha: Leges, 2013. p 349.

¹¹² HENDRYCH, Dušan et al. *Správní právo, Obecná část*. 8. edition, 2012. p 154. Cf. Constitution of the CR art. 105.

¹¹³ Act No. 128/2000 Coll., municipal establishment § 109 and others and § 66. Act No. 314/2002 Coll., Act on Determination of Municipalities with Authorized Municipal Office and Determination of Municipalities with the Possibility of Competence. Cf. Act No. 128/2000 Coll., municipal establishment § 64. And cf. Decree 388/2002

municipality, this is in its basic scope exercised by the authorities of the municipality, which are competent to do so. The most important position in this case is the municipal office itself, as an institution and bearer of the local authority. In the exercise of delegated powers, the territory of the municipality becomes the so-called administrative district in whose territory the administration is performed. For specific tasks, the competent municipal authority is given powers by a special law, as shown in *Table 1*.¹¹⁴ Other municipal authorities that have the authority to exercise state administration are the municipal council and the mayor.¹¹⁵ The authorities of the region are enacted by law to exercise **delegated powers in the region**.¹¹⁶ Control over the performance of the region's activities is exercised by the relevant ministry or other central administrative authorities.¹¹⁷ A detailed breakdown of competences in the field of delegated competence of the TSU in the CR is presented in *Table 1* below. It is not an exhaustive list of activities entrusted to the territorial authorities, since the Czech legislation in this area is fragmented into many special laws. The main regulations, i.e. the Act on Municipalities, Regions and the Capital City of Prague,¹¹⁸ which specify the basic powers of the TSU do not provide a comprehensive regulation of the activities of the TSU, which can be gifted. Specific activities are authorized only by special laws, as further shown in Table 1. Examples include municipalities with a building authority, which can issue building permits, municipal authorities with extended powers, and which can further issue identity cards and other certificates of citizens' eligibility to certain activities.

Table 1. Basic competencies of the TSU in the CR in the field of delegated powers

Authority	Region	Authority	Municipality
Regional assembly	It decides if explicitly authorized by law.	Municipal assembly	To issue regulations in municipalities where councils are not elected.
Council	Rather, it makes exceptional decisions, for example, on extraordinary issues relating to the safety of the population.	Municipal council	Standardization – issues regulation.

on establishing administrative districts of municipalities with authorized municipal office and administrative offices with extended municipalities.

¹¹⁴ Cf. Act No. 128/2000 Coll., municipal establishment §64 and others.

¹¹⁵ Act No. 128/2000 Coll., municipal establishment § 99 and others and § 103 and others.

¹¹⁶ “An important function at the level of regional authorities is also played by the director of the regional authority, who is generally gifted by law to perform both state administration and self-government. From his office he is accountable to the regional Governor. In the field of delegated powers, it meets the requirements imposed by a special law.”

¹¹⁷ Act No. 129/2000 Coll., regional establishment § 86.

¹¹⁸ Cf. Act No. 129/2000 Coll., regional establishment and Act No. 131/2000 Coll., On the City of Prague, as amended.

Regional office	Administration of social affairs, education, agriculture, water management, building regulations, management of forests, hunting, water supply and sewerage, supervision of the performance of state administration of municipalities, methodological assistance for municipalities, provision of information, election agenda, population register and other provision of information and others.	Municipal office	The basic scope of delegated powers includes, for example, population registers, the authorized municipal authority also issues, for example, building permits and the municipal authority of a municipality with extended powers is, ¹¹⁹ inter alia, authorized to issue identity cards and passports.
Regional Governor	Appoints and dismisses the director of the regional office, after prior approval of the MICR, signs the legal regulations. The tasks may be determined by a resolution of the Council, the Assembly or by law.	The Mayor	It carries out its tasks in the field of election organization and crisis management. It cooperates administratively with other municipal authorities, ensures communication of the municipality to the outside.

As can be seen from *Table 1*, the municipalities and the regional authorities complement each other in the performance of their activities. In the system of territorial authorities that are gifted for the exercise of delegated powers, their power in democratically elected bodies, especially the council, predominates. One of the most important powers is the standardization of the municipality and the region, thanks to which the TSU can regulate certain matters in the interest of its citizens. The most frequent area in which this institute is used, is among the municipalities of the CR, for example, a regulation prohibiting doorstep selling in the municipality.¹²⁰ Standardization of the delegated performance of state administration at the TSU dominates especially in the municipal and regional councils, when the council is authorized to issue regulations.¹²¹ Such a regulation may regulate, for example, the area of fire protection, alarm planning, waste management planning of a given area, establishment of cultural or natural monuments, protection zones, notification of the state of local roads and many others.¹²² Another important body in the state administration of the TSU is the institution of the municipal and regional authority, whose area of qualification includes competences relating to the public benefit of the population and really close to the execution of the state

¹¹⁹ Rozsudek Nejvyššího správního soudu ze dne 16.12. 2004, sp. zn. 2 As 21/2004.

¹²⁰ Cf. *Nářizení a vyhlášky obce Soběchleby* [online]. sobechleby.cz, 5 January, 2006 [cit. 6 September, 2019]. Available from <<https://www.sobechleby.cz/index.php?oid=918046>>.

¹²¹ Constitution of CR art. 79/3 cf. §7 a §61 and others of Act No. 128/2000 Coll., municipal establishment

¹²² *Platné právní předpisy Moravskoslezského kraje* [online]. msk.cz, 15 August, 2018 [cit. 1 May, 2019]. Available from <https://www.msk.cz/cz/verejna_sprava/platne-pravni-predpisy-moravskoslezskeho-kraje-41271/>.

administration in the TSU territory. It is important for the citizens in this case that they can do many things that are also in the state interest, at the local level.¹²³

Another analyzed state is the **Republic of Austria**, which is officially divided into a total of nine federal states (Länder), which are further subdivided into individual districts, of which there are a total of 80 and at whose level there are also statutory cities, which are 15. The lowest element of this system consists of individual municipalities, which amount to 2 103 in total. In contrast to the Czech and Slovak Republics, the term “Länder”, translated into Czech as a land, is used in Austria to designate regions. On the contrary, as in the CR, the capital of Austria is considered both a city and a “region”. Today, Vienna forms a unified center from which matters of a national nature and in the state interest are managed.¹²⁴ The Austrian Constitution is based on the legal equivalence of the state and its territorial units. The division of competences between the state and the Länder therefore plays a decisive role. The Austrian Constitution confers a legislative a priori to territorial unit. To the state only in cases where it is expressly authorized by law. As has been shown above, this exception is the rule in Austria. The principle of indirect federal administration, which is expressed through the Länder, applies to local government in Austria. To put it simply, indirect administration takes over state-level tasks and performs them through its local authorities - the district administration and the Länder, provincial administration. In this case, the Länder authorities act for the state. For this reason, the provincial governor in this form of administration is accountable to the state and is bound by orders of the relevant ministry to which he is responsible. Despite the fact that the Länder authorities are not completely independent, they still have some room for action and thus an effective influence on the performance of the state's tasks.¹²⁵ The division of territorial administration in Austria is then followed by internal division of the given territorial unit and its authorities. At the provincial level we find the provincial assembly as a legislative body. Each country has a number of members elected every six years. At the height of this hierarchy is the Provincial Governor and the Provincial Government. The Provincial Government consists of representatives of all elected parties.¹²⁶ The government is elected by the Landtag and consists of several members (different for each “Land”), including the provincial governor,

¹²³ See Table 1 - *Competencies of the Regional and Municipal Authorities*.

¹²⁴ *Online právní předpisy* [online]. ris.bka.gv.at, 6 August, 2015 [cit. 1 May, 2019]. Available from <https://www.ris.bka.gv.at/Dokumente/ErV/ERV_1930_1/ERV_1930_1.pdf>.

¹²⁵ REGIONALMANAGEMENT Österreich, *Veřejná správa v Horním Rakousku, Jihočeském kraji a Bavorsku*. rmooe.at. 2014, 1. edition.

¹²⁶ *ie. that all parties represented by a certain number of deputies in the Landtag have at least one seat in the Provincial Government.*

deputy governor and individual councilors. The main institution of the regional administration is the provincial office, which is responsible for its proper functioning. Provincial offices are divided into individual departments and departments which always manage the respective agenda of the administrative activities of the parties.¹²⁷

The provincial administration is divided into individual levels. These are districts and municipalities. The responsibility for the entire territorial hierarchy lies with the provincial government, as the highest provincial authority.¹²⁸ The Austrian legislation stipulates when and under what conditions self-governing bodies of municipalities and countries may carry out state administration in their territory.¹²⁹ The Constitution also confers on countries the right to exercise state administration, but does not specify the specific division of competences between individual territorial units, or when the local level involves delegated powers or self-government. The basic principle governing territorial administration is “efficiency”. This means that the power of the state exercised by the provincial authorities is transferred to a lower level. The government acts for the good of countries, districts, and municipalities. Municipalities act in their own interest. However, there are issues that always remain at national level. These include finance, police, defense and national security, as well as foreign and environmental issues. As can be seen in *Table 2*, within the scope of delegated powers, countries are mainly given legislative powers. Länder and municipalities are empowered to legislate and take decisions in areas such as spatial planning, environmental protection, hunting and fishing issues. On the contrary, the issues of education, social care, civil and commercial law, criminal law, health issues are regulated by federal law. Districts and their authorities play an important role in the area of delegated powers.¹³⁰ The district office is headed by a director appointed by the relevant provincial government. It is a municipal administrative body in the territory of a given district or administrative district, which was assigned to it by the Länder Act. Each municipality of the Republic of Austria belongs to a certain district. However, the district's powers conferred on it by the state to exercise delegated powers are much deeper in scope, since the district authority has the power to issue personal documents such as identity cards, driving licenses, passports, firearms licenses, or residence permits with foreign nationals from third

¹²⁷ See *Annex no 2*.

¹²⁸ REGIONALMANAGEMENT Österreich, *Veřejná správa v Horním Rakousku, Jihočeském kraji a Bavorsku*. rmoee.at. 2014, 1. edition. 40 pg.

¹²⁹ Constitution of Austria art. 120 and others.

¹³⁰ Bundeslander [online]. documentcloud.adobe.com, 27 November, 2016 [cit. 12 June, 2019]. Available from <<https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3Ae3ffb7df-de33-4682-8ac4-37b3d89a84d0>>.

countries.¹³¹ As can be seen in *Table 2*, the district office does not have a democratically elected element in its internal structure, as in the remaining comparative states, from which we conclude that it has no legal personality and hence, at the district level, local government is not as close to the citizen as the Länder and municipalities.

Table 2 Basic competencies of the TSU in AT in the field of delegated competence

Authority	Länder	Authority	District	Authority	Municipality
Provincial assembly „Landtag“	Elects the members of the provincial governments, represents Lander externally, the control legislative control.	x		Municipal assembly	It provides education, social affairs, the environment and its protection, the founder of libraries, etc.
Provincial Government	The executive body performs tasks assigned to it by a special law.	x		Council	Reporting obligation, executive character.
Provincial governor	Heads the Provincial Government, convenes meetings and manages them (executive power).	District governor	Formal status; administration; Signing important documents etc.	The Mayor	Co-signing of documents issued by municipalities - ensures enforcement of decisions and resolutions.
Provincial government office	Formal character, provides administrative administration - documents etc.	District office	District security, foreign police, administrative punishment, social care, road management, water management, health care, forestry, fishing and hunting, municipal supervision.	Municipal office	Administrative matters - important person of the secretary.

In the field of state-transferred areas, local authorities are above a great deal of competence than in areas that are authorized to administer others at the municipal level. Despite the fact that it is close to the list of entrusted competencies, it is not a separate competence of the municipality. Given these facts, it can be stated that the local government in Austria is considerably close to its citizens. This fact is confirmed in particular by the above-mentioned

¹³¹ Bundeslander [online]. documentcloud.adobe.com, 27 November, 2016 [cit. 12 June, 2019]. Available from <<https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3Ae3ffb7df-de33-4682-8ac4-37b3d89a84d0>>.

fact, which I mentioned in the work as an example for the CR and the fact that it is not necessary due to the need to handle a travel document to visit who is authorized to issue such a document and obtain the document there. In the exercise of competence of the municipality in the areas defined above,¹³² the municipality carries out the activity entrusted to it by law. The responsibility of the municipality in this sphere comes to a higher level, i.e. the provincial administration, which fulfills the function of supervision of the municipal administration. The municipality is entitled, within the scope of the law, to issue regulations of the municipal police, which aim to regulate safety in the municipality and improve life at the municipal level. Such a regulation must be in accordance with the legislation with higher legal force; the laws and ordinances of the Austrian Länder. As shown in *Table 2*, many of the competencies in the area of state administration at the local level are the same as in the CR. In Austria, districts are also established, which form an intermediary in administration between Länder and municipalities. The Austrian practice is more coherent than the one common in the CR and, thus, creates an “illusion” of Austria having territorial units with a wider area of competence than in the CR. The different scope of power is particularly evident in the area of district administration. In the area of supervisory powers over LTU, this function is performed by district authorities, and subsequently by regional government offices, which do not exist in the CR.¹³³

The last country to compare the scope of competencies entrusted to the territorial administration is **the Slovak Republic**. The territory of Slovakia is divided into HTUs, districts, towns and municipalities. The HTUs are regions established by the Act of the Slovak National Council of 1996.¹³⁴ A total of eight regions were defined by law. They became self-governing units only after the reform of PA in Slovakia, which took place in 2001.¹³⁵ The Slovak HTUs are basically similar to the previous examples. The region is managed by a council elected in free elections. The regional council determines the number of deputies for the entire parliamentary term in the ratio of 12 to 15 thousand inhabitants per deputy. The territorial units are further divided into a total of 79 districts, which are not in any way gifted by the self-government or the state administration and are established mainly for statistical purposes. The lowest territorial self-governing unit is represented by municipalities. As in the CR, the

¹³² *This is not an exhaustive list.*

¹³³ *A detailed analysis of the specific activities applied in practice will be provided in the next chapter.*

¹³⁴ Act of the National Council of the Slovak Republic No. 221/1996 Coll., on Territorial and Administrative Organization of the Slovak Republic, as amended.

¹³⁵ Cf. *Vývoj administratívneho členění Slovenska* [online]. geography.upol.cz, 24 November, 2010 [cit. 16 June, 2019]. Available from <https://geography.upol.cz/soubory/lide/smolova/RGSR/ucebnice/portrety/admin_cleneni.html>.

municipality is headed by a municipal assembly elected for a period of four years in direct elections. The municipal office is gifted to the performance of self-government and state administration. The territorial structure of the SR is, as in the CR, two-tiered. If it is rational and effective, some of the tasks of the state are transferred to the municipal level. The self-governing region can also fulfill some tasks of state administration which can otherwise only be transferred by law. Unless the law expressly stipulates that it is a decision in matters of state administration, it is always a separate competence. The government administration of the state controls the delegation of state administration to the municipality.¹³⁶ As in the CR and Austria, the principle of the state will provide the self-governing region with the necessary financial and material resources.¹³⁷ The delegation of powers of state administration bodies (ministries, regional authorities, and also district offices) to municipalities or HTU is regulated by law.¹³⁸ This involves the transfer of the performance of state administration and the transition from the powers of state administration authorities to the self-governing powers of regions to the extent stipulated by law.¹³⁹ The quoted law has a specific construction. Its content is the legal stipulation of the transfer of competence to municipalities and regions. Other articles deal with amendments to existing legislation and special laws dealing with the powers of municipalities.¹⁴⁰ We can see some shortcomings and contradictions in the amended areas of legislation.¹⁴¹ This occurs, for example, with a government bill¹⁴² that is based on a different principle. If the law does not explicitly stipulate that this is a separate competence, it is always a delegated competence.¹⁴³ The specific scope of competence¹⁴⁴ of the TSU in Slovakia is provided in *Table 3*.

¹³⁶ Act of the Slovak National Council No. 369/1990 Coll. on municipal establishment, as amended.

¹³⁷ *Vyšší územní celky na Slovensku* [online]. moderniobec.cz, 4 July, 2002 [cit. 18 March, 2019]. Available from <<https://www.moderniobec.cz/vyssi-uzemni-celky-na-slovensku-1/>>.

¹³⁸ Act No. 416/2001 Coll. on the transfer of certain competences from state administration bodies to municipalities and higher territorial units (the so - called Small Competence Act), as amended.

¹³⁹ *To the extent set out in Articles II to XXI of the Act.*

¹⁴⁰ *For example, it is an amendment to the provisions of the Act on State Administration in Water Management, Registries, Nature and Landscape Protection.*

¹⁴¹ *“For example Article 1/4, which lays down the principle that in cases expressly provided for by law - this is a delegated competence, is always a separate competence.”*

¹⁴² print 1162.

¹⁴³ *Vyšší územní celky na Slovensku* [online]. moderniobec.cz, 4 July, 2002 [cit. 18 March, 2019]. Available from <<https://www.moderniobec.cz/vyssi-uzemni-celky-na-slovensku-1/>>.

¹⁴⁴ Cf. Act No. 164/1996 Coll. on Railways, as amended, Act No. 42/1994 Coll. on civil protection of the population, as amended, Act No. 29/1984 Coll. on the system of primary and secondary schools, as amended, Act No. 503/2001 Coll. on the promotion of regional development, as amended, Act No. 195/1998 Coll. on social assistance, as amended and also Act No. 446/2001 Coll. on property of higher territorial units, as amended, Act No. 135/1961 Coll. on Roads, as amended.

Table 3 Basic competencies of the TSU in the SR in the area of delegated powers

Authority	Region	Authority	Municipality
Regional assembly	Decides on regional development and tourism issues; civil protection of the population; road transport; rail transport; social assistance; education; culture; health service; regional development and others.	Municipal assembly	Administration of registers; Spatial development and spatial planning changes; Education and training competences; part of competences in education and others.
Council	Advisory function to the chairman, executive body, supervisory powers.	Municipal Council	Advisory function towards the mayor, executive initiative body, control functions of the municipal council and others.
The Chairman	It represents the region externally; It convenes meetings of the Assembly and the Council; Power of suspension of enforcement; administrative activities and others.	The Mayor	Decides on all matters of municipal administration - unless they are reserved for the council. It convenes and leads meetings of the council, it can suspend the execution of decisions, it represents the municipality externally.
Regional office	In particular, it performs tasks assigned to it by the local authority, organizational unit, administrative matters and others.	Municipal office	In particular, it shall perform the tasks assigned to it by the local authority, the organizational unit and administrative matters.

Regarding the extent of the powers entrusted to the territorial units, which arise from *Table 3*, it can be stated that within the scope of the state delegated powers to the territorial unit it is given almost the same scope of powers as in the CR and Austria. As in the case of the CR, it is not possible to talk about superior and subordinate positions within the framework of mutual relations between municipalities and regions. There is a significant difference between the CR and Slovakia in the application of PA models. The two countries differ in the way in which competences are divided between the state and the HTU. The extent of state administration in the case of regions of the SR is not as extensive as in the CR. This difference is due, among other things, to the different size of state budgets and the subsequent funding of the regional administration in both states.¹⁴⁵ As it has been shown in the work, the state finances the performance of state administration in the region, so at a higher state budget, regions can get more resources for the performance of state administration, which they can dispose of. In my opinion, an extension of the powers of the regional authorities in both states could be an appropriate solution to this problem, thus increasing the level of decentralization of the state level. However, the proposed amendment would require an amendment to the legislation. The highest possible decentralization of the state is also the aim of the Charter of Local Self-

¹⁴⁵ Cf. KONRADOVÁ, Jana. *The powers of municipalities and regions (Působnost obcí a krajů)*. Praha: Univerzita Karlova, Právnická fakulta. 2016. p 85.

Government, to which all selected states are signatories. When analyzing the individual laws of selected states that relate to TPA, it was found that both the Austrian and Czech legislation are adapted to the individual provisions of the Charter. In the case of Slovakia, as it shall be concluded in detail at the end of this thesis, the provisions of individual laws dealing with TPA and its competences are in accordance with the requirements issued by the Charter of Local Self-Government. However, the primary regulation that enshrines the issue in existence should undergo an amendment that would make it more transparent and detailed. It should have made clear what local authorities have basic competences, which would then further extend special laws, as in the CR and Austria. In there, it should have been made clear with which basic competences local authorities are vested. Such a specification would then enable the further extension of special laws, just like in Austria and the CR.

Based on the provided analysis of the legislation of selected states, it can be stated that the legislature used the space that the legislature had to make sufficient use of to regulate the entrusted powers of the TSU. The very nature of states makes it clear that states cannot be exactly identical. The Slovak legal regulation of local administration reflects the idea of a separate model of public administration relatively thoroughly, while the CR follows the connected model, which uses the existence of municipalities to perform state administration at the lowest level. The indisputable advantage of the combined model of public administration is the efficient and effective use of the institutions and bodies of the TSU to exercise all the powers that the TSU has.¹⁴⁶

3.4 Separate powers of the TSU

In this subchapter, I deal with the competence of territorial self-government in the selected states, which are within its individual competence, according to the valid legislation. Interventions of state power in self-government are allowed by laws in selected states only under specified conditions. In the case of the CR, the condition is to protect the law under the procedure allowed by the law.¹⁴⁷ The Constitutional Court of the CR dealt with interventions

¹⁴⁶ OROSZ, Ladislav. *Ústavná úprava územnej samosprávy v Slovenskej republike (vznik, vývoj a súčasný stav, perspektívy)*. [online]. uniba.sk, 17 January, 2015 [cit. 6 September, 2019]. Available from <https://uniba.sk/fileadmin/ruk/veda/docprof/PraF_UK/Orosz/PC_Orosz_3_4_2018_najnovsia_verzia.pdf>. Cf. KADEČKA, Stanislav et al. *Právní regulace místní a regionální samosprávy* Brno: Masarykova UNI, 2008, p 97-98. Cf. KONRADOVÁ, Jana. *The powers of municipalities and regions (Působnost obcí a krajů)*. Praha: Univerzita Karlova, Právnická fakulta, 2016. p 85.

¹⁴⁷ Cf. MODERNÍ OBEC. *Odborný Časopis pro veřejnou správu*, druhá část, legislativa, téma doby: Dozor nad samosprávou. Měsíčník vydavatelství Profi Press s. r. o. Nr. 11 November, 2017 and MODERNÍ OBEC. *Odborný časopis pro veřejnou správu*, bezpečnost v obcích a odměňování zastupitelů, obec a veřejné zakázky. Nr. 7 July 2017.

of the state in the right to self-government rather sporadically.¹⁴⁸ The key authority in the independent competence of the TSU is the assembly. Special laws shall determine the scope of the authority's competence. Both levels of territorial self-government are endowed with normative powers,¹⁴⁹ that flows to them a priori from the constitution of the state. Citizens of territorial units can participate in governance. They can do so either directly, that is, be part of the local authority of a regional government or through elected representatives.¹⁵⁰ The autonomous competence of the TSU covers matters of existence and development of territorial community.¹⁵¹ This scope is not absolute but limited by the relevant legislation.¹⁵² The TSUs are independent in the performance of their activities, their competence is autonomous, each of which carries out matters in its own interest.¹⁵³

Regarding the independent competence of the municipality in the CR, the Act on Municipalities¹⁵⁴ precisely defines the areas under which the competence of the municipal self-government falls. As of 2 May 2018, there are 6 258 municipalities in the CR.¹⁵⁵ Matters belonging to the independent competence of the municipality are divided into several categories:

1. matters of interest to the municipality and its citizens;
2. matters not legally entrusted to the region;
3. unless it is a delegated competence, i.e. the state administration of the municipality;
4. in the case of matters entrusted to the law by independent powers;
5. or, on the contrary, does not include them under the agenda of another state authority.¹⁵⁶

Regarding the **independent competence of the CR region**, it includes matters that are in the interest of the region and its citizens and which are exemplified by the Act on Regions

¹⁴⁸ Cf. Nález Ústavního soudu ze dne 4. 10. 2000, sp. zn. I. ÚS 471/2000. Nález Ústavního soudu ze dne 5. 4. 2000, sp. zn. Pl. ÚS 1/2000. Nález Ústavního soudu ze dne 10. 10. 2000, sp. zn. IV. ÚS 420/2000. Nález Ústavního soudu ze dne 30. 9. 2002, sp. zn. IV. ÚS 331/02. Cf. JIRÁSEK, Jiří et al. *Ústavní základy organizace státu*. 1. edition. Praha: Leges, 2013, p 331-348.

Note: "In Decision IV. ÚS 331/02 The Constitutional Court of the Czech Republic stated on the given issue that within the limits provided by the Legal Order of the Czech Republic, self-governing power is constructed as a public power in its territory. The state anticipates this power. For these reasons, it must be adequately protected and given legal certainty in the event of unlawful interference by the State with its autonomous space."

¹⁴⁹ Rozhodnutí Ústavního soudu ze dne 11. 12. 2007, sp. zn. Pl. ÚS 45/06.

¹⁵⁰ LZPS CR, and its relevant provisions.

¹⁵¹ Rozsudek Nejvyššího správního soudu ze dne 19. 8. 2010, sp. zn. 2 As 52/2010.

¹⁵² Nález Ústavního soudu ze dne 19. 1. 1994, sp. zn. Pl. ÚS 5/93.

¹⁵³ HENDRYCH, Dušan et al. *Správní právo, Obecná část*, 2012, p 149-153.

¹⁵⁴ Act No. 128/2000 Coll., municipal establishment, as amended.

¹⁵⁵ *Lexikon obcí ČR* [online]. czso.cz, 1. January, 2018 [cit. 28 June, 2019]. Available from <<https://www.czso.cz/csu/czso/maly-lexikon-obci-ceske-republiky-2018>>.

¹⁵⁶ Cf. Act No. 128/2000 Coll., municipal establishment, as amended.

and special laws.¹⁵⁷ In exercising this competence, the region cooperates with municipalities located in its cadastral territory. The region is not authorized to interfere in the exercise of the independent competence of the municipality. The regions have a statutory obligation to discuss matters with their municipalities beforehand.¹⁵⁸ The CR has a total of 13 regions and the Capital city of Prague,¹⁵⁹ which has a specific position as it has the character of a municipality and a region.¹⁶⁰ The same is true for Austria, where this article represents the city of Vienna. The selected overview of powers of municipal authorities is provided in *Table 4*.

Table 4 Basic competencies of the TSU in the CR in the area of separate powers

Authority	Region	Authority	Municipality
Regional assembly	Participation in state norms - possibility to submit draft laws of the Chamber of Deputies, issue generally binding ordinances, elect regional representatives, decide on cooperation with other regions, approve concepts of territorial development, elect and remove regional governors. Approve the region's budget and more.	Municipal assembly	The approval of the municipal budget, issuing a generally binding decree, decides on the proposed changes to the cadastral territory of the municipality, the establishment and cancellation of municipal committees, approval of the municipal development program, cooperation with other municipalities under specified conditions owned by the municipality etc. ¹⁶¹
Council	The area of property rights, the function of the founder of organizations operating in its territory. Appointment and dismissal of regional director. It decides to provide a subsidy of up to CZK 200 000 to a LE or IE in one calendar year. ¹⁶²	Municipal council	Division of powers in the municipal office, issuing municipal regulations, determining the total number of employees of the municipal office, checking the fulfillment of tasks by the municipal office, setting up the procedure for receiving and handling complaints, ensuring the management of the municipality according to a pre-approved budget and others.
Regional office	Regional Development Agenda, drawing subsidies from the Structural Funds, providing subsidies to municipalities, issuing regional newsletters, preparing materials for council and its	Municipal office	Assistance for the committees and commissions it establishes; It shall carry out the tasks assigned to it by the council or the assembly. Administrative activities.

¹⁵⁷ Act No. 129/2000 Coll., regional establishment, as amended and Act No. 131/2000 Coll., On the City of Prague, as amended.

¹⁵⁸ Act No. 129/2000 Coll., regional establishment, § 14 and others.

¹⁵⁹ See *Annex no 1*.

¹⁶⁰ In details Act No. 129/2000 Coll., regional establishment, and Act No. 131/2000 Coll., On the City of Prague, as amended.

¹⁶¹ *Nález Ústavního soudu ze dne 24.4. 1996, sp. zn. Pl. ÚS 63/04 and Nález Ústavního soudu ze dne 13.9. 2006, sp. zn. Pl. ÚS 57/05 and Nález Ústavního soudu ze dne 12. 6. 2007, sp. zn. Pl. ÚS 21/06. Cf. Rozsudek Evropského soudu pro lidská práva ze dne 2. 9. 1998, č. 4/1999, pg. 84 and others. Cf. LANGÁŠEK, T. Obrat v nazírání Ústavního soudu na obecně závazné vyhlášky. Právní rozhledy, 2008, nr. 10.*

¹⁶² *Rozsudek Nejvyššího soudu ze dne 8. 3. 2004, sp. zn. Vol 12/2004.*

	meetings, providing information, etc.		
Governor	Is responsible for informing the citizens of the region, the right to suspend the execution of the council's resolutions, is responsible for the timely review of the region's management, ensures the protection of classified information, etc.	The Mayor	It convenes and manages the meetings of the assembly, signs the minutes of this meeting, signs the legislation that the municipality issues, represents and replaces the municipality outside and others. ¹⁶³

From the above analysis of the law we can conclude that the territorial units of the CR have entrusted the agenda, which sufficiently covers the defined areas. At the level of LTU, self-government is closest to the citizen, while higher self-governing units are entitled to manage the agenda of greater importance and in a wider area. In comparison to the scope of competencies delegated, and with regard to the independent competence of the TSU in the CR¹⁶⁴, it can be stated that the authorities of the TSU have much broader powers in the area of autonomy than in the field of delegated competence. The TSU in the area of self-government is as close to the effective and transparent performance of PA in the given territory as it is to the performance of state administration in the same territory, but there is a clear difference in the scope of this competence. As an example I can mention the processing of the ID card in case I am a citizen of one of the smallest municipalities in the CR. I cannot obtain my ID in my municipality because it does not have sufficient authority to provide me with this service. According to the division of municipalities of the CR into towns, statutory towns, townships and municipalities, it is clear that the division of individual state competences entrusted to the state must be different. Another example of a positive character may be that even in one of the smallest municipalities in the CR, as a citizen of this municipality, I can have an influence on its “proper” operation. Citizens of the municipality can participate in public meetings of the municipal assembly and comment on the agenda being discussed. Citizens can also deliver petitions, complaints, requests and suggestions, which the municipality is obliged to deal with and answer to their own hands.¹⁶⁵ The possibility of citizen participation directly or through their elected representatives in local government represents the degree of so-called closest administration to the citizen.¹⁶⁶

Another comparative state is **the Republic of Austria**. The scope of its independent competence will be regulated a priori by the Constitution of Austria. It defines the areas in

¹⁶³ Nález Ústavního soudu ze dne 10. 7. 2001, sp. zn. III. ÚS 721/2000 and Rozsudek Evropského soudu pro lidská práva ze dne 17. 7. 2007, č. 6/2007, pg 317 and others.

¹⁶⁴ See comparison tab. No. 4 and No. 1.

¹⁶⁵ Act No. 128/2000 Coll., municipal establishment § 16/2.

¹⁶⁶ Act No. 128/2000 Coll., municipal establishment § 46 and others and also §16.

which the municipality can decide and exercise its authority on its territory independently, without the intervention of state power. In particular, the Constitutional Act includes the following areas:

1. establishing functions within the municipal authorities and the authorities themselves;
2. ensure public security;
3. manage local roads, traffic and police;
4. manage their own budget, ensure the sale of real estate located in the municipality;
5. provide a public service for out-of-court dispute resolution, etc.¹⁶⁷

On this issue, I consider it important to evaluate and compare the quality of elaboration of the Constitution of the Republic of Austria, which stipulates in its provisions that the municipality has a separate and delegated competence entrusted to it by the Federal Republic or the individual Länder. Furthermore, it demonstratively defines the areas in which the scope is applied. A special law determines what powers are in a separate competence. This is particularly important in terms of the independent activity of the municipality and its legal certainty, but also in terms of its legal protection guaranteed by the constitution.¹⁶⁸ Within the scope of its independent competence, the municipality is endowed with standardization in the areas defined by law. The TSU is entrusted with the broader competence in the field of standard-setting activities within the performance of state administration at the local level.

Most of the regulations, as in the CR and SR, are created by the state itself and thus regulate the necessary matters and especially the extent of the transfer of competencies to local units. At the local level, the local authority is the municipality office in the given territory, and in the district it is the district office. The Constitution further provides that in cases where a municipality is unable, for certain reasons, to fulfill its function of self-management in certain matters on its own, it may delegate that power to a higher instance, the Länder concerned, or to the federal level. The provincial government is superior to the municipal and has supervisory power over it.¹⁶⁹ The specific tasks that the TSU can perform in the area of self-government are demonstrated in *Table 5*.

¹⁶⁷ Constitution of Austria art. 118/3.

¹⁶⁸ Constitution of Austria art. 118/1 and 2 Cf. *Bundesrecht konsolidiert* [online]. ris.bka.gv.at, 8 July, 2019 [cit. 3 August, 2019]. Available from <<https://www.ris.bka.gv.at/NormDokument.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138&FassungVom=2019-07-08&Artikel=115&Paragraf=&Anlage=&Uebergangsrecht=>>>.

¹⁶⁹ *Online právní předpisy* [online]. ris.bka.gv.at, 6 August, 2015 [cit. 1 May, 2019]. Available from <https://www.ris.bka.gv.at/Dokumente/ErV/ERV_1930_1/ERV_1930_1.pdf>.

Table 5 Basic competencies of the TSU in AT in the area of separate powers

Authority	Lander	Authority	District	Authority	Municipality
Provincial assembly „Landtag“	Law relating to its territory; Building law, housing construction support; Spatial Planning; transport, tourism; Nature conservation, fishing, forestry; Sport, youth protection and education, etc.	x		Municipal assembly	It establishes local police, provides municipal planning, introduces local fees, control functions; Administration of municipal roads; It assigns specific tasks to the local police and more.
Provincial government	Executive body - performance of activities entrusted to it by the Assembly, It is also interested in the effective management of the TSU, etc.	x		Municipal council	Preparation of Council and Assembly meetings and fulfillment of tasks assigned by the Council. Managing and managing municipal property and more.
Provincial Governor	Responsible for timely information of citizens, elected function Administrative activities	District Governor	District Authority; general state administration in the first instance; Indirect federal administration at first instance.	The Mayor	The question of property and labor relations, administrative matters - represents the municipality externally, convenes meetings of municipal authorities.
Provincial office	It ensures the operation of the Provincial Government, especially from the administrative point of view.	District office	Exercise of authority within departments; Services for the population - security.	Municipality office	Citizens' information, the official notice board, handles matters of an administrative nature.

The last state to which I present here the analysis of the law conferring its territorial self-government right is **the Slovak Republic**. The basic task of territorial units is to take care of the all-round development of the territory and the needs of its inhabitants. From a legal point of view, tasks can only be imposed on a municipality on the basis of a law or an international

treaty. Local self-government is exercised by municipal or regional authorities with a certain scope.¹⁷⁰ According to the statutory authorization, to which the municipal self-government is gifted,¹⁷¹ it may carry out its execution in its territory under specified conditions. Their demonstrative list is provided directly in the Act on Municipalities, but in cases where a special law stipulates that the municipality has other powers, it is obliged to exercise this competence in these areas.¹⁷² **Regions** are endowed with an independent competence by law,¹⁷³ which has the nature of an organizational and competence law, in which most of its provisions are devoted to the regional authorities. It basically follows the same principles as the municipal law. Pursuant to Article 64 let. a) of the Constitution of the SR HTUs associates persons who have permanent residence in its territory. The law stipulates that a resident of a region is a person who has a permanent residence in a municipality in its territory. It follows that the concept of population is not associated with the citizenship of the SR. The main tasks of the region in the area of self-government include:

1. ensuring the development of the region;
2. support of regional development;
3. cooperation with municipalities;
4. and international cooperation.¹⁷⁴

Table 6 Basic competencies of the TSU in the SR in the area of separate powers

Authority	Region	Authority	Municipality
Regional assembly	Management of local roads; public spaces; local development; setting up schools and school facilities; cultural and social affairs; public transport; establishing and abolishing the LE of the self-governing region; approves the budget; determines the principles of management; decides on the announcement of a referendum and others.	Municipal assembly	Schools and school facilities; setting up local police; collection of local taxes and fees; regional development, regional spatial planning; collection of local taxes and fees; manage their property; manages the economic activity of the municipality; ensures public order in the municipality; operates in the field of social assistance, etc.
Council	The Self-Governing Regions Act does not discuss it in detail.	Municipal council	The advisory function vis-à-vis the mayor performs, in particular,

¹⁷⁰ Constitution of Slovakia, Title IV.

¹⁷¹ Act of the Slovak National Council No. 369/1990 Coll. on municipal establishment, as amended.

¹⁷² See Table no 6.

¹⁷³ Act No. 302/2001 Coll., On self-government of higher territorial units in Slovakia (Act on Self-Governing Regions), as amended.

¹⁷⁴ *Vyšší územní celky na Slovensku* [online]. moderniobec.cz, 4 July, 2002 [cit. 18 March, 2019]. Available from <<https://www.moderniobec.cz/vyssi-uzemni-celky-na-slovensku-1/>>.

			the tasks assigned to it by the assembly.
Chairman	It decides on the RaO of IE and LE; property-law relations, labor-law relations, the power to suspend the execution of decisions of the council and others.	The Mayor	It convenes meetings of the Assembly and presides over them; performs administration of the municipality; It issues working and organizational rules and others.
Regional office	Determines the internal organization of the Office; ensures administrative and organizational matters of the council. In addition, the function of the principal controller may be established.	Municipality office	Administrative matters - written agenda, auxiliary body in issuing documents of the municipality. The office may also include the post of principal controller.

I found the main difference between the SR and the CR in the area of regional self-government. The Slovak territorial administration is based on an organizational model. There is a separation between the performance of state administration and the performance of self-government, which will be reflected mainly in the institutional division. There are regional authorities, state administration authorities, and self-governing authorities.¹⁷⁵ It does, however, not show excessive differences in the scope of independent competence of the CR or SR.

3.5 Summary

Both the autonomous and delegated powers of states are governed by their respective legal systems. In this chapter, it has been shown systematically that the Austrian legislation creates a wider environment for the territorial authorities to exercise their affairs in their own interest. Especially in the area of state power delegated to territorial authorities, the issue of taking greater power is more evident. In the Republic of Austria, due to its systematics and the division of territorial units into self-governing units, these are endowed with deeper competencies and wider powers than in the CR and Slovakia.

In the CR we may lack the relevant agenda of competencies of the TSU in the area of the level of district offices that were abolished by the amendment to the legislation, whereas most of the competencies for which they were gifted can be managed by regional or municipal authorities alike, if not more effectively. For matters concerning the local level, this agenda was taken over by municipalities and, on the other hand, for matters that may have an impact on a larger area than the cadastral territory or administrative district of the given municipality, this administration was taken over by the regional authorities. Efficiency is mainly ensured by

¹⁷⁵ *Vyšší územní celky na Slovensku* [online]. moderniobec.cz, 4 July, 2002 [cit. 18 March, 2019]. Available from <<https://www.moderniobec.cz/vyssi-uzemni-celky-na-slovensku-1/>>.

savings of funds spent on the district authorities and their delegated powers by the state. On the other hand, in Austria, in the individual Länder, other authorities are established at the level of local authorities, which are empowered to make decisions within the boundaries defined by law. In the CR and Slovakia, a system of basic bodies is established at the municipal level, which make decisions in the interest of their citizens, to whom specific laws define the exact limits of their competence. In Austria, this competence is given a priori by the constitution to the local level authorities, which we do not find in the Constitution of the CR so detailed.

In the example of the SR, it should be noted that it might not be too much to consider further amendments to the Constitution of the SR, since it does not deal with territorial self-government in any way after its last amendment.¹⁷⁶ Even if the Constitution of the SR mentions competences, the municipalities and regions do not have sufficient resources in my opinion, and this part of the legal regulation enshrined in primary law of the SR could be broadly conceived. Further explanation of this reasoning will be provided at the end of the thesis.

In the following chapter, a total of three TSU bodies from each comparing state will be selected for analysis, on the example of which I want to demonstrate the intensity of specific tasks entrusted to self-government to exercise its authority and competence in the given territory. An analysis of the number of specific competencies entrusted to each selected TSU will be carried out and a subsequent comparison of whether the competences entrusted to territorial units in the selected territories are the same or not. The last chapter of this master thesis is based on the knowledge of the state about the legal regulation of territorial self-government and the amount of competencies entrusted to it for effective management at the local level.

¹⁷⁶ Cf. Constitution of Slovakia, Title IV.

4. Efficiency of local level of governance

As has been shown in previous chapters, the competence of local government can have a dual character. Municipalities and regions are vested with autonomous powers when they decide on their affairs independently of state power. On the contrary, some deconcentrating units of territorial administration are only important for mediating the delegated power of state administration. The aim of this chapter is to compare the specific competences of the selected regions. I chose a total of three degrees of deconcentrated power within the individual territorial units. From each analyzed state, HTU and LTU will be compared, as well as districts, on whose example I want to demonstrate the issue in detail and possibly point out potential shortcomings in terms of entrusted competences and their intensity at the local level. The territorial units selected for the analysis are selected based on the criteria of their administrative division - the size of the territorial self-governing unit and the criteria of the number of inhabitants living in the territory of this TSU. In the Republic of Austria, the Land Upper Austria has been selected for such a comparison. In the Czech Republic, for the same analysis, the Olomouc Region and within the Slovak Republic, the comparison and analysis will be performed on the example of the Žilina Region.¹⁷⁷

4.1 Analysis of competencies of TSU

The Olomouc Region was chosen for the analysis of the thesis as well as two other TSUs from the remaining countries due to its administrative character and division.¹⁷⁸ OLR is divided into individual territories of municipalities and administrative districts. There are 20 municipalities with authorized municipal offices and 13 municipalities with extended powers. There are 399 municipalities in total, including 30 towns and one military area. The region is headed by the regional authority of the Olomouc Region, Governor and Director of the regional authority. The Office is divided in detail into individual departments. In its independent competence, it shall perform the tasks assigned to it by the assembly, the Council or the Governor.¹⁷⁹ The Office is authorized to carry out proceedings on the RaO of LE and IE in

¹⁷⁷ See *Graphic Annex 1*.

¹⁷⁸ *Městské a obecní úřady* [online]. statnisprava.cz, 11 May, 2019 [cit. 4 August, 2019]. Available from <<https://www.statnisprava.cz/rstsp/ciselniky.nsf/i/d0055>>.

¹⁷⁹ Cf. See *Tables 1 and 4 of the previous chap.*

matters stipulated by law. In delegated powers, it performs only tasks assigned to it by a special law.¹⁸⁰

The Republic of Austria is a federal state consisting of the individual Länder, and one of which is **Upper Austria**. Within the administrative division, its territory is further divided into administrative units, which are districts, statutory cities, and, at the lowest level, the municipalities. Below you will find a specific list of the powers that Upper Austria has in order to exercise power in its territory. In terms of administrative organization, Upper Austria is further divided into fifteen districts, at the level of which there are three statutory cities. The lowest administrative units are represented by municipalities, which, like in the Czech and Slovak Republics, are further subdivided according to the number of competencies entrusted to perform their administration into towns and townships. There is a total of 442 municipalities in Upper Austria, which are further divided into 32 towns and 151 townships.¹⁸¹

The Žilina region is administratively divided into five regions, eleven districts, towns and municipalities.¹⁸² Following the amendment of public administration in Slovakia in 2001, the region became a self-governing HTU.¹⁸³ Its scope includes, e.g., the establishment of social services, schools and school facilities, hospitals and other health care facilities, the administration of roads and cultural organizations.¹⁸⁴ In matters relating to the exercise of TPA in a given region, it acts within the limits of the law in the interest of its citizens. The number of competences entrusted to the Žilina region was gradually transferred, starting in 2002, when competencies in the areas of railway transport, civil defense, education and tourism were transferred to the region. Until 2004, the powers were gradually extended. Especially in the field of social assistance, health care, spatial planning, own property management, education and training, culture and others.¹⁸⁵

On the following pages, I shall explain in detail the specific powers that the territorial authorities can exercise within the limits set by law in the following subchapters. At the end of

¹⁸⁰ Act No. 129/2000 Coll., regional establishment and *Organizační struktura* [online]. kr-olomoucky.cz, 18 July, 2019 [cit. 6 August, 2019]. Available from <<http://www.kr-olomoucky.cz/3-organizacni-struktura-cl-302.html>>.

¹⁸¹ *Land-oberoesterreich* [online]. land-oberoesterreich.gv.at, 28 July, 2019 [cit. 6 August, 2019]. Available from <<https://www.land-oberoesterreich.gv.at/default.htm>>.

¹⁸² Act of the National Council of the Slovak Republic No. 221/1996 Coll., on Territorial and Administrative Organization of the Slovak Republic, as amended.

¹⁸³ *Žilinská župa* [online]. zilinskazupa.sk, 14 May, 2017 [cit. 8 August, 2019]. Available from <<http://www.zilinskazupa.sk/sk/prave-menu/zilinsky-samospravny-kraj/zakladne-informacie/>>.

¹⁸⁴ *Samospráva SK* [online]. zilinskazupa.sk, 26 September, 2016 [cit. 11 August, 2019]. Available from <<http://www.zilinskazupa.sk/sk/samosprava/zariadenia-zsk/>>.

¹⁸⁵ *Žilinský samosprávny kraj* [online]. zilinskazupa.sk, 3 September, 2012 [cit. 11 August, 2019]. Available from <<http://www.zilinskazupa.sk/sk/prave-menu/zilinsky-samospravny-kraj/kompetencie/>>.

this chapter, the most important findings will be summarized and identified by the analysis, so as to delimit areas that are identical for individual TSUs in the selected states and vice versa, furthermore, would like to find out which areas of the exercise of PA closer to their citizens.

4.2 Organizational structure of regional and provincial authorities

In this subchapter, with the help of graphic processing, I will mention the potential competencies exercised by authorities of the regional and provincial administration. Despite the fact that the selected states do not fully agree on the application of models of TPA, in its performance in their territory, their competencies do not differ very much. It is not possible to create a *contra legem* situation that aims to centralize state power. The general requirement is that the public administration should be as close to the citizens as possible. Perhaps it is precisely because of the existence of the Charter of Local Self-Government that it is possible in these states to achieve an increasing extent of deconcentration of state power to a lower level of administration. Regional and provincial authorities are the institutions that form the cornerstone of the system of TPA in the territory of the TSU, through which the independent and delegated powers are applied to citizens. These offices are usually further internally divided. Within the scope of mediation, they are divided into sub-stages through which a specific competence is exercised.

The internal structure of the **Regional Authority of the Olomouc Region** is delimited by its internal regulation, the organizational code, which divides the office into directors, employees and individual organizational levels. For the efficient performance of PA, these can be further subdivided into individual departments for achieving the highest possible degree of power deconcentration. The scheme of its structure is provided in *Annex B*. There are also persons working within the office: assistants, managers, internal audit, lawyer of the office and others. The detailed tasks that the office is entitled to carry out both in relation to the institution and its internal structure and to the citizens are specified in the internal regulation of the regional authority or the law conferring the relevant powers on the regional authority - see *Annex B*.¹⁸⁶

The competences of the Olomouc Region Office will in this subchapter be compared to the **Office of the Upper Austrian Provincial Government**. Both authorities ensure the performance of PA in the territory of the given TSU. Public administration in the territory of

¹⁸⁶ Cf. *Magistrát města Olomouce* [online]. statnisprava.cz, 15 December, 2019 [cit.11 August, 2019]. Available from <<https://www.statnisprava.cz/rstsp/adresar.nsf/i/64508>>.

Upper Austria is applied in the manner described in more detail in *Annex A*. The office of the Upper Austrian Government is at the forefront of this structure. When comparing the competencies of the two HTUs, we can see many areas in which the two units coincide. We conclude from this that the application of PA at the local level is not very different despite the different character of the states. See Scheme *Annex A*. However, there are also areas in which they may differ, see *Annex B* of the OLR Scheme.

The two compared offices of the TSU are headed by the director. Both offices are divided into individual departments, through which the specific performance of public administration of these institutions is applied. On the example of both states, we can see in *Annex A* and *Annex B* that both institutions possess an almost identical structure of their internal division, and so their powers differ only marginally. The institutions are the same in the scope of their care about their territory and citizens, education of the regional population, social affairs, health, sport, culture, transport and, above all, ensuring their correct and effective management. Significant differences in the scope of the competencies entrusted are hardly apparent at this level of the TSU. Negligible differences are found only in the structure of division of departments into individual departments, albeit this does not affect the scope of competencies of both institutions. The Olomouc Region, unlike the Upper Austrian Regional Authority, unites some trade unions together and tries to make its activities more efficient. The Austrian office thus creates a clearer structure for the citizen in which areas it is authorized to make decisions and carry out activities. Apart from this fact, when the Office of the OLR brings together e.g. the Department of Culture, Sport and Monument Care in one, it does not differ markedly with states at the level of the HTU and their competencies.

4.3 Organizational structure of district offices

Just as in the previous subchapter, this section, will continue to examine the issue of the scope of competencies of TSU and their units in the selected countries by graphical processing of the structure diagrams of the structure of district authority institutions. These, as demonstrated in the work, form an intermediate link between LTU and HTU. The main aim of this section is to prove whether the competencies of district authorities are negligible or vice versa. One of the analyzed countries is the SR and, as we already know, in the process of shaping the functioning of PA in its territory, it has undergone many amendments. The most important of these is the relatively recent amendment of 2013, which abolished state administration authorities at the regional level. The missing level was replaced by district

offices, which serve as substitute for citizen contact with the state administration at the local level. The aim of this reform was to improve the performance of PA throughout the SR. The analyzed district office is the **District office Žilina**.¹⁸⁷ Within it, every citizen should be able to handle everything he needs from the state administration. For example, the establishment of trade, register, citizenship, offenses, land registry, environment and more.¹⁸⁸ The existence of the district administration in Slovakia does not in any way alter the existing relations between the public administration and the territory. The district is not in a senior position to the towns or municipalities, which are analyzed in the next subchapter. TSUs are equal partners.¹⁸⁹

I will demonstrate the issue of the competencies of the **Austrian district administration** on the example of the **District Governorate Rohrbach**. The district governor acts as the district administrative body. Just like the HTU authorities, district authorities can be organized into sub-units. In the example of the Austrian district, the Governorate is organized into a three-level structure, see *Annex C*.

When comparing the district administrations of SR and AT, it soon becomes obvious that there exist already more significant differences than at the level of regional administration. District authorities in both Slovakia and Austria share the same goal. This is to act as sub-elements of the territorial division of the PA of the state, which makes citizens more satisfied with the functioning of the whole system, as they themselves save the resources and time they would otherwise have to spend traveling to a higher level office competent to deal with their affairs. Such an office is usually located in larger cities, so a citizen from a small and distant village may have a problem with this and the public administration becomes ineffective for him. Thanks to the district section of the TSU, the system is clear and closer to the citizen.

The structure of the district Governorate is¹⁹⁰ is more complicated in comparison to Žilina. This is mainly since this sub-unit of the TSU can exercise jurisdiction in a wider area than the same unit in Slovakia. In addition, the district of Rohrbach is entrusted with the responsibility for migration issues and disaster protection, for which the Security Department

¹⁸⁷ See *Annex D*.

¹⁸⁸ *Slovensko se vrátilo k okresným úradům* [online]. moderniobec.cz, 5 December, 2013 [cit.18 August, 2019]. Available from <<https://www.moderniobec.cz/slovensko-se-vratilo-k-okresnim-uradum-usetri-obcane-i-stat/>>.

¹⁸⁹ *Slovensko se vrátilo k okresným úradům* [online]. moderniobec.cz, 5 December, 2013 [cit.18 August, 2019]. Available from <<https://www.moderniobec.cz/slovensko-se-vratilo-k-okresnim-uradum-usetri-obcane-i-stat/>>.

¹⁹⁰ “*The Žilina District Office also exercises state-delegated powers for selected districts, which are the Bytča and Kysucké Nové Město districts and only in selected areas that are unable to secure the selected districts independently. This is the area of trade, road and transport management, land and forestry and general internal administration.*”

is responsible. The Slovak District is not authorized to make decisions on this agenda, as these are national issues that are not transferred to the local level by law.

4.4 Organizational structure of City Offices

In this subchapter I analyze the scope of entrusted powers of an article of municipal authorities (city offices) in the CR and Slovakia. It is a comparison of a number of competences in the areas defined by law at the Municipal Office of Olomouc and the Municipal Office in Žilina. Both cities are the main regional cities in which the organizational units of the HTU are located.

The organizational structure of the **Municipal Office of the City of Olomouc** does not differ significantly from the organization of the regional authority. Moreover, we can find here for example the Department of Drivers and Motor Vehicles, competent inter alia in the field of driver registration, minor traffic offenses, demonstration of technical competence, and vehicle registration.¹⁹¹ The structure of the Municipal Office of Olomouc is somewhat more detailed than at the Regional Authority. The office already acts as an article in the municipal structure of municipalities in the region, which enjoys a special position in comparison to the classical municipality of the CR. The Municipal Office is entrusted with more competencies to perform its services and has a wider area of competence.¹⁹² In the division of competencies within the structure of the Office, an important body is the City Council, which determines the division of powers of the office, establishing and abolishing trade unions and departments. It may issue regulations in delegated powers.¹⁹³ In the field of delegated powers, it carries out its activities in accordance with special laws, except for matters falling within the competence of another body. In the area of its independent competence, it shall carry out the tasks assigned to it by the Council or the Assembly. It also assists committees and commissions in their work.¹⁹⁴ For schemes with specific areas of activities that the office is authorized to perform, see *Annex E*.

The organizational structure of the **Municipal office of Žilina** is governed primarily by the law and in particular by the internal regulations of the organizational rules of the municipal

¹⁹¹ *Odbory Magistrátu města Olomouce* [online]. olomouc.eu, 1 September, 2019 [cit.4 September, 2019]. Available from <<http://www.olomouc.eu/magistrat/odbory-magistratu>>.

¹⁹² *Odbory Magistrátu města Olomouce* [online]. olomouc.eu, 1 September, 2019 [cit.4 September, 2019]. Available from <<http://www.olomouc.eu/magistrat/odbory-magistratu>>. Cf. *Organizační řád obecního úřadu* [online]. moderniobec.cz, 4 January, 2012 [cit.4 September, 2019]. Available from <<https://www.moderniobec.cz/organizacni-rad-obecniho-uradu/>>.

¹⁹³ *Rada města města Olomouce* [online]. olomouc.eu, 1 October, 2018 [cit.4 September, 2019]. Available from <<http://www.olomouc.eu/samosprava/rada-mesta>>.

¹⁹⁴ *Magistrát města Olomouce* [online]. olomouc.eu, 1 September, 2019 [cit. 5 September, 2019]. Available from <<http://www.olomouc.eu/magistrat>>.

authority and by the regulation entitled ‘Organizational Structure’. It stipulates under what conditions and in which areas the municipal authority performs its activities. The municipal authority is not a LE and therefore has no legal personality. For example, it provides a written agenda related to the needs of the city, prepares documents for council meetings and prepares written decisions issued by the city.¹⁹⁵ It is divided into individual departments within which local administration is carried out.¹⁹⁶ Within the individual departments or their departments to which they are divided, eventually the so-called papers to which individual departments can be divided, specific matters are carried out in the interest of the citizen.¹⁹⁷ By means of the Statute of the City, its basic operation, structure, powers and mutual relations between the city authorities are regulated.¹⁹⁸

There are many differences in comparison with the Municipal Office of Olomouc. Even before the important fact that both cities are central territorial seats of regions, the competences entrusted to the authorities are different. Of course, as in the previous examples, there is a basic structure that is immutable. Despite all this, there are many differences. At first glance, it is obvious from the structure of the internal division of the Municipal Office of Olomouc that it is more extensive. So, is this office endowed with more powers than the “identical” office in Slovakia? For a more detailed structure of the Municipal Office of Žilina see *Annex F*.

Unlike the Municipal Office of Žilina, the Municipality of Olomouc connects together the Department of Transport and Spatial Planning. The advantage of concentrating these workplaces in one unit is the saving of jobs in managerial positions, because the management of this department can ensure a lower number of employees. The unification of these departments with similar agendas also makes it easier for officials to communicate with each other. The Olomouc Municipal Office has a greater impact on the well-being of its citizens in the social field, as it sets up more departments in this area compared to the Žilina Municipal

¹⁹⁵ *Organizačný poriadok mestského úradu v Žiline* [online]. zilina.sk, 5 May, 2018 [cit. 5 September, 2019]. Available from

<http://www.zilina.sk/userfiles/2018/Organiza%C4%8Dn%C3%BD%20poriadok%20Mestsk%C3%A9ho%20C3%BAradu%20v%20C5%BDiline,%20C3%BA%C4%8Dinn%C3%BD%20od%2015_05_2018.pdf>.

¹⁹⁶ *Schéma organizačnej štruktúry mestského úradu v Žiline* [online]. zilina.sk, 1 June, 2019 [cit. 5 September, 2019]. Available from

<http://www.zilina.sk/userfiles/2019/Sch%C3%A9ma%20organiza%C4%8Dnej%20C5%A1trukt%C3%BAry%20Mestsk%C3%A9ho%20C3%BAradu%20v%20C5%BDiline,%20platn%C3%A1%20od%2001_06_2019.pdf>.

¹⁹⁷ Cf. *Komunálne služby pre mesto* [online]. zilina.sk, 14 June, 2019 [cit. 5 September, 2019]. Available from <<http://www.zilina.sk/mesto-zilina-uradna-tabula-mesta-prehľad-služieb-pre-mesto>>.

¹⁹⁸ *Žilinská samospráva* [online]. zilina.sk, 14 May, 2018 [cit. 6 September, 2019]. Available from <http://www.zilina.sk/samosprava_2/>.

Office. Therefore, it can provide more specialized services in each area. Thanks to a more detailed breakdown of these departments, they are able to employ specialized persons on the given issues.

In addition, the Žilina Municipal Office establishes the function of Principal Controller, which does not exist at the Municipal Office of Olomouc. This person is not an authority of the municipality, but despite having an important position, he or she is authorized to exercise control over the municipality's management, as it constitutes an important control mechanism in the management of the municipality's property and public funds. It is in the company's interest to have an effective control mechanism over this management.¹⁹⁹

4.5 Organizational structure of municipal authorities

The last territorial unit that I will analyze in its detailed structure is LTU. Municipal authorities should be the lowest link of public authorities through which PA can be performed at the lowest level - in each municipality. The municipal office in the Czech Republic consists primarily of the mayor, deputy mayor and the person of the secretary, or other employees of the city or municipality who are organizationally within the structure of the given office. The municipal council establishes individual departments for individual sections of the office's activities as basic organizational units. Their names, powers and other subdivisions are set by the relevant internal regulation of the municipality or town. Such a regulation is generally called the organizational rules. The secretary's office, which reports directly to the secretary, acts as a separate unit in this structure.

As an example of the internal structure of the office, I present, in the case of the Czech Republic, the **Municipal office of Holic**. For the scheme of its organizational structure, see *Annex G*. In the case of a small municipal office, not all of the above-mentioned departments have to be set up, as small municipalities with a low population are not able to fulfill the given structure, especially financially. There there may also be questions with regard to the necessity of setting up these functions.²⁰⁰ The number and type of unions or departments set up depends on the municipality and its needs.

The Austrian municipalities, like the SR and the CR, are endowed with the possibility of their own administration and organization. However, they do not have legislative or judicial

¹⁹⁹ *Hlavný kontrolór obce* [online]. vssr.sk, 13 April, 2015 [cit. 6 September, 2019]. Available from <<https://www.vssr.sk/clanok-z-titulky/hlavny-kontrolor-obce-3.htm>>.

²⁰⁰ *Organizační řád města Holic* [online]. holic.eu, 6 April, 2019 [cit. 6 September, 2019]. Available from <<https://www.holic.eu/urad-online/dokumenty-ke-stazeni/category/48-smernice-a-rady-uradu>>.

powers. Citizens of the given municipality elect representatives who perform the administration of the municipality for them. Whether the municipality acts in accordance with the law is supervised by the relevant provincial law. Municipal authorities can place their own structure, as needed to carry out their affairs. The municipality is always headed by the mayor and the municipal council or secretary. A municipality can be divided into separate departments, such as construction and finance. The construction department may include, for example, the construction of schools, sports halls, etc. For the specific scope of authority, I analyze the **Municipality of Perg**, see *Annex H*.

The municipality can be divided into individual departments. For the sake of a detailed comparison I analyze also the competencies of **municipalities in Slovakia. Těrchová**,²⁰¹ which is located in the Žilina region and in the Žilina district, was chosen for the analysis. Its leadership is the mayor of the municipality, his deputy, deputies of the Municipal council and the assembly. There is established the function of the Principal Controller and individual commissions through which a part of the municipality administration is performed. Territorial public administration is thus approached to the citizen, because it is thanks to the establishment of individual commissions that the administration within the given area is effectively performed.

When comparing the competencies of the municipalities of the SR, the CR and Austria, I came to the conclusion that in the latter two countries analyzed, the competences of municipalities lack the function of the establishment of the Principal Controller, as in Slovakia. The other competences entrusted to the municipal level, especially in the area of autonomous competence, are generally the same across the three countries.

The areas in which the legislation shows shortcomings and gaps will be defined in detail in the conclusion. Due to the detected state of territorial public administration in the selected states, however, I can already say that in my findings precisely because of the existence of interconnectedness of cooperation of states within the EU, states are not very different. By analyzing the specific competencies of the individual levels of the TSU in the three countries compared, I have come to the conclusion that the Austrian legislation shows more sophistication in comparison to the SR and the CR.

²⁰¹ See *Annex CH*.

4.6 Summary

The process of decentralization of government from the central level to TSU should primarily involve the transfer of RaO from the state to the municipalities and other territorial units. The principle of effectiveness plays an important role here, which means that the TSU is more knowledgeable about the local situation than the state itself and is therefore able to perform the administration more efficiently. In the analyzed countries, when performing PA, the state should provide services that are uniform throughout its territory, while the local government has the task of ensuring efficient and effective administration that is as close to the citizens as possible.

Before the comprehensive amendment of PA in their territory, which took place after 2000, the Czech and Slovak Republics showed rather centralization tendencies, as the states did not want to give up too many competences in areas they considered exclusive state administration matters. Compared to Austria, the nature of PA was almost different from the outset. The state level had no significant problem with the transfer of competencies to lower territorial units. Austria was well aware that only the gift of municipalities with the necessary agenda for the proper and personal administration of their territory could approach the citizen. This is the reason why high efficiency and satisfaction of citizens is achieved - with the system of PA, its organization and functioning, transparency.

From the above proven facts, it is clear that the number of entrusted competencies in each country is influenced by the size of the TSU, its form, and therefore financial capacity. The same applies without exception to other decentralization units, municipalities and cities. Within the local government there are categories of competence of the TSU and its units, which are almost always common / identical.

For all selected countries, this information was confirmed by the above analysis of the structures of the territorial units. These self-government powers include, for example, spatial planning, care for the public good, development of territorial self-governing units, providing conditions for the recreation of citizens - libraries, parks, public greenery, sports halls, playgrounds and similar facilities. Furthermore, social services and, for example, ensuring the collection of municipal waste. Each of the smallest municipalities is gifted by these powers and can exercise them on its territory. In the area of self-government we can confirm the hypothesis that it is really close to its citizens and even a really small municipality in the elected states is able to provide these services, at least in given circumstances and to the extent given by local needs of its territory. In the area of government, this claim may be questionable.

When deciding which legislator should be empowered to give to municipalities, cities, or rather to a higher level of district, respectively region/Länder, it is important to take into account many factors. The legislator must decide when the exercise of power conflicts with effective exercise. Whether it is at the municipal level, or if it is the interest of citizens in a wider area, it is therefore appropriate to either entrust the competence to the HTU or leave it at the state level.

Conclusion

The aim of my master thesis was to describe in a practical way how local public administration works at the local level in selected countries and to create a summary work which in detail depicts to what extent the territorial self-governing units in these countries are gifted with their competences. At the end of my thesis I therefore want to answer the question how differentiation in entrusted competences and their extent between states is caused. The main object of this research was to clarify how the concept of competence is understood in each of the three selected states. Austria, Czechia, and Slovakia shared an age-long common history within the Austro-Hungarian Empire, and thus also the same rule of law system. By processing legal texts, I tried to figure out whether such continuity between these three states still exists. The answer to this question is the interdependence of states within the EU in the form of so-called cross-border cooperation. Thanks to this, territorial units, especially border regions, which share common borders, cooperate in various areas and thus create modern forms of cooperation and improve mutual relations between states. As it was not the aim of my work to provide a comprehensive overview of the functioning of public administration and territorial public administration in a given territory, the theoretical part of the thesis only deals with the most important concepts that I use in this thesis. However, as has been shown, despite the manifold differences - socially, geographically and especially legally - the states analyzed display a broad variety of common features.

With the help of case law, the theoretical part of the thesis clarified which state has certain shortcomings in its legislation. The legal systems as such are not sufficiently elaborated, but in special laws we can still find certain parts for which it would be useful to supplement and amend the legislation. The main research question, which I set before the processing of this topic, was the extent of competence of territorial self-governing units in selected countries. The TSUs are endowed with a relatively wide range of competences, especially in the field of delegated powers entrusted to them by the state itself. In the field of autonomous competence, there have been significant changes over the years and the competence of the TSU has been constantly growing. The aim is for the public administration to be as close to the citizen as possible.²⁰²

Regarding the evaluation of the impact of the Charter of Local Self-Government on the legislative systems of selected states, Austrian legislation works with the Charter of Local Self-

²⁰² Cf. MATES, P. Rozšiřování samosprávy obcí. Právní rozhledy, nr. 15. 2008.

Government and EU regulations relatively openly. In the case of the CR, on the contrary, it is often referred to as a European dictation. The same is true for Slovakia, where the situation is not very different. In the context of the Charter of Local Self-Government and its provisions, the states agree and try to bring their “ideal situation” as close as possible to this “ideal state”. The aim is to harmonize public administration and the services it provides across the signatory states of the Charter.

The proposals *de lege ferenda*, which I recommend for reflection as an output of my analysis, are listed below. In my opinion, the first problematic area that arose after the analysis is the need to re-evaluate the existing delegated powers of state administration to local units in selected countries. In each of the selected countries, I suggest that a proposal be considered to evaluate the possibility of further transferring competencies from the state to the municipalities. The aim should be to extend powers to small municipalities. As it has been proven, this fact is controversial in the Austrian municipalities, in the CR, the ratio of competences entrusted to municipalities is also relatively broad, but in Slovakia in particular, more competencies could be transferred to the municipal level for more efficient and closer administration. The self-government in the SR, as it has been proven, does not have such a wide scope of competence as the TPA in the CR or in Austria.

Regarding the amendment of the legislation and its extension in areas that have an impact on the TPA, both in the CR and Slovakia, the aforementioned area of legislation is relatively fragmented. TPA deals with several laws and for an “ordinary” local level official, the legislation may be confusing and consequently may not be able to execute its entrusted agenda efficiently and in accordance with the law. As a result, there may be situations that are not even foreseen by the law itself and therefore very difficult to resolve, especially for the benefit of the TSU citizens. In the CR, despite the “fragmentation” of legislation into many sub-regulations, the system is relatively transparent and effective. The problematic phenomenon, especially after the establishment of the independent legal system of the CR, was insufficient education of officials, especially at the local legal level, which has changed dramatically in recent years and the qualifications are increasing and functions are “only” sufficiently educated and competent persons. In the given area of the Czech legal order, a reform has been carried out in recent years, and at least the leadership positions of officials of the TSU are now being filled with university-educated persons with sufficient experience.

As regards the Austrian legislation, it should be noted that, particularly in its constitution, we find a great deal of information on how the TPA is established, in what areas

it is entrusted with it, and which authorities it establishes. As a result, the legislation is much more transparent in comparison to Slovakia. As I dealt with this issue in detail, in the example of the Slovak Republic, I came to the conclusion that, despite the relatively recent comprehensive amendment to the Constitution of the SR, it would not be too much to think about the new amendment, at least in terms of the part of the fourth Constitution of the SR dealing with the local PA. At present, it does not have much interest in local government, let alone the specific entrusted or sovereign competencies. The detailed orientation and powers of the TPA can be found “only” in the laws.

In order to better clarify the legislation of the CR and especially Slovakia, I recommend the adoption of a clear legal regulation, which will deal with the original competence of the municipality and also the law on delegated state administration, which should fall within the municipal scope. Such regulations could make the legislation on the competence of municipal and regional authorities more transparent and would clearly distinguish the powers in the area of state administration and self-government. Currently, there are many laws in the SR and CR, which confer municipalities jurisdiction. Small municipalities may not even have a good overview of what they can and cannot do.

At the beginning of my master thesis, I set out two main hypotheses, with the fact that I can now answer the first of them unambiguously and positively, because the more competencies the TSU has, the closer it is to the citizen and therefore able to bring local level administration as close as possible to its citizen. For the second research question, my answer cannot be so unambiguous, because I could not clearly prove by elaboration of the work whether the Austrian system is more efficient than those of the Czech and Slovak republics. Even though it needs to be stated that the Austrian system at first glance works. However, the difference or better quality may be either be caused by the difference in the state system as such, by the territorial division of the country, or by a more detailed legislation.

By elaborating the text of my master thesis and above all by analyzing it, I wanted to achieve better clarity and information of the unprofessional public and practitioners who deal with the issue of TPA in European states or who are affected by it as citizens. In the practical examples I have included in my work, I have pointed out the shortcomings that not only the legislation of the selected states offers, therefore, the text of the thesis could serve as a basis for further research and motivation of, for example, university students who study fields that deal more closely with PA issues.

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Abstract

This master thesis aims to analyse whether the competences entrusted to the local level across European Union member states can be considered as equal. In the first section, a theoretical framework for clarifying and explaining the overall nature of public administration in Central Europe is provided.

Subsequently, in section two, an analysis of territorial public administration terminology in selected countries aims to shed light on the power of competences entrusted to local authorities and their self-government.

This analysis has proven the existence of manifold shortcomings in domestic legislation regarding the issue of territorial self-government. Based on the information obtained through this examination, I am able to provide suggestions for the future prevention of such public administration deficiencies.

Abstrakt

Tato diplomová práce si klade za cíl analyzovat, zda lze pravomoci svěřené místní úrovni napříč členskými státy Evropské unie považovat za rovnocenné. V první části je uveden teoretický rámec pro objasnění a vysvětlení celkové povahy veřejné správy ve střední Evropě.

Následně je v druhé části cílem analýzy terminologie územní veřejné správy ve vybraných zemích objasnit intenzitu pravomocí svěřených místním úřadům a jejich samosprávě.

Tato analýza prokázala existenci mnohonásobných nedostatků ve vnitrostátní legislativě, pokud jde o otázku územní samosprávy. Na základě informací získaných tímto šetřením mohu poskytnout návrhy na budoucí prevenci takových nedostatků veřejné správy.

Key words

Public administration, self-government, government, territorial self-administration, separate powers of community, delegated powers of community, Municipality, Region, villages, competences, scope, power, Act, Constitution, territorial breakdown, delegation of powers, deconcentration, delegation, central, regional, local government system, local authority management, comparison, regional legal status.

Klíčová slova

Veřejná správa, samospráva, státní správa, územní samospráva, samostatná a přenesená působnost, obec, kraj, region, vesnice, kompetence, působnost, pravomoc, zákon, ústava, územní členění, přenos pravomocí, dekoncentrace, delegace, centrální, regionální, místní systém vlády, správa místních orgánů, srovnání, právní postavení regionů.

Annex no. 1

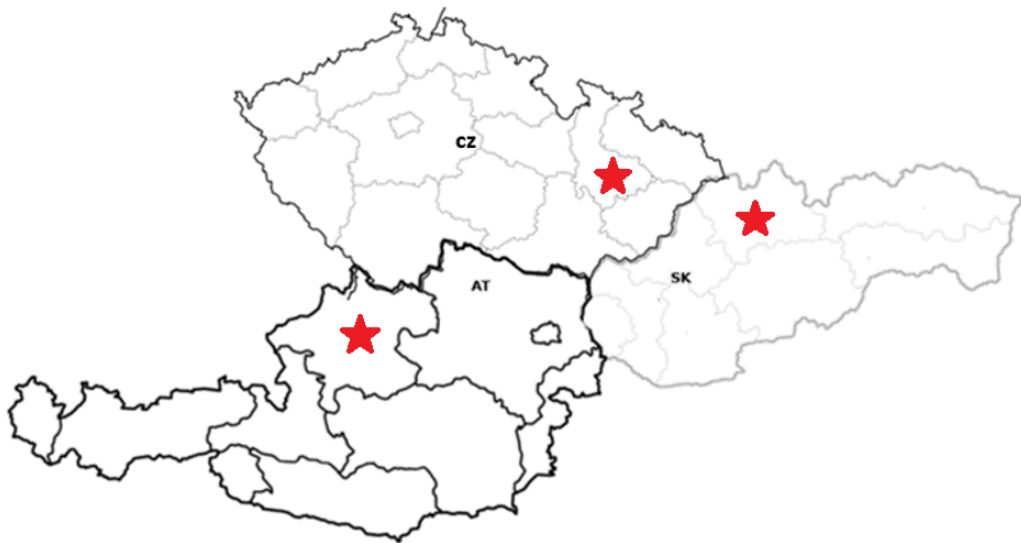
Picture processed according to the valid legal status of the division and the number of territorial self-governing units in individual states as of 14 May, 2019. Graphical representation of regions and countries in the Czech Republic, Slovak Republic and Austria.

Territorial breakdown of selected states:



The Regions selected for analysis are marked with an asterisk in the illustration below:

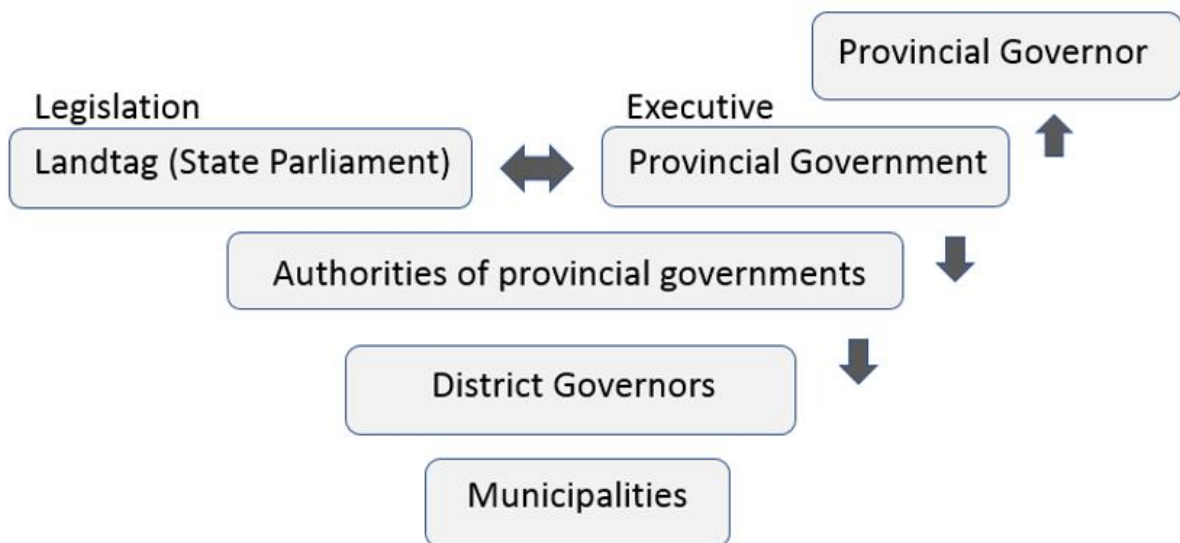
This master thesis deals with three regional unities in three neighbouring countries. Within the Republic of Austria, the *Land* Upper Austria will be analysed. While in the case of the Czech Republic, the Olomouc Region, and in Slovakia the Žilina Region will be looked at.



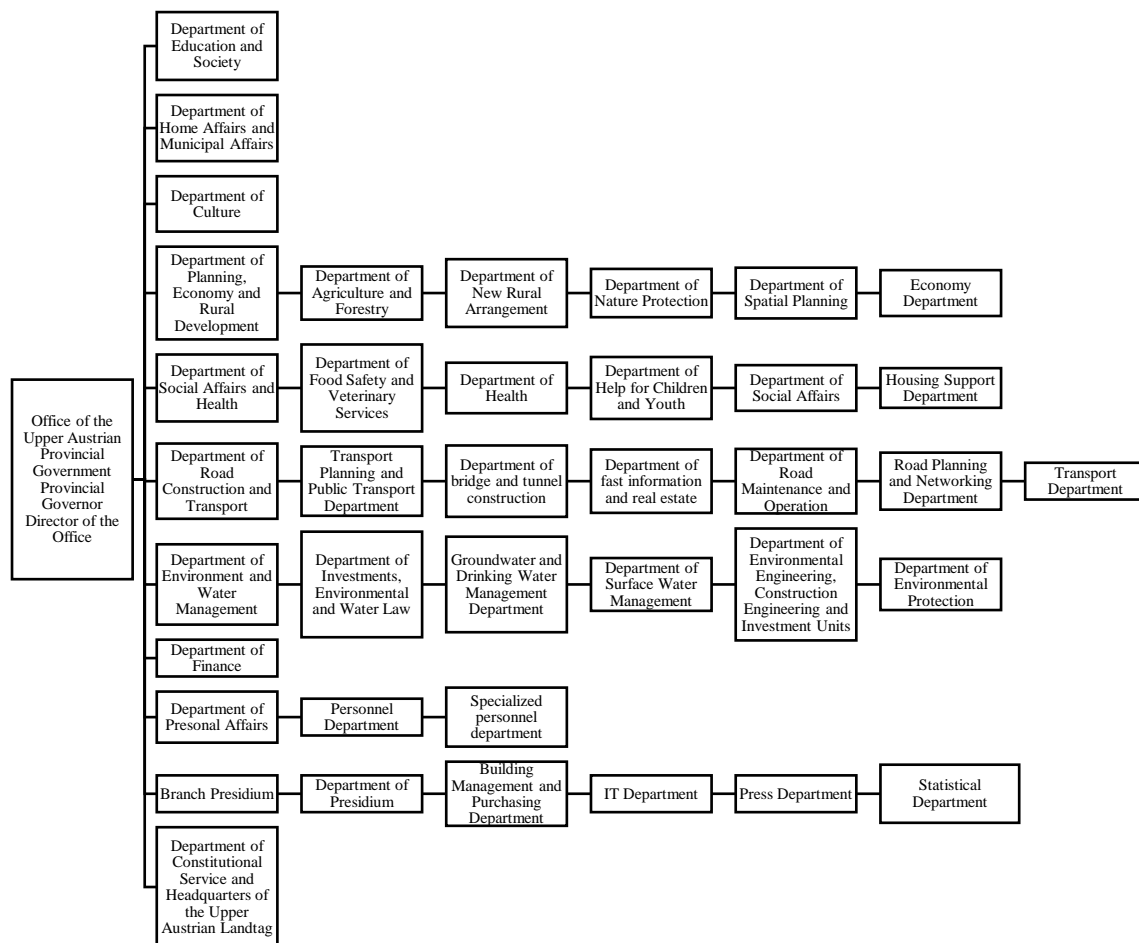
Annex no. 2

Scheme of the structure of functioning and hierarchy of public administration at the level of territorial units in the Republic of Austria. Prepared according to the valid legal status as of 18 May, 2019. Graphic form of processing. Source: own processing based on generally known information.

System of territorial public administration in Austrian Länder:

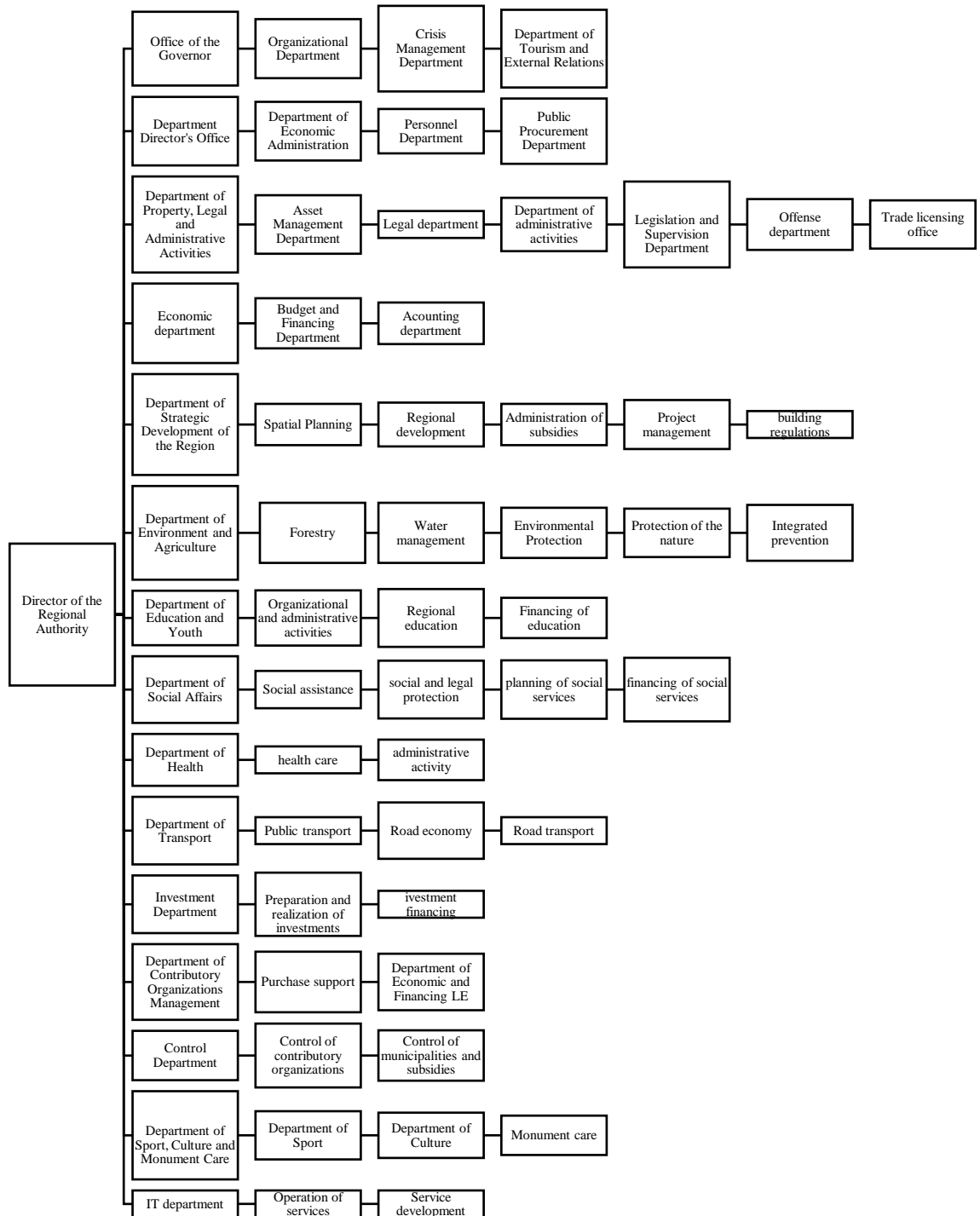


Annex A Organization chart of the Upper Austrian Provincial Government Office.²⁰³



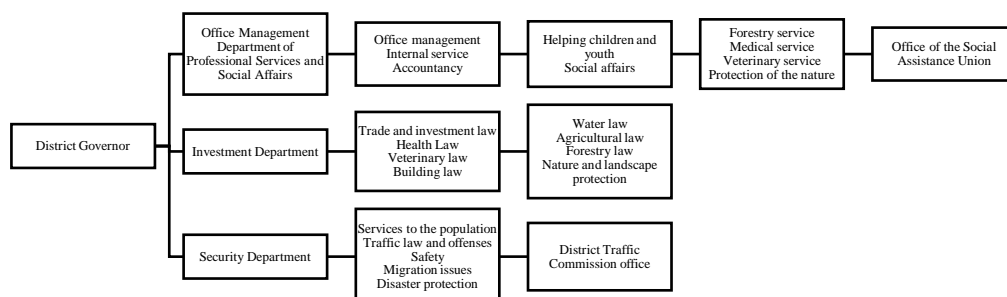
²⁰³ Cf. <https://eige.europa.eu/gender-mainstreaming/structures/austria/office-provincial-government-upper-austria-directorate-steering-committee-department-steering-committee-womens> and cf. REGIONALMANAGEMENT Österreich, Veřejná správa v Horním Rakousku, Jihočeském kraji a Bavorsku. rmooe.at. 2014, 1. edition. 40 pg.

Annex B Organization chart of the Regional Authority of the Olomouc Region²⁰⁴

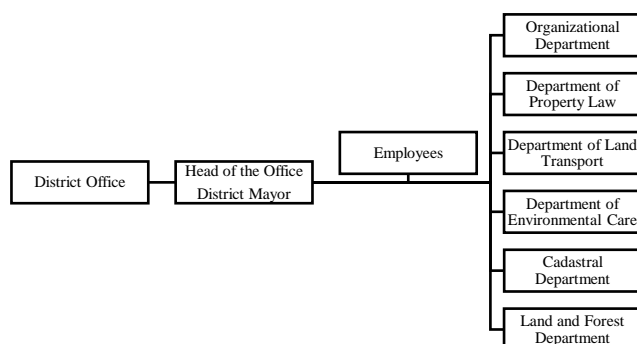


²⁰⁴ Cf. <https://www.kr-olomoucky.cz/3-organizacni-struktura-cl-302.html>

Annex C District Governorate Rohrbach²⁰⁵



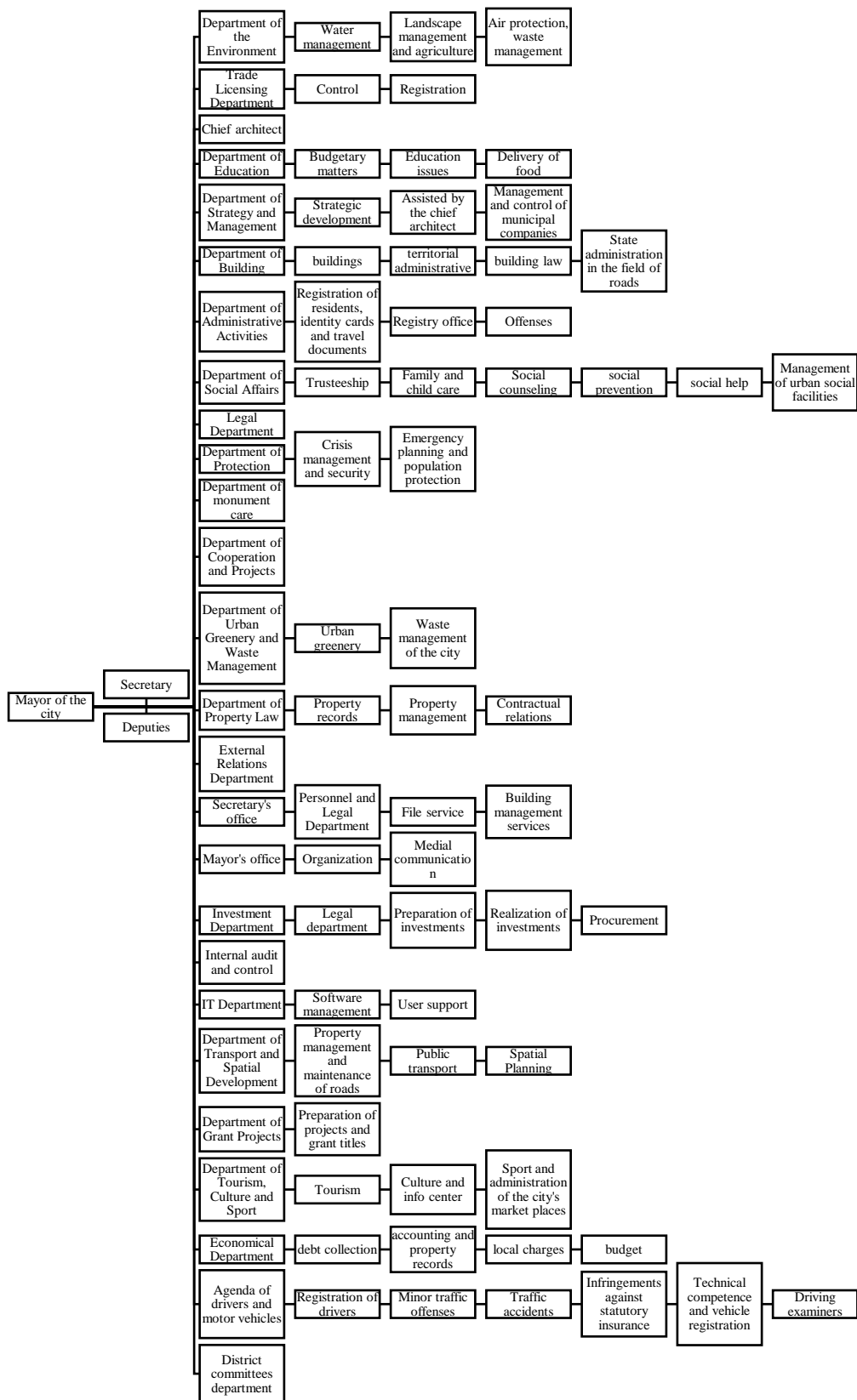
Annex D District Office Žilina²⁰⁶



²⁰⁵ Cf. REGIONALMANAGEMENT Österreich, Veřejná správa v Horním Rakousku, Jihočeském kraji a Bavorsku. rmoee.at. 2014, 1. edition. 40 pg.

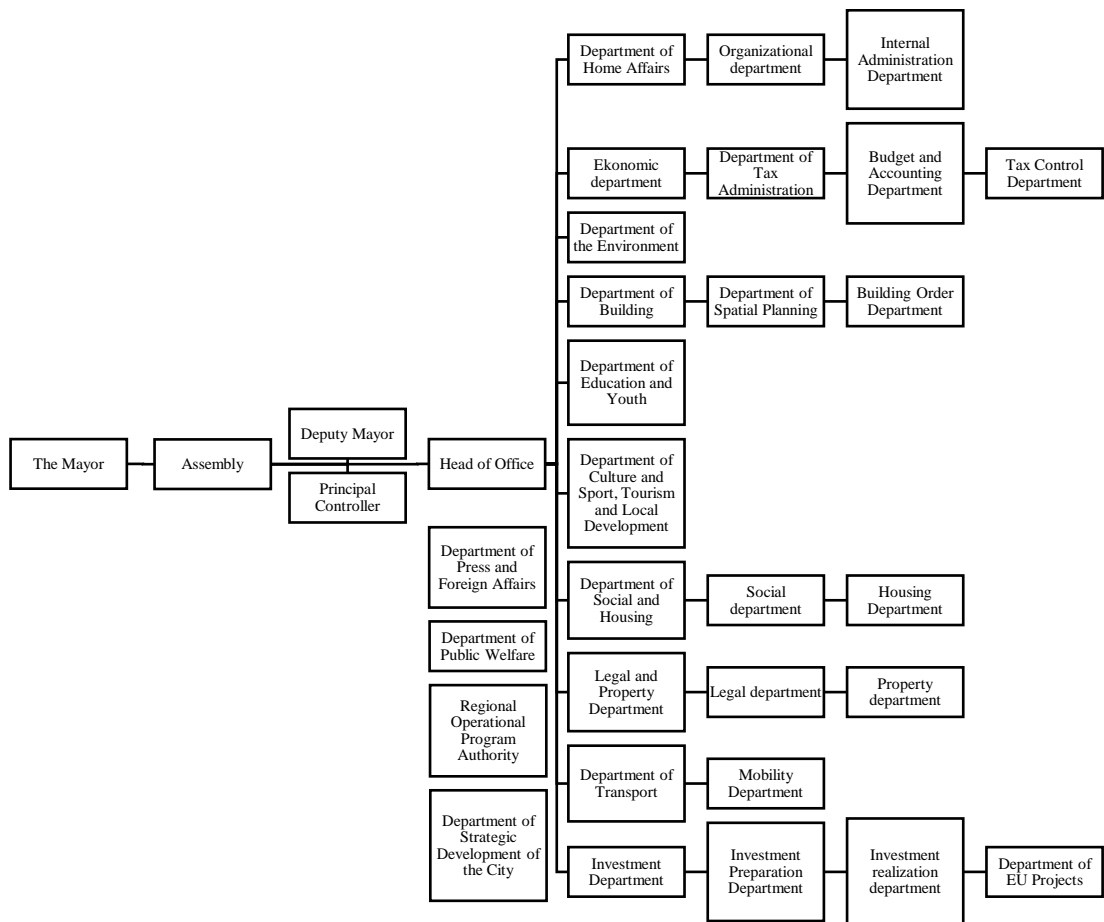
²⁰⁶ Cf. https://www.slovensko.sk/sk/institucie/_169f2f6e-091e-42e3-ba84-a26501030e28

Annex E Municipal Office of the City of Olomouc ²⁰⁷



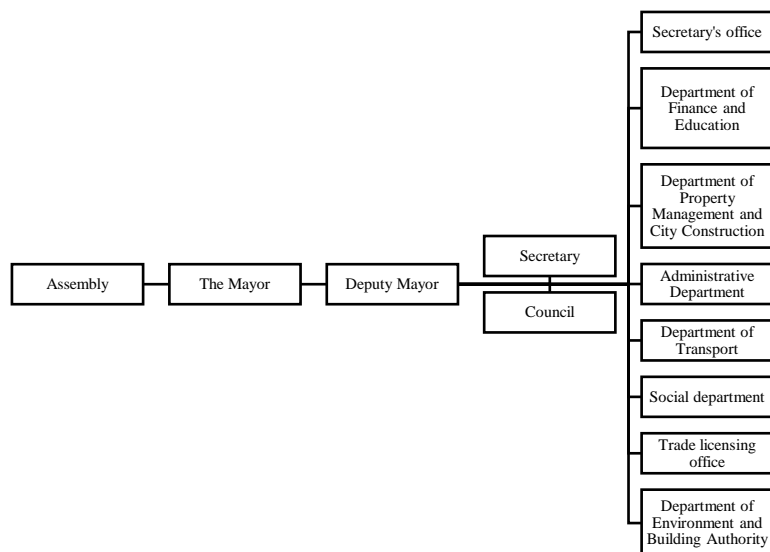
²⁰⁷ Cf. <http://www.olomouc.eu/magistrat/odbory-magistratu>

Annex F Organizational structure of the Žilina Municipal Office²⁰⁸



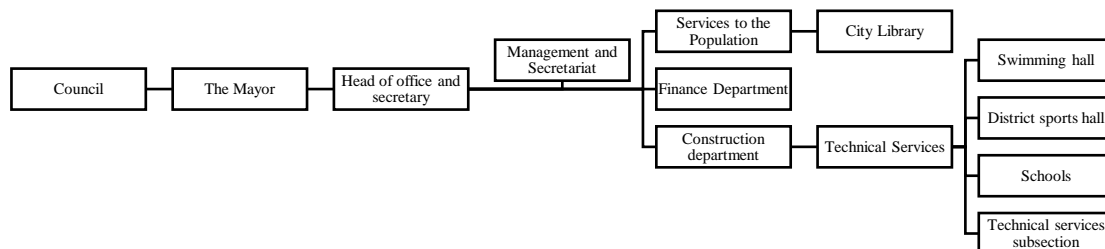
²⁰⁸Cf. http://www.zilina.sk/userfiles/2019/Sch%C3%A9ma%20organiza%C4%8Dnej%20%C5%A1trukt%C3%BAry%20Mestsk%C3%A9ho%20%C3%BAradu%20v%20%C5%BDiline,%20platn%C3%A1%20od%2001_06_2019.pdf

Annex G Organizational structure of the Municipal office Holice²⁰⁹

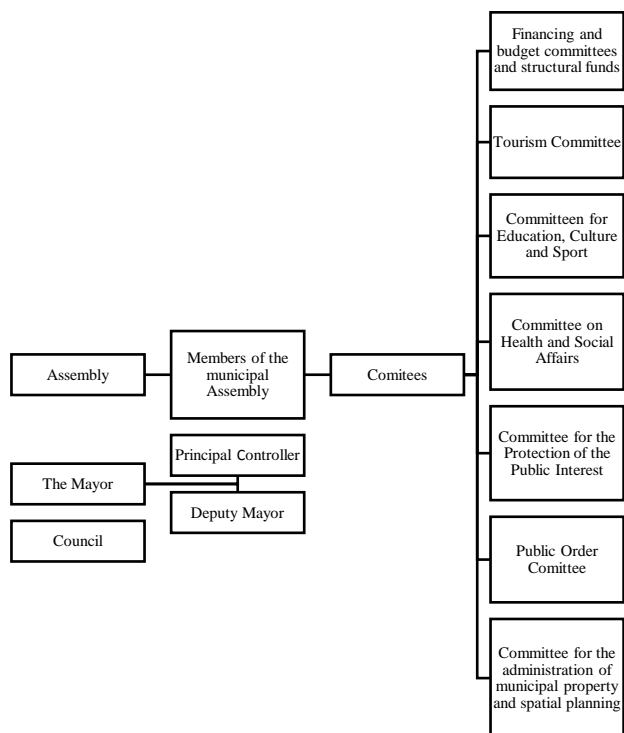


²⁰⁹ Cf. <https://www.holice.eu/aktuality-obcan/urad-mesta/organizacni-struktura.html>

Annex H Organizational structure of the municipal administration in Perg²¹⁰



²¹⁰ Cf. REGIONALMANAGEMENT Österreich, Veřejná správa v Horním Rakousku, Jihočeském kraji a Bavorsku. rmoee.at. 2014, 1. edition. 40 pg.



²¹¹ Cf. <https://www.terchova.sk/sluzby/obecne-organizacie>