



SIGMA

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PUBLIC SERVICE

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Introduction

Sigma produced an assessment report on the public service in Turkey in 2005, which was updated in 2006; no update was provided in 2007. This report examines the developments in this area between August 2006 and May 2008, and it should therefore be read in conjunction with the preceding reports.

Main Features of the Assessment Period

The years 2007 and 2008 have been dominated by serious political confrontation, leading to a sharper polarisation of politics in Turkey, which has shifted its attention away from public administration and civil service reform, despite the fact that the 2007 Accession Partnership with the EU states as a short-term priority that the country should “pursue reform of public administration and personnel policy in order to ensure greater efficiency, accountability and transparency”¹.

Public Service Reform

No changes can be observed in the public service legal framework. Civil service reform seems to have a low profile on the policy agenda of the government. Nevertheless, the drafting of a new civil service law to partially repeal Law 657 still seems to be making discreet, slow progress under the leadership of the Prime Ministry, with the participation of the State Personnel Presidency and the Ministry of Finance; Sigma already provided comments on this draft law in April 2006, but the latest version has not been available to Sigma. According to the State Personnel Presidency, the objectives of the draft now seem to be shifting towards achieving a fairer salary scheme, introducing performance-related pay, revising disciplinary arrangements, clarifying social rights, and developing the Personnel Registry. However, according to TODAIE, the tendency is still towards a more widespread contractualisation of civil service legal relationships and a more extended use of performance-related pay.

Sigma’s comments on the 2006 draft law emphasised that it contained positive elements, such as the recognition of the principles of transparency, neutrality and justice; promotion of performance; enhancement of the role of legislation in the determination of management rules; and the balanced right to a defence. However, it was also indicated that aspects of the draft were very liable to produce negative consequences for the Turkish civil service system. Among these negative aspects, the further contractualisation of the civil service was a conspicuously distressing one because it could lead to weakening the very values that democratic civil services are purported to underpin. The wholesale introduction of performance-related pay could result in increased arbitrariness in civil service management.

¹ Decision adopted by the Council of the European Union on 13 February 2008, on the principles, priorities and conditions contained in the Accession Partnership with the Republic of Turkey and repealing Decision 2006/35/EC.

Unfortunately, and more importantly, Sigma indicated that the draft did not properly address the main problems of the current civil service: the need for a clearer scope of the civil service with a better delimitation of the boundaries between politics and administration, clear merit-based management rules, and full democratic accountability of civil servants.

Public Employment Statistics and Distribution Across the Country

In the public sector there are four categories of employees: civil servants (the largest group, numbering 2,022,349 which correspond to 73.07% of the total number of public employees); contractual personnel (153,492 – 5.55%); workers (workers include permanent and temporary workers 479,720 – 17.33%); and others (temporary staff, village headmen and guards; 112,045 – 4.05%), the majority of whom are employed in state enterprises. Some public employees, such as academic personnel of universities, judges, public prosecutors and police forces, have their own specific personnel law. In total, there are 2,767,606 public employees¹. In terms of administrative levels, 81.22% are in central government and social security institutions, 8.77% in local self-governments and 10.01% in state enterprises and public banks.

The geographical and functional distribution of public employees is not balanced throughout the country. In some regions there is shortage of applicants to public administration as the working conditions here are not attractive. Against this background of economic constraint, the government has adopted a new policy on employment consisting of recruiting public employees on the basis of an annual contract. The contract is renewed every year. This type of recruitment is very common on the education and health sectors. Although there is a system of permutation of positions called “*becayis*”, which gives public employees the opportunity to exchange positions, there is no mobility right for them to transfer for other region. As compensation, their salaries are higher than civil servants.

Recruitment and Promotion

A trend towards politicisation in recruitment seems to be taking hold unevenly with regard to the appointment of upper-level positions in the administration. Patronage has always affected the upper echelons of the administration through the “three signatures” scheme, whereby promotion to a higher position is granted to those individuals supported by the minister, the Prime Minister and the President, but it now seems to be carried out more systematically, and politicisation is also reaching lower administrative echelons. Given the current acute political polarisation of the country, this situation is seen as only natural by some and very worrisome by others.

Temporary appointments, based on articles 68 and 86 of the Civil Service Law, have been used for filling the echelons of the administration, thereby causing a proliferation of “acting managers”. These acting managers may include undersecretaries, general directors, provincial governors, heads of department, and even lower-ranking positions that are to be filled from the ranks of the civil service through meritocratic competitive mechanisms. Some 355 of these managers were “acting” at the end of 2006, as their definitive appointments were blocked by the former president. According to the records, the total number of appointments by the current president amounted in July 2008 to 679, of which 124 were modifications from “acting status to permanent status”.

The merit system in recruitment and promotion should be more clearly respected and firmly supported as a policy by whichever government is in place if the professionalism of the civil service is to be strengthened.

Classification of the Public Service

No changes were observed during the assessment period.

Rights and Obligations, especially Impartiality and Integrity

The disciplinary and penal accountability of certain public officials is still weak because of the “permission regime”² that is in vigour in connection with specific types of crimes, especially those related to torture and

² The “permission regime” specifies that a public official can only be prosecuted if there is an authorisation to do so by his superior authority (See Law 4483 of 2 December 1999, as amended by Law 4778 of 11 January 2003, on Procedures for Prosecution and Trial of Civil Servants, which establishes this unjustified regime).

ill-treatment of detainees by the police, the gendarmerie and village guards. The permission regime, together with inconsistent decisions of prosecutors and judges, usually leads to impunity for serious abuses and violations of individual rights committed by representatives of security forces.

However, the investigation of the most recent crimes has become more effective, which leaves hope that the days of prevailing impunity may be numbered. It is nevertheless worrisome that 51% of Turkish judges consider that human rights pose a threat to national security and that the state's interests should prevail over the rights of individuals. In addition, 63% of judges believe that the law may be in conflict with state interests, and in that event the state interests (of course, as interpreted by the judge) should prevail³.

Corruption in the administration, in the sense of taking and giving bribes, does not appear to be widespread, but clear ethical guidelines could help to sustain better ethical standards. In terms of ethical behaviour, the Public Servants' Board of Ethics created in 2004-2005 is fully operational now, although its resources are scarce and its independence is problematic. The Board disposes of a secretariat of nine staff (four experts, four administrative personnel and one press relations adviser). However, although the law describes the Board as independent, it is located within the Prime Ministry premises (State Planning Organisation building), the secretariat is composed of Prime Ministry personnel, and the budget is within the Prime Ministry's budget, circumstances which may put its independence into question. The Board benefits since November 2007 from a two-year technical assistance project funded by the European Commission and implemented by the Council of Europe; it is too early to evaluate the results of this project.

Whatever the case may be, it seems that the awareness level has gradually been increasing due to the activity of the Board, bearing in mind the number of requests lodged for information and clarification by public administration bodies. Another important indicator has been the number of individual complaints received between 2005 and 2007, which shows a reduction in the number of cases of violation/breach of the ethical code, unethical behaviour and corruption.

During those three years the complaints focused on: personnel procedures (six cases in 2005; two in 2006; 12 in 2007); breach of the general ethical code of conduct (10 in 2005; eight in 2006; four in 2007); breach of duty/misconduct (17 in 2005; nine in 2006; four in 2007); use of public resources for personal or unnecessary purposes (six in 2005; two in 2006; 20 in 2007); nepotism-discrimination (seven in 2005; two in 2006; three in 2007); equality and equity (four in 2005; five in 2006; eight in 2007); right to information (three in 2005; two in 2006 and in 2007); corruption/irregularity (17 in 2005; 12 in 2006; four in 2007). Civil servants are increasingly cautious with regard to corruption or unethical behaviour due to the sanctions provided for by law on the request of the Ethics Board.

The protection of whistle-blowers, provided for in article 12 of the By-Law on the Principles of Ethical Behaviour of Civil Servants and on Principles and Procedures of Application issued in accordance with the Law No. 5176 seems insufficient because it only foresees the non-disclosure of the whistle-blower's identity "to avoid any harm". The provision relating to the protection of whistle-blowers should be improved, since it does not regulate the situations of protection of their physical integrity, dismissal, and victimisation, among others, in the event of a leak of information concerning his/her identity. Consideration should also be given to promoting individual responsibility by encouraging staff to speak up about behaviour that they consider to be wrong, thereby improving the way in which public organisations are – and are seen to be – accountable, and to providing legal and practical advice and support free of charge.

The law about bringing civil servants to trial (Law 4483) concerns only civil servants' job-related crimes. Their penal accountability for crimes other than job-related crimes is subject to the same procedures as for any other citizen/

The immunity of public servants is subject to specific procedures depending on the crimes committed in the scope of Laws 3628 and 4483, and there is no immunity for most of the serious crimes. For the prosecution of crimes described in Law 4483 (on the Prosecution of Public Officials and Other Public Servants), the permission of the minister or other administrative authorities is required. There exist special provisions in Law 4483 on the prosecution of civil servants and other public officials. For most of the serious crimes described in Law 3628, the prosecutor can directly proceed with the prosecution of public officials without having obtained the prior permission of the minister or other administrative authorities. Civil servants and other public employees cannot benefit from the privileges provided in Law 4483 in corruption-related cases. This also applies to cases where civil servants and other persons legally obliged to do so fail to declare their assets or are found guilty of corruption, bribery, smuggling or similar offences; they will be subject to direct

³ TESEV (November 2007), *Perceptions and Mentality Templates in and around the Judiciary*, Istanbul.

prosecution by the public prosecutor, in accordance with Law 3628 (Declaration of Property, Fight against Bribe and Embezzlement).

However, the issues of the withdrawal of the immunity of civil servants and the permission regime are currently under discussion, which is in itself a positive sign. Some members of the government consider that this immunity should be withdrawn. The penal accountability of civil servants should not be subject to the permission of any political or administrative authority, as such a permission cannot be superimposed on the power of the judiciary, which alone is legally competent to assess this accountability.

A strict prohibition to strike applied to all civil servants is still in force, which is neither proportionate nor aligned with ILO standards. In principle, the right to strike should be guaranteed as a fundamental employee's right⁴.

Legally and in principle, the civil service is autonomous with regard to the ruling government, as public employees are obliged, when carrying out their duties, to be loyal to the state, the Constitution and the law. This autonomy seems to be gradually eroding in favour of a more explicit politicisation of the public bureaucracy. The increased impartiality of the civil service should be a permanent policy goal.

Salary Scheme

The salary scheme has experienced no modification. The revolving funds are still in use and are managed under special procedures in accordance with Public Financial Management and Control Law (PFMC Law). They should have been eliminated by the end of 2007, but this did not happen. While this deadline was not met, it is understood that the Ministry of Finance is to restructure and prepare a new law on the revolving funds by the end of 2008. Selective increases of salaries in some services or categories of public employees continue to widen the gap, creating severe internal salary imbalances within the public service. The military continues to enjoy a host of privileges. The salary scheme for the whole public service needs to be unified in order to achieve a higher degree of internal fairness in the system and to bring public personnel expenditure under control. The reform of revolving funds in particular should not be postponed.

The salary of a civil servant is made up of the basic salary (with different coefficients, determined annually by the Budget Law), which is paid monthly. Twice a year there is a salary adjustment corresponding to the rate of inflation. In 2008, the inflation rate is 5%. In addition to the basic salary are allowances (for job difficulty or risk, job delivery difficulty, financial liability, special severance pay, family allowances, allowances for clothing, foreign languages, non-ergonomic positions, etc.). Managerial positions receive in addition to their salaries an executive compensation, which is also not unified.

However, the public service salary scheme is very complex, not unified, and not subject to the principles of coherence and fairness, both internally and in comparison with general labour market levels. The principle "equal pay for equal work" is not applied at a broad level. Civil servants performing the same functions are paid differently, depending on the organisation to which they are assigned. Therefore, in each ministry there are different remuneration policies. This situation has generated demotivation and dissatisfaction as it is unfair. There are no established criteria or rational justifiable grounds for deciding remuneration increases. For organisations that put into practice a higher remuneration policy, the respective authorisation was granted solely by the Minister of Finance.

Some ministries and public institutions that generate revenues for the state use special budgetary and expenditure rules. They deduct a percentage from their revenues, which should be forwarded to the Treasury, to be used as revolving funds. Civil servants and other staff working in these institutions and contributing to the production of public goods (services) receive a salary supplement paid from the revolving funds. This system is unacceptable, but its reform would be difficult and controversial in view of the sensitivity of the revolving funds issue.

There are around 10 or more different kinds of salary groups. One of these groups is employed under the Civil Service Law 657 and constitutes the largest group in the public service. Other groups are employed according to specific laws or regulations. There are also contractual staff, who receive a bonus payment four to six times a year depending on the public organisation in which they perform their functions. However, the bonus scheme is not equal for all contractual staff. On the whole, all contractual staff are paid 12 months and

⁴ In December 2007 the European Court of Justice (ECJ) declared that "the right to take collective action, including the right to strike, must therefore be recognised as a fundamental right which forms an integral part of the general principles of Community law".

obtain an increase in the salary in accordance with the rate of inflation, just as in the case of the salary of civil servants.

The salary of workers is determined by each ministry or agency and is based on collective agreements under the labour law. These employees are unionised and have the right to go on strike. As their salaries are subject to collective bargaining and they have no job security, unlike civil servants, they obtain relatively better salaries than the other personnel in the public service. They therefore have no right to the biannual salary increase, but their salary increase is determined in the collective agreements.

The government intends to introduce changes in the remuneration system so as to establish a single remuneration framework, harmonising the wages in the entire public administration (employees excluded), and to introduce a transparent, balanced and fair system. In this process civil servants' rights will be safeguarded because, from a legal point of view, it will not be possible to reduce the remuneration of those who are earning more than others. There will therefore have to be a transition /adaptation period, during which the lower salaries will gradually be increased so as to reach the level of the higher salaries.

The draft law on remuneration is in preparation and will be submitted to stakeholders for consultation, together with the new draft law on state personnel. According to the government calendar, these two drafts will be submitted to parliament at the end of 2008; and their passage is expected in 2009.

Career Development and Training

No changes have been observed; the lack of sound motivational elements within the public service is still apparent. Studies sponsored by the State Personnel Presidency, which were geared to reforming the *kadro* system and reviewing job descriptions and evaluation, were initialled some years ago, but the implementation of their recommendations seem to be at a standstill and have for the time being led nowhere. The 9th Development Plan (paragraph 312)⁵ recognises “the fact that the transition to the use of norm cadre could not be fully realized in public institutions and organizations, results in the inability to determine the number and qualifications of employees required by public services”.

Overall in-service training policies are under the responsibility of the State Personnel Presidency. Specialised training is provided by certain ministries, for example through the Academy of Justice and the Academy of Finance. No changes could be observed in this area. External providers of training have recently multiplied the number of training courses, especially on EU-related matters.

TODAIE has been reintegrated within the Prime Ministry, thus reversing a 2002 decision placing it under the responsibility of the Ministry of the Interior.

The civil service remains attractive to young people, although the pay level is considerably lower than in the private sector. However, security of tenure, prestige, social rights and labour rights are better guaranteed in the public sector, which contribute to its attractiveness.

The Grand National Assembly's 9th Development Plan clearly recognises that “unclear and inadequate definition of promotion on the job in the legislation, lack of an effective reward system and inequalities in salaries in the public sector, affect the personal development of public employees in a negative manner”, and that “the inability to provide public employees with adequate on the job training prevents them from acquiring the necessary information and skills that would allow them to perform their duties productively”⁶.

Steps should be taken to establish equality, merit, accountability, rationality, good performance and efficiency as central values of public servants in the conduct of their duties.

Management System and Control of Personnel

No central capacity exists to enable the setting of common homogeneous management standards across the administration. The State Personnel Presidency is not empowered to assume this responsibility.

The establishment of a central database was started in 2006 under the State Personnel Presidency in order to provide reliable data on personnel resources and mobility, but it is not yet operational.

⁵ The Turkish Grand National Assembly adopted its 9th Development Plan (2007-2013) on 28 June 2006.

⁶ Paragraphs 310 and 311 of the 9th Development Plan.

Social Dialogue in the Public Service

According to the Law on Public Employees' Trade Unions, adopted by parliament in June 2004, certain legal impediments restricting the establishment of trade unions for public employees and their active participation in union activities have been removed, in line with the relevant ILO Convention (n° 151). The right to strike was not adopted from the European Social Charter and the right to collective agreements is not guaranteed either.

Civil servants have five trade union confederations that include 50 trade unions, but only three confederations undertake collective bargaining with the government. Freedom of unionisation is not guaranteed. The Minister of Labour closed the trade union of retired civil servants because the law did not foresee the creation of such a trade union, although the law did not forbid it either. The creation and abolition of trade unions require the authorisation of the Ministry of Labour. There is a strong political control over the trade unions in Turkey.

The scope for collective bargaining includes working conditions and social and economic issues, but it is confined to an exchange of opinions on these issues. Government decisions on such issues are taken on a unilateral basis. Despite the fact that the law, subsequent to its 2004 amendment, recognises the right to come to an agreement, the government does not allow trade unions to use this right. This situation is not conducive to involving trade unions in the decision-making process.

Collective agreements between municipalities and municipal trade unions have not been recognised by the government, but in a 2007 ruling the European Court of Human Rights considered that these agreements were valid.

Gradually, the government has taken steps to increase social dialogue within the public administration, organising meetings in the Ministry of Labour three times a year. Trade unions' recommendations are taken increasingly into account in the law-making process. One of the recent examples is the "Social Security Law", which takes on board some trade union recommendations that had been submitted to the government. In spite of the progress made in the relationship between the government and trade unions, social dialogue in Turkey is still incipient. The creation and abolition of trade unions is dependent on the authorisation of the government.

Conclusions

- During the two years comprised within the assessment period, few reforms have been carried out with regard to the public bureaucracy, as it has been a period dominated by other, pre-eminently political, concerns. The lack of reforms also seems to have resulted in an increase in the politicisation of the public service and in the further weakening of the impartiality principle.
- Political neutrality and democratic responsiveness of the public bureaucracy and of public servants should be clearly promoted and enhanced.
- A balance should be reached between the well-established traditional values, such as hierarchies of control, conformity, impersonality of work, authority through the position, and the command-control paradigm, that prevail in the Turkish public service and the new values of accountability, openness, transparency, efficiency, effectiveness, authority by means of leadership, and managerial culture. Training and social dialogue should provide a useful means for bringing about this change.
- In general, the conclusions and recommendations set out in Sigma's 2005 and 2006 assessment reports on the public service in Turkey remain valid.