



SIGMA

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ASSESSMENT

SERBIA

2010

CIVIL SERVICE AND ADMINISTRATIVE LAW

Main Developments since the Last Assessment

This assessment report describes in summary form the development of the public service and the general administrative law framework in Serbia during the period between May 2009 and April 2010. Both of these areas are complementary and both are equally important for a democratic state in which the public administration is based on the rule of law.

A new Law on the National Assembly came into force on 2 March 2010. *Inter alia*, this law specifies the constitutional right and obligation of the National Assembly to supervise and control the government, which includes parliamentary control of the public administration.

A new Law on Administrative Disputes, adopted in December 2009, has established a completely new system for the administrative judiciary. Previously, the administrative judiciary consisted of the administrative department of the Supreme Court and administrative departments of district courts. The Administrative Court started its work on 1 January 2010 with 32 judges; it inherited about 10,000 unresolved cases.

On 1 January 2010 a new Law on Prohibition of Discrimination also came into effect. This law regulates the general prohibition of discrimination, forms and cases of discrimination, as well as means of protection against discrimination. The law introduced the institution of Commissioner for the Protection of Equality as an independent state body. The National Assembly elected the first Commissioner at the beginning of May 2010, following a transparent and lively public debate on the three candidates who had applied for this position.

The task of the Commissioner for the Protection of Equality is to receive and review complaints from citizens who have been the alleged victims of discriminatory treatment. He/she also has the tasks of informing citizens of their rights and obligations, conducting reconciliations, filing complaints for violation of the prohibition to discriminate, filing of criminal and misdemeanour charges, and informing the public of discriminatory actions. This institution provides citizens who have been discriminated against with another form of legal protection in addition to the regular courts.

The secretariat of the Ombudsman comprised in December 2009 nearly 60 staff members. In 2009, more than 1700 written complaints were submitted to the Ombudsman. The vast majority of these cases were related to economic, social and cultural rights, as well as to principles of "good administration"; only a small number of cases concerned violations of civil or political rights.

The Office of the Commissioner for Information of Public Importance and Personal Data Protection has been operational with these double functions since 1 January 2009. In December 2009 it was staffed by only 11 of the envisaged 69 civil servants. In its first year of operation, the Office had about 2800 cases in process, 90% of which were resolved in favour of the requesters. The largest majority of cases dealt with access to public information, with very few complaints related to data protection.

During the assessment period moderate changes have occurred in the civil service regulatory framework and practice. Among the December 2009 amendments to the Civil Service Law (CSL) were those related to recruitment and selection procedures for "executorial" civil service posts and to the performance appraisal system. Article 30 of the CSL now requires a performance appraisal of civil servants every three months. This amendment imposes for the future a significant administrative burden on managers, who may not be willing to comply with such demanding and time-consuming performance appraisal requirements. In 2009 performance appraisal was carried out in the majority of institutions. Usually, a high proportion of staff is awarded the highest performance marks, which significantly reduces the effectiveness of the performance appraisal as a human resources management instrument for motivating staff.

The government has not fulfilled its legal obligation, in accordance with the CSL, to complete the process of appointment of senior civil service personnel. This process has been postponed – for the third time since the adoption of the CSL – until the end of 2010.

In 2009 the number of employees in the administration was decreased by about 7% in order to reduce the wage bill and to mitigate the effects of the economic crisis, in accordance with the IMF conditionality.

On 21 January 2010, the government adopted the fourth General Programme of Professional Development for Civil Servants¹ prepared by the Human Resources Management Service (HRMS), which is a key institution responsible for civil service training. This programme is quite a comprehensive document, encompassing 93 different topics that are classified in 11 thematic areas. The thematic areas of the programme are reform-oriented, encompassing a wide range of topics, including senior management development and EU integration.

Main Characteristics

The government system in Serbia is based on the rule of law (article 3 of the 2006 Constitution) and on the division of power into legislative, executive and judiciary branches; the relation between the three branches of power is based on balance and mutual control (article 4). Accordingly, control of the government should be one of the constitutional tasks of parliament. However, the constitutional reality in Serbia is the predominant and omnipotent role of the executive branch, which directly or indirectly controls the other two branches (legislative and judiciary). This situation is due to the fact that the Constitution virtually puts the mandates of representatives at the disposal of their political parties. The mandates of members of parliament can be rescinded at any time by the parties to which they belong by various means, including the practice of “blank letters of resignation”. Thus the political situation in Serbia could best be described as a partocracy, i.e. the direct rule of political parties.

Ministries and administrative bodies are in charge of drafting legislation (laws, secondary legislation) on matters that fall in their respective areas of responsibility. As underlined in previous Sigma assessment reports, the poor quality of legislation remains a general problem. The main deficiencies are the tendency to overregulate, contradictory provisions, poor systematic order, and incomprehensibility due to overly bureaucratic or technical language. The reasons for the poor quality of legislation are diverse. However, first and foremost, it is obvious that law-drafting capacity in ministries and administrative bodies is insufficient in terms of both the quantity and quality of human resources. The time pressure imposed on law-drafting bodies from outside also explains the frequently unsatisfactory quality of the products. Finally, the process of law-drafting is impeded by the lack of co-ordination between the various bodies and ministries that are involved in drafting laws and by the fact that the National Assembly is not in a position to establish a strong secretariat with responsibility for examining draft laws.

The new Law on Administrative Disputes is one example of how time pressure directly obstructs good results in a legislative process. This particular piece of legislation, which for some of the “old” EU Member States had required several years to elaborate, had to be drafted in Serbia within a few months. Of course the end-product was unsatisfactory. It is true that the new law has already resulted in a remarkable level of administrative justice, but it will nevertheless require a thorough review in order to bring the administrative court system completely in line with EU standards.

The current Law on General Administrative Procedures is still rooted in the old Austrian tradition that had inspired the former Yugoslav administrative law. It reflects the authoritarian understanding of the public administration of the past, does not provide complete legal protection against administrative decisions, sets out unnecessarily complicated and lengthy procedures, and enters into regulatory details that would be better dealt with through secondary legislation or internal administrative rules. In addition, several issues that are important for a modern administration are not regulated by law.

The internal organisation of administrative bodies needs to be rethought to enable the improved delegation of decision-making competence. The current situation, where almost all decisions are taken by the top of an administrative body (e.g. minister), is not only a major reason for the inefficient internal organisation of

¹ General Programme of Professional Development for Civil Servants in the State Administration Authorities and Services of the Government for 2010 – available at www.suk.gov.rs

administrative bodies, but also has an undesirable impact on the quality of administrative decisions and the accountability of civil servants.

Although the HRMS' operations can be assessed as satisfactory, it is questionable whether this body – due to its weak legal status as a central government institution – has the necessary power to carry out its statutory tasks. Within the institutional hierarchy of the government system, central administrative bodies rank on a lower level than ministries. Hence the head of the HRMS is not a member of the government. Moreover, the HRMS is not in charge of civil service policy development and the interpretation of legislation, since these responsibilities are reserved only for ministries. As a result, the HRMS plays mainly a technical role and has little influence on the development of policy guidelines for the human resources management system.

Reform Capacity

The Serbian Government's will to determine political direction and set priorities for public administration reform does not appear to be very strong. The Governmental Council for Public Administration Reform (PAR), which is comprised of key ministers and headed by the Prime Minister, meets quite rarely and does not make substantive decisions on PAR. The Ministry of Public Administration, which has the mandate to deal with strategic PAR issues, does not provide comprehensive leadership and is primarily concerned with local government development. Although the government did adopt the updated Action Plan for the implementation of the PAR Strategy in July 2009, it seems that the elaboration of this Action Plan was more a donor-driven exercise than a genuine initiative of the Serbian public administration.

However, in spite of the overall lack of a strategic view on PAR, individual members of the government and administrative bodies do demonstrate commitment to the reform process in their portfolios, which make it possible to pursue specific PAR priorities on a case-by-case basis. Such an approach is often the most efficient and productive in practice. A number of institutions in the administration have a good understanding of the need for PAR, coupled with the commitment and reasonable capacity to absorb PAR assistance projects. The most efficient and plausible approach to furthering the PAR agenda in a sustainable manner seems to be through building on the capacity and commitment that already exist in those institutions interested in PAR. While this approach may appear to lack "strategic glamour", it has a good chance of making a concrete contribution to PAR in Serbia in the context of the current stage of development and commitment to reform.