



## **SIGMA**

**Support for Improvement in Governance and Management**

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# **HUNGARY**

## **PUBLIC SERVICE AND THE ADMINISTRATIVE FRAMEWORK**

### **ASSESSMENT 2003**

#### **Introduction**

This report reviews, complements and updates the June 2002 SIGMA assessment of the Hungarian public service and administrative law framework. Some critical points signalled in the 2002 report have been addressed, in particular concerning the Senior Public Service (SPS), described below. Likewise, some positive developments have taken place, such as the creation in September 2002 of the Government Commissioner for Public Service Reform, although the practical results of this initiative still remain to be seen. The main task of this office is to prepare a new Act on Public Employment, civil service included. This development should be taken as an opportunity to mend the shortcomings affecting the current civil service legal framework by improving both the content and formal quality of the 1992 legal text currently in vigour. At the same time (July 2002), a Public Administration Organisation and Civil Service Office has been established within the Ministry of the Interior. Finally, the salary increase scheme carried out during the past years will be completed by July 2003.

#### **1. Legal Status of the Public Service**

*1.1 Does an appropriate legal basis exist defining the status of civil servants in a way compatible with prevailing standards of EU Member States?*

##### ***Constitution***

The Hungarian Constitution (adopted in 1949, with fundamental amendments in 1989 and 1997) does not deal specifically with the public service, other than to confer on citizens a general right to hold public office. It specifies that citizens have equal opportunity in this regard, in accordance with their "suitability, education and professional ability" (article 70-4), with no discrimination based on gender, race, religion, political opinion, national origin or any such grounds. No specific guarantees or limitations are imposed on those employed in the state administration, other than prohibiting the employment of members of parliament and political activities of judges and prosecutors. The rights to strike, associate, assemble and disseminate information are constitutionally protected as fundamental, but may be restricted by an Act of Parliament. Such an Act may not restrict the basic meaning and content of fundamental rights (article 8-2). Lawful economic activities and participation in politics are the fundamental rights of all citizens, which cannot be restricted. This entitlement might pose legal difficulties when setting up an appropriate legal regime for civil servants, in particular with regard to the conflict of economic or political interests with civic rights. The right to strike of civil servants can be restricted by law.

## ***Ordinary Legislation***

The Civil Service is regulated by Act XXIII of 1992, with major amendments in 1995 (Act XLIII) and 2001 (Act XXXVI, in force as from 1 July 2001). Specific provisions of the Labour Code and a number of implementing decrees supplement the Act. Another Act of 1992 regulates public employment, namely employment in public health care and education. However, in the Hungarian legal understanding the Labour Code is the basic law, whereas the Civil Service Act is considered as a special law; this understanding has practical consequences when applying legislation. Laws regulating specific groups of public servants, e.g. uniformed forces and custom officials, are designed to create a suitable regime for each, and although they cover the same topics as the Civil Service Act, they differ in content by addressing specific issues corresponding to these corps. This body of legislation, which collectively makes comprehensive provision for those employed in the public sector, has been further developed through secondary legislation.

## ***Scope***

The most important piece of legislation regulating the legal status of public servants is the Civil Service Act. It deals in considerable detail with those employed in policy support, control and supervision, and in exerting administrative capacities in central and local government. A corps of some 100,000 strong forms the civil service under the Civil Service Act. The Judiciary Act of 1997 and Public Prosecutors Act of 1994 govern these specific public officials, who make up a group of some 10,000. A Law of 1996 regulates police and prison officers, border and customs guards and civil defence and fire service officials. These so-called uniformed officials form a body of 90,000 personnel. Their special statutes differ in many respects from each other and from the General Statute on the Civil Service. In general, their rights are more limited and service obligations more demanding than those of non-uniformed civil servants. The status of other public employees performing service functions (e.g. in education and health service), who are not treated as civil servants, is dealt with by distinct legislation (Act of 1992), which confers on them a status midway between civil servants and labour contractees. Some 550,000 form the group of public employees. Employees of state-owned companies are not treated as public servants and are governed entirely by the Labour Code.

The 2001 amendment to the Civil Service Act has reduced the scope of the civil service. It reserves the status of civil servants to those dealing with matters of administrative authority, either as decision-makers or experts. Conversely, the Act (article 1-8) states that only civil servants may carry out tasks directly related to exercising executive, administrative, controlling and supervisory functions. Therefore, important state institutions must be staffed exclusively by civil servants at executive level and in expert positions. Among these institutions are Parliament, the Presidency, ministries and the Prime Minister's Office, the State Audit Office, the Ombudsmen (called Parliamentary Commissioners), the Constitutional Court, the Public Procurement Council, the Hungarian Competition Office, the National Radio and Television Commission, and the Secretariat of the Academy of Sciences.

The scope of the civil service was narrowed when former civil servants devoted to auxiliary tasks lost their civil service status in 2001 (18 - 20 % of the staff, some 20,000 personnel), and became regulated by the Labour Code. The civil service trade unions challenged this decision in court, but their appeal was rejected. An amendment to the 2001 amendment is being considered by the government. In March 2003 the government adopted the decision of sending to parliament an amendment whereby these clerical and auxiliary tasks would be brought back within the scope of the civil service.

Administrative state secretaries and their deputies are also civil servants, although some specific issues are regulated by Act LXXIX of 1997 relating to members of the government and state secretaries. Political advisors in ministerial cabinets are considered as civil servants (article 11/A) and their tenure is dependent on the tenure of their appointing authority. Their number is legally limited to no more than 5 % of the staff of the relevant institution. Contractual appointments for limited periods (usually one year) and for specific tasks are possible and

occur in a number of ministries. Such appointees are considered as (acting) civil servants and must have the equivalent qualifications.

### ***Implementation***

Individual ministries or other state institutions have principal responsibility for putting the Civil Service Act into effect. The Ministry of Interior is responsible for supervising the implementation and for drafting secondary legislation. This task was assigned in July 2002 to the Public Administration Organisation and Civil Service Office within the Ministry of the Interior. However, the Office has the same powers in this respect as the Ministry used to have. The Ministry has little authority to compel compliance with the Act's requirements, or to interfere with a ministry when it exercises the discretionary power conferred on it by the Act. As a result, there is a disparity in the way some matters are implemented, which is not justified by functional differences between government branches, although co-ordination is improving in some areas, such as in training-related matters. The transition of civil servants under the previous political regime to the new system appears to have been satisfactorily completed in the years subsequent to the 1992 Act, although the standards of the qualification procedure were not very demanding. The 2001 amendment has made the qualification requirements (education and training) for entering the civil service more rigorous. However, open competition in recruitment is still not obligatory.

The 2001 reforms have been implemented through secondary legislation such as the following decrees: 29 May 2001 on Disclosure of Assets, in force as from 29 October 2001; 10 October 2001 on the Register of Personnel; 14 September 2001 on the Permanent Senior Civil Service; 19 October 2001 on Qualification of Civil Servants; 10 December 2001 on Technical Expert Examination on Public Administration; 10 December 2001 on Training Management. Some of these Decrees have been totally or partly implemented or are currently under implementation, as will be explained below. The expected increase in salaries was implemented to a large extent as from 1 July 2001 and will be completed by 1 July 2003.

***The Hungarian legislation on civil service is not fully aligned with civil service standards prevailing in EU Member States. The 2001 legal reforms have, in general, improved the civil service legal framework. This is apparent in the areas of career development, training, better salary structure and a better basis for enhancing accountability and reducing corruption. Some problems are still outstanding, such as the politicisation of the civil service and the lack of compulsory open competition in recruitment procedures. These problems will be addressed later in this report.***

## **2. Legality and Accountability**

*2.1 Do administrative practices and the general legal administrative framework guarantee the principle of legality in administrative decision-making, and are they sufficient and appropriate to guide civil servants and make them accountable for their performance?*

Article 2 of the Constitution guarantees the rule of law. Although some partial regulations existed previously, it was in 1957 that Act IV/57 was adopted on the General Rules of State Administration Procedures in order to consolidate many existing procedures into one common framework. An important feature of this Act was the principle that the administration should be self-supervised; appeal to external authorities was only allowed in exceptional cases. This principle was consistent with the political suppression that followed the 1956 Hungarian uprising. An amendment in 1981 opened the way for a limited judicial review of administrative actions. Other amendments followed.

In 1991, Act XXVI introduced an important amendment, which adapted the General Rules of State Administration Procedures to the reformed Constitution. Article 57-5 established the right of each citizen to seek judicial remedy against any administrative decision or action. The law still gave preference to internal administrative appeals prior to bringing the case before court, but only on matters of law, not facts (Article 72-1 of Act IV/57). No

administrative courts have been created, but a special division of the ordinary civil court carries out judicial review of administrative decisions<sup>1</sup>. The procedures followed by the courts are regulated by the Civil Procedural Code. A court may not redress an administrative ruling directly, except if allowed to do so by a specific law. The court only instructs the relevant administrative organ to complete a new procedure in accordance with the court's ruling. This restriction limits the effective judicial protection of rights and legitimate interests. In general, administrative appeals are rather complicated and are limited to the defence of formal rights. Defence of interests is against the constitutional provision (Article 57-5). In some cases, it is possible for citizens to appeal directly to the Constitutional Tribunal when constitutional rights are at stake.

Under current legislation, the parties involved in an administrative procedure must be informed of their rights, obligations and appeal options, as well as their right to a hearing. An administrative act must be issued within 30 days from the initial application, or from the initiation of the procedure, should this be *ex officio*. In some cases, the absence of a timely ruling (administrative silence) is considered to be a positive response to the claims of the applicant. An administrative decision can be followed by an interval of remission (interim relief) under certain circumstances, although the general rule is the immediate execution of a decision. Civil servants with a personal interest in the procedure must withdraw from any intervention (article 19 of Act IV/57).

Several aspects of the basic regulation on administrative procedures need reform, and a Concept has been prepared and published in the Official Gazette. The Concept is the basis for a comprehensive revision of the Law on Administrative Procedures. At the same time, an *ad hoc* Codification Commission was set up in 2001, composed of civil servants and other experts, with the mandate of reviewing administrative laws. Among the shortcomings of the current regulations are the following: 1) It is not clear if and when notice must be given to the interested party about the initiation *ex officio* of an administrative procedure. Notice is only required if established by the specific legislation governing the relevant matter. The fact is that in numerous areas of administrative action, the notice provision does not apply. 2) The disclosure obligation of relevant information held by the administration is not clear in the current Act IV/57. This provides only for disclosure of documents generated during the procedure (article 41), but not of other pieces of information relevant to the case that the administration may use in its ruling. This may lead to uneven and arbitrary disclosure, thereby damaging the openness that should preside over administrative actions. The obligation to disclose relevant information should be given general application, except for some singular matters, such as state secrets and similar information. 3) Administrative discretion based on principles of administrative law, such as good faith, fairness and proportionality, as developed by the European Court of Justice, should be taken as a basis for administrative decision-making so as to prevent arbitrariness. 4) There is a need for a procedural system for making general administrative decisions, which is not presently included in Act IV/57. In summary, the General Rules need an overhaul to align them with the European principles of administrative law, and to make them simpler and more accessible to the public.

As far as transparency is concerned, along with the General Rules of 1957, two main pieces of legislation form the legal framework for the administration. One is the Law of 1995 on State Secrets and Official Secrets. The other is Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Data of Public Interest. Although these laws contain some of the components for enhancing transparency, in practice they seem to work in a rather uneven and random way, with at times surprising interpretations that impede transparency in administrative decision-making. For example, decisions on recruitment of civil servants cannot be challenged before the courts by a candidate, because this allegedly would violate the right of other candidates to the protection of personal data.

The Law of 1987 on Law-Making and the Assessment of the Quality of Legislation is currently under review. It establishes the limits to legislative action, defines the different types of regulatory instruments, regulates the process of preparing them, distributes the responsibilities of different bodies involved in the process and deals with

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<sup>1</sup>. Prior to the 2002 elections a debate took place and proposals were made to create an administrative court system comprising several administrative sections in certain regional courts (about 14) and an administrative section at the Supreme Court with annulment powers. It was estimated that some 30 to 40 administrative judges were required to staff the proposed system. This debate apparently faded away after the elections.

other important aspects, such as the use of public consultation. The Act was revised extensively in 1999 and 2000 to improve these administrative controls, with an emphasis on legal harmonisation with the European Union. The 1987 Act requires quality appraisal analysis of draft legislation by each sectoral ministry sponsoring a new law, and the publication by the government of a long-term law drafting plan. The government must establish a five-year programme listing all the laws and major government decrees to be prepared. In addition to this requirement, the government has developed shorter-term legal programmes spanning from six months to three years. These plans are important tools for both internal and external consultation. By law, the government must consult with the Supreme Court, the Public Prosecutor, social and business representatives and local governments, as well as with the central administration. After approval, the government must publicise the programmes in the Official Gazette and in the mass media. Additionally, every six months the Ministry of Justice updates the legislative plan, reporting progress to parliament and improving, through this mechanism, the management of its legal responsibilities. The ministries post the texts of draft legislation on the public bulletin boards of the so-called "Green Spider" network, based on the concept of "open legislation" whereby draft laws are published on the internet together with a submission deadline for comments. The Law Department of the Government Office does not carry out impact assessment centrally but if they realise that a draft does not contain this analysis, they may signal its omission in their report to the government. Sound impact assessment of regulation, however, does not yet appear to be satisfactorily established, except perhaps on some aspects concerning harmonisation with EU legislation and language polishing (the latter being carried out by the Ministry of Education). A government resolution of 2001 laid down the criteria for deciding whether drafting a law or other regulatory instrument was the most appropriate way of coping with a given policy issue. Plans have been made to set up an examination on law drafting for civil servants, whereby only those having passed such a test will be able to draft legislation. These plans are set within a broader framework aimed at amending the Law of 1987, which has still to materialise.

A system of hierarchical subordination primarily determines the accountability of civil servants, although under the law every individual in the service is obliged to act independently. Consequently, a civil servant is entitled to refuse compliance with unlawful orders issued by superiors. This regulation is the right and obligation of the civil servant (article 38 of the Civil Service Act) and is guaranteed under the legislation. The 2001 amendments to the Civil Service Act reinforced hierarchical subordination by introducing enhanced mechanisms for performance appraisal.

In Hungary, there are three Ombudsmen: one for Civil Rights, one for the Rights of National and Ethnic Minorities, and one for Personal Data Protection. Any citizen may initiate proceedings before the Ombudsmen, who hold sway over public decisions and actions. In general, the institution of the Ombudsmen is quite popular and well respected. Some of their actions have embarrassed the government of the day and raised public controversy. Article 32B of the Constitution is the basis of the Ombudsmen's powers, and there are other specific laws which further define this authority.

The State Audit Office also has a constitutional character (Article 32C of the Constitution) and reviews administrative performance in terms of legality, expediency and efficiency. The Government Control Office likewise investigates actions of civil servants. Neither of these institutions is entitled to initiate action, but may recommend action to the relevant authorities in the case of public employees and civil servants deemed to be at fault.

The judicial review of public administration decisions, as far as their legality is concerned, represents a further basic protection of the legality of administrative decisions and actions. As indicated above, there are no specialised administrative courts, but ordinary courts are competent to review administrative decisions by following the procedures set out in the Civil Procedural Code. This legislation is rather complicated and at times makes judicial protection of legality ineffectual. There is no legislation specifically regulating the judicial revision of administrative acts.

The reforms of 1997 (Act LXVI on the Organisation and Administration of Courts and Act LXVII on the Legal Status and Remuneration of Judges) instituted major reforms of the judiciary, but did not address the issue of the creation of administrative courts. The parliamentary majority elected in 1998 delayed the application of such reforms. In 2000 they extended the scope of the Lustration Law of 1994 to the judiciary as a whole. This decision, along with frequent open criticism by government officials of judicial decisions, raised doubts about the existence of a government policy to strengthen the independence of the judiciary. The guarantee of the legality of administrative decisions by the judiciary needs to be reinforced. Judicial jurisprudence is far from taking an active stance in introducing respect for general principles of administrative law in administrative decision-making. If better administrative legislation were introduced, a change of attitude in the judiciary would favour a more active jurisprudence to fill the gaps in existing legislation.

Liability is institutional in principle and not personal to the incumbent civil servant. Appeals are brought against the administrative authority, and not against the individual civil servant responsible for the decision, action or fault. If the civil servant is found to be at fault, the relevant administrative authority is empowered to initiate disciplinary action and, if so considered, to require total or partial compensation for the damages from the incumbent civil servant, who can challenge the decision in court. The exception is if it appears that the civil servant has committed a criminal offence. In such cases, the civil servant is held personally and directly liable for the compensation of damages, and the administration is considered to be collaterally liable.

***The legality and accountability of the administration is reasonably well guaranteed. However, improvements are needed in terms of administrative procedures and judicial review of administrative decisions in order to make them simpler and easier to apply. It is also necessary to align them more closely with standards and principles prevailing in EU Member States and enshrined by the jurisprudence of the European Court of Justice. An improved and more systematic mechanism to ensure the quality and soundness of legislation is also required.***

### **3. Professionalism of the Civil Service**

*3.1 Are civil servants' recruitment, rights and obligations defined, regulated and enforced in such a way as to ensure their commitment to constitutional and public law values, such as legality, impartiality, political neutrality and integrity?*

#### ***Recruitment and Promotion***

The civil service status is legally considered as a “special contractual relationship” between the State or local government and the civil servant (article 5), although the status of civil servant is awarded by appointment, not by contract. The law (article 7) establishes the general requirements for entering the civil service (Hungarian citizenship, clean criminal record, level of education, suitable health, and so forth). Recruitment is regulated in a different way, depending on the position to be filled.

Department Heads: For recruiting heads of departments, publicly announced open competition is legally mandatory (article 10) and may be followed by an entry examination, but is not obligatory (for instance, the Ministry of Finance does not require the examination and the same is true for other ministries). Recruitment procedures are set by each ministry. The announcement is usually published in commercial newspapers. A selection committee (usually of three members) may be assembled at the discretion of the recruiting authority to screen CVs and applications. A psychological aptitude test may also be required. Although the committee ranks candidates by their scores, the minister decides on recruitment at his discretion, without having to provide reasons for an eventual departure from the committee's proposal. No specific arrangements are made for unsuccessful candidates to appeal, as it is alleged that this would remove the protection of personal data of candidates. An additional reason given is that labour arbitration courts can only review disputes between employees and

employers, and a candidate is not an employee as the employment relationship has not yet been established. Under this recruitment scheme of department heads, the principles of equal access to the civil service and of competition based on merit are not fully guaranteed, as each ministry sets up its own recruitment procedures.

Remaining civil servants: For the rest of the civil service, open competition is not mandatory, but anyone complying with the general requirements established in article 7 may apply usually upon “invitation” by the appointing authority (the relevant ministry or local self-government council). In practice, a public announcement of a vacancy was used up to 2001 for recruitment in most cases, but this was not an obligation for the recruiting authority. With the recent salary increases, the civil service has become more attractive. As a consequence, ministries no longer make public announcements for recruitment, but rely on personal invitations to prospective candidates or on the pool of unsolicited applications they receive regularly (e.g. the Ministry of Education reports receiving some 30 of these applications per month, and the Ministry of Health some 10 per day). In several ministries, officials report that they tend to rely on their own acquaintances first and only if this did not succeed would they publish an announcement in newspapers. Alternatively they resort on education institutions, basically universities, to find “invitees”. Only the general requirements for entering the civil service are checked (Hungarian nationality, State Security record, etc.), and academic credentials (this is the only qualification required for entry into the civil service). These staff are recruited by administrative state secretaries or by department heads. In general, unsuccessful candidates can only appeal against recruitment decisions in very extraordinary cases. The recruitment system for basic civil service positions, as described above, does not guarantee essential civil service principles that are practised in EU Member States, namely equal access and competition based on merit. Under these conditions, the staff quality and professionalism of the Hungarian civil service should be put into question. The Hungarian recruitment system is very vulnerable to any kind of politically biased recruitment decisions and to patronage-driven appointments.

A probationary period is possible, at the discretion of the appointing authority, for a maximum of six months. A probationary period is not legally possible when the recruitment has been carried out through open competition, i.e. for heads of department.

There are many exceptions, but the general rule is that those appointed for positions other than heads of departments are “placed on the payroll” at the lowest salary level. Only after they have followed one year of training and passed a basic public administration examination will they be able to commence their civil service career in the basic category of *drafter* (for those with a university education) or *clerk* (for those with a secondary education), although for the latter the deadline for taking the examination is two years after their appointment. If the trainee (also called “junior civil servant”) does not pass the examination, the civil service relationship is terminated. The National Examination Committee of Public Administration (OKV in Hungarian) administers these examinations, and the Institute of Public Administration offers the relevant preparatory training. The 2001 amendments introduced a compulsory (with numerous exceptions) Specialist Examination for further promotion for those holding a high university degree in law. For promoting to managerial positions the Specialist Examination has been compulsory since 1995. This scheme of basic public administration examination somehow offsets the lack of an appropriate entry competition and examination, but it is not sufficient to guarantee the merit and equal access principles in the recruitment of Hungarian civil servants.

Promotion has several forms and there are several different regulations and partly depends on the length of service. The 2001 amendments introduced a new structure to the civil servant’s professional career. In the previous system, promotion was automatic every three years. Under the new system, promotion may be much faster at the beginning of the career (with the objective of attracting young people). It is also possible to be promoted during the last years of service before retirement, by applying the salary multipliers without necessarily going up higher on the hierarchical ladder. This was not possible under the previous system. The new promotion scheme follows a consciously designed, albeit complicated, pay advancement system. In essence, the multipliers corresponding to young graduates rise at a higher than average rate, those corresponding to mid-career civil servants rise at an average rate, and at the end of the career path in the years prior to retirement, the rise in corresponding multipliers

is again higher than average. In this way, civil servants are better able to gain experience and professional skills that qualify them for managerial positions by the time they reach mid-career. These positions mean higher than average remuneration and other financial incentives, thus compensating for the comparatively lower rise in their multipliers.

It can be said that there are currently two types of promotion. On the one hand the form most commonly used consists of salary advancement without changing position but by changing title. This type of promotion is subject to certain general requirements set up in legislation: passing the public administration examination at the Institute of Public Administration, a required length of service, and good performance. For promotion there are two established committees in each ministry, one establishing the criteria for promotion and the other administering the relevant internal test. In this case, the proposals of the committee are binding for the deciding authority. Trade unions can participate in the candidate rating procedure, and they usually do. Recourse to the Labour Arbitration Court is possible in promotion procedures. The usual result of this form of promotion is that the concerned civil servant continues doing the same job but displays a higher job title and earns a higher salary. The second kind of promotion consists of climbing the hierarchical organisational ladder, but currently there is a restriction of the number of managers and consequently this form of promotion is rarely used. In this second type of promotion internal candidates for managerial positions must compete with external applicants. Along with these two kinds of promotion, there is a third, consisting of promotion upon proposal of the relevant manager, in principle as a result of a performance appraisal exercise. However, this form of promotion is reputed as being highly subjective and little formalised. Although the promotion schemes are generally more respectful of the principles of equality and merit than the recruitment procedures, there is still room for a better regulation that would make the promotion scheme simpler and more predictable.

### ***Classification of the Civil Service***

Civil servants are classified (article 24) according to their educational level into two basic groups: a) those with a university level of education (drafters, counsellors, chief counsellors, senior counsellors, and chief senior counsellors); and b) those with a secondary level of education (clerks, chief clerks, and senior contributors). Within each group the classification depends on the length of service, performance appraisal, and whether or not the candidate has succeeded in the basic and specialised public administration examinations.

In Hungary, there seem to be three kinds of senior managers in public administration. One category includes department chiefs, department heads, and their deputies (article 31), who are appointed by open competition as described above. These managers can be removed at the discretion of a minister at any time, without any further explanation. They are entitled to another civil service position when removed. Another category is the Senior Public Servant staff (SPS) created by the 2001 amendments (articles 31/A and ff.) and further regulated by a Government Decree of 14 September 2001, which set up a special office within the Prime Minister's Office to manage this corps exclusively. This office is named the "Government Personnel Administration Centre". Finally, there are state secretaries (of two types, political and administrative) who are civil servants regulated mainly by the Civil Service Act, but also by the Government Act. Under-secretaries can only be civil servants. They are nominated and removed by the president, and their deputies are nominated and removed by the relevant minister.

The SPS staff are maximum 300 in number, and are distributed among the Prime Minister's Office, ministries and other central state agencies. There are also "Central Officers", i.e. uniformed officials, maximum 150 in number. Their tasks are described in law as expert advisors on preparing strategic decisions. They also act as managers, ensuring the effectiveness of both management and control and efficiency in operating the budget. They carry out *ad hoc* tasks as required by the Prime Minister (PM) (article 31/A-3) and other tasks related to EU integration.

This SPS corps was introduced by the 2001 amendments to the Public Service Act. Initially, the only requirements for selection to this corps were a university degree and civil servant status at the time of appointment (not necessarily at the time of filing the application). No particular previous training, professional track record, or

experience was necessary, except that the candidate should have on record a certificate issued by the National Security Service. Each candidate should simply state in his application that he is suitable for the job and make a declaration disclosing his personal assets. The Prime Minister issued public “invitations” in the Official Gazette for applications in autumn 2001. A committee of three, nominated by the PM, scrutinised and shortlisted the 1,643 applicants (1,216 for SPS and 427 for uniformed forces), based on the criteria that all departments should be represented in the shortlist and that a balance between academic knowledge and practical abilities should be struck. On 15 February 2002 the PM issued his decision and appointed 271 SPS and 107 central officers. Afterwards, the PM's Office and the Institute of Public Administration (IPA) assessed training needs for those SPS and Central Officers selected. On 15 December 2001 the PM's Office approved the training scheme for these civil servants, as prepared by the Institute of Public Administration. This scheme includes public administration policies, organisation, management, strategic planning, operating procedures of EU institutions, government communication systems, and managerial skills. In addition, other training modules are tailored to the individual needs of the incumbents (foreign languages, IT and so forth).

Those selected as SPS were unevenly distributed among ministries to do approximately the same job they had been doing before their selection. From the day of their selection they were paid the salary established under article 31/C-2 of the Act, namely, a basic salary increased thirteen times, plus a supplement. This meant that for non-departmental heads the total salary was 429,000 HUF per month<sup>2</sup>, which was the lowest salary for an SPS. Those in managerial positions received 536,000 HUF. Deputy state secretaries received 620,000 HUF. The salary for administrative state secretaries was 800,000 HUF per month. For the sake of comparison it should be said that, after the general 2001 salary increase, a civil servant of expert status could expect at that time to receive a salary of between 200,000 and 250,000 HUF per month. The appointment of SPS was for five years, and they could be horizontally transferred between institutions at the PM's discretion. SPS could be “discharged” from their duties in cases of refusal to be transferred or by resignation. They could also be put on the “unattached” list for five years at the disposal of the PM while being paid only the basic salary for SPS established in article 31/C (thirteen times the ordinary basic salary). The SPS status was totally incompatible with any other remunerated activity and with any political partisan involvement.

The creation of the SPS was controversial. According to many observers, civil service trade unions and scholars included, the regulation of the SPS was inconsistent with a professional senior civil service, could lead to over-politicisation of the civil service, and was inimical to a full-fledged merit system. The extremely wide, discretionary power of selection attributed to the PM, along with the lack of specific qualifications, professional experience or training required for applying and being selected, seemed to reinforce such criticism. On the other hand, as many government officials pointed out, the aim in creating the SPS was to foster an elite or resource team to assist the strategic work of the government as a whole, by rising above vested sectoral or institutional interests and applying their expertise in any policy area. However, the materialisation of these aims is still to be seen in practical terms. Internally, the main obstacles to the creation of the SPS came from the apparatuses of ministries, because the SPS was to be interdepartmental and outside the exclusive jurisdiction of managers in ministries. It was recognised by senior government officials at the time of implementation that some mistakes had been made. Trade unions regarded the implementation of the SPS as an attempt by the PM to win the personal loyalty of those benefited, and they considered the selection process as opaque. The newly elected PM stated, in the run-up to the election, that he would keep in office all those selected by his predecessor, but that he would demand from them a volume and quality of work commensurate with their high salaries. Amendments to the SPS regulation were sent to parliament by the new government at the beginning of June 2002 in order to establish more stringent requirements for appointment as an SPS.

As a consequence of the change of government after the 2002 elections, the regulation of SPS was amended. The bulk of these amendments refer to the requirements for being appointed as an SPS. These new preconditions are: a minimum of five years of service; command of a European international language, at least at an intermediate level;

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<sup>2</sup>. 1 € is approximately 250 HUF.

and success at the intermediate level of the public administration examination. Other modifications are that the period of time in the “unattached list” is reduced from five to two years (retroactive), and refusal of mobility by the incumbent represents automatic termination of SPS status. From now on, only civil servants in state administration will be entitled to apply for an SPS post (local government civil servants and those who are not civil servants are excluded). On the other hand, if state secretaries apply for an SPS post, they will be automatically selected. Of these modifications, only the international language requirement was introduced in the Civil Service Act. The others became amendments to secondary legislation. A shift has also been introduced to the SPS by the new government, which sets out their role as consisting mostly of co-ordination of government policies. They will no longer be the “core task force of the government”, as initially intended, although the practical consequences of this shift remain to be seen.

Since the current government took office in mid-2002, some 50 SPS terminated their status, the majority through resignation or mutual agreement. Others were simply put on the “unattached list”. In October 2002 the Prime Minister called for new applications for SPS posts through an announcement published in the Official Gazette. Formally no new appointment for SPS has been confirmed at the time of writing this report (March 2003), but the appointing committee has already officially proposed the names of the selected candidates, who are currently in the review process (State Security review stage).

The modifications operated in the SPS scheme are positive in terms of recruitment, but it remains to be seen what exactly their role will be and what impact it will have on the operations of the Hungarian State administration. Up to now this SPS corps seems to be an expensive body without a clear assignment, although it formally continues to be responsible for the overall government policies in budget management, EU integration, management control, and preparation of strategic administrative decisions.

### ***Obligations, Rights and Duties, with special reference to Impartiality***

Civil servants’ rights and duties are not regulated in a systematic way by the Civil Service Act, which mainly refers to discipline at work (in quite elaborate detail). Such obligations are mainly stated by each institution. However, dispersed throughout the Act are provisions to prevent any conflict of interest that might affect a civil servant’s performance, such as having other financial interests or undertaking additional work inconsistent with the civil service duties (article 21). Activities that might jeopardise the impartiality of civil servants are expressly prohibited. Any breach of these duties can lead to dismissal through the application of disciplinary proceedings. The grounds upon which disciplinary action is based are regulated in the Civil Service Act at a level of generality which proves to be ineffective. Conflict of interest rules for economic activities outside the administration can easily be circumvented, as the authorisation depends only on the personal judgement of state secretaries.

Neither the Constitution nor the Civil Service Act provides sufficient guarantees of professional independence and political impartiality, although the Act is predicated on those principles. The Act forbids involvement in a political party or in public activities by an office-holder. The exception is when campaigning for a political office (although it is recommended that the public service relationship be suspended at such times). Impartiality is encouraged by provisions in the Civil Service Act on conflict of interest and duties to preserve confidential information (regulated by the Act of 1995). Other legislation (Act of 1992) lays down rules and procedures that are designed to allow access to official information. This legislation provides guidance to civil servants on the balance between freedom of information and the right to privacy. Individual civil servants can be required to appear before parliamentary committees investigating issues of public administration. Tradition, rather than law, governs the circumstances in which civil servants may have contact with organised political groups.

Corruption is dealt with mainly through line management, internal control and the criminal law system. Civil servants are subject to discipline for any corrupt action. The Penal Code defines corruption-related criminal offences that might be committed by civil servants, and which would result in police investigation and prosecution. Government Regulation 1023/2001 set out a general anticorruption regulation applicable to the whole public

sector, including civil servants. It established an Anti-Corruption Council under the jurisdiction of the Ministry of Justice and the Minister Head of the PM's Office. The Code of Conduct for the civil service, required by the 2001 amendments, is in preparation, and each administrative authority will have an Ethical Committee (article 58/A). Trade unions are reluctant to regulate ethics through legal instruments and they claim, perhaps rightly, that ethical standards should not be imposed by legislation but developed at grass-roots level. At present, no administrative body is specifically charged with investigating and punishing corruption within the public service. That function rests with the prosecutors and the courts under general criminal law and procedure. However, it is calculated that some 8 to 10 different bodies have some responsibility in preventing or fighting corruption. The current government has established a state secretary in charge of overseeing the use of public money, which adds to the plethora of bodies nominally responsible for the proper use of public assets and resources.

According to many observers, corruption does not seem to be a great problem in the public service. It is mainly a problem at the political level, where decisions are made on distribution or redistribution of State assets, particularly in parliament and in high decision-making positions. Some 20 % of the members of parliament have had problems of conflict of interest during recent years, and have been prosecuted accordingly. Within the civil service less than 1 % has had such problems. Corruption cases appear mostly in activities related to public procurement, public subsidies, customs, licensing and privatisation. Two civil servants were punished for taking bribes to waive citizenship examinations for foreign migrants. The increase of the salary level, phased in since 2001, has further reduced the incentives for corruption among civil servants.

The 2001 amendments (article 22/A ff.) introduced the obligation for different groups of civil servants to declare assets, and set the timing for such disclosures. By 29 October 2001 (deadline for the first declaration) some 130.000 disclosures had been submitted to the Public Service Control Office of the Ministry of the Interior, which is the body administering the exercise, with powers to investigate questionable variations in assets. Confidentiality is guaranteed by a specifically designed mechanism, whereby only dubious variations in assets would lead to revealing the identity of the incumbent civil servant. The responsibility for handling and managing asset declarations as well as for carrying out investigations on such issues has been allocated, as of July 2002, to the Public Administration Organisation and Civil Service Office of the Ministry of the Interior. For this particular problem, the Office reports to the Prime Minister, not to the Minister of the Interior.

***Recruitment based on merit is not guaranteed because of the lack of a legally mandatory public competition for recruitment, except for managerial positions. This lack formally opens the door to patronage and politically motivated recruitment. The 2001 amendments did not change this situation. What is more, the characteristics and the way in which the SPS corps was established also led to strong suspicion of partisan-based selection of its members, even if the current government has introduced some more objective recruitment requirements. Under these conditions the professionalism and political impartiality of the Hungarian civil service should not be assumed.***

***The promotion scheme reflects more clearly merit-based principles and seems better structured, although the actual practice of key elements of the new system, such as the performance appraisal scheme, is still in the early stages and shows excessive subjective components. Although the newly introduced performance appraisal system raised hopes for improvement in many quarters, some sceptics think that the future of the performance appraisal scheme will fare much the same as it did in the majority of OECD Member countries, where such schemes have not worked well.***

***Means to combat corruption are in the process of being further improved, and should reinforce the integrity of the professional civil service if a clearer distribution of responsibilities reduces the current fragmentation. However, politicisation is still a problem in the Hungarian administration, with negative consequences on the impartiality of the civil service.***

3.2 *Does the law fix the salary scheme, and is the determination of individual pay transparent and predictable?*

A unified pay scheme is in place throughout the civil service, although civil servants governed by specific statutes and some public authorities have different arrangements. Examples of the latter are the State Audit Office, the Banking Supervisory Body (with salaries pegged to those of the Hungarian National Bank), local governments and the SPS. The same is true for those under the Labour Code. The scheme for civil servants is defined in the Civil Service Act, and conditions for supplements and bonuses are described therein.

The salary components are basic salary, salary supplements and bonuses. The basic salary system is comprised of 17 grades for university graduates, and 15 grades for secondary education graduates. Assigned multipliers for each grade are determined yearly by the Annual State Budget Law (Public Finances Act). Basic salary and salary supplements form the fixed part of the take-home pay, whereas bonuses are the variable part. Bonuses may reach a maximum of 20 % of the basic salary, but state secretaries and other senior managers may be granted up to 60 %. Other bonuses are also possible for command of foreign languages, a doctoral degree and for especially difficult working conditions.

Objective job evaluation is not used to determine supplements, but the Civil Service Act (article 44) establishes them for central administration at a range of between 80 % and 10 % of basic salary (depending on the institution) for university graduates, and at 15 % for secondary education graduates. In local governments, these supplements are significantly lower. The performance appraisal scheme introduced in 2001 was meant to be used to determine bonuses, although critics consider it too subjective and too dependent on the personal judgement of managers.

Detailed information on basic pay is in the public domain. Surpluses due to vacancies have been used to a very large extent to pay bonuses, and although this practice has diminished, it has not completely disappeared and currently seems to be rebounding. In the Ministry of Finance, for example, unspent funds apportioned to filling vacancies are used to pay bonuses and institutional development (up to 5 % for implementing new technical programmes). The Civil Service Act (articles 45 and 46) also determines the salary scheme of ministers. One linear 13<sup>th</sup> month of pay is also awarded to every civil servant. In the Ministry of Finance a 14<sup>th</sup> month salary is also possible if the “ministry’s revenues make it affordable” Allowances are also regulated by the Civil Service Act (article 49/E).

The 2001 reform established an average salary linear increase of 70 % for civil servants with a university diploma, and 50 % for civil servants with a secondary education qualification. This increase was due to be implemented in phases between 1 July 2001 and 1 July 2003. Effectively, most salary multipliers were doubled on 1 July 2001, resulting in an increase of 7.75 % in everyone’s basic salary as from 1 January 2002. As a result, salaries have improved considerably for university graduates. The increase was not initially applied to civil servants with a secondary education. The government expects to complete the whole salary increase by 1 July 2003, and budgetary allocations are earmarked in the current budget law for 2003.

Public employees were much less well paid than civil servants, and this was an issue in the 2002 political campaign. The 2001 amendments also gave a number of fringe benefits to civil servants, such as State-guaranteed mortgages, supplements for clothing, holiday resorts, insurance contributions and other social advantages. The new government decided to also increase the salaries of those delivering public services, as promised during the electoral campaign.

Effectively, public employees delivering public services and labour contractees (former civil servants) in ministries were not affected by the big 2001 salary increase, although they were awarded the 7.75 % increase of their basic salary. This differentiated timing for applying the salary increase led, for example, the Ministry of Education to partly freeze the application of the salary increase in the core ministry (January 2002) so as not to

further widen the remuneration gap between civil servants and public employees within the jurisdiction of the ministry, and to offset resentment in the run-up to the legislative elections due to be held in April 2002.

This unbalanced situation was corrected by the current government. In fact, it was one of the first measures adopted after taking office and consisted of increasing salaries for public employees by an average of 50 % through an Act of September 2002, which revised the State Budget Act. Qualified public employees, in particular medical doctors and teachers, had their salaries increased by more than 50 %, whereas for less qualified public employees the salary augmentation was less than 50 %.

Subsequent to these overdue salary augmentations, public salaries rank today second best in the country, only surpassed by salaries in the banking sector. According to data published by the Ministry of Labour<sup>3</sup>, in December 2002 the average salary (by averaging blue and white collar employees) in the “government” sector at the end of 2002 was 127.604 HUF, whereas in the “enterprise” sector it was 88.545 HUF. The legal minimum wage in the country was 50,000 HUF in 2002. A salary decompression has also been operated. Now the salary ratio in the public sector is 1/5 or 1/6, whereas previously it was 1/3.

The salary system, although formally unified, has many variations regulated in great detail in the Civil Service Law. However, the complexity of the system, along with the wide degree of discretion allowed for managers to decide on bonuses, may lead to differences (and in fact does) between and within institutions which are not always justified. The possibility to increase or reduce salaries by plus/minus 20 % of the salary leads to imbalances across institutions and between individuals doing the same job amounting to up to 40 % discretionary salary. The reasons for this are historical and result from the way in which the salary system, enshrined in the Civil Service Act, was negotiated in 1992. The Ministry of the Interior advocated a unified pay system for the whole administration, but the Ministry of Finance favoured wide discretion for heads of institutions to set up their own salary scheme. This resulted in a compromise: a unified salary scheme would be established by law, but conflict of interest rules would be relaxed; supplements and bonuses would be introduced for all central government civil servants in different measure; and a so-called “personal remuneration list of the minister” would be permitted.

The 2001 amendments, although officially intended to eliminate discretion in determining individual salaries, have reinforced this tendency towards fragmentation by introducing an award for outstanding performance (article 49/N), amounting to up to six months’ salary, or by conferring paid holidays at home or abroad. This six-month limitation for “outstanding performance” has been removed by the Act on Implementation of the State Finance Act of 2003. Consequently it is now legally possible to be paid bonuses amounting, for instance, to 100 % or 200 % of the salary, determined by discretionary decisions of managers.

Such a wide and unrestricted discretion may easily lead to arbitrariness in determining individual salaries and patronage-driven practices, endangering the impartiality and objectivity that should preside over civil service performance. The principle of the legality of administrative action is at risk if a disproportionate part of the salary depends on managerial discretion. In practice, however, bonuses average three or four months of salaries, which is equivalent to some 30 % take-home pay as discretionary salary, a percentage that is clearly excessive, although according to some accounts bonuses are not awarded in large numbers. Individual salaries are not disclosed as it is alleged that this would be counter to legislation on personal data protection, and therefore the whole system remains opaque and open to all kinds of undue manipulation. Trade unions advocate putting the bulk of the salary under the “basic salary” component of the salary scheme and narrowing the wideness of discretionary pay.

The system is highly complex, and the discretion of managers for awarding bonuses is too wide and has been made even wider in 2003. The system is not transparent. This could be offset to some extent if the performance appraisal scheme were soundly applied, which is far from being the case. However, as the rather discretionary appointment of managers - whose remuneration includes not only numerous perquisites but also salary supplements - depends

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<sup>3</sup> “Development of the Net Monthly Average Earnings of Full-time Employees in the National Economy”, December 2002.

basically on individual decisions by politicians, the system will continue to be distorted if this issue is not properly tackled. Unfortunately, the tendency towards fragmentation and opaqueness in the management of the salary system seems to be reinforced by recent legal measures.

***The salary system, although established in legislation, is too complex and has too many exceptions. Discretion of politicians and managers is high in attributing individual salaries or bonuses. This leads to a system that is neither transparent nor predictable and works against the impartiality and political neutrality of civil servants. The tendency towards fragmentation and discretion in handling the salary scheme has been accentuated in 2003.***

3.3 *Do sufficient and reasonable mechanisms (basically mobility, training and motivation) exist for good performance and career development within the civil service so as to make it attractive?*

The 2001 salary improvements made the civil service more attractive and considerably narrowed or even surpassed the gap with private sector remuneration rates for qualified employees. However, critics point to the fact that the attractiveness is tempered by a very high degree of politicisation of the civil service, and that this problem cannot be solved solely by increasing salaries. Trade unions quoted the findings of a survey, which indicated that the civil service was the less preferred professional option among university students, and that only 10 % of university graduates intended to join the civil service. Trade unions also believe that politicians tend to think of civil servants' loyalty in terms of personal loyalty rather than institutional loyalty. A vast majority of Hungarian citizens (some 90 %, according to a 1999 survey<sup>4</sup>) believe that the first loyalty of Hungarian public servants should be to the Constitution and laws of the country. Only 44 % think that the first loyalty should be to the government of the day and 23 % rank loyalty to their hierarchical superiors as first priority. Recent empirical research on the Hungarian transition shows that these views are in striking contrast to the mainstream attitudes of Hungarian political leaders, which are oriented towards securing political and personal loyalty of the civil service to their own political objectives. This phenomenon, as institutionalised in legislation and administrative practices, has been labelled as "formal politicisation of the civil service"<sup>5</sup>.

The introduction of political state secretaries in 1990 was part of a policy aimed at separating politics and administration. Political state secretaries were nominated through political appointment and were not meant to have any role in managing the internal affairs of a ministry, whereas administrative state secretaries were to be responsible for the professional management of the ministry. All ministries now have cabinets of political advisors appointed for the duration of the government's term, and the cabinet's activity encroaches on the operations of the administration. This is regarded by many, trade unions included, as hampering the professional development of the civil service. Administrative state secretaries are civil servants, but they are routinely removed when the government changes, a practice that was followed again when the current government took office in 2002. Consequently, the administrative continuity is severed regularly. Administrative state secretaries are removed as frequently as are political state secretaries.

Horizontal mobility is legally possible but rarely used. In central state administration salaries are now more competitive, but significant salary differences still exist among institutions, thereby hampering horizontal mobility.

The 2001 amendments also introduced a performance appraisal scheme. Currently, all institutions are developing, or have already developed the relevant criteria, in accordance with a methodology proposed by the Ministry of Interior and the Institute of Public Administration. Specific training to manage the performance appraisal scheme

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<sup>4</sup> Gallup-Hungary 1999: "Public Opinion Survey on Public Perceptions on Public Servants". Budapest: Gallup-Hungary. Quoted by György Jenei and Gábor Zupkó in "Public Sector Performance in a New Democratic State: The Hungarian Case", in *International Review of Administrative Sciences*. Vol. 67 (2001), pp. 77-98.

<sup>5</sup> See Jan-Hinrik Meyer-Sahling, "Getting on Track: Civil Service Reform in Post-Communist Hungary", in *Journal of European Public Policy* 8:6, December 2001, pp. 960-979.

has been given to all managers. Immediate superiors will carry out a performance appraisal exercise every year. It is meant to set the remuneration for the subsequent year. The remuneration may oscillate by plus or minus 20 % as a result. The ratings for promotion are assessed every four years on the basis of the four preceding yearly appraisals. Although seniority plays a role in promotion, performance appraisal has become the main basis for promotion. Promotion based solely on performance appraisal is also possible if several “excellent” evaluations are obtained in the appraisal exercises. The notion of promotion has qualitatively shifted. It now (as from 1 January 2003) consists more of obtaining salary increases, even on the basic salary, rather than climbing up the hierarchy to managerial positions. The new performance appraisal scheme has worked acceptably in some institutions and less so in others. The reason voiced by the Government Personnel Administration Centre is that the scheme is cumbersome and very demanding for managers, as they need to write long reports to justify the salary rates they give to their subordinates.

The Hungarian civil service appears to have a sufficient degree of guaranteed tenure. The termination of the civil service relationship is only possible by resignation, retirement or on grounds of the incumbent’s lack of ability, either for health reasons or for a lack of professional skills. Disciplinary faults are also grounds for dismissal. The Civil Service Act contains a number of causes for dismissal by restructuring (article 17), within certain limitations and restrictions. In the case of restructuring, civil servants are entitled to severance pay amounting to between one month and eight months’ salary. However, although tenure is formally guaranteed, ministers have a high degree of discretion to dismiss unilaterally groups of civil servants of all categories by means of different kinds of ministerial restructuring or reorganisation, a ministerial right more or less recognised by article 40-2 of the Constitution.

Training is considered as an obligation for civil servants (article 33). The Institute of Public Administration holds the main responsibility for training, although more specialised training is the responsibility of the relevant ministries. The Institute is funded principally by the Prime Minister’s Office and also by the Ministry of Interior. The staff are 41 strong and are not civil servants. Ten of them are researchers, including the director.

The Institute has managed a Central Training Programme for the implementation of the new civil service legislation, in which some 3,000 civil service managers have been trained. The Institute has developed the training curriculum, and trained the trainers on the contents of the new law, with the aim of ensuring its uniform application throughout the administration.

The new legislation makes it compulsory to pass a Specialised Civil Service Examination, which is both practical and theoretical, for promotion to managerial positions. The Institute ensures the training necessary for those preparing themselves for this examination. The topics studied are general administrative law, State finance, organisation and management, law enforcement and implementation, EU legislation and institutions, and a number of optional topics of choice. The preparation course takes six days, according to the Decree 35/1998. The Institute has also developed a training concept for the recently established SPS, based on a typical management training programme. The Institute is the centre for designing methodologies for further and continuous training, and assists ministries in developing their curricula. These curricula require approval by the Ministry of Interior, which also issues the accreditation certificates. The competent body within the Ministry of Interior is the Further Training College, to which the Institute acts as secretariat. The overall training budget rose from 300 million HUF in 2001 to 1,500 million HUF in 2002.

***The Hungarian civil service has improved overall in terms of its attractiveness to provide a professional career. Elements for motivating the staff have improved (salaries, performance appraisal). Tenure and stability are relatively guaranteed. Training budgets are also increasing. Promotion is more and more linked to training and performance and less to seniority, although political connections still play a significant role. However, horizontal mobility is hampered by the disparate salary arrangements across institutions, and the degree of politicisation still remains high.***

#### 4. Management of the Civil Service

##### 4.1 *Have systems for personnel management and a cross-government structure been established so as to ensure the application of homogeneous standards across the administration?*

Traditionally the Ministry of the Interior has had the main responsibility for the civil service in terms of drafting legislation, co-ordination of law implementation and training development, but its powers, regulated mainly by article 64/A of the Civil Service Act, have been traditionally weak. The management of the civil service is decentralised to ministries and institutions, which enjoy a high degree of autonomy in setting their own personnel management policies and standards. Recent measures have been introduced that might lead to complicating the institutional landscape with regard to the management of the civil service.

First, a Government Personnel Office was created in 2001 in the Prime Minister's Office, reporting to the Minister Head of the Prime Minister's Office. This office was given the assignment of managing the SPS created by the 2001 amendments to the Civil Service Act.

Second, in July 2002 a Public Administration Organisation and Civil Service Office was established in the Ministry of the Interior, the head of which is a civil servant (SPS) appointed by the Prime Minister upon proposal of the Minister of the Interior. This office is an autonomous office within the ministry, reporting to different authorities depending on the subject matter. The main responsibilities of this office are: a) handling and managing the civil servant's asset declaration and conducting relevant investigations in this area, reporting to the Prime Minister; b) management of the civil service, a responsibility transferred from the Ministry of the Interior, and reporting to the minister on these matters; and c) developing policies and actions on improving the quality of administrative performance in central administration, as well as increasing administrative capacity, particularly with a view to EU membership. These matters are under the direct authority of the Minister of the Interior.

Third, in September 2002 (Decree 1161/2002) the Prime Minister established an office headed by a government commissioner in charge of developing and co-ordinating the implementation of a comprehensive regulation of the public service. He appointed the head of this office, with the rank of state secretary, under the organisational umbrella and budget of the Ministry of Employment and Labour. The Commissioner represents the government in the Public Service Reconciliation Council, a negotiating table with trade unions (see below). The task of the commissioner consists of submitting recommendations on the primary legislative framework and on secondary regulations for public employment, including the civil service; and proposing solutions for a harmonised regulation and implementation of legislation concerning public employment, wages and social tasks of public employees (article 1 of the decree). The commissioner has been given a deadline (31 October 2003) to submit to the government a "detailed concept on a comprehensive regulation of the public service" (article 3 of the decree). Relevant ministers have been ordered to co-operate with the commissioner for the successful completion of his assignment (article 7). The Commissioner has concretised these formally designated tasks into preparing a new regulation which will include all public employees into a single Act on Public Service, which will be a framework law. This law is intended to be based on accepted European principles of administrative law and civil service, and its objectives will be a) to raise salaries up to "European level"; b) to establish sufficient social benefits so as to make public employment competitive with the private sector; c) to create a special pension system for public employees; and d) to reform the collective negotiation system with trade unions, by unifying the two negotiation tables (reconciliation councils) currently existing and by other measures. The commissioner's planning indicates that the Act should be adopted by spring or summer 2004, the new salary scheme applied as from 2006, and the new pension system introduced in 2006.

The creation of the Commissioner's Office encountered the reluctance of the Ministry of the Interior, which as a consequence seems to be shifting its emphasis from preparing civil service legislation towards the tasks mentioned above for the Office and towards the reform of sub-national governments (regions and municipalities). At the same time, the ministry has not formally relinquished its attributions with regard to the civil service. The main

supporters of the Commissioner in the Council of Ministers are the Prime Minister, the Minister of Employment and Labour, and the Minister Head of the Prime Minister's Office.

For many observers, the role of the Commissioner's Office is unclear as it overlaps with the responsibilities attributed to other ministries or offices. For others, it is a "sunset" exercise which will terminate when the tasks assigned to it have been completed. Whichever the case may be, the creation of this Commissioner's Office (now with seven permanent staff plus a number of appointed external consultants) reveals the will of the government to address the problems currently affecting the civil service. A different matter is whether these problems will be tackled correctly and effectively and whether the reforms will be oriented in the right direction. It is still too early to say. In any case, it should be stressed that the creation of this office represents an opportunity to address badly needed reforms in the Hungarian civil service.

The fragmentation of responsibilities with regard to civil service management and the high degree of autonomy accorded to ministries and institutions in setting standards are resulting in very unequal civil service management. As there is no central capacity with sufficient powers to co-ordinate effectively the implementation of common management approaches, the inequality and disparities will tend to be accentuated in the future, and the fragmented nature of the Hungarian civil service will remain.

***The system is decentralised in ministries and institutions, which hampers the homogeneous application of general civil service standards. Marked disparities exist with regard to recruitment (some institutions use open competition, others do not), salaries (differences in salary levels still remain, depending on the institution), and so forth. The 2001 reform left the Hungarian civil service management system unchanged, and this situation could lead to even more fragmentation. Recent actions, such as the creation of the Commissioner's Office, provide an opportunity to introduce badly needed reforms in the civil service, including a sound management system with a central capacity sufficiently empowered to set common civil service management standards across the entire state administration.***

#### 4.2 *Are staff numbers and personnel costs controlled and published?*

The resources allocated to the payroll in the public service are published in the Annual State Budget (State Finances Act), and the total amounts available to pay bonuses and supplements are subject to internal controls and external audit. It is not legally possible to shift the finality of the earmarked line items in the budget. For example, it is not possible to exceed spending ceilings, because operational costs cannot be shifted into personnel costs, but within the "personnel costs" chapter managers enjoy greater flexibility. In fact, this flexibility allows for raising salaries (through different kinds of bonuses) of actual staff by using funds foreseen for unfilled vacancies. In addition, exceeding spending limits may bear disciplinary consequences. The Ministry of Finance (Budget Office) holds a register of all existing positions where information on civil servants' salaries and bonuses is kept, but this register contains incomplete information about actual staff numbers. The Ministry of the Interior had maintained a register containing personnel information provided through a manual reporting procedure, which conveyed information which was neither up-to-date nor totally reliable. A new, computerised information system introduced in the Ministry of the Interior in September 2002 is in the process of becoming operational. In 2003 the government resumed a practice, discontinued in 1996-97, which consisted of fixing the maximum number of staff to be employed by each ministry during the fiscal year. It can be said that the total personnel costs and total staff numbers are controlled and published, even if some weak points still appear, stemming mainly from inter-administrative co-ordination failures (for example, weak communication between the registers in the Ministries of Finance and Interior). What is not disclosed and remains non-transparent is the amount paid to individual civil servants through the different sorts of bonuses.

***The current systems for controlling personnel costs and staff are improving, but are still weak in terms of instruments and co-ordination arrangements between the responsible institutions. Total costs are generally***

***under control, but it is very difficult, if not impossible, to know the amounts of bonuses paid to individual civil servants.***

4.3 *Do staff representatives participate in decision-making and control concerning personnel management matters?*

There are seven trade union federations among public employees. Civil service trade unions have the right to collective bargaining. Until end of November 2002 two main bodies served to channel the collective relationship between the administration and civil servants (article 65 and ff.). One was the Public Servant Council of Conciliation of Interest for civil servants in central government. The other was the National Conciliation Council for local governments. In December 2002 the trade union negotiating schemes were reorganised under the responsibility of the Ministry of Employment and Labour. The National Public Service Reconciliation Council was created, within which four specific forums have been established: a) the labour issues council for public employees (non-civil servants); b) the civil service forum (with two sections: state administration and local governments); c) the army; and d) other uniformed corps (police, customs officials, firemen, etc.).

Under the legislation trade unions have a marked consultative role and a less pronounced negotiating role. Trade unions usually do not participate in selection processes. They can be called on, by an interested party, to participate in the application of disciplinary proceedings and sanctions, as well as in performance appraisal and promotion procedures.

Hungarian public service trade unions have a preference for solving problems through negotiation and compromise rather than through open confrontation with the government. Strikes, although permitted, are rarely used, because it is very complicated to meet all the preconditions legally required to declare a strike in the public sector. To date it has always been possible to reach a compromise before the strike, even announced, has materialised.

Although recent salary increases are regarded as very positive and largely overdue, trade unions are not satisfied with the current situation of the Hungarian public administration. They insist on the need for a more professional public service, less politicised and less unbalanced in terms of remuneration, on spreading the use of IT in the administration, and on promoting a more citizen service-oriented public service. At the same time, they denounce the existence of excessive discretionary elements in the remuneration system and the unrestricted encroachment of politicians and their cabinets on the operational sphere of the civil service. In this regard, the institutionalisation of the National Public Service Reconciliation Council and the establishment of the Government Commissioner's Office could represent opportunities to channel long-standing union demands for a more integrated Hungarian civil service.

***Under the current legislation trade unions have a more marked consultative role than a negotiating role. This situation could change if the measures taken recently consolidate to create a larger role for trade unions in the functioning of civil service management and, by extension, in the performance of the administration.***

## 5. Capacity to Reform and Sustainability of Reforms

### 5.1 *Does the politico-administrative system reasonably enable the government to carry out reforms?*

The Constitution confers wide powers on the Prime Minister within the Hungarian institutional context. While in office he can only be removed through a constructive non-confidence censure motion. The Prime Minister does not have the power to dissolve parliament. The Hungarian mixed proportional voting system ensures that sufficient workable majorities can be formed in parliament to support a stable government. The Prime Minister's Office was directed by a state secretary until 1998, and is currently led by a minister called the head of the Prime Minister's Office. The PM's Office co-ordinates the preparation of legal drafts, controls the ministries, centralises different functional units of the government, gives strategic direction to the government, and prepares government decisions. It used to do this by replicating the structure of a ministry in a sort of mirror government (called the *referratura* system). The *referratura* system was abolished in 2002 by the newly elected government.

Co-ordination has developed in a rather informal way, as there is little formalised co-ordination structure, although the structure and functions of the PM's Office are set down in a government regulation. One function of the PM's Office is to design and monitor the implementation of strategy and action plans for public administration reform. Several plans for public administration reform have been adopted in recent years, usually on a biennial basis. The last one was adopted by Government Resolution 1057 of 21 June 2001. It contained the action plan for the years 2001-2002, and assigned responsibilities for its execution in different ministries and institutions. The government elected in 2002 has launched several initiatives to boost reform. Some amendments to previous government policies have been made (regarding the SPS), while others have been continued (e.g. the policy to increase salaries in the public service).

The state secretaries, midway between politicians and professional administrators, ensure the translation of government policy priorities into administrative actions. State secretaries fall into two categories, political and administrative. The political state secretaries, appointed by agreement among the governing coalition parties, do not have to be civil servants. The administrative state secretaries are civil servants appointed to their positions on the basis of political/personal trust and professional expertise. They are removed at ministerial will, without losing the status of civil servants. The roles of either category are clearly separated in legislation (Act LXXIX/1997), but in practice they are not always as clearly performed, and duplication and turf wars are not uncommon. Successive governments have extensively removed this segment of staff when taking office. Experience has shown that these administrative state secretaries end up leaving public service altogether when removed from office, and this practice represents a loss of experience and expertise for the civil service. Moreover, the total dependency on ministerial goodwill to stay in a managerial office means that the neutral professionalism of administrative state secretaries is not a guarantee against politically biased interventions. This situation blurs in practice the separation between politics and administration.

Another element of this politicisation has been the introduction of personal staff to give advice to politicians (cabinets). In principle this group, confined to a maximum of 5 % of the total personnel, is outside the hierarchical structure. However, as their responsibilities are not clearly defined, they frequently encroach on the permanent staff and state secretaries. This situation spurs unhealthy competition in the top echelons of the administrative hierarchy and makes it difficult for independent professional policy advice to reach ministerial ears.

The main risks and obstacles for pursuing administrative reforms come more from within the government, rather than from parliament or other social forces, such as civil service trade unions. The government should make changes to ensure that fragmentation in management and bureaucratic strongholds do not hamper reform. The Hungarian Government has the advantage of the strong constitutional position which the Prime Minister enjoys within the politico institutional context, and it is surprising that within the Prime Minister's Office a clearer and stronger powerhouse for steering public administration reform has not been established. Instead the continuing policy of setting up complicated arrangements for the distribution of responsibilities, with mixed hierarchical and

functional dependencies, may in the end render reform policies ineffective. The establishment by the new government in 2002 of a separate unit under the Administrative State Secretary of the PM's Office to give impetus to the modernisation of the state administration may represent a step in the right direction, reversing the current tendency towards dispersion of responsibilities. However, this remains to be seen.

5.2 *Have the main reform incentives been identified, and is their sustainability foreseeable in the medium term?*

The Hungarian political class and successive governments have been very much aware of the crucial role the administration plays in building a new political system. Public administration reform had already begun in Hungary prior to the end of the previous political regime. This gave Hungary the advantage of being at the forefront with regard to other EU candidate countries. The reform process has consisted basically of progressive adoption of administrative principles and standards prevailing in EU Member States. Otherwise said, the reform or modernisation processes have been Europeanisation processes.

The Hungarian intelligentsia has also played a crucial role in raising this awareness, and in keeping it alive before and through the transition process. It is assumed that if Hungary started reforms even before the former regime fell, it was because the Hungarian intellectuals convinced the communist authorities of the day of the necessity for reform. In fact, in Hungary the bulk of reform proposals and policies have been concocted in academic quarters, with scholars going back and forth between the university and the government. This means that in Hungary there is a "critical mass" of opinion able to ensure the continuity of public administration reforms. The Hungarian intellectual community continues to be very active both in public affairs and in civil service trade unions. It is encouraging that this community widely acknowledges the factual politicisation of the Hungarian administration, and the majority advocate a more resolute governmental stance to reduce it and to thereby increase the professional autonomy of the public administration.

The prospect of joining the EU plays a crucial role in Hungarian reform policies. One positive example is the introduction into Hungarian legislation, by the 2001 amendments to the Civil Service Act, of modern human resource management techniques and better quality standards in the functioning of the administration. This example indicates, along with ongoing extensive and intensive training programmes, a certain impetus for reform. However, on the negative side is the politicisation of the civil service, which will remain high unless competitive and transparent schemes for recruitment are put in place soon, discretionary powers to determine individual remuneration narrowed, and institutional instruments with sufficient powers set up to manage the civil service.

It is uncertain whether Hungary will proceed with essential public administration reforms, even if some recent developments may be seen as positive, as this report has shown. In Hungary, the major levers of change will be new and better legislation, and training aimed at increasing professionalism and decreasing politicisation. However, up to now the Hungarian political class has been reluctant to seriously tackle the problem of the high politicisation of the civil service. In fact, the 2001 amendments to the Civil Service Act represented a missed opportunity of the government to introduce key elements required in the system, namely the establishment of better regulated civil service management, especially a recruitment system where open competition based on merit is the general rule. The government introduced instead an element that made the system even worse: a Senior Public Service clearly designed along patronage patterns, although the more striking negative features of this scheme have been corrected by the new government. The envisaged revision of the current public service legal framework should be taken as a new opportunity which the government should make every effort not to miss.

## **Recommendations and Next Steps**

1. Serious efforts should be made to reduce politicisation in public administration and increase professionalism, including setting up transparent procedures for recruitment and promotion, ensuring a clear demarcation between politics and professional civil service, and basing without ambiguity the new Senior Public Service scheme on merit.
2. Further efforts should be made to implement extensive training for management. The current training institutions need to be strengthened to provide initial and in-service training more systematically and effectively.
3. Civil service management across the administration should be organised to ensure homogeneous standards. A central management capacity with sufficient horizontal powers should be established.
4. Salary arrangements must facilitate horizontal mobility of staff across ministries and other state institutions. Unjustified salary imbalances between ministries must be reduced. The excessive discretion of managers to determine individual take-home pay through the various existing bonus schemes should be reduced and kept under control.
5. The personnel register should be fully computerised and linked to the payroll system to better control real staff numbers and personnel costs and to assist in personnel policy decision-making.
6. The legislation on administrative procedures should be simplified and amended to align it with European standards.
7. Specific procedures for judicial review of administrative decisions need to be adopted. The capacity of the judiciary needs to be improved to ensure a more adequate judicial review of administrative decisions.