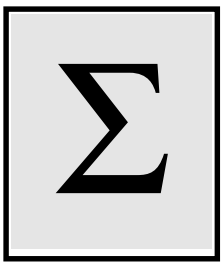

SIGMA

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SCOPE OF CIVIL SERVICES IN EUROPEAN COUNTRIES
Trends and Developments

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INTRODUCTION

Describing the scope of civil services could be seen as a simple task since it is usually defined in legislation. However, definitions in legislation of European countries differ considerably and the interpretation of these definitions has changed in the course of time. In any case, the civil service is basically a legal construction. For this reason, we can only basically rely on formal legal definitions of the scope of the civil service and from this attempt to perceive tendencies regarding new and old legal definitions and interpretations of boundaries for civil services in European countries.

In the case of Europe we need to divide countries into two groups because their respective situations are different. The first group is made up of countries with traditionally well-established professional civil services, which are relatively independent from politics. These countries are members of the EU and others situated in the so-called European Economic Area. The second group of countries are emerging from a period of communist rule, where no distinction was apparent between political party apparatuses, public administration and the idea of the State as an independent reality both from public administration and political party. Countries in this second group are striving to create genuine civil services in order to approximate their public administrations to those of the first group.

To adequately identify current trends in defining the limits of civil services in European countries I believe it is necessary to distinguish between these two groups of countries if only because each of them are confronted with different challenges and realities, obliging them to adopt different solutions. However, some concerns are common.

The major common concern is the effort required to define the core responsibilities of the State in an ever-changing world, where some are questioning the traditional legitimacy of the State in Europe and elsewhere. We also need to recognise that the effort required to define the core responsibilities of the State has been linked to the desire to reduce operating costs of a public administration that is deemed by many as costly, inefficient and burdensome. Questions about the role of the State abound in European countries and as yet no clear outcome to this debate is envisaged. The notion of governance, coming mainly from English speaking countries, which is supposed to cast some light on these questions has proved to have limitations. There is no common notion of governance. Other notions such as "good administration" prevail in non-English countries.

However, let us agree at least that the core role of the State in European democratic societies of today, with market economies, has two main aspects. The first is that the State provides fair and equal conditions and guarantees for personal rights of individuals, based on a range of generally well-accepted fundamental human rights. The second is that the State provides a reliable and predictable environment for the economic activities of individuals and legal entities. This is one reason why the rule of law becomes the cornerstone for good governance. Nobody seems to question these two aspects as inherent to the contemporary democratic State. What has been mainly questioned in recent times is a third role of the State, namely the State as provider (or producer) of welfare services. Critics of the welfare state advocate for the State a role closer to an enabling force than to a "providential force".

I will start my presentation by sharing with you a number of hypotheses and then see whether they can be confirmed throughout our ensuing discussion.

Working Hypotheses

1. The scope of the civil services in EU Member States has remained in general unchanged since World War II, with the exceptions of Italy and Denmark, which reduced such scope in 1993 and 1969 respectively, and Sweden, which enlarged the scope in mid 1970s.

2. New definitions of the "public sector" in the 1980s' and 1990s' have had no significant impact on redefining the scope of civil services in these countries. However, these definitions have narrowed the tasks and functions attributed to the State and provided some new interpretations about the boundaries of the civil service.

3. Academic and political attempts to redefine the "core responsibilities of the state" have not been conducive so far to changes in the scope of civil services in EU Member States, because the main purpose of these efforts has not been to redefine the role and scope of the civil service but to reduce its size and cost, and because civil service trade unions have strongly opposed such changes.

4. The formal approaches to delimit the scope of the civil service, based on legal definitions, are being challenged by the introduction of "labour-like" staffing arrangements into the public administrations. This might be eroding traditional values attached to the civil service.

5. In Eastern Europe, the efforts to identify the core responsibilities of the state are in general being translated into actual designs of civil services and lead to creation of civil services with a reduced scope in an attempt to combine stability with a not too expensive public administration. This combination is deemed as important in an all-encompassing transition process, which is taking place amid tough economic circumstances in such countries.

6. In Eastern Europe, three main criteria are combined to draw the boundaries of the civil services: a) holding state powers; b) qualifications needed; and c) separation between politics and administration. These criteria define which positions are civil service positions and distinguish them from non-civil service positions (political or auxiliary).

7. In Eastern Europe the foundations are being laid to build an administrative elite shaping a weberian-style bureaucracy under the authority of elected politicians. Mainly two factors are considered: a) the scope of the civil service reduced to the core public administration; b) the mix of elements of career (tenure, promotion, in-service training and stability) and position-based civil service systems (recruitment for specific jobs and possibility of termination of service out of legally established reasons other than discipline).

In order to test these hypotheses, I will make a brief review of the scope of civil services in EU Member States in the light of re-definitions which have occurred concerning the public sector and the role of the State, and see whether the boundaries of the civil service have been affected by such a redefinition. I will then describe some formal legal definitions of the civil services in some eastern European countries, where the traditional role of the State has dramatically changed in actual terms during the past ten years. By looking at Eastern Europe it is possible to better reflect on the criteria these countries are using to define the boundaries of their new civil services. This reflection may in turn lead to a better understanding of the assumptions that underlie western definitions of the scope of civil services and their tendencies to change, if any.

AN OVERVIEW OF THE SCOPE OF CIVIL SERVICES IN EU MEMBER STATES AND ITS REFORMS

The current situation

In the majority of EU countries, most public employees have the status of civil servants. This means that they are governed by a civil service law, which is a public law and not by the general labour laws, which are private or civil laws applicable to the relationships between workers and employers in the private sector. However, the importance of Trade Unions is worth noting as collective agreements govern wide aspects of the civil service relationships. This is the case for France, Spain, Portugal, Greece, Ireland, Netherlands, Belgium and Sweden. In Sweden the Civil Service Law is very minimalist, as it basically regulates the specific rights and duties and discipline measures whereas labour law and collective agreements regulate all other employment conditions. The United Kingdom is a particular case: civil servants have specific regulations conferring them the status of civil servants but a general law on civil service does not exist. In EU

countries, the rule is for the public employee to be a civil servant and the exception is to hold a labour contract with the state. This situation encompasses even local government employees (except in the U.K., where local government employees are subject to ordinary labour laws).

In a limited number of countries, only a portion of permanent government employees has the status of civil servants. In Germany, there is a typical distinction between civil servants, who are those employees holding public authority or state powers (around 40 % of public employees) and the rest, who are subject to the labour laws and specific collective agreements. The German constitutional law provides the criterion upon which to draw the borderline between *Beamte* (civil servants) and *Angestellte* (state employees) i.e. performing functions implying the exercise of public authority. Civil servants are regarded as the executing arms of the state, as the agents of public power, although they are able to serve whatever government of the day (political neutrality principle) and are accountable to the law. The concept of "exercise of public authority" is closely related to issues concerning the national interest, law and order, sovereignty of the state, law enforcement, and so forth. However, in general university professors and teachers at all levels, including those in primary education, and managers in local governments, are also civil servants. Non-civil servants are regarded as simply performing a profession in the public sector of the economy, or within the public services funded by the state budget. Austria and Luxembourg are close to the German model. Reforms in Denmark in 1969 and Italy in 1993 followed the German model. In Italy only a few thousand higher officials are now under the scope of the civil service law, the remainder being subject to labour law.

In this way it can be said that only Denmark (since its Law of 1969) and Italy (since its Law of February 1993) have experienced a significant redefinition by reducing the scope of their civil services during the past fifty years. In Sweden such redefinition led in 1976 to expansion of the scope of the civil service by including the majority of public employees, mainly due to a combination of a major labour law reform and trade unions' pressures.

Although Switzerland is not an EU Member, recent developments in this country are worth noting. The Law on the Personnel of the Confederation first adopted in 1927 is about to be extensively revised in order to repeal the tenure rights and salary schemes of civil servants and to introduce public law contracts and collective agreements to govern the relationships between civil servants and the state. It is perceived in practice as the abolition of the statute of the civil service. According to observers, Trade Unions have accepted the reform under the threat of a referendum that they would surely lose. The reform is due to enter into force on 1st January 2001.

The issue of the core responsibilities of the State

As aforementioned, the debate on the traditional legitimacy of the State, based on the idea of "state-providence", has been conducive to attempts to identify the very core responsibilities of the State with a view to reducing its size. Allow me then to put forward my own understanding of these core responsibilities, even if it is somewhat tautological. We could define the core responsibilities of the State as those able to be translated into functions that nobody but the State has sufficient legitimacy to carry out in democratic societies. This resembles what in the French administrative tradition is known as "*responsabilités régaliennes*", directly linked to the exercise of public power.

This quite simple definition does not go without saying. The unfolding of the welfare state has led to an extension of the notion of exercise of public power, traditionally understood only as national defence, law and order, to a broader understanding to shape a state that intrudes in every realm of life, both social and private. It is recognised today that in Europe the state has a right to direct policies aimed at social equalisation by promoting social equity, at economic development by setting up rules affecting a varied range of domains and so forth. This extension of the notion of public power is at the root of the criticism raised by those who criticise the legitimacy of the State in Europe. Others, however, think that this is a precious European heritage that deserves to be preserved, though adapted to new circumstances. In the end, no politician in Europe dares to delve too deeply into the welfare state. Reform policies have thus generally moved around the margins of the system.

In some EU States there is a trend to shifting responsibilities for "non-core" activities of the State (whatever it means) either towards the private sector by means of privatisation or contracting out or down to sub-national governments via decentralisation processes. Perhaps the introduction of the principle of subsidiarity in the Treaty of Maastricht has had some influence on this or perhaps it is the other way round. Whatever the case, these trends can be observed in most EU countries: Sweden, The Netherlands, Denmark, Italy, Spain, UK, Ireland, and France, among others. This phenomenon is also present in some eastern European countries as a result of the transition process itself, where privatisation in all countries and decentralisation in some of them, in particular in Poland, the Czech and Slovak Republics, have been, and still are, high in the political agenda of the last decade.

Whatever the case, the attempt to identify the core responsibilities of the State has only had a meagre impact, if any at all, on reducing the scope of civil services in western European countries. This attempt is having a stronger and more generalised impact on defining reduced scopes of the civil services in eastern European countries if only because they are now creating new civil service systems amidst difficult economic times and because they need criteria able to justify suitable policy choices in doing so.

New definitions of the public sector and public administration by the ECJ

a) Public sector

In EU Member States, the European Court of Justice has established the criteria for defining the public sector and therefore, indirectly, the notion of public administration. This has happened when the Court has been interpreting Treaty provisions concerning free economic competition and free movement of workers across the Union.

Effectively, although the Treaties do not challenge the ownership of enterprises, whether public or private, it is because of the Court's case law that most public services[1] in Member States have shifted from monopoly regimes to one of free enterprise and competition. Organisations and activities that once had to be public and were accorded preferential treatment have now been

[1] Perhaps it would be more appropriate to speak about "public utilities" in the English meaning. However, as in continental Europe the notion of "public services" embraces both and there is no strict equivalent to "public utilities", I will use the words "public services".

privatised, or have at least lost their preferential treatment. The Court has always been sure to stipulate that Community Law, in principle, does not preclude the creation of public enterprises or the preservation of the existing ones. Such enterprises must, however, comply with the rules of the Treaty, and in particular those concerning competition.

As a consequence, the relevant jurisprudence of the Court has spawned solutions leading to substantial reorganisations of the State intervention in the economy in member countries and to setting limits to the public production of goods and services. *Régie Renault* in France, *British Railways* in UK and *Deutsche Bundesbahn* and *Deutsche Telekom* in Germany, among others[2], could be regarded as cases in point. Special or exclusive rights for public enterprises can be justified only insofar as Community Law permits it (e.g. transport, gas, electricity, water and so on). A further requirement established by the ECJ is that public needs cannot be met more efficiently by private operators in a competitive regime, i.e. by interaction of supply and demand. A last requirement set up by the Court is that any restrictions to free competition must not go beyond what is strictly necessary in order to attain the desired public interest goal. In the domain of creating a genuine common market this jurisprudence of the Court has had an evident impact.

However, although the Court's impact in re-defining the scope of the public sector has been significant, it has had no visible impact up to now on redefining the scope of civil services of EU Member States. In fact, privatisation and corporatisation processes have concerned public companies and enterprises more than the core public administration[3].

b) Public administration

The Court's case law has put forward another line of jurisprudence by questioning precedent prevailing notions of public administration. Effectively, when interpreting Treaty provisions about free movement of workers, the Court has made a further twist in defining the notion of core public administration functions. In order to set limits to the tendency of a number of Member States to restrict the access of foreigners to jobs in their public sector, the Court has had to determine acceptable and unacceptable criteria in the light of the Treaty for so doing. Jobs in public administration must be open to any EU citizen in whichever Member State on an equal footing with its own citizens. The only justified exception refers to jobs entailing the exercise of public authority or directly linked to safeguarding the national interest or the sovereignty of the State.

In this way the Court has given a wide enforceability across the European Union to the German tradition whereby a distinction is made between functions of authority and functions of public service. The delivery of public services does not entail exercising public authority and therefore can be made by nationals of whichever EU Member State, whereas the exercise of public powers can be reserved to nationals of the concerned State. In other words, the exercise of public powers is the only monopoly of the State. However, it is up to each State to determine what functions are public authority functions. Roughly speaking, it is reckoned that 60 to 90 per cent of public service jobs in EU Member States are today open to citizens of all Member States, which means that only 10 to 40 per cent of the total jobs in public service are reserved for nationals. In other

[2] The majority of Telecommunications industries, formerly public, are now privatised.
[3] Pentti Tuominen "Impact of the Privatisation and Corporatisation Process on Public Sector Pay and Employment". Handout to the OECD Puma Activity Meeting on Human Resource Management. Paris, 25-26 June 1998.

words, only 10 to 40 per cent of public positions have something to do with the "exercise of public law powers and safeguarding the general interest of the state", to use the wording of the European Court of Justice (Case 149/1979, Commission vs. Belgium).

However, the jurisprudence of the Court has had up to now no direct impact on modifying the scope of civil services in EU Member States. Civil Services of Belgium, France, Greece, Ireland, The Netherlands, Portugal, Sweden, and Spain comprise the majority of public employees. The civil Service scope in Austria, Luxembourg, Italy, Germany or Denmark is confined, in principle, to those positions holding public authority. Contractual staff may co-exist with civil servants in both cases.

The legal formal approach

Professor J. Ziller[4] proposes two formal-legal elements defining the civil service. The first one is that civil servants are nominated unilaterally by the State on the basis of a public law (civil service statute) that defines all the basic terms of the relationships between the civil servant and the State. No contract is negotiated nor established between the civil servant and the State, but the Law defines the respective obligations and rights generated by such relationship. In the UK, a "contract" does exist, although it is a contract of adhesion in which virtually no room for negotiations exists. The second element is that civil servants are generally nominated for tenure lasting until the retirement age, though temporary civil servants can also be nominated and in some countries dismissal out of restructuring is possible. For example, in Germany, there are also "elected civil servants" for top management posts as for example, mayors. In Sweden civil servants can be dismissed at any time because of budget cutbacks. In Spain the so-called "employ civil servants" are political nominees dismissed when the appointing authority leaves office.

The criteria proposed by Ziller are well rooted in European legal traditions. They represent legal solutions adopted by European countries to ensure the creation of powerful modern nation-states. The modern democratic State was inconceivable without an extensive and powerful bureaucracy able to give stability and continuity, even "rationality", to the public sphere, as Tocqueville and Max Weber pointed out. The modern state needed a stable administrative elite able to safeguard the State itself as the expression supreme of the rationalisation of social life. A well-designed and established professional bureaucracy was essential to the creation of the modern state.

However, these assumptions are contradicted by facts in many European countries of today because of two trends. One is the introduction of managerial approaches and values (efficiency) in public administrations. Such managerial approaches do not go well with non-negotiated terms concerning objectives to be attained and rewards to strive for, and they do not combine well with security of tenure. The other trend is the introduction of temporary or contractual public employees for the sake of alleged flexibility and cost reducing targets. Both moves depart from the tradition of civil services based on stability, permanent tenure and ruled by law rather than by a contract. Let me provide some examples:

[4] Jacques Ziller: "Administrations Comparées. Les Systèmes Politico-Administratifs de l'Europe des Douze". Montchrestien, Paris, 1993.

Example # 1: In Germany specific contracts ("public law contracts") have been introduced in the course of privatisation of public services. This new legal category has basically been intended to allow for flexible recruitment, for individually negotiated contracts and for keeping managers above the civil service salary scales. Senior civil servants at ministries can be put in interim

retirement at any point in time due to lack of "political congeniality" with the minister without further justification, although they continue holding the status of civil servants[5]. Similar phenomena occur in France, Greece, Italy, Spain, and Portugal.

Example # 2: In France the Statute distinguishes between permanent full-time positions, reserved for "*titularisés*" civil servants and other employees (contractuals, auxiliaries, "vacataires", and workers) generally governed by "administrative contracts" to which public law and the jurisdiction of the administrative tribunals apply. The non-civil servants are mainly employed in the education and public health sectors (but also as police auxiliaries) and are in general less protected than statutory civil servants. Pressure from public service Unions in France is pushing the system to reduce the non-statutory types of employment under the banner of reducing precarious employment in the public administration[6].

Example # 3: Temporary employees in public administrations of Spain[7] (central, regional and local) represent today 20 % of the total existing public employment, whereas in 1996 they represented 17 %. If one takes into account only the new public employs created between 1996 and 2000, the percentage of temporary positions is 61.5 % with respect to all public positions created during these years.

In a relatively recent symposium[8] devoted to reflection on the impact of the introduction of non-career civil service, non-permanent, contractual employees in public administrations, it was noted that in OECD countries these arrangements have been on the rise during the past 15 years. Some saw this as a threat to the permanent civil service and to the values of professionalism, objectivity, political impartiality and consistency that were attached to it, whereas others considered that it is a positive step towards a more adaptive, competent, efficient and cheaper administration. In the course of that symposium one of the conclusions reached was that the main reasons for employing temporary non-career staff were always the same: search of flexibility for saving budget money and avoidance of administrative law rules deemed as being too rigid. It was also noted that this practice is conducive to weakening the rules of merit and represents a sort of return to nepotism and patronage, reintroduces problems with equity and equal access to public offices, and produces loss of knowledge, experience and loyalty to the general interest[9]. Finally and consequently, it is probable that predictability and legal certainty of administrative decisions and actions would be less guaranteed.

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[5] See Hans-Ulrich Derlien: "Unorthodox Employment in the German Public Service" in *International Review of Administrative Sciences*. Vol. 65 No 1 March 1999. Pages 13-23.

[6] See Jean-Michel Eymeri: "De la souplesse dans la rigidité: les corps administratifs à la française" in *Eipascope*. No. 2000/2, pages 6-17. See also Jean-Luc Bodiguel: "Non-career civil servants in France" in *International Review of Administrative Sciences*. Vol. 65 No.1, March 1999. Pages 55-70.

[7] According to a survey released in October 2000 by the Trade Union CCOO.

[8] Accounted for in *International Review of Administrative Sciences*. Volume 65 Number 1, March 1999.

[9] See Gow and Simard "Introduction" *in International Review of Administrative Sciences*. Volume 65 No 1, March 1999, pages 5-12.

In general, it can be said that the efforts undertaken in the 1980s' and 1990s' by many EU governments to define the core responsibilities of the State have generally been unrelated to a new definition of the scope of their civil services. However, the introduction of "labour-like" staffing arrangements has brought about some inconsistency with traditional legal arrangements on and understandings of civil service values.

Trends to reduce staff, but not to redefine the scope of civil services, in EU Member countries

Most EU Member countries have encountered a need to reduce public sector employment as a means to reduce public expenditure and cope with fiscal pressures. The ways and means of doing so have differed depending on the countries. In a survey conducted by the OECD[10] in 1996-1997, there appeared to be significant differences in design, implementation and priorities for public service adjustment in countries with career systems *vis-à-vis* countries having position-based public service systems. In career-based systems many categories of staff are protected against redundancies generated by programmes aimed at identifying surplus staff. Dismissal is seldom used and then it is primarily a disciplinary measure. It could be said that in countries with a mainly career-based public service the approach has been to curb public expenditure mainly through staffing and salary freezes across the board. This is the case of Austria, Belgium, Germany, France, Spain, Portugal, and Greece where reductions of staff mainly come from natural attrition (i.e. retirement or resignation). In these countries the main trend has been to use redeployment schemes to reduce staff, and salary and recruitment freezes to reduce costs[11].

In countries where a job-based public service prevails the general tendency has been to promote a sort of "management-oriented" or "results-oriented" public service with specific targets. In position-based systems there have been reductions of staff by redundancy, usually with severance pay and other benefits. This is the case for the UK[12], Netherlands, Sweden and Denmark. However, even in position-based systems there has also been a tendency to preserve jobs by using redeployment schemes or seeking alternative solutions to dismissal when facing large-scale redundancies, as, for example, early retirement schemes.

In summary, the pressure to define the core functions of the public administration has been in general mainly cost-cutting driven. The primary aim of that effort has not been to identify a new role for the State and to redefine the scope of the core civil service accordingly, but to reduce its size and cost. This can also explain why the legal definitions of the scope of the civil services have been generally untouched by such moves in most EU Member States.

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[10] OECD Public Management Service: "Public Sector Workforce Adjustments in OECD Countries. Interim Report". Paris, 1998.

[11] In Spain a so-called "replacement rate" has been established since 1996. It means that only one out of every four vacancies can be re-filled with new permanent civil servants. This has further contributed to increase the ratio of temporary employment.

[12] In UK the so-called "industrial arm of the civil service" was reduced in size by 80 % between 1979 and 1986. This was achieved partly by redefinitions, as certain classes of workers were no longer categorised as civil servants, but mainly through non-replacement of departing staff. For UK see Tonge, Jonathan "The New Civil Service", Baseline Books, Tisbury, 1999.

THE SCOPE OF THE CIVIL SERVICE CREATED NEW

Most central and eastern European countries have recently adopted laws on civil service and others are preparing draft laws. It is widely recognised that a permanent and stable professional civil service is necessary for performing the functions of the state. Few in Europe-based cultures challenge this presupposition. Nevertheless an array of complex issues arise when attempting to transpose this assumption into practical legal regulations on civil service. This is of a particular importance in those countries where labour law regulated all employment and no distinction was operational between party, administration and state. That is to say that in these countries the current endeavour consists of building new civil services while demolishing old understandings. The question about how far the permanent civil service should reach is of utmost relevance and is frequently raised.

In Eastern Europe it is now a widely accepted[13] idea that every government needs a permanent public administration in order to implement its policies. The public administration has to be permanent in order to promote and keep the institutional knowledge and professionalism needed to carry out complex policy issues and law enforcement in modern societies. As the main component of the public administration is personnel, defining the size of the civil service becomes the nub of the problem. An important challenge is thus to decide on the scope of the civil service needed to execute government policies, exercise public authority, and manage public funds without promoting an expensive public administration.

An overview of legal solutions adopted by eastern European countries

As already shown EU Member countries have adopted different solutions, usually rooted in the history of their respective states. There are countries whose civil services encompass every public employee as it is considered that every public employee is part of the executing machinery of the state (broad concept of civil service), whereas other countries have restricted the concept of civil service to the so-called “core public administration” (restricted concept of civil service).

In central and eastern European countries a dominant tendency is observable. Most countries are opting for a restricted notion of civil service whereby civil servants will be only those holding public authority or directly involved in policy making, law drafting or implementation of legislation. The main policy reason beneath this choice seems to be the processes of privatisation and restructuring of their public sectors. It is understood that many activities formerly carried out by the State or local governments are to be carried out in the future by the private sector. Downsizing or privatising former components of the public sector are thought to be easier if employees in non-core public administration activities are under labour law contracts.

In Hungary only a few of the public employees are considered as civil servants according to the Law of 1992. Civil servants are those officials exercising managerial, decision-making, legislative or implementation functions or entrusted with particularly important tasks within the public administration bodies. They represent 12 per cent of all public employees. In addition to the civil servants there are public servants covered by a separate law on public servants (teachers, doctors, and public service staff).

[13] The pressure to join the EU has had an impact on that idea being accepted.

In Estonia, the criterion adopted by the Civil Service Law of 1995 is that of the exercise of public authority. Only top officials are deemed to hold public authority and therefore considered as civil servants. Support staff and temporary employees are governed by the labour laws. Certain categories of public employees who are usually considered as civil servants elsewhere (police, border guards, and prison administrators) are regulated by specific laws.

In Latvia, the Law on "State Civil Service" passed in September 2000 and scheduled to enter into force on 1 January 2001 contains a restricted notion of the civil service. The civil service is divided into two categories: general civil service and specialised civil service. The general civil service includes those positions located at the State Chancellery, ministries and public administration institutions subordinated to a ministry or to the government that develop strategies or policies, co-ordinate sectoral activities, assign or control financial resources, prepare draft legislation, control implementation of legislation, issue administrative acts or prepare or adopt decisions affecting the rights of individuals. This notion combines the criteria of function performed and the "*locus"* where the function is performed. The specialised civil service includes those positions that perform the same above mentioned functions in the Diplomatic and Consular service, the Police, Border Guards, Prison service, and State fire-fighting and rescue service.

In Lithuania, the Law on "Public Service" passed in July 1999 distinguishes between civil servants, statutory civil servants and public employees. Civil servants are those who in state or local governments institutions or agencies perform public administration functions as defined in legislation. These functions refer to executive activities intended to implement administrative acts and administering public services. Statutory civil servants are those with a specific statute (customs officers, police, controllers, diplomats, and civil employees in the national defence service). Public employees are those employed in State or municipal institutions or agencies and who deliver services to the public or perform auxiliary functions.

In Poland, the Law on Civil Service of December 1998 (in force since July 1999) distinguishes between civil servants and civil service employees. Civil servants are those nominated to a civil service position by following the procedures specified in such law. Civil service employees are those contracted through an employment contract on the basis of the principles established in the law on civil service. Civil Service positions are located at the Chancellery of the Prime Minister, Offices of Ministers and Chairmen of Committees who are members of the Council of Ministers and offices of central agencies of Government administration; prefect offices and other offices which constitute structures supporting local agencies of Government administration, subordinate to Ministers or central Government administration; Government Centre for Strategic Studies; headquarters, inspection offices and other organisational units which compose structures in support of heads of unified services at prefectures, inspections and guards as well as heads of *poviat* (regional) services, inspections and guards, unless relevant laws state otherwise. The Foreign Service is regulated by a separate Law.

In Bulgaria, the Law on Civil Service of 1999 defines the civil servant as a person who has a paid civil service job within the administration and to whom a special law gives a status of a civil servant while observing the requirements of such Law. The Council of Ministers has the responsibility for adopting a Unified Classifier of civil service positions. The Law excludes those

positions that are politically appointed for political cabinets, and those positions of a technical nature (auxiliary positions) from the scope of the civil service.

In Romania, the Law on Civil Service of 1999 chooses a broad scope for the civil service by defining those nominated for a permanent public position in the state, county, town or village as civil servants. Public positions are those performing public functions.

In Albania, the Law on Civil Service of 1999 (article 2-1) considers as civil servants those employees at institutions of central or local public administration who exercise public authority in functions of a managerial, organizational, supervisory or implementing nature as established in Article 11 of this law. This article classifies civil service positions into the following: civil servant of high-level management; civil servant of medium-level management; civil servant of low-level management; and civil servant of the implementing level (specialists).

The draft civil service law in preparation in the Former Yugoslav Republic of Macedonia combines the criteria of exercise of authority, professional qualifications and the employing institution, in order to be considered as a civil servant. Civil servants would be those exercising managerial authority, "professional civil servants" and "professional administrative civil servants". Managerial and professional civil servants must hold a university degree. Professional administrative civil servants must hold a secondary education degree. Civil servants are only those managerial, professional, or professional administrative civil servants employed in the Parliament, the President's Office, the Prime Minister's Office, ministries, the courts, the Court's Council, the Public Prosecutor's Office, the Constitutional Court, and prison administrations.

The draft Law on Civil Service being prepared for the State (common institutions) of Bosnia and Herzegovina defines the civil servant as an individual appointed to a civil service position through an administrative act in accordance with the law on Civil Service. The law defines civil service positions: senior executive managers, assistant-ministers, executive managers, senior advisers and officials and specialists. All these positions are within the scope of the civil service if they are located at the Council of Ministers or ministries.

In Slovenia, a draft law on civil service has been under preparation for a long period of time. One of the stumbling blocks for acceptance by the government has been that the draft proposed too broad a scope for the civil service. Work is ongoing on a new draft with a narrower scope for the civil service.

Criteria used to delimit the scope of civil services in Eastern Europe

As it can be seen, central and eastern European countries have made (and are still making) a considerable effort in defining the notion of core public administration and the functions attached to it. The reason is that, in general, they have been seeking a restricted concept of civil service, which is considered as more pertinent in an overarching transition process, co-existing with overall economic restructuring. It is also true that up to now Trade Unions have had no influence in defining the scope of civil services. Trade Unions in these countries have, in general, been in disrepute since they have been perceived as institutions which are over-identified with the old political regimes and since new Trade Unions are still weak. New emerging Unions could provoke change in the situation in the future.

To define the core tasks of public administration and therefore a restricted concept of the civil service, several criteria are being used:

- The first criterion, also used by the European Court of Justice, is that of those holding state powers or public authority safeguarding the sovereignty of the state or affecting fundamental rights of citizens. This idea of exercising public authority has become the basic criterion for drawing the dividing line between civil servants and the rest of public employees in most countries.

- The second criterion refers to the qualifications needed to exercise such public authority. In other words, the exercise of public authority on a professional and permanent basis has to be made by persons sufficiently educated and qualified in accordance with the position's requirements. Therefore, persons occupying the higher positions in the administrative hierarchy must hold sufficient academic credentials and qualifications so they are capable of guaranteeing a minimal *a priori* standard of reliability and performance. These qualifications, on the other hand, are the foundation of the merit system, which is the legitimate basis of a professional public administration.

- The third criterion refers to the fact that the top of the public administration in a democracy is occupied by politicians, i.e. persons appointed as a result of free political elections to carry out policy-making and give direction to the administration. It means too that a dividing line must also be drawn between politics and administration, as the underlying constitutional legitimacy for politicians is different from that of civil servants. This dividing line between politics and administration is necessary because if too high a degree of mutual encroachment appears, the legitimacy of both sides is adversely affected in the end.

Combining these criteria is leading to a concept of civil service restricted to the core public administration and also serves as a basis for designing the vertical as well as the horizontal scope of the civil service. Thus the core public administration is being defined as *the area or areas of public administration filled by positions connected to the exercise of public authority and occupied, on a professional and permanent basis, by persons sufficiently qualified and recruited through a merit system scheme that includes competition*. Persons holding such positions would constitute the members of the civil service.

Once this definition of the core public administration is accepted, then the next step is to identify which positions are to be occupied by civil servants. Eastern European countries have been seeking inspiration and taken stock from experience of European Union Member States, where, as mentioned above, figures roughly show that this restricted scope of the civil service accounts for between 10 and 40 per cent of all public employees.

By combining the above mentioned criteria, central and eastern European countries are making policy choices in order to define the scope of their civil services, that is, to define the upper and lower lines delimiting the civil service and to consider other bodies as civil servants with special statutes.

First, *the upper line*, that is, to decide where to draw the dividing line between politics and administration. Clearly politicians are members of parliament, members of government and members of local government councils. However, positions that could be in either the realm of politics or the realm of the administration are abundant. The criteria for deciding to include them within the scope of permanent civil service or within the domain of politics tends to be based upon an assessment of whether the actual necessity exists or not for these positions to be freely appointed and dismissed for political reasons, particularly after political elections. The concrete application of these criteria is heavily dependent on the political consensus that the political actors in a given country are able to build around this issue.

Second, *the lower line*. In other words, to compose a list of positions in ministries or other institutions, which clearly hold state powers and to assign them the status of civil servants. These positions will usually require academic preparation to the level of a university degree and will be high in the administrative hierarchy, such as director-generals, directors, and department heads, senior or junior specialists. These positions can be considered as the core public administration of the state, performing functions that no other institution outside the state can perform, and also representing the minimal administration needed to carry out the responsibilities of the state at an acceptable level of stability and professionalism. The other positions in ministries or in other institutions can be filled by public employees subject to labour laws, as these support positions do not need the same degree of stability as the higher ones.

Special consideration is given to the police force, border guards, prison officers, tax officers and so forth. The lower levels in the hierarchy of these institutions do not usually need to be credited with university degrees. But they do hold state powers. A solution being used is to allot them the status of civil servants with a special statute based on common civil service principles outlined in a general civil service law. Roughly the same solution applies to the diplomatic corps.

The judiciary is generally considered to be either a part of the civil service, but regulated by specific laws or statutes, or no part of the civil service at all. Usually only basic principles of the general law on civil service apply to the judiciary.

In general, and as far as the horizontal scope of the civil service is concerned, eastern European countries tend to put institutions delivering public services, basically education and health care, out of the scope of the civil service, although in some cases managerial positions at such institutions are considered also as civil service positions.

Although the majority of eastern European countries take these criteria into consideration, the scope of their civil services is not uniform. In some eastern European countries the civil service vertically embraces the administrative hierarchy in ministries, from state secretary to heads of departments, senior and junior specialists. Other countries place state secretaries in the realm of politics, as they are political appointees with the same length of tenure as their political superiors, and are therefore out of the merit system. Other countries are creating specific bodies of professional public managers, with a civil service status but with specific requirements for recruitment and termination of the civil service relationship. The majority of countries place lower and auxiliary positions out of the civil service and therefore under labour law arrangements.

CONCLUSION

In view of the facts analysed above, the conclusion can be reached that in general the scope of the civil services in Western Europe has remained rather unchanged, with the exceptions on the one hand of Italy, Denmark and Switzerland, which have reduced the scope of their civil services, and on the other hand of Sweden, which has enlarged such a scope, while at the same time harmonising employment conditions with the private sector. The tendency in EU Countries towards stability concerning the boundaries of the civil services has been also the result of pressure by civil service trade unions. Governments have generally responded to this pressure by introducing temporality and precariousness in public administration.

In EU countries, reductions of the horizontal scope of the civil services can be seen. This is a consequence of re-definitions of the public sector. In countries where public enterprises were formerly staffed by civil servants, privatisation has led to civil servants being either reclassified into labour employees or put under transitional schemes meant to last until their retirement age.

In Eastern Europe, the tendency is to establish civil services with a scope reduced to those positions holding public authority in a broad sense. The impact of Trade Unions in defining the scope of civil services has been insignificant so far.