



SIGMA

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BUILDING A CIVIL SERVICE SYSTEM

By

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This article focuses on the main policy options and instruments to build up a civil service system. It reflects on the essential problems in need of being tackled and it takes stock from the experience accumulated by Sigma while co-operating with Central and Eastern European Countries for almost ten years now. Debating about these issues can help make better policy decisions over options suitable for the specific social, economic and political reality of a country. These policy options are shaped as a range of feasible responses and specific country solutions to the problems under discussion and are formalised in a piece of legislation, i.e. in a Civil Service Act passed by Parliament.

Objectives of a Civil Service Act

The Civil Service Act is an instrument subservient to a range of policy objectives. These objectives can be divided into two categories, negative and positive, which form the two sides of the same coin. Negative objectives are meant to avert a number of undesired consequences. As an example we can cite the following negative consequences to be prevented and, conversely, the positive outcome to aspire to:

- *Politization*: Partisan involvement of civil servants leads to losing impartiality of public administration. Thus people's trust in the state is diminished if not destroyed. A reasonably designed legal arrangement to promote the partisan political neutrality of civil servants should be an objective.
- *Corruption*: Unrestricted possibilities for public servants to be involved in economic activities, even if these are lawful, is conducive to merge public and private interest in managing public affairs, a situation where conflicts of interest tend to grow. Integrity of civil servants, and of politicians as well, is extremely necessary for good governance and for economic development.
- *Patronage*: the submission of public officials to a overlord diminishes their ability to serve the public interest at large. Impartiality of public decision-making and respect for the principle of legality are necessary and essential in a state under the rule of law.
- *Nepotism*: Holding positions in public service cannot be only a matter of belonging to a given ethnic group, family or clan. Public offices are not the patrimony of a selected number of families. Merit and competition should be the bases for recruitment.
- *Lack of professionalism*: High quality and motivated civil servants are indispensable if the state has to adequately fulfil its mission at the service of the country. Alongside open competition based on merit, other elements help foster professionalism: training, transparent mechanisms for promotion and for assigning salaries, and a relatively acceptable level of remuneration that is affordable for the country, are required conditions upon which to build up a professional civil service. A set of duties and rights that take into account constitutional requirements on public administration are needed to raise professional standards. Clear lines of accountability reinforce not only the accountability of civil servants but also their professionalism.

- *Instability*: keeping the public administration in a constant state of flux works against the reliability of the state and makes the public service unattractive for good and well-qualified individuals. In a democracy, the public administration should be stable and permanent as it guarantees the institutional continuity. A certain degree of tenure and employment guarantees for civil servants favour stability and professionalism.

- *Fragmentation*: Clearly established standards homogeneously enforced across all public administration settings are necessary. In order to achieve this a central capacity holding overall responsibility for the management, monitoring, and development of the civil service is necessary. Coteries in managing the civil service work against fairness and reliability of public administration as a whole and make the system little transparent. To foster a holistic vision on the long term is a requirement to building up the institutions of a state.

Elements of the civil service system

The policy objectives to be attained by the Civil Service system imply a number of structural elements to decide upon:

- Delimitation of the scope of the civil service
- Classification of civil servants
- Bases for selection, recruitment and promotion
- Reasons and conditions for the termination of service
- Rights and duties of civil servants
- Improving qualifications, training and human resource development
- Salary structure
- General working conditions
- Incompatibilities
- Disciplinary provisions
- Management of the civil service
- Management of the transition

The appropriate treatment of these issues and finding feasible solutions to the problems they entail is a joint endeavour involving political vision and technical ability. Obviously, the solutions will be feasible only if they are appropriately adapted to the specific country reality, even if these solutions are meant to upgrade such a reality. It is necessary to take into account both the political constraints in presence and the requirements of sound technical formulations. This is why it is important to identify the main political and technical players to be involved in this effort and to design a methodology for their work that is both politically acceptable and technically realisable.

The Act on Civil Service is at the foundations of the system

A civil service law is not an employment law, i.e. a labour code, for public employees. A law on civil service is a public law. In other words, it shows a preoccupation for governance issues, as well as for constitutional and administrative law concerns. It is a public law defining responsibilities, liabilities, duties and rights of those who execute the powers of the state, manage public funds or provide the services of the state to the public. At the same time it can set basic institutional arrangements to make sure that standards required from the civil service are homogeneously applied across the public administration as a whole. The Act on Civil Service is not meant to create better or privileged working conditions for state employees. Rights awarded to civil servants must correspond to the duties imposed upon them.

A law on civil service should contain all the defining elements of the system, but not regulated in a very detailed way. Details can be contingent and usually are left for secondary legislation to be

issued by the government. Experience shows that details will have to be changed quite often while principles will remain. If details are regulated in the law they cannot be changed very easily because it is not the role of the parliament to discuss such details once and again. A civil service law should focus on five basic dimensions:

- *The constitutional dimension*, i.e. the establishment of the civil service as an institution of the state, executing the powers of the state, managing public funds, or providing services and constituting the administrative interface between the state and the public. In other words, to consider the civil service as an institution for governance. To cover this aspect the law has to provide for e.g. duties, responsibilities, accountability and disciplinary liability of civil servants in order to make their actions both predictable, ruled by law and open to be challenged before independent courts and to be scrutinised by relevant overseeing bodies. Within this aspect the law also needs to protect the professional independence of civil servants in relation to the political levels of government in order to safeguard a performance and decision-making free from unjustified influence of political and other interests. This independence is normally guaranteed by a combination of strict competition procedures for selection and appointments based on merit and a sufficient, although not necessarily absolute, job security. The professional independence is aimed at enhancing the aspect of the civil service as being committed and accountable to constitutional and administrative law mandates, even if this is to be combined by an adequate hierarchical subordination to the lawful government of the day. The civil service as a state institution is concerned with the fulfilment of the general interest of the country as defined by laws and by governmental policies. Clear separation between politics and administration is a part of this constitutional aspect of the civil service as politics and administration have different sources of legitimacy that should not be mixed up.

- *The dimension of professionalism*, which refers to the professional role and the professional quality of the individual civil servants. Under this aspect the law needs to define the principles of a human resource management system covering selection, recruitment and promotion as well as encouraging and retaining qualified civil servants. In relation to this aspect the law has to define necessary qualifications of civil servants and how requirements for civil service positions should be matched with the qualifications of individuals, according to a classification of civil service positions (or grades) defined by law. The law should also provide principles whereby to make it possible for civil servants to improve their qualifications and skills (usually through initial and in-service training, transfers and secondments). The law should define predictable career possibilities linked to training and good performance. One major reason for a civil service law is to safeguard a certain professional quality in all branches and levels of government subordinated to the law. The risk of politization should be averted by sound regulations limiting reasonably the political involvement of civil servants. Integrity of civil servants should be promoted by setting up limits to their free involvement in economic activities that could raise conflicts of interest perturbing the necessary impartiality and correctness of public decision-making and actions.

- *The management co-ordination dimension*, i.e. the government is responsible for securing a management within all state institutions that will make civil servants perform well by safeguarding a harmonised management throughout the administration. The latter includes personnel policy-making, drafting of regulations as well as monitoring civil service management, staffing quality and personnel costs by a central management capacity. The law should in addition define the task of collecting and analysing of information on civil servants. The law should also provide for how decision-making in personnel matters should be done, which kind of consultations or procedures for shared decision-making should be used and how decisions in personnel matters can be challenged and incorrect decisions finally corrected. Also staff involvement in the decision-making could be seen as part of the management aspect. The notion of the civil service as a system shaping a state institution is diluted when every public agency or

ministries perform as independent employers. In this case the governance aspects connected to the civil service is hampered.

- *The social dimension*, i.e. the rights of the civil servants corresponding to their duties, their integrity as well as their professional qualifications. The definition of rights and duties should show a commitment towards constitutional and public law requirements, and not simply a preoccupation for working discipline. In this dimension the law should provide for the right for civil servants to get a salary and possibly other kinds of benefits in order to make the civil service career attractive and to retain qualified civil servants. Staff involvement could be also seen as part of this aspect. The civil service law should provide for rights and benefits that should be specific for civil servants due to their specific role. These provisions need to be cost-estimated and affordable for the yearly state budget. The salary system should be outlined also in the law, by setting out its main components and the standard ratios among them. The law should also define the main disciplinary measures affecting civil servants. In any case, when defining rights, it is necessary to keep in mind that the primary purpose of a civil service law is not to unjustifiably improve the working conditions and benefits for civil servants.

- *The transitional dimension*, i.e. how current employees of the state should be able to qualify as civil servants under the new scheme and to what extent requirements applied to future civil servants should apply to current staff as well. In relation to this aspect, the law should clearly provide for how, and during which time-period, existing employees will be able to qualify under the new scheme and what kind of support in terms of training and other development measures should be available for them to be able to do so. Provisions related to this aspect need also to be in balance with the yearly state budget as well as in balance with existing capacities to screen, train and select candidates, which could mean that only a specified number of employees would be able to make the transformation each year.

The Act on Civil Service should define its scope

The scope of the civil service, i.e. the span of applicability of the law, needs to be determined as well as the relation between this law and other laws, especially statutes covering special branches of government such as Police, Border guards, etc and with the labour code. A decision is necessary as to whether or not to include local governments within the ambit of the law.

Vertical scope: where to draw the upper dividing line between politics and administration and the lower dividing line between civil servants and other public employees?

Horizontal scope: what institutions and bodies are to be included within the law on civil service and what institutions and bodies have to have specific statutes or simply be regulated by labour law?

Material scope: what matters affecting the civil service can be better (or are already) covered by other laws different from that on civil service e.g., pensions, working hours, holidays, etc.? To what extent should these laws be applicable to civil servants?

There are two basic options here. One is to prepare a civil service law applicable to every public official, including policemen, etc. If this option is chosen the law can only include basic principles and must be complemented by specific laws or regulations for the various branches of the administration that it will cover. Such a law can basically only define principles related to the constitutional aspects above. All other aspects above will have to be dealt with in specific laws and regulations for the various branches, but bearing in mind that the principles informing those statutes should remain compatible with the general principles of the law.

The other option is to prepare a civil service law only applicable to the core administration and to keep the existing statutes for specific branches. In this case the law can and should regulate all five dimensions above.

Concerning the material scope, one option is to apply general legislation on pensions and labour related rights (number of working hours, number of holiday days, etc.) to the civil service. The question is to what extent rights (i.e. the social aspect above) should be specific for civil servants. Those rights should be regulated in the law while other rights could be regulated by cross-references to the labour code and other relevant legislation.

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

Implementation issues deserve close attention

The implementation of the law must be considered thoroughly and implementation financial costs must be estimated. Of special importance is the establishment of an institution or mechanisms for the management co-ordination dimension and provisions for the transition aspects.

Experience from many EU Member States shows the necessity to set up a centrally located management co-ordination capacity which will take responsibility for the implementation of the law and which will monitor its application in the various state institutions. This central capacity usually is either a ministry or a specific central office attached to the government.

Experience shows in Central and Eastern European countries that the law should not be implemented in a way that will automatically transform current public employees into civil servants. There must be some kind of qualification or selection procedure also for current employees. If not, the Civil Service Act will only increase costs without increasing quality in staffing and performance. The transitional provisions of the law should specify how current employees should be able to qualify and what kind of training they should have available during the transition period in order not only to be able to improve their qualifications but to develop a professional career within the civil service.

The law should contain a legal mandate for the government to regulate and implement it in detail via secondary legislation. A time frame as specific as possible should be set for the government to fulfil that legal mandate.

The civil service is a sub-system within a broader administrative system

The civil service works within a broader constitutional and administrative law context that is composed of a number of pieces of legislation. This context shapes the general administrative law framework in a country. Substantive and procedural administrative law provides for the necessary instruments making it possible the principle of administration through law. Independent courts able to review the legality of administrative actions and decisions should ensure compliance with this principle. The legal administrative system reinforces the accountability of civil servants.

In order to complete the administrative system, other actions, apart from drafting the civil service law, are also important and should be carried out either simultaneously or immediately after the enactment of the Law on Civil Service. For example, a General Law on Administrative

Procedures would be a useful arrangement enabling the civil service and, in general, public institutions to operate under clear rules in their relationships among themselves and with the public at large. A Law regulating the Administrative Process, i.e. the ways and means for the judicial review of administrative actions and decisions to operate, would complete the minimal legal order needed to ensure the principle of the rule of law in public administration.

The Law on Administrative Process necessarily entails the creation of the State Judiciary as a State Power that is independent from the legislative and the executive. In addition to these important pieces of legislation, other basic legislative actions could also be envisaged, as for example, an Act on Public Procurement.

The aim is to complete a general legal administrative environment with a sufficient degree of legal certainty, and consequently a public administration governed by the rule of law as a condition for increasing its predictability and reducing arbitrariness. Finally, other accountability institutions should be set up. Ombudsmen, external and internal audit mechanisms and institutions are of utmost importance in order for the administrative system to function properly.

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