



SIGMA

Support for Improvement in Governance and Management

A joint initiative of the OECD and the European Union, principally financed by the EU

FORMER YUGOSLAV REPUBLIC OF MACEDONIA
PUBLIC SERVICE AND THE ADMINISTRATIVE FRAMEWORK
ASSESSMENT JUNE 2007

Introduction

This report updates the June 2006 assessment report on the public service and administrative framework in the former Yugoslav Republic of Macedonia¹. It follows the baselines which Sigma has defined for these areas and is mainly based on information gathered up to mid-May 2007. As an update, this report focuses on changes since the last assessment. For a full picture of the state of the public service and the administrative framework in Macedonia, reference should be made to the June 2006 assessment report.

Following parliamentary elections on 5 July 2006, a new government took office on 28 August. According to the Programme of the Government for 2006-2010, “the improvement of the quality and efficiency of the public administration” is one of the government’s main goals. In line with this goal, the document underlines as objectives a reduction of staff and an increase in professionalism. Moreover, the introduction of employment and career advancement criteria is foreseen as a way of depoliticising the civil service.

The Programme of the Government and various political statements emphasize the option for a more professional, managerial and results-oriented approach in all domains of activity as well as the engagement of the Macedonian society in policy-making through effective mechanisms of participation and consultation. It is expected that special focus will be given to assessing the impact of new regulations and to implementing the legal framework. The Programme addresses some of the issues that were raised in previous assessments and may lead to an improvement of the present situation. However, experience in other countries suggests that this approach has significant risks, which need to be carefully monitored.

The government has sent mixed signals concerning its real commitment to professionalism and the rule of law in civil service matters. Early decisions have affected all senior management and consequently the momentum of EU relations. It remains to be seen how far the government will now realise its ambitions for professionalisation and whether its actions to depoliticise the top ranks of the civil service will set a strong precedent for future governments.

Implementation of the Ohrid Framework Agreement (2001) in terms of the equitable representation of non-majority communities is progressing, and a new Strategy and Action Plan in this regard have been adopted to strengthen implementation and speed up the process.

1. Legal Status of Public Servants

1.1 Does an appropriate legal basis exist, defining the status of public servants in a way that is compatible with prevailing standards in EU Member States?

Constitution

No structured civil service model is set out in the Constitution², but some of its provisions establish the basis for the civil/public servant’s status. Article 23³, for instance, states that “every citizen has the right to take part in the performance of public office.”

Membership in a political party (article 20) is established as a right of every citizen. On the other hand, the right to join a trade union (article 37) and the right to strike (article 38), while recognised in the Constitution, may – according to the same provisions – be restricted by law for the armed forces, the police and administrative bodies.

¹ In this report, the former Yugoslav Republic of Macedonia will hereafter be referred to as “Macedonia”.

²The Constitution and its amendments are published in the *Official Gazette*, nos. 52/91, 1/92, 31/98, 91/2001, 84/2003 and 107/2005.

³ Article 23 is in Chapter II, “Basic Freedoms and Rights of the Individual and Citizen”, Title 1, “Civil and political freedoms and rights”.

Equitable representation of all communities in public bodies at all levels and in all areas of public life is one of the fundamental values of the constitutional order of Macedonia. This principle was introduced as an amendment to the Constitution in November 2001 following the Ohrid Agreement in August 2001. It must be stated that to some extent the principles of equal access and equitable representation may be in conflict, and this could damage the civil service merit system and create some problems in the management of the civil service.

Ordinary Legislation

The basic legal act defining the status of civil servants is the Law on Civil Servants (LCS), adopted in 2000 and amended 12 times thus far⁴. This law applies to civil servants at central and municipal levels.

The latest amendments to the LCS of May 2006 were adopted in order to harmonise the LCS with the new Electoral Code. Since the Electoral Code envisages that civil servants participate in the election process as members of electoral bodies in order to reinforce the legality of electoral operations, amendments to the LCS introduced a new obligation in the chapter of civil servants' rights and duties and defined two new disciplinary offences related to this duty.

The May 2006 amendments to the LCS also postponed once again by a year the implementation of the career supplement, which had been scheduled to take effect as from 1 January 2007; implementation of this missing part of the salary system has now been postponed until January 2008. The basic salary component and the position supplement have been implemented since 1 April 2006.

A new Law on the Police was adopted in November 2006⁵. In addition to organising the police and police authorities, the law regulates the rights and duties of police officers in the Ministry of Internal Affairs, their employment, positions, performance assessment and other matters related to their work relations that are not regulated in the Law on Internal Affairs.

The new Law on Foreign Affairs adopted in April 2006⁶ regulates the employment of civil servants in the Ministry of Foreign Affairs, diplomatic and consular positions, the salaries of civil servants having diplomatic and consular positions, the requirements and examination for these positions, promotion to higher diplomatic and consular positions, and special rights and duties of civil servants holding consular and diplomatic positions. The salaries, salary supplements and allowances of civil servants in diplomatic and consular representations of Macedonia are regulated by a special government decree adopted in February 2007 (*Official Gazette*, no. 22/2007), which is based on the Law on Foreign Affairs.

The Law on the Courts, adopted in May 2006⁷ and implemented as from 1 January 2007, contains a special chapter on expert services in the courts. It regulates the positions of staff in the expert services of the courts. The law also introduces a position of "secretary" in courts with more than seven judges; this position is set as the highest position in the expert service, and the law stipulates the specific requirements that have to be met to be eligible for this position, without specifying whether it is acquired by way of appointment, employment or promotion. The law nevertheless specifies the position of general secretary in both the Supreme Court and the Administrative Court. It also defines specific positions of staff in the courts' expert services (senior court advisors, independent court advisors, court advisors, expert collaborators and court trainees) and sets out the special eligibility requirements for these positions.

⁴ The LCS and its amendments were published in the *Official Gazette*, nos. 59/2000, 112/2000, 34/2001, 103/2001, 43/2002, 98/2002, 17/2003, 40/2003, 85/2003, 17/2004, 69/2004, and 81/2005. A consolidated text of the law, including all of its amendments and three Constitutional Court decisions of 2001, 2002 and 2003 annulling certain provisions of the law, was published in the *Official Gazette*, no. 108/2005. References to specific articles in the following text are indicated as they are numbered in the consolidated text of the law. The latest amendments to the law were published in the *Official Gazette*, no. 61/2006.

⁵ *Official Gazette*, no. 114/2006.

⁶ *Official Gazette*, no. 46/2006.

⁷ *Official Gazette*, no. 58/2006.

Scope and Implementation

The coverage of the Law on Civil Servants (LCS) does not include certain functions that carry the exercise of public power⁸ (e.g. tax administration and customs), which are covered by separate legislation.

Based on the Law on Foreign Affairs, civil servants in the Ministry of Foreign Affairs are not excluded from the LCS, but the specific provisions of their employment and service in diplomatic and consular representations are regulated in the Law on Foreign Affairs.

The Law on the Courts neither explicitly excludes application of the LCS nor refers to another law with regard to regulation of the status, rights and duties of staff in the expert services of the courts, who have been considered to date as civil servants. This law regulates only partially the positions that these staff may hold and the eligibility requirements. Therefore, according to article 3 of the LCS they must be considered as civil servants.

The Civil Servants Agency (CSA) published on its website, at the end of March 2007, the “Annual Report on Data of the Register of Civil Servants for 2006”. According to the data provided in this report, the number of civil servants under the LCS (at central and local levels) was 11,830 on 31 December 2006 (10,006 in the central administration and 1,824 in local administrations). These figures represent a slight decrease (minus 2.8%), as in June 2006 the number of civil servants was 12,170.

Looking at the distribution by gender, of these 11,830 civil servants, 6,094 are female (51.5%) and 5,736 are male (48.5%).

In terms of qualifications, more than 50.1% of civil servants have a high school-level education (3rd and lowest category in the civil service), 34.2% are experts (2nd category) and 15.7% are in managerial positions (1st and highest category). The managerial and expert civil servants must hold a university degree. These figures show an unbalanced distribution of qualifications, which needs to be improved. In this regard, recruitment to the 3rd category was frozen in 2006, but this policy did not succeed and the number of 3rd category staff has even increased.

On 31 August 2006 the total number of public employees was 113,934, of which 29,615 were employed in educational institutions and state institutes, 15,272 in public enterprises, 2,905 in court administration and 636 were judges⁹.

The report of the CSA, based on data provided in the Civil Servants' Register, indicates that the percentage of Albanians in the civil service is 12.2%; Serbs represent 1.6%; Turks 1.1%; Vlachs 0.8%; Roma 0.4% and Bosnians 0.3%. Altogether minorities account for 17.3% of all civil servants, which constitutes an increase of minorities' representation in the civil service during the past year (from 15.6% in 2006).

Regarding the representation of minorities, those in managerial positions represent 16% of the total, judges from minority groups represent 15.2%, and minorities employed in educational institutions and state institutes represent 28.1%. Looking at the total number of public employees (civil servants as well as other public servants), minorities represent 18.7%, broken down as follows: Albanians 13.06%, Turks 1.36%, Serbs 1.76%, Vlachs 0.57%, Bosnians 0.32%, and Roma 0.62%¹⁰.

According to the 2002 census, minorities represent 35.8% of the total population of Macedonia.

With regard to personnel on short-term contracts (covered by operational expenses that escape the scrutiny of the Ministry of Finance), the situation has changed due to the new Law on Agencies for Temporary

⁸ This is the criterion used in the jurisprudence of the European Court of Justice.

⁹ Data obtained from the website of the Sector for Implementation of the Framework Agreement (SIOFA); the Register of Civil Servants does not provide global information on public employment.

¹⁰ SIOFA data

Employment, adopted in April 2006¹¹. This law allows an agency for temporary employment to conclude an agreement with the employer in order to second an employee on a temporary basis (for a maximum period of one year). These employees are registered with the Employment Agency of the Republic of Macedonia and their social, pension and health insurance is also covered. This mechanism is now widely used by ministries and other state bodies instead of contracts, with de facto permanent employees under the Law on Obligation, and at least these employees are socially protected.

Conclusions

The scope of the Law on Civil Servants (LCS) remains a difficulty because certain functions – which would normally be included in a civil service law – are regulated separately, covered by the Labour Code, or covered by special laws, using the Labour Code as subsidiary law. This separate regulation has an effect on the unity and coherence of the civil service systems and on the scope of the Civil Servants Agency (see below). Consequently, the system is complex and opaque, and it does not contribute to increasing professionalism in the public service; it also reduces mobility and redeployment opportunities and affects the co-ordination capacity of the Civil Servants Agency.

The Civil Servants Agency (CSA) should have integrated data regarding the whole of public employment. This information is relevant for the elaboration and management of a comprehensive human resources policy.

New regulations on short-term contracts have improved the situation of the staff concerned and increased flexibility in human resources management. However, the use of these contracts must be carefully monitored in order to avoid the exercise of permanent functions by non-permanent staff. Another area to be monitored relates to the functions that these staff are allowed to exercise; short-term contracts should never be used, for instance, for the performance of managerial functions.

2. Professionalism of the Civil Service

2.1 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

Equal access, equal conditions and equitable representation of the communities are the main principles established in the Law on Civil Servants (LCS) regarding the recruitment of civil servants. Open competition is mandatory for all civil service employment. An exception to this procedure is the recruitment of secretaries general and state secretaries, who are appointed by the government (or by the heads of the relevant institutions) after selection from among the ranks of managerial civil servants. However, this restriction is often forgotten in practice. Actually, it has been reported that several senior appointments were made from outside the ranks of managerial civil servants, disregarding the LCS. General and specific requirements are established by law. For instance, Macedonian citizenship is one of the general conditions for employment as a civil servant (article 12 of the LCS). It should be underlined that in the medium/long term this requirement will need to be reviewed in order to align it with European standards and with the jurisprudence of the European Court of Justice. The Civil Servants Agency (CSA) plays an important role in recruiting civil servants, and it ensures transparency and professionalism in a large part of the procedures. However, as the CSA does not participate in all stages of the recruitment process – the final decision is taken exclusively by the interested entity – political interference and patronage are still possible.

The new Law on Foreign Affairs stipulates that the State Secretary of the Ministry of Foreign Affairs, as the highest civil servant in the ministry, is to be appointed by the government on the proposal of the minister, following selection from among the diplomatic and consular civil servants holding the highest

¹¹ *Official Gazette*, no. 49/2006

positions in the ministry. This law also establishes directorates in the ministry and specifies that the directors are also to be appointed by the Minister of Foreign Affairs, after selection from among diplomatic and consular officials. The law has been implemented since 1 January 2007.

A Decision on the establishment of a Committee of Ministers to monitor and co-ordinate activities aimed at improving the equitable representation of minorities was adopted by the government in November 2006 (*Official Gazette*, no. 115/2006). The committee members are the three deputy prime ministers in charge of implementation of the Ohrid Framework Agreement, respectively for economic issues, education and agriculture. The government has also adopted a new Strategy for Equitable Representation of Non-Majority Communities and earmarked 107.5 million MKD (approximately 1.75 million EUR) in the 2007 budget for improvement of equitable representation, as compared to 46 million MKD (about 748,800 EUR) in the 2006 budget.

As part of the strategy to improve multi-ethnicity in the Macedonian public administration, in December 2006 a total of 99 new translators and interpreters were recruited, trained and assigned to public institutions (38 in courts and 61 in various administrative bodies). Another 250 new positions have been announced and the recruitment process is now underway.

Promotion

The current system provides few opportunities for the promotion of civil servants. As the system is position-based, each “promotion” to a higher position requires an open competition, both within the civil service and outside. Actually, such a promotion is treated as a new employment. In some circumstances and conditions, a kind of vertical promotion is possible, without competition, within the framework of mobility schemes involving assignment to another body.

Authorities are aware that this situation provides a poor incentive to better performance in the civil service and is looking for possible solutions. For instance, the government programme mentions the introduction of employment and promotion criteria based on merit as a way of improving professionalism and promoting depoliticisation in the civil service.

Obligations, Rights and Duties, with special reference to Impartiality

The latest amendments to the LCS in 2006 regulate the duty of the civil servant to participate in the election process as a member of an electoral body, if selected by the State Election Commission, in accordance with the Electoral Code. The civil servant may refuse and be released from such duty, but only for health or family reasons, which must be proven by relevant documentation.

Based on the December 2006 amendments to the Law on the Prevention of Corruption¹², every civil servant is obliged to submit a property declaration to the employing body within 30 days of the day of taking up duty, within 30 days of the day of termination of employment, and whenever there is a significant change of assets. The scope of application of this law seems too wide, especially given the limited capacity for handling submissions, and in practice it reduces the ability to implement an effective control over the most sensitive areas or ranks, where civil servants are more exposed to corruption.

Based on the 2005 amendments to the LCS, the CSA adopted in June 2006 a new Rulebook on the manner of conducting the disciplinary offence procedure¹³. In 2006, the CSA participated in 44 disciplinary procedures against 44 civil servants. Most cases (23 of the 44) resulted in fines amounting to 10-30% of the salary, and in one case termination of employment was pronounced.

According to the Constitution and the LCS, civil servants are allowed to be a member of a trade union and have the right to strike, provided that essential services are guaranteed. The head of each employment

¹² *Official Gazette*, no. 126/2006

¹³ *Official Gazette*, no. 69/2006

body defines the essential services that should be ensured during a strike and the corresponding number of staff who would be obliged to work. However, social dialogue with trade unions is not common and the matters to be submitted for negotiation and the related procedures have not been established.

In accordance with the constitutional right granted to every citizen to join a political party, the LCS establishes that as a member of a political party a civil servant must avoid putting in jeopardy his/her civil servant status when participating in party activities. It also states that civil servants must not participate in political activities during office hours.

No individual decisions on civil servants' rights, duties, promotion, etc. are published, either by the body in which they are employed or by the *Official Gazette*. These decisions are only delivered to the civil servants concerned and a copy is furnished to the human resources office/unit and kept in the archives of the employing body. The LCS contains specific provisions (article 110) for the publication of a decision, but only in the case of termination of service. This article stipulates that the decision on termination of service be handed personally to the civil servant. Only if the civil servant cannot be found at any known address or if he/she refuses to receive the decision may the decision be published on the notice board of the employing body. It is considered that after three days of such publication the decision will have been properly delivered to the civil servant.

Grievances

The LCS contains provisions on "Protection of Civil Servants' Rights"; in accordance with the LCS, the Civil Servants Agency (CSA) has also adopted Rules of Procedure of the CSA Second-Instance Commission on Appeals and Complaints of Civil Servants.

This special commission in the CSA, composed of three members, protects civil servants' rights, responding to the complaint of a civil servant within 15 days (in case of termination of employment and recruitment decisions, the time frame is eight days). This special commission, convened on a demand basis, handles 600 to 700 complaints every year as a second-instance body.

The number of appeals and complaints received in 2006 by the special second-instance commission in the CSA was 757. Most of the appeals and complaints were related to new employment, reassignment to another position, and termination of employment. Thirteen of the appeals (1.7%) were related to performance assessment.

It is possible to appeal a decision of the commission to the Supreme Court. In the near future, however, these appeals are supposed to be sent to the Administrative Court, established by the Law on Courts (2006), which is scheduled to start its operations on 29 May 2007. However, this date will have to be postponed, because the operating conditions (premises, selection of new judges and staff, training) have not yet been fulfilled. The intention to select the 18 judges of the Administrative Court was just announced on 9 May 2007 in the *Official Gazette*, and the interested candidates were invited to submit their applications within 15 days to the Court Council.

Professional Independence from Politics

To establish a professional, impartial and permanent civil service, successive governments in Macedonia have included the strengthening of the civil service's independence from politics as an objective in their programmes. However, implementation of this objective is often not fully coherent.

With the change of government, the dismissal and appointment of directors in the various public services, without reference to legally determined criteria, were recorded¹⁴. In addition, legal provisions forbidding any attempt to influence the election results, the appointment and dismissal of persons holding managerial

¹⁴ The decision, announced in the *Official Gazette* of 19 September 2006, to discharge 544 persons was adopted during the first session of the government on 29 August 2006.

positions, and the employment, allocation and dismissal of officials during the electoral campaign and after the elections were not respected. The disrespect of these provisions is in itself an indication of the strong politicisation existing within the administration, which leads to undesirable consequences (lack of professionalism, neutrality or responsiveness of civil servants and instability in the administration due to a turnover that is dependent on party membership) and to non-enforcement of the law. According to the statement of the State Commission, “violations of these provisions are so common, they might as well be considered as a rule”¹⁵.

A code of ethics for ministers is now in preparation. One of the objectives of this code is to clarify relations between the government and the public administration, with a view in particular to increasing the independence of the civil service.

Integrity

To accommodate one of the GRECO recommendations, the Civil Servants Agency adopted an amendment to the Code of Ethics for Civil Servants (published in the *Official Gazette*, no. 48/2007, April 2007). The amendment consists of one new article (article 5-a) on whistle-blowing.

Currently, conflict of interest is still a matter regulated by the Law on the Prevention of Corruption, which regulates jointly and similarly politicians and civil servants. However, a separate law on conflict of interest has just been passed by parliament. This law continues to regulate both politicians and civil servants but, according to the draft, conflict of interest in the civil service will be now regulated in a separate article. The general objectives of this new law are to better define situations that could involve a conflict of interest, to clarify the scope, and to regulate the acceptance of gifts. It will also establish that the State Commission for the Prevention of Corruption (SCPC)¹⁶ will be in charge of controlling the implementation of the law. For the time being, a deeper assessment of this new law is not possible.

Conflict of interest concerning civil servants is already regulated in the LCS, but the provisions in the LCS are not coherent with the relevant articles in the Law on the Prevention of Corruption. It would be preferable to regulate civil service issues fully within the LCS and not to mix the civil service with politicians and MPs, who are not covered by the civil service disciplinary system. The Law on the Prevention of Corruption and the Conflict of Interest Law cover a wider definition of non-political officials than in the LCS (e.g. tax and customs). It would require further analysis to identify incoherencies between the Conflict of Interest Law and the separate regulations covering non-political functions.

Measures aimed at developing ethics and preventing and controlling conflict of interest are needed in order to improve professionalism in the civil service and to increase citizens’ trust in the public administration. It is generally recognised that these are persistent problems in the Macedonian public administration. Deeper and sustainable changes in the administrative culture are needed. However, it is not just a matter of amending laws or adopting new legislation; to promote such changes, specific training and information campaigns should be prepared.

Salary System and Pay Determination

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

The system of salaries and allowances for civil servants is defined by the LCS, which is published in the *Official Gazette* and is accessible to the general public. It consists of the basic salary, a position supplement and a career supplement. Only the basic salary and position supplement components have been implemented. The career supplement has been postponed year after year for the past seven years. The

¹⁵ State Commission on the Prevention of Corruption, Annual Report, page 42

¹⁶ The SCPC was created by the Law on the Prevention of Corruption as an autonomous and independent body accountable to parliament.

reasons given for this postponement are that there are not enough budget funds for full implementation of the salary system and that the Ministry of Finance needs to make thorough calculations of the impact of the salary system on the overall budget. Salary costs represent roughly 1/3 of the national budget.

Government decisions regarding the actual value of the salary points are adopted and published each year in the *Official Gazette*. The salary point value for 2007, for example, has remained the same as in the last three years (40.1 MKD or approximately 0.65 EUR per salary point).

Article 6 of the LCS stipulates that the system of salaries and salary allowances regulated in the law is based on the principles of legality, equality, transparency, predictability and fairness. However, as there is no unitary salary system for the civil service (tax administration, customs, diplomatic staff, etc.), some of these principles are not protected and implemented in practice.

In Macedonia there has never been any salary discrimination in the public sector based on gender. In addition, the new Law on Equal Opportunities among Women and Men (adopted in May 2006 – *Official Gazette*, no. 66/2006) in its article 3 prohibits discrimination based on gender in the public and private sectors in the areas of employment, labour, education, social welfare, culture and sports.

Performance and Career Development

2.3 *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?*

Performance Appraisal

The performance assessments of civil servants for 2006 were carried out by a very small number of bodies within the legal deadline (end of March 2007). Despite the CSA's efforts to speed up the process in June 2006, the final outcome was that only half of the executive bodies carried out the performance appraisal. An additional problem is related to the performance appraisal of state advisers and head of sectors, who should be assessed by the state secretaries, according to the law. However, all of the state secretaries have had fewer than six months in office and as very few of their predecessors left the required reports on performance, they have not been able to perform this task. The law does not provide a solution for this problem.

Poor implementation of the performance appraisal system has also had a negative impact on the implementation of the career supplement.

Training

A Strategy for Training in Local Government, prepared by the Trilateral Committee on Co-ordination of Training in Municipalities¹⁷, was adopted by the government in March 2006. Consequently, the Trilateral Committee developed and adopted in March 2007 the annual Training Programme for Local Administration, which is currently the subject of donor interest.

With regard to training for the state civil service, the CSA is trying to develop a training programme and has been gathering information and funds from the various institutions and donors. However, neither a general training strategy nor a training programme has been adopted yet. A policy document entitled "National System for Co-ordination of Training and Professional Development of Civil Servants in the Republic of Macedonia", adopted by the CSA in October 2005, is still the most comprehensive document on the issue, but further development and delivery of an annual training programme for the state civil service is required.

¹⁷ Trilateral Committee (representing the Ministry of Local Self-Government, Association of Local Self-Government Units (ZELS), and Civil Servants Agency)

Conclusions

The recruitment system is almost fair and transparent, but manipulation and political interference in some phases are still possible, mainly because the Civil Servants Agency (CSA) is not participating in the whole process.

Consideration should be given to introducing internal competition and giving it preference over open public competition, so as to strengthen continuity and professionalism and also to enhance the motivation of civil servants by providing them with career expectations.

The classification system – which has been previously assessed as not unified and incongruent -- has not improved.

A better understanding of what professionalism means, for both politicians and civil servants, would help to improve the continuity and sustainability of the public administration.

The salary system remains problematic: salaries are low – in any event, the possibility to increase salaries depends on the resources provided by economic development and by higher productivity -- and the system is not unitary, transparent and equitable. The postponement of the full implementation of the salary system, along with the absence of promotion mechanisms, is demotivating civil servants and creating conditions for the introduction of specific solutions for some groups outside the general scheme.

Implementation of the performance appraisal system has largely failed, and it will be important to assess the reasons for this failure in order to adopt the necessary corrective measures.

Training needs to be largely developed, and clear priorities should be set in this regard.

3. Management of the Civil Service

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

Central Management Capacity

In Macedonia, human resources management in the public administration is highly fragmented. The Civil Servants Agency (CSA), an autonomous state body accountable to parliament, is in charge of (i) creating policies related to human resources management in the civil service; (ii) safeguarding the system of the civil service as defined by law; and (iii) promoting the development of the civil service. To fulfil these functions, the CSA is supposed to work in close co-operation with the human resources units in each institution and in particular with the General Secretariat of the Government and the Ministry of Finance. Its scope is limited by the Law on Civil Servants (LCS, see above) and therefore does not cover some public functions. Furthermore, the restricted scope of the CSA means that there is no body able to provide coherent management for the entire civil service.

At the present time, as the CSA lacks the power¹⁸ and capacity to perform its functions even within its mandate in a broad, proper and permanent way, and as the human resources units are generally understaffed and not adequately skilled, the final result is that the overall capacity to manage the system is weak. In addition, as has been stressed in previous assessments, the institutional positioning of the CSA – under parliament – is not a suitable solution for the management of human resources in the civil service.

A central Register of Civil Servants has been created in the CSA, and with the support of the General Secretariat and donors the CSA is making efforts to modernise the Register so that it is able to produce the

¹⁸ For instance, the CSA has no real power to control if a civil servant's employment is in accordance with the LCS. It is the Labour Inspectorate, under the Ministry of Labour and Social Policy, that has the power to terminate an illegal employment (article 109 of the LCS).

precise and accurate information that is required for managing and developing the whole civil service. This objective is unfortunately still far from being reached. However, the Ministry of Finance has its own database on civil service and public servants paid by the state budget. These data nevertheless do not coincide with those provided in the Register of Civil Servants, and there seems to be no co-operation between the CSA and the Ministry of Finance on this issue.

The CSA is supposed to participate twice a year in general discussions with the government on public administration reform, and it is supposed to prepare regular reports on civil service and human resources management. However, these activities have never been implemented.

3.2 *Are staff numbers and personnel costs controlled and published?*

Staffing and Control

Each institution has its own rulebook on the systematisation of jobs, which establishes staffing limits. These rulebooks are controlled *ex ante* by the CSA, and the Ministry of Finance controls the budgetary spending on salaries, but neither of these entities is able to control how the numbers are established and to identify real needs.

Due to the absence of capacity to assess real needs of institutions, staffing control is more a formal than a substantive exercise. As a result, staffing turns into a mere question of capacity of the budget to provide funds rather than an opportunity to establish priorities and develop a consistent human resources management policy.

The CSA publishes an “Annual Report on Data of the Register of Civil Servants”. However, a more comprehensive report on the whole public service is needed in order to provide global and accurate information on the entire public employment, which is crucial for budgetary and management issues.

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

Staff Representation

Social dialogue is not developed in Macedonia and trade unions are weak. There is a Trade Union of Administrative Workers and an Independent Union of Teachers, but they lack capacity and representativeness. In fact, the unions do not play a relevant role as social partners. The absence of a law on social dialogue limits the scope for improving the situation regarding staff representation.

Conclusions

The scope of the Civil Servants Agency (CSA) is insufficient to ensure the broad and coherent management of the entire civil service. Despite the CSA’s efforts, the resources and power allocated to the CSA are not sufficient to enable it to fulfil its functions completely and in an efficient manner. Cooperation with other bodies is, in general, rather formalistic and inconsequential. The nature of the CSA, its dependence on parliament, and the fragmentation of civil service management reduce its opportunities to act more efficiently in policy-making and in the organisation and development of human resources management throughout the public administration.

Social dialogue is almost non-existent in this sector.

4. Legality and Accountability

4.1 *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?*

Constitution and Constitutional Institutions

Legality and the rule of law are basic principles and “fundamental values of the constitutional order of the Republic of Macedonia”.

Within this framework, several key constitutional institutions are in place for protecting the rule of law and ensuring the accountability of the public administration: the Constitutional Court, the Ombudsman, the Public Prosecutor’s Office and the judiciary (supported by the Judicial Council)¹⁹. Recruitment has started for the staff of the Administrative Court.

The basic legal administrative framework includes the following main pieces of legislation: Law on Organisation and Operation of State Bodies (2002), Law on the Government (2000, amended), Law on General Administrative Procedures (2005), Law on Local Self-government (2002), Law on Personal Data Protection (2005), Law on Free Access to Public Information (2006) and Law on Administrative Disputes (2006). However, the poor quality of law drafting, incoherence of various pieces of legislation, and inconsistency in implementation affect legal certainty.

The need to reduce the discretionary powers of public officials, according to the recommendation of the State Commission for the Prevention of Corruption (SCPC), remains a concern of the current government. During the session held on 18 October 2006, the government took into account the report on the discretionary rights of ministries and requested each ministry to prepare a communications paper announcing the legal acts that were to be amended for the purpose of limiting the broad discretionary powers of officials. This measure seems to stress the importance given to ensuring the rule of law and reinforcing accountability.

Conclusions

In general, the principles of the legal administrative framework are almost in line with European practices, and the fundamental institutions are in place. In part, improvements in the legal framework show how the goal of EU accession serves as a major leading force in Macedonia. However, the capacity and efforts to implement some of the legislation – the Law on General Administrative Procedures, for instance – are insufficient.

Furthermore, some concerns have been reported about the capacity to ensure and protect legal certainty with regard to some decisions related to the professional situation of civil servants. In fact, decisions regarding recruitment and mobility, for instance, can be annulled at any moment on the grounds of illegality, meaning that the situation has never been consolidated. This is not in line with the legislation and practice in EU Member States, where such administrative decisions are consolidated after a certain period of time (one year, in general), even if they had been made without full compliance with the law. Only in cases of major violations can administrative decisions be invalidated after a certain period of time established by law (for instance, if the decision had been taken by an entity without legal competence on the subject).

Quality of Legislation

In order to cut bureaucracy and administrative barriers for businesses, as well as to reduce the opportunities for petty corruption, the government started a project entitled “Regulatory Guillotine”, which is based on its decision of December 2006 (*Official Gazette*, no. 129/2006). The aims of this project are to minimise and simplify the unnecessary formalities and administrative barriers for natural and legal entities (such as their obligations to obtain certificates, applications, decisions, approvals, consents, licenses, requests, statements and authorisations) defined in the current regulations and to develop a central electronic register of regulations – in addition to the *Official Gazette* – that would be published on the government’s website. The project is divided into three phases and is due to end in September 2007.

¹⁹ The State Audit Office also has a role within this context but in Macedonia the SAO does not have a constitutional anchorage.

All ministries and other administrative and state bodies, supported by special working groups, have been obliged to produce a list of regulations within their competencies and to prepare explanations on the need to retain, amend or annul these regulations. A Commission on Regulatory Reform, headed by the Deputy Prime Minister on Economic Issues, was established at a high administrative level for implementation of the project. The project envisages that all interested business entities, chambers of commerce, NGOs and citizens will be consulted and involved in the process of simplifying and annulling regulations.

The strategic planning process and the mechanisms for policy co-ordination have been strengthened. The legal framework regulating the system of planning and creation of policies includes the Law on the Government and the Rules of Procedure of the Government, which provide the foundations for the processes of strategic planning and analysis and co-ordination of policies. The Methodology for Policy Analysis and Co-ordination (2006), which sets out the main policy-making principles, together with the Policy Development Handbook form the basis for continuous training of the public administration, with a view to strengthening the capacities of ministries in drafting high quality proposals and in carrying out consultations and impact assessment. The participation of civil society in the process of policy-making is one of the strategic objectives included in the Strategy for Co-operation between the Government and the Civil Sector (2007-2011).

Ineffective co-ordination of policies, weak consultation with social partners, and over-regulation have been common problems affecting the overall quality of legislation in Macedonia. However, the adopted legal framework related to strategic planning and policy co-ordination and the new approach of the regulatory project launched by the government, if fully and consistently implemented, could mark the beginning of a change in regulatory policy and activity in the country.

Transparency in Public Administration

Along with the Constitution, the Law on General Administrative Procedure (LGAP), the Law on Free Access to Public Information, and the Law on Personal Data Protection are the main pieces of legislation related to transparency in public administration. Generally speaking, they are in line with common European practices. However, attention must be paid to implementation and to the evaluation of the impact of this legislation in order to improve the quality of the legal framework.

If not otherwise regulated by a law or regulation based on law, administrative decisions must include an introduction, stating *inter alia* the legal grounds for adoption of the decision, disposition, justification or instruction on legal remedies; in addition, they must be based on facts established on evidence and public hearings must be obligatory (except in cases established by law). However, additional efforts will be needed to assess all special procedures in order to evaluate whether they are justified.

Regarding the implementation of the Law on Free Access to Public Information, the Commission on Free Access to Public Information has prepared its annual report for the year 2006 and presented it to parliament, but this report is not yet available to the public. According to the Commission's website, for the period 1 January – 30 April 2007 a total of 48 appeals were submitted to the Commission, 21 of which were withdrawn since the persons concerned received the information requested (although with a delay); six lawsuits were submitted to the Supreme Court, two of which were withdrawn, three are being processed, and one was returned to the Commission for a new decision.

In any case, even if no major problems have been reported regarding the impact of the Law on Free Access to Public Information in improving openness and transparency in the public administration's operations, a longer period is needed to assess the effectiveness of the law. However, it already seems that the Law on Personal Data Protection (February 2005) is conflicting with some provisions of the Law on Free Access to Public Information, and consequently its review is envisaged.

The government has introduced a Citizens' Charter, which is an innovative and interesting tool for improving public services, fighting bureaucracy, increasing transparency and changing administration culture.

Protection of Legality by Civil Servants

The Law on Civil Servants (LCS) establishes the rights and duties of civil servants and their disciplinary liability. Its provisions, together with the Code of Ethics for Civil Servants, should in general be sufficient to protect the legality of decision-making. Hierarchical subordination, administrative appeals to a wide system of second-instance commissions, and appeals to the courts are the mechanisms in place to ensure fair and legal decisions.

Some questions remain concerning the role of second-instance commissions – a working group has been created to evaluate this system – and concerning the capacity of the judiciary to decide appeals in a timely and competent way. The creation of an Administrative Court and the development of the activity of the Academy for Training of Judges and Prosecutors could help to resolve some of these difficulties.

Ombudsman²⁰

The Ombudsman's annual report for 2006 has been presented to parliament in April 2007. It shows that the number of complaints has slightly increased in the past year (from 3,053 in 2005 to 3,076 in 2006); 30% of these complaints are related to the judiciary system. The inefficiency of the public administration (lack of qualifications and of commitment) is the second main reason for complaints. Co-operation with the public administration is improving at both central and local levels, mainly due to a new reporting mechanism. In fact, every three months the Ombudsman sends statistical data to the government on the received and answered complaints by the state administration in order to perceive the level of cooperation. The Government prepares its own report regarding the cooperation of the state administration bodies with the Ombudsman and their actions upon the recommendations of the Ombudsman. The Report contains conclusions related only to the state administration bodies. This system allows the government to put pressure on institutions to act properly and to implement those recommendations.

The resources provided to the Ombudsman (staff and budget) have been increased, but the situation still needs improvement in order to reinforce the Ombudsman's independence and capacity to act more efficiently. Some of the needs of institutions are being filled by donors, which is not sustainable in the long term. Better cooperation between the Ombudsman and the Government is improving effectiveness of the Ombudsman's action.

Administrative Control and Review of Administrative Decisions

Since the Law on Administrative Disputes will not be applied until May 2007, the situation regarding administrative control and review of administrative decisions has remained the same since the previous assessment. In fact, as its implementation is largely dependent on the functioning of the Administrative Court, it is difficult to assess the effectiveness of the law at this stage. A total of 4,067 cases were pending in the Administrative Disputes Department of the Supreme Court; if these cases are not resolved in the meantime, they will be transferred to the Administrative Court as soon as it becomes operational. Considering that roughly 4,000 new administrative cases are submitted to the courts each year, this means that when the new Administrative Court starts its operations it will have to face a huge backlog of cases.

In a certain way, the efficiency of the Supreme Court has improved during the past year (fewer judges handled more cases of the same average complexity). However, the increasing number of new cases has not contributed to reducing the accumulated backlog. Expectations are that the Administrative Court, which has full jurisdiction, will improve the current situation. However, according to several sources, Macedonia needs a two-instance system of administrative justice.

²⁰ More information on the Ombudsman is available in Sigma's assessment on the public integrity system in Macedonia.

The difficulty in fully completing the Judicial Council membership risks blocking the operations of the Administrative Court, as it now has just 2/3 of the members required for taking decisions. The election of judges to the new Administrative Court is one of the fundamental actions that have been postponed as a result of this difficulty.

Final Conclusions and Recommendations

- Basically, the principles of the legal administrative framework in Macedonia are in line with European practices and the institutions for developing, implementing and controlling it are in place. In the past year the situation has slightly improved in some areas. Even considering that Macedonia is trying to follow European practices, the legislation still needs to be improved, mainly to avoid dispersion and to improve coherence and consistency.
- A new political impetus is aimed at reaching better and quicker results through a more managerial approach, looking at the real needs of citizens and entrepreneurs, reinforcing monitoring mechanisms for the implementation of legislation, and using wide consultation mechanisms (at least regarding economy issues) to improve the overall quality of governance. It will be important to ensure that this positive impetus for change is implemented with full respect of the law, without compromising human rights, and with careful monitoring so as to guard against the risks of a strict managerial approach and a still underdeveloped administrative system.
- Professionalism and depoliticisation of the civil service remains a concern. The dismissal of a large number of managers at the very beginning of the new government provided some contradictory signs to the society and to the civil service. Ethics in civil service should be strengthened.
- The scope of the Law on Civil Servants (LCS) remains a problem; it needs to be reviewed and enlarged. The classification system is not unified and it is poorly controlled.
- The scope of the Civil Servants Agency (CSA) is also problematic, because it is defined by the narrow scope of the LCS. In the short term this scope should be extended to cover all functions exercising executive power, and in the longer term to cover all non-political public employment.
- The institutional positioning of the CSA – under parliament – does not seem to be the most suitable for the performance of human resources management of the civil service, which is a main responsibility of the government. The capacity of the CSA must be strengthened, mainly in terms of more and better qualified staff.
- The use of short-term contracts under the Law on Agencies for Temporary Employment has increased flexibility in hiring staff whenever necessary. However, a matter of concern is the misuse of such contracts for the performance of either permanent functions or managerial functions. The situation must be closely monitored, because it risks creating serious problems in the near future.
- The promotion system does not provide incentives for better performance. The introduction of internal competition – and giving it preference over open public competition – could enhance motivation through better career expectations.
- The civil service salary system lacks competitiveness, as the salaries are low, and it is not fair, as it is not a unified system. Moreover, postponing implementation of the career supplement, year after year, just increases demotivation in the civil service. A clear commitment to the full implementation of the salary system is needed.
- The performance appraisal system must also be implemented, as it is supposed to provide essential inputs to the salary system and to career development.

- Training needs to be further developed, financed, assessed and co-ordinated. Clear priorities must be defined.
- The system in place, which aims to protect legality regarding the civil service, has some shortcomings that need to be resolved. The revision of the second-instance commission's status has begun, and its role should be developed and supported. Steps must be taken to make the Administrative Court operational soon.
- Conditions for the establishment of a constructive social dialogue on civil service matters need to be developed.