



ReSPA

Regional School
of Public Administration

The Professionalisation of the Civil Service between Politics and Administration

8th ReSPA Annual Conference Proceedings



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ReSPA is a joint Initiative of European Union and the Western Balkan countries working towards fostering and strengthening the regional cooperation in the field of public administration among its Members. It seeks to offer excellent innovative and creative training events, networking activities, capacity building and consulting services to ensure that the shared values of respect, tolerance, collaboration and integration are reaffirmed and implemented throughout the public administrations in the region.

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FOREWORD

*By Mr. Goran Pastrovic
ReSPA Director a.i.*

Civil service professionalisation is one of the main challenges for Western Balkans. EU Enlargement Strategy from 2014 identified public administration reform, including the professionalisation of human resources management, as one of three key pillars of the European Union's (EU) Enlargement Strategy towards the Western Balkans and Turkey. Based on that, ReSPA 8th Annual Conference was devoted to 'The Professionalisation of the Civil Service between Politics and Administration' and the main focus at the Conference was given to merit recruitment, promotion and the de-politicisation of the senior civil service.

The importance of civil service professionalisation is widely recognised beyond the world of policy-makers. Scientific studies in law and social sciences have emphasized for a long time the benefits of merit-based, de-politicised civil services for economic growth and the prospects of successful democratisation. In particular, merit recruitment has been shown to reduce corruption in the public sector and to enhance trust in public institutions.

Supported by partners in the region, ReSPA Annual Conference aimed to take a fresh perspective at the state of civil service professionalisation in the Western Balkans, the main drivers and obstacles of reform and an elaboration of strategies to improve the professionalisation record across the region. We have offered a learning platform, fostering exchange of the experience and lessons learned within the region and from European Union member states. We believe that the identification of good practices in this and other areas of administrative affairs, once published, further disseminated and contextualised, will also facilitate the identification and recognition of the standards of performance of public institutions in the region. ReSPA therefore intend to continue its work in this direction.

It is out of doubt that the benefits of a well-structured, professional and depoliticised civil service go far beyond its formal role of being among EU conditionalities, while we all know that Western Balkans countries are candidates for EU accession or stream to EU membership. Moreover, the civil service represents the "front line" of the state vis-a-vis citizens and is therefore crucial for public confidence. What is one of the most important instruments in ensuring equal access to public employment and a reliable environment for investments through quality service delivery? It's a depoliticised and professional civil service, of course.

The papers that were submitted and elaborated at the Conference as well as the number and seniority profile of the presenters and participants reflected the relevance and attraction of the topic for the representatives of the Western Balkan countries and beyond. The fact and figures also demonstrated the increased visibility and reputation of ReSPA in its capacity as a Centre for enhancing regional cooperation, promoting shared learning and supporting the development of public administration in the Western Balkans.

The success of the Conference would be difficult to achieve without the support, commitment and mobilisation of both political and organisational public administration actors in the region. The Conference was attended by more than 100 participants. Therefore, I would like to express my gratitude to all respective Ministries responsible for Public Administration in the region and their equivalents and in particular to ReSPA's Governing Board Members. Special thanks are due to the DG Enlargement for entrusting ReSPA for regional cooperation in the area of Public Administration. I would also like to express gratitude to our partners, speakers and experts from the European Union and its Member states for their substantial contribution, in particular, to Mr. Jan-Hinrik Meyer-Sahling for his sustained efforts in compiling and analysing the Conference papers in order to ensure their publication as an additional accomplishment of the Conference.

Last but not least, my appreciation also goes to the whole ReSPA team who made a great effort to ensure that the Conference's organisation and proceedings met the expectations of our participants in every respect. In line with the objectives mentioned above, it is my pleasure to present to you the publication devoted to the 8th ReSPA Annual Conference held on 12-13 November 2015 in Danilovgrad, Montenegro.

Chapter 1

Introduction and Recommendations

The challenge of civil service professionalisation in the Western Balkans

Jan-Hinrik Meyer-Sahling, Professor of Political Science, University of Nottingham

This year's ReSPA Conference was devoted to 'The Professionalisation of the Civil Service between Politics and Administration'. Civil service professionalisation is one of the main challenges for Western Balkan states. In 2014, the European Commission identified public administration reform, including the professionalisation of human resources management, as one of three key pillars of the European Union's (EU) Enlargement Strategy towards the Western Balkans and Turkey.

Similarly, the South East Europe 2020 Strategy, coordinated by the Regional Cooperation Council, refers to 'governance for growth' as a major objective of reform. Effective public services, transparency and impartiality in public administration and respect for the rule of law are crosscutting themes that are essential conditions for achieving the ambitious objectives of the South East Europe 2020 Strategy.

The professionalisation of public service and human resources management is also among the central principles of administration developed by SIGMA (Support for Improvement in Governance and Management, a joint initiative of the OECD and the EU, principally funded by the EU). The principles include a comprehensive set of minimum standards, including merit recruitment and promotion and the de-politicisation of the senior civil service, both of which were given centre stage at this year's ReSPA Conference.

The importance of civil service professionalisation is widely recognised beyond the world of policy-makers. Scientific studies in law and social sciences have long emphasised the benefits of merit-based, de-politicised civil services for economic growth and the prospects of successful democratisation. Professional bureaucracies have been found to reduce the potential for violent conflict and civil war. In particular, merit recruitment has been shown to reduce corruption in the public sector and to enhance trust in public institutions.

The quality of bureaucracy has also been shown to affect a country's progress in the EU accession process and the prospects of both implementing EU policies and successfully participating in policy-making at the supranational level. From an outside perspective, there is hence plenty of evidence that the professionalisation of the civil service is one of the best investments in the future that Western Balkan states can make – or should have made.

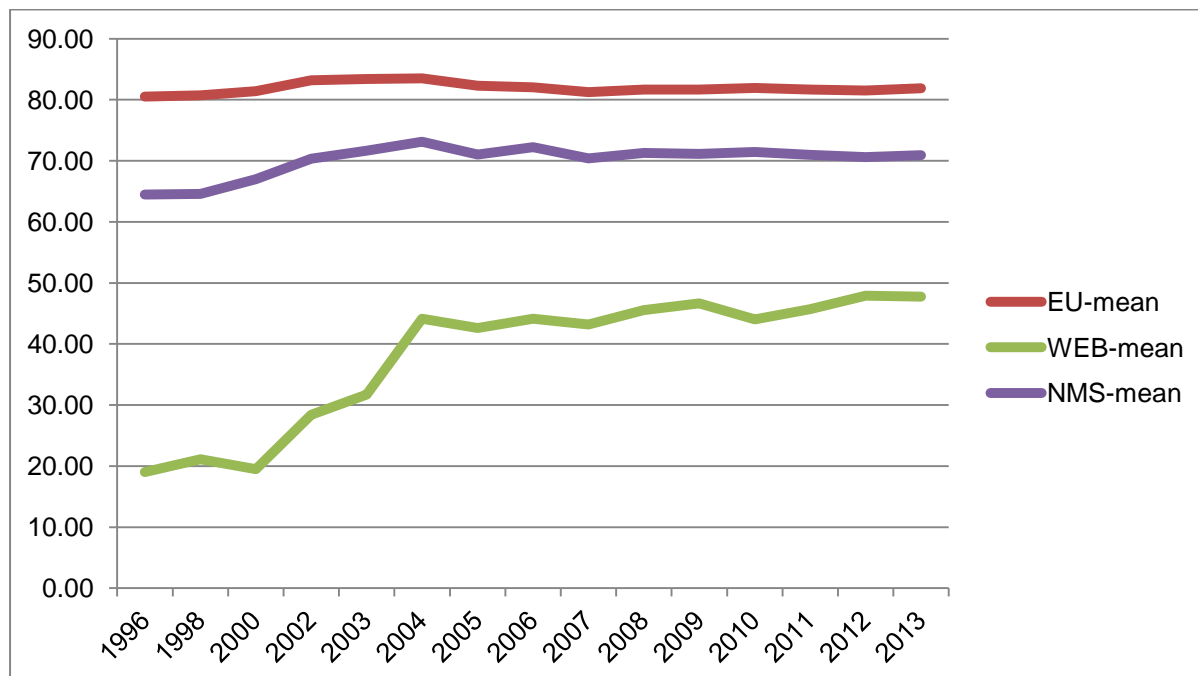
Indeed, the civil service reform record in the Western Balkans is ambiguous. On the one hand, Western Balkan states have continuously developed reform programmes and the formal rules underpinning civil service professionalisation. The first generation of civil service laws was adopted in the late 1990s, early and mid 2000s across the region. In several countries, new civil service laws have come into force over the last few years.

However, the outcomes of reform have often been disappointing. The implementation of civil service laws – or particular provisions of the new laws – have been delayed and remained inconsistent. In particular, the politicisation of personnel policy has remained widespread across the region. Informal patterns of behaviour continue to dominate the day-to-day management of the civil service. Problems of public sector corruption remain a major problem for the Western Balkans, having undermined public trust in government and having increasingly spurred public protest against government across the region.

The limited reform progress is well illustrated when comparing civil service professionalisation trajectories across the Western Balkans, the new EU member states from Central and Eastern Europe and the EU in general. Figure 1 plots the World Bank Governance Indicator for 'Government Effectiveness' from 1996 to 2014. The indicator focuses on the professional functioning of the civil service. The comparability of the survey data across time and countries has been criticised and any such comparison should be viewed with some caution.

However, Figure 1 allows us to eyeball the development over nearly two decades. It suggests that, between 2000 and 2004, Western Balkan states started to catch up with Central and Eastern European states, which, at that time, were EU candidate states. The period reflects the impressive reform progress after the end of the wars for Yugoslav succession and the beginning of the Stabilisation and Association process with the EU.

Figure 1. Civil service professionalisation in the Western Balkans, Central and Eastern Europe (new member states) and EU member states: Development over time based on World Bank Governance Indicator 'Government Effectiveness' (EU = European Union, WEB = Western Balkans, NMS= New Member States)



However, from around 2004 the development in the Western Balkan states has stagnated. The difference between the average score for the Western Balkans, on the one hand, and the new member states from Central and Eastern Europe and all EU member states, on the other, has remained almost completely unchanged for the last ten years. Moreover, differences within the region are remarkably small. That is, they are smaller than among the new member states from Central and Eastern Europe and certainly much smaller than across all EU member states. Most critically, the trajectories across the Western Balkan states since 2004 indicate small differences and minor changes. Overall, the professionalisation of the civil service therefore remains a major challenge for the Western Balkans.

Focus of the 8th Annual ReSPA Conference

Against this background, this year's ReSPA Conference aimed to take a fresh perspective at the state of civil service professionalisation in the Western Balkans, the main drivers and obstacles of reform and an elaboration of strategies to improve the professionalisation record across the region.

The Conference brought together Ministers from the Western Balkans who are responsible for public administration reform, senior policy-makers from the Western Balkan governments, representatives from civil society organisations and think tanks from across the region, senior officials from the new EU member states from Central and Eastern Europe, senior officials from Western Europe, the European Commission and several international organisations such as the OECD and the United Nations and academics from universities across Europe.

The Conference was divided in two parts. The first part – the first day – focused on assessing the state of civil service reform and professionalisation in the Western Balkans, the context of reform, including factors that promote and hamper professionalisation, and the opportunities for drawing lessons from abroad.

The discussion of the context of reform paid particular attention to the role of institutional design, the role of political parties, civil society organisations and the EU integration process. Moreover, presentations addressed the impact of the economic crisis on the prospects of civil service professionalisation and the role played by ethnic diversity, which is characteristic of several Western Balkan societies.

The panel presentations and discussion further aimed to provide a forum for lesson drawing from abroad. In particular, Central and Eastern Europe countries provide useful insights for the Western Balkans, as these countries have emerged from communism, undergone a dual transformation to democracy and a market economy, the integration into Western security structures and, in particular, accession to the European Union.

It is widely recognised that civil service professionalisation in the Central and Eastern European member states of the EU has not everywhere gone smoothly. Quite to the contrary, the Baltic States are usually identified as the only countries that have successfully professionalised their civil service systems.¹ The good and the difficult cases therefore provide plenty of experience for the Western Balkans to learn from.

The first day was concluded with a Round Table Debate on drivers, obstacles and prospects of civil service professionalisation in the region. Led by Hans-Achim Roll, it brought together political representatives, senior policy-makers from the Western Balkans and EU member

¹ For details, see Meyer-Sahling, J.-H. (2009) *Sustainability of Civil Service Reforms in Central and Eastern Europe Five Years After EU Accession*. Sigma Papers No 44. Paris: OECD Publishing.

states, academics and leaders of civil society organisations. The Round Table participants discussed the benefits of professional, politically neutral civil service systems for government operations and outputs. In particular, it provided a forum for assessing the pros and cons, mechanisms and limitations of using specific strategies – such as participation and monitoring by civil society organisations and the role of higher education – to support the professionalisation of the civil service in the region.

The second part – the second day – of the Conference focused on strategies to support and improve the professionalisation of the civil service in the Western Balkans. The discussion was organised along three panels. They addressed strategies:

- To improve the implementation of merit recruitment procedures, in particular, strategies to increase the professional capacity of the senior civil service and to better manage political influence over senior civil service appointments.
- To build effective integrity management systems by looking both at the institutional and cultural requirements of integrity management and specific challenges of building the capacity of access to information regimes.
- To strengthen the role of civil society organisations in promoting the professionalisation of the civil service, including strategies to build capacity of civil society to monitor and evaluate management practices in the civil service and to participate, directly, in recruitment process.

The conference proceedings

Following the structure of the second day, this Conference volume focuses on strategies to promote the professionalisation of the civil service in the Western Balkans. While bringing together contributions from both days of the Conference, we asked authors to go beyond the assessment and identification of problems but to elaborate strategies that will support the professionalisation process in the region.

Accordingly, the volume is divided in three parts. The **first part** focuses strategies to improve merit recruitment in the Western Balkans. It draws on the experience of Western Balkan states (Meyer-Sahling), compares the experience of new EU member states and Western Balkan states (Virant), examines the experience of Poland (Pastwa) and Latvia (Krievens, Liepina and Kirse) in the context of regime transition, EU integration and the economic crisis that hit several new member states hard.

The **second part** focuses on strategies to build effective integrity management systems in the Western Balkans. It discusses managerial schemes to support integrity management (Cardona), compares the efforts of EU member states and Western Balkan states to cultivate a spirit of integrity (Taseva) and draws specific lessons from building the capacity of the Parliamentary Commission for Access to Information in Croatia (Musa).

The **third part**, finally, focuses on the role of civil society in promoting the professionalisation of the civil service. It first takes the perspective of Croatia as a new EU member state in order to discuss innovative strategies for civil society organisations to monitor and evaluate the operations of government (Vidacak). It then turns to the case of best practice in the region, namely, the experience of Institute Alternative in monitoring civil service reform and management in Montenegro (Muk).

Conclusions and recommendations

The conference and the proceedings lead to a number of conclusions that will provide the basis for further efforts to invest in the professionalisation of the civil service in the region. The conclusions address ReSPA as well as the governments of Western Balkan states, civil society in the region and international stakeholders including the European Commission. Eight general conclusions are put forward here. Thematic conclusions will be presented in each of the chapters below.

1. The participants of the conference as well as the contributors of the conference proceedings generally agree on the **benefits of merit-based civil service systems** for the political and economic development of the Western Balkans and their integration with the EU. However, general concern was raised that citizens, business and politicians will need to develop greater awareness of the importance of civil service professionalisation. There is hence considerable scope for initiatives that raise the understanding of civil service reform and professionalisation.

2. The conference presentation and contributions to this volume emphasise the importance of building capacity for the effective implementation of civil service laws. The adoption of laws and regulations as well as the establishment of central management bodies are evidently merely the starting point for successful implementation. Capacity questions were raised in relation to the implementation of freedom of information regimes (Musa, in

this volume) and the implementation of civil service laws, for instance, by strengthening personnel departments of institutions across public administration (Meyer-Sahling, in this volume). There is hence a need to widen the concept of capacity building across institutions covered by civil service laws.

3. The conference discussion and several chapters from this volume agreed on the **importance of institutional designs** for the success of civil service reforms in the region. Civil service laws and secondary legislation will need to be closely aligned with SIGMA's principles of administration in order to effectively promote the professionalisation of the civil service (Virant, Meyer-Sahling; both in this volume. Salvador Parrado Diez, UNED Madrid, at the panel on 'promoting merit recruitment into the senior civil service').

In addition, the Round Table stressed the **role of complementary legislation** such as administrative procedures acts (Hans-Achim Roll, Chair of the Round Table Debate). The review and continuous improvement of legal frameworks will hence remain on top of the civil service reform agenda for some time to come.

4. The conference presentations, Round Table discussion and contributions to this volume paid particular attention to the question of **political interference with civil service management**. Generally, the conference discussion agreed on the challenge of reconciling the need for 'political responsiveness' and 'neutral competence' at the top of the civil service (Petr Kopecky, Leiden University, at the panel on the 'context of reform'; Salvador Parrado Diez, UNED Madrid, at the panel on 'promoting merit recruitment into the senior civil service').

In an attempt to understand how this tension can be resolved, the conference and chapters in this volume demonstrate that most EU member states allow for a limited amount of political discretion at the very top of the civil service (Virant, Pastwa; both in this volume). However, there was general consensus that (1) political discretion should be limited to the most senior positions and (2) it would require the prior testing of the professional competences candidates for top positions.

The major weakness of (senior) civil service systems in the Western Balkans is a combination of *too much* political discretion and *too little* professional competence testing. In order to improve the situation, it will be necessary to review and improve the legal frameworks, strengthen examination systems and to launch new initiatives to persuade

politicians of the benefits of a professional competent senior civil service (Virant, Meyer-Sahling; both in this volume).

5. The discussion during the conference and contributions to this volume emphasise the **constructive role that civil society** can play in promoting the professionalisation of the civil service in the region. The conference provided a forum for showcasing cases of best practice in Croatia (Vidacak, in this volume), Montenegro (Muk, in this volume), Kosovo (Venera Hajrullahu, Kosovo Civil Society Foundation, as presenter at the panel on 'civil society and civil service professionalisation'), Serbia (Milena Lazarevic, Centre for European Policy, as speaker at the Round Table) and the region in general (Jasenka Perovic, Technical Assistance for Civil Society (TACSO), as presenter at the panel on 'civil society and civil service professionalisation').

Civil society organisations have the potential to effectively monitor civil service developments, raise awareness both among the wider public and lobby government and parliament for better regulation and more professional management practices.

The debate on the role of civil society also raised opportunities for the involvement of civil society organisations in civil service management and integrity management. For instance, civil society actors might directly participate in procedures, for instance, as panel members in the recruitment and selection of (senior) civil servants.

However, the effectiveness of civil society will crucially depend on the independence of civil society organisations and their capacity to fulfil a critical public watchdog function.

6. The conference discussion, in particular, the Round Table and the contributions to this volume frequently referred to the professional capacity of civil servants and the **role of higher education** in promoting civil service professionalisation (Virant, Pastwa, Krievens et al, Meyer-Sahling; see their contributions in this volume. Marius Profiroiu, President of NISPAcee, Dragana Ranitovic, Ministry of Interior, Montenegro; both as speakers at the Round Table).

The quality of higher education in the Western Balkans has been challenged in the context of regime transition and austerity. As a consequence, observers within and outside government have questioned the quality of applicants for civil service careers. Moreover, academia lacks the capacity to critically evaluate public administration and to provide constructive support for governments on public administration reform.

The role of higher education does rarely receive much attention in discussions of civil service reform and professionalisation in the Western Balkans. However, there is an urgent need to review and invest in the capacity of higher education in light of the development of professional public administrations in the region.

7. The conference discussion frequently referred to the **economic and social context** of civil service professionalisation in the Western Balkans. A lack of employment opportunities in the private sector tends to provide incentives for political parties to offer jobs in the civil service in exchange for votes during elections. The culture of clientelism is entrenched in most Western Balkan states and will be difficult to break without an improvement of the economic situation in the region.

Ethnic diversity presents additional challenges for the professionalisation of the civil service. It tends to contradict recruitment on the basis of merit. ReSPA and national governments in the Western Balkans will have to develop strategies to reconcile the principles of ethnic representativeness and merit recruitment in the management of the civil service.

8. The conference discussion and chapters collected in this volume emphasise the **importance of international support for civil service reform and professionalisation** in the region (Virant, Pastwa, Cardona, Musa, Vidacak; all in this volume). International organisations including the European Commission, SIGMA and ReSPA play a key role in setting the reform agenda, providing reform templates, regularly evaluating reform progress and in providing aid and assistance for civil service reform and implementation.

However, the conference discussion stressed the need for local ownership and an appreciation of local contexts. In particular, in light of promoting sustainable civil service reforms that will last beyond a future accession to the EU, it is essential that domestic institutions and actors have incentives and capabilities to fulfil their role (Cardona, in this volume; Demush Shasha, Ministry of European Integration, Kosovo, speaker at the Round Table).

Part 1

Lessons from the Western Balkans and EU Member States

Chapter 2

Merit recruitment in the Western Balkans: How to improve the quality of implementation?

Jan-Hinrik Meyer-Sahling, Professor of Political Science, University of Nottingham

Introduction

Merit recruitment is the most critical element of modern, professional and de-politicised civil service systems. Without effective merit recruitment procedures it is difficult to imagine how other areas of personnel management will function professionally and, indeed, how public administration can operate in accordance with the European principles of administration as developed by SIGMA.

The centrality of merit recruitment is widely recognised by the European Commission, SIGMA and other international organisations such as the World Bank. Moreover, social science research has confirmed on many occasions the benefits of merit recruitment for political and economic outcomes in transition, accession and developing countries.

Since the early 2000s Western Balkan governments have continuously invested in the reform of the civil service, including the establishment of merit recruitment procedures. However, the quality of implementation remains a major concern for the Western Balkan. Problems of implementation occur when legislation has been adopted but is not applied in practice, when implementation has been delayed or suspended. In addition, problems of implementation refer to violations of the spirit of the law. In the context of merit recruitment, this occurs when there is no breach of the law but when examinations are nonetheless not competitive because informal agreements on a preferred candidate have been reached before a position has been opened.

The chapter examines the implementation of merit recruitment procedures in the Western Balkans to identify the nature and location of implementation problems and to explore

strategies to improve the quality of implementation. To this end, the chapter presents the findings from the ReSPA regional study on HRM in the Western Balkans.²

The chapter is divided in four parts. The first presents the approach that was taken for the ReSPA HRM study. It will then discuss the common problem of implementation in the Western Balkans, that is, the discrepancy between reform efforts and new formal rules, on the one hand, and disappointing management practices and, in particular, outcomes of recruitment processes, on the other. The third part will discuss nine factors that contribute to problems of implementation across the region. The conclusion will summarise strategies for the improvement of merit recruitment procedures.

The ReSPA HRM study

The ReSPA HRM study was conducted in the summer and autumn of 2015 on behalf of the ReSPA Community of Practitioners in Human Resources Management and Development (CoP in HRM/HRD) by the author in collaboration with country experts and the ReSPA Office. It focuses on the implementation of merit recruitment procedures in Albania, Kosovo, Macedonia, Montenegro, Serbia and Bosnia and Herzegovina at state and entity level (*henceforth* BiH State level, BiH Federation level, RS).

The study is based on the analysis of legislation, reports and assessments including SIGMA Assessments and EU Progress Reports, personal interviews with senior staff of central civil service agencies (or equivalent), a range of personnel managers across government institutions and external observers of the civil service.

A central component of the study was a survey of personnel managers and contact points of institutions that are located within the scope of each country's civil service law. The survey was conducted as an online survey in local languages. It asked personnel managers to assess the implementation of recruitment procedures in their institution and to provide qualitative feedback and recommendations for the improvement of recruitment practices in their institution and in general.

² Meyer-Sahling, J.-H.; Mikkelsen K.S.; Ahmetovic, D.; Ivanova, M.; Qeriqi, H.; Radevic, R.; Shundi, A.; Vljakovic, V. (2016) *Improving the Implementation of Merit Recruitment Procedures in the Western Balkans: Analysis and Recommendations*. Danilovgrad: ReSPA Publications. Available at www.respaweb.org. For an earlier analysis of the civil service in the Western Balkans, see Meyer-Sahling, J.-H. (2012) *Professionalisation of the Civil Service in the Western Balkans*. SIGMA Paper Nr 48. Paris: OECD Publishing.

The study differs from most evaluations to-date, as it takes the perspective of recruiting institutions rather than a central or international perspective. The approach allows for a bottom-up assessment of recruitment practices in each of the countries under study. Many of the comments provide action points for CoP members, which they can follow up on their own or in collaboration with ReSPA. The online survey of personnel managers generated 283 responses across countries and an average response rate of 58 per cent.³

The persisting gap between merit rules and practices

The main challenge surrounding merit recruitment in the Western Balkans concerns the discrepancy between formal rules and actual management practices. On the one hand, it is evident that Western Balkan states have continuously invested in the reform of the civil service. Since the early 2000s, Western Balkan states have adopted and regularly updated civil service laws.

In the context of civil service reform, Western Balkan states have formally institutionalised merit recruitment procedures. In all countries in the region, it is mandatory to advertise job vacancies, selection commission are formed and examinations have to be passed before a candidate can be appointed for a position in the permanent civil service.

To be sure, the details of recruitment procedures differ across the countries. As will become clearer below, there are also gaps in the regulatory frameworks of most countries. However, a general trend in the region towards the institutionalisation of merit recruitment is evident.

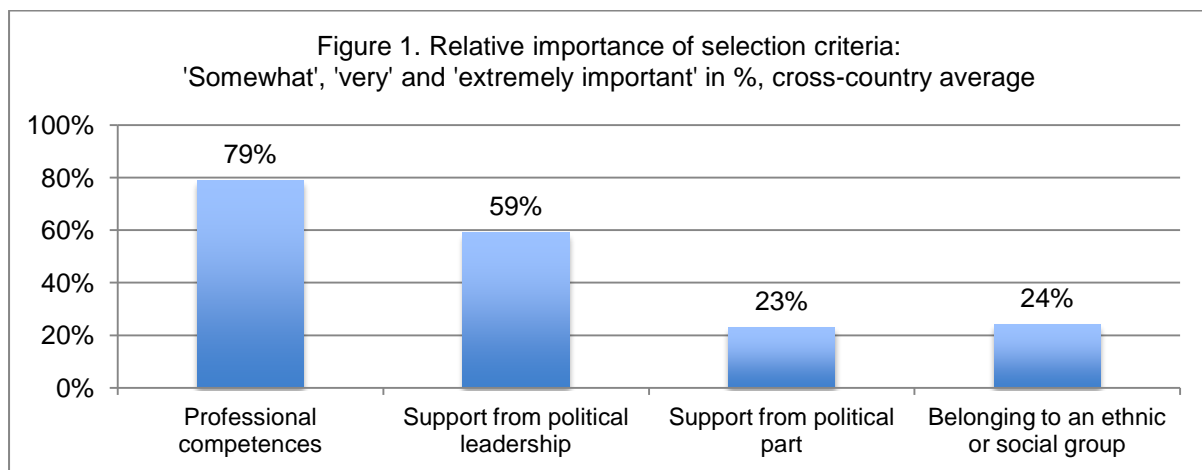
By contrast, the outcomes recruitment processes are widely criticised. Merit recruitment is based on the assumption that competitive examinations lead to the selection of the ‘best and brightest candidate’ for a given role. Yet in the Western Balkans, it is often called into question that the best candidate is picked for the job.

Evidence that we collected through the survey of personnel managers in the context of the ReSPA HRM study indicates that the ‘best and brightest candidate’ is only selected in 20 – 25 per cent of the cases. The average is even below 20 per cent for Serbia, Macedonia and BiH state level. In addition to the low proportions, it is important to notice that in each of the

³ Albania = 24 respondents, BiH = 33, FBiH = 21, RS = 20, Kosovo = 68 (including 20 municipalities), Macedonia = 61 (including 33 municipalities), Montenegro = 33, Serbia = 23.

countries recruitment practices vary considerably 'within' countries. This indicates that the implementation and outcomes of recruitment are not consistent across institutions.

The ambivalent quality of the recruitment processes and outcomes is also evident when comparing the relative importance of different selection criteria. Figure 1 below shows that 'professional competence' consisting here of academic qualifications, procedural knowledge and subject expertise is generally important when taking selection decisions. However, Figure 1 clearly indicates that non-merit criteria are important, too.



Support from the political leadership, in particular, the Minister is evidently an important condition for the selection of a candidate. Interestingly, political parties, which have no formal role at all, are often informally involved in recruitment and selection processes. Ethnic representation also plays an important role in several countries; in particular, in Macedonia and BiH state level.

The main question is therefore why merit recruitment procedures have so far remained relatively ineffective in the Western Balkans? This remainder of this chapter discusses nine factors that influence the quality of recruitment processes and outcomes in the region. For each factor, the chapter provides paradigmatic examples from the region. For a detailed analysis, readers are asked to consult the ReSPA HRM study.

Drivers and obstacles of good implementation

The quality of legal frameworks

In the first place, the ReSPA HRM study demonstrates that in several countries legal frameworks in the region are not yet complete. To provide one of the high profile examples, in Serbia and Republika Srpska recruitment procedures do not require candidates to pass written examinations. Rather, candidates have to only sit a personal interview in front of a selection commission.

Written examinations are merely optional. Estimates vary. For Serbia, some suggest that merely 20-30 per cent of all recruitment processes involve a written examination. Others estimate that up to 50 per cent of the competitions include a written element. The different estimates indicate that institutions vary considerably in the way they apply the recruitment procedure.

In several countries, moreover, written examinations are only applied at the expert civil service level. By contrast, senior civil servants do not have to pass a written test at any point of the recruitment procedure. This applies, for instance, to both Montenegro and Kosovo.

In order to improve the implementation, it will hence be important for policy-makers in the region, in particular, CoP members to review the legal frameworks of the recruitment procedure and to fill the remaining gaps.

The quality of complementary legislation

While procedures for recruitment into the permanent civil service have typically been defined by law, it is evident that the implementation partially depends on the quality of complementary legislation and processes. In other words, it is important to consider the systemic character of recruitment into the civil service. The negative side effects of the under-regulation of temporary employment in the civil service provide a telling example.

In several countries, the temporary employment system is used to by-pass the merit recruitment procedure. In Serbia, for instance, temporary employment is regulated by labour legislation. It is not necessary for institutions to advertise positions and candidates to not

have to pass an examination. In short, employment is at will – subject to the full discretion of the institution.

The main challenge for the quality of the recruitment procedures emerges when temporary employees apply for permanent jobs. Temporary staff has advantages because they are familiar with the requirements for the job that is advertised. Indeed, jobs are often only advertised to convert temporary jobs into protected, permanent civil service jobs. As a consequence, there is no effective competition for civil service jobs. Potential applicants from other institutions and from outside the civil service might not even apply because they are aware that the competition will not be open and fair.

The problem is widespread across the Western Balkans. In addition to Serbia, it is especially evident in Macedonia, Montenegro and BiH state level. Yet the problem could be easily addressed by regulating temporary employment within the civil service law, by generally requiring open competition and the application of an examination procedure. In this way, temporary employment could act more like a preparatory service for employment in the permanent civil service rather than a strategy to bypass the merit recruitment procedure.

Persisting application gaps

When examining recruitment practices in the Western Balkans, it became evident in the context of the ReSPA HRM study that there are relatively few application gaps, that is, few problems of rule evasion. Generally, recruitment rules are widely applied in practice. Job vacancies are approved by central institutions before they can be filled, jobs are advertised – internally and/or externally, selection commission are formed, examinations and interviews are conducted and ranking lists are prepared.

However, there are a number of exceptions. Most notably, Macedonia has not yet properly started to implement the new recruitment procedure that was established in the context of the last civil service reform. Implementation was meant to start in 2015. However, a moratorium on recruitment and, in particular, the lack of a methodology for workforce planning have so far prevented institutions from applying the new procedure. Comparing across the region, the situation in Macedonia is therefore least favourable at the point of writing this chapter.

Another important example concerns the appointment of temporary staff to senior civil service positions in Serbia. Since the adoption of the civil service law in the mid 2000s, it has been required that the Higher Civil Service Council conducts the examination and selection process for senior civil servants. However, a large proportion of senior civil servants in the position of Secretary of the Ministry and Assistant Minister continue to be appointed on a temporary basis.

Moreover, the survey of personnel managers indicated that several institutions across the region do not consistently apply legal frameworks. Several cases at the state level of BiH and in Kosovo suggest that vacancies at senior level are not always advertised and that selection commissions are not always formed as required. For Kosovo, the evidence further suggests that institutions sometimes struggle to meet the requirements of the legal framework, for instance, when small institutions seek to appoint five members to selection commissions that are required to reflect a specific ethnic and gender balance.

In order to improve the quality of implementation, it will therefore be required to demonstrate clear commitment to the legal framework governing recruitment to the civil service. Moreover, it is essential that monitoring efforts across the civil service are strengthened. Finally, the evidence suggests that it might be necessary in some cases to review and revise the legal framework in order to make it more implementable.

Low examination standards

Merit recruitment procedures in the Western Balkans tend to require the application of complex examination procedures. It is true that written examination procedures are still lacking in several countries (see above). However, in most countries, examinations consist of formal eligibility screenings, general examinations that focus on legal and procedural knowledge and specialised examinations that focus on specific requirements for the advertised position. In addition, Western Balkan states vary in the extent to which they rely on the assessment of CVs, the use of generic intellectual capacity testing, psychological tests and personality tests to examine the suitability for employment in the civil service.

Despite the large range of examination methods, it appears that examinations fail to effectively test the competences of candidates. First, in most cases, examination systems are not based on systematic competency frameworks that could provide clear criteria for the assessment and selection of candidates. The Federation of BiH is about to pilot

competency-based interviews. However, it remains common in many countries that contents for the job-specific part of the examination and the criteria for evaluation are developed by selection commissions on an ad hoc basis. As a consequence, assessments are not sufficiently consistent across candidates, let alone across competitions.

Second, the use of multiple-choice type methods for the general examination part and, in the case of the Federation of BiH, also the job-specific examination might improve the impartiality of the procedure. However, it favours the assessment of factual and legal knowledge, while it is difficult to assess the competences of candidates.

Third, there are doubts for many cases in the region as to whether the level of difficulty is appropriate for the examinations. By their very nature, examinations are meant to discriminate between candidates. They provide an opportunity to assess competences and to identify the strongest candidates. When looking at the Western Balkans, it is evident that the pass rates are very high indeed. For most countries, our survey of personnel managers suggests that 60 – 80 per cent of the candidate successfully pass the written examination components.

As a consequence, the written examination does not appear to contribute much to the identification of the best and brightest candidates. In the worst case, it becomes a routine that is followed to legitimise the employment of a candidate on a permanent basis.

In order to improve the quality of merit recruitment, it will therefore be essential that examination systems in the Western Balkans are reviewed and revised in order to raise the bar for passing an examination. In particular, the general examination component should be reformed by charging central civil service agencies (or equivalent) with the development and administration of a comprehensive entry examination. Such an entry examination should include comprehensive assessment centres that use a variety of methods and levels of difficulty.

Lack of procedural expertise among members of selection commissions

Much of the international assistance for civil service reform and management has focused on the development of formal-legal frameworks and the development of capable central civil service agencies (or equivalent). Yet the evidence from the survey of personnel managers suggests that a lack of knowledge and information among members of selection

commissions, personnel departments, senior civil servants and the political leadership of recruiting institutions is one of the main obstacles to good implementation.

Most civil service systems in the region are position-based. For each competition, they rely on the appointment of ad hoc selection commissions. To be sure, selection commissions vary in their composition. In Kosovo, they consist of five members who are all drawn from the recruiting institution. In BiH state and Federation level and in Republika Srpska, commissions have five members who come from the recruiting institution and a list of civil service experts that is administered by the central civil service agencies.

By contrast, in Serbia and Montenegro, selection commission consist of only three persons. In Serbia, they include two members from the recruiting institution and one representative from the central Human Resources Management Authority. In Montenegro, they consist of one member from the recruiting institution, one member from the central Human Resources Management Authority and one external expert from academia and/or the NGO sector.

Personnel managers of recruiting institutions and representative of central civil service agencies have – naturally – better information of the recruitment and selection procedure. However, senior civil servants who join the selection commissions on an ad hoc basis tend to be much less well informed.

Moreover, the HRM study showed that it will be necessary to improve the role of external experts on selection commissions. On the one hand, they have the potential to monitor recruitment processes and to add expertise to the selection panels. On the other hand, it became evident that the selection of external experts and their subsequent allocation to selection panels is seriously under-regulated. There exist typically no clear criteria for the involvement of external experts. Moreover, they are insufficiently trained to competently fulfil their role.

Albania is a relevant exception in relation to the position of selection commissions, as the most recent civil service reform introduced permanent commissions for the entry-level pool recruitment procedure. However, even for Albania it became evident that commission members would benefit from more and better information in order to implement the recruitment procedure more effectively.

An improvement of the expertise of selection commissions should be prepared and coordinated, to a large extent, by central civil service agencies (or equivalent). In the first

instance, central agencies should improve the guidelines that members of selection commissions receive when implementing the recruitment and selection procedure.

In addition, central agencies should consider systematic training for members of selection commissions.⁴ Ideally, commission members would have to undergo basic training in order to qualify for their role. An accreditation process would professionalise the recruitment procedure. Moreover, the establishment of (semi-)permanent selection commissions would certainly improve the implementation of the recruitment procedure.

Lack of fairness

In addition to concerns over the quality of information, selection commissions are frequently criticised for a lack of fairness in managing recruitment processes. The legal frameworks clearly commit selection commissions to impartiality. However, the findings of the HRM study suggest that, in practice, recruitment processes are often biased, for instance, because selection commissions start their work with a preferred candidate in mind or candidates from recruiting institutions are favoured during the recruitment process.

Problems of bias are partially related to the composition of selection commissions (see above). The predominance of commission members from recruiting institutions in Kosovo, Serbia, RS and Macedonia (with qualifications) implies that central civil service agencies and external experts lack the capacity to monitor and influence recruitment processes.

Yet problems of bias also appear to be relevant for cases that grant a smaller role to commission members from recruiting institutions. Reports for BiH state level, for instance, indicate that institutions tend to get it 'their' way even if only two out of five commission members are from the recruiting institution.

The findings of the HRM study suggest that in these cases selection commissions are 'briefed' before they begin their work, for instance, by members of the political leadership, in order to ensure that the right kind of candidate wins the examination and interview process.

Criticism related to the fairness selection commissions is widespread across the Western Balkans. However, the most recent reform in Albania has introduced a pool recruitment

⁴ For the analysis learning and 'professional socialisation' effects among civil servants, see Meyer-Sahling et al (2015).

procedure that might provide an effective instrument against unfair selection commissions. According to the new procedure, a group of similar positions is advertised simultaneously based on annual staffing plans that are approved by the Government. The central Department for Public Administration then coordinates the examination, which leads to the ranking of candidates. At the end of the process, the top-ranked candidate is entitled to be the first to pick a vacant position, then the second ranked candidate and so on until all successful candidates have picked a position.

The most innovative element of the procedure is the delegation of selection powers from the commissions to the candidates. Commissions can therefore devote their energy to the assessment of candidates without having to worry about how to steer the process in favour of one or another candidate. The new procedure is currently applied at the entry level for executive positions. It has been well received and, as one indicator of success, has led to a significant increase in the number of applications per job vacancy. The public trust in the new system hence appears to be on the rise.

The functioning of the pool recruitment procedure should be observed closely. If successful, it might provide an effective tool for other Western Balkan states to increase the perceived fairness of the recruitment procedure. Alternatively, Western Balkans will have to re-think the composition of selection commissions by means of strengthening central participation and monitoring in commissions and by giving external experts and civil society organisations a more prominent role in the recruitment process.

The role of ministers and other politicians

The ReSPA HRM study shows that the prominent role of Ministers and other political appointees is a major obstacle to better implementation of merit recruitment procedures in the region. The SIGMA principles of administration are unambiguous in their preference for minimising the role of politicians in recruitment processes. Yet in several Western Balkan states they are charged with the formation of selection commissions and, most importantly, the final selection of candidates.⁵

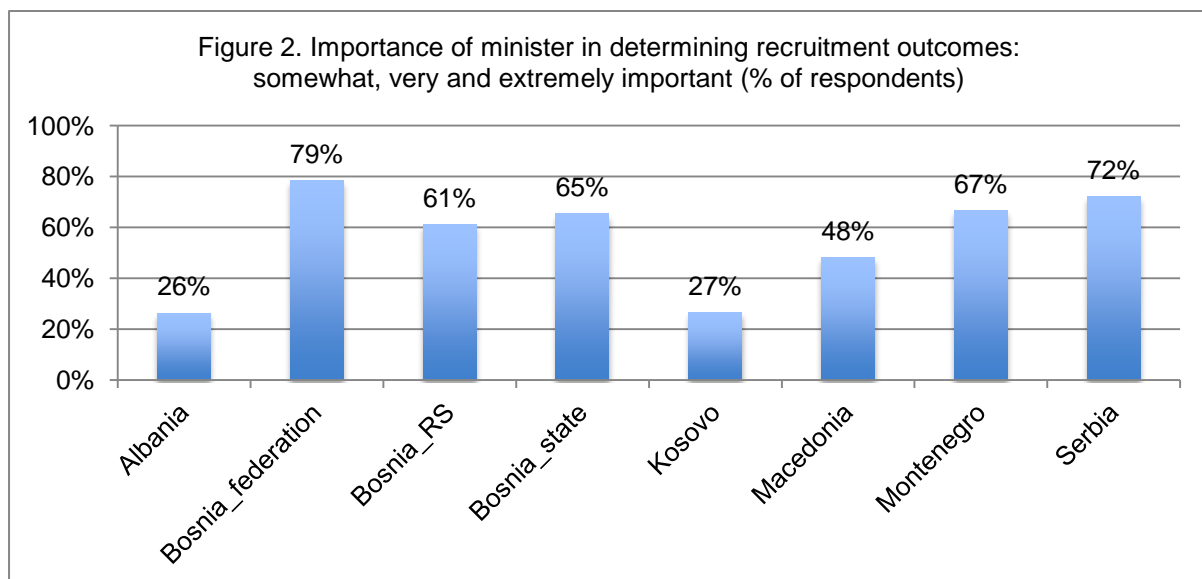
In Serbia, Montenegro, RS and BiH state and Federation levels, Ministers are responsible for the internal approval and appointment of commission members insofar as the representatives of the recruiting institutions are concerned. Most important, Ministers tend to

⁵ For different approaches to political discretion, see also Virant, G. (2016) in this volume.

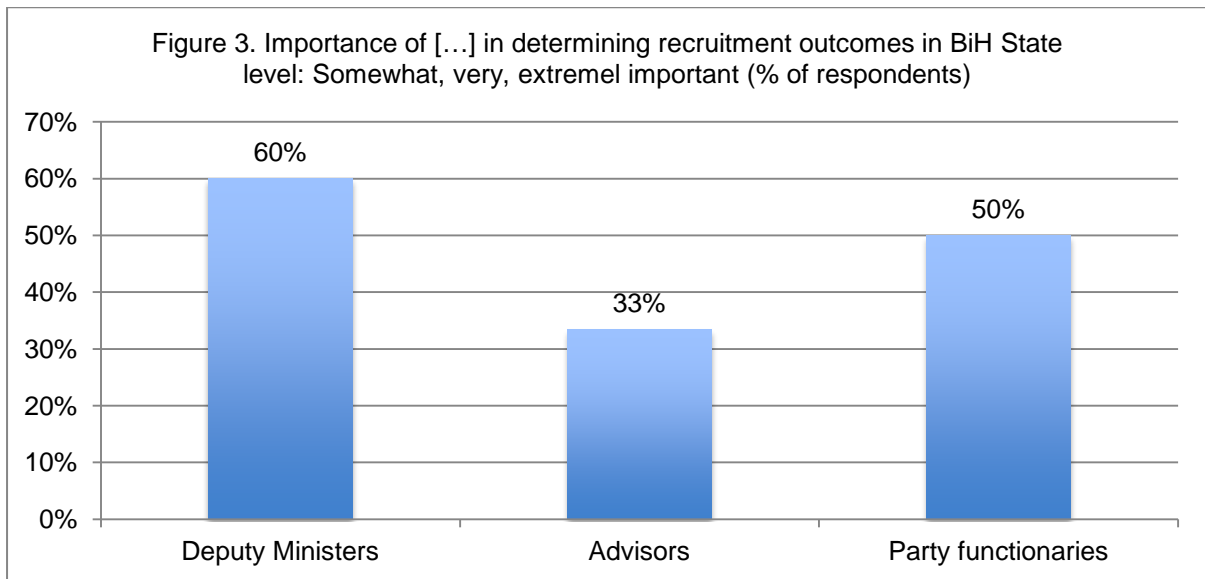
play an important role in the final selection of candidates. In Serbia, they select from a shortlist of three candidates. In Montenegro, the shortlist consists of five candidates. In the Federation of BiH, Ministers are presented with an alphabetically sorted list of candidates who have passed the written and oral examination. In BiH, the Minister has the right to select senior civil servants from a shortlist. In RS, he or she is presented with a candidate, which he has to approve at the end of the selection process.

The prominent role of Ministers is reflected in the findings of the survey of personnel managers. Asked about the importance of Ministers in determining the outcomes of the recruitment process, it showed that, on average, more than 50 per cent of the personnel managers consider Ministers to be somewhat, very or extremely important.

There is a considerable degree of variation however (Figure 2). For countries that grant Ministers a formal role at the end of the recruitment process, the influence of the Minister is perceived to be more important. The relatively less important role of Ministers in Kosovo and Albania is the result of delegating selection powers to General Secretaries rather than Ministers.



The political influence over recruitment processes is not limited to Ministers. The HRM study distinguished between Ministers, vice-Ministers, political advisors and party functionaries. It found that political influence is not limited to Ministers. In the case of BiH state level, for instance, we found that Deputy Ministers play a role that is almost as important as Ministers. Moreover, the importance of political parties in determining recruitment processes is remarkable.



The importance of Deputy Ministers, advisors and party functionaries indicates strong informal political influence over recruitment outcomes at the BiH State level. For the other countries, the proportions are slightly lower but they also confirm that political influence over recruitment is widespread in the Western Balkans.

Overcoming informal political influence will be very challenging. A revision of the legal frameworks to reduce the formal powers of Ministers will be an important starting point. However, efforts to persuade politicians of the relevance of merit recruitment for the development of the Western Balkans will be very important indeed.

The capacity of personnel departments

One of the distinctive features of the HRM study is the survey across institutions covered by each country's civil service law. The study shows that the coordination between personnel departments and the central civil service agencies (or equivalent) runs remarkably smoothly and in a co-operative manner. However, it was also found that personnel departments across the civil service lack the capacity to play a more proactive role in the implementation of the recruitment procedure.

On average, we found that a separate personnel department has been established only in one out of two institutions across the region. In Macedonia and Albania, most institutions have indeed set up personnel departments. By contrast, in the other countries it is much less common to find separate departments responsible for personnel management. Rather, one or two officials located in general affairs departments are responsible for personnel issues.

In addition to questions of size, the study raises concerns related to the expertise of personnel departments and their staff. Most personnel managers and personnel contact points are law graduates. Officials with a specialised background in human resources management, public management or public administration are rare. The feedback collected through the ReSPA HRM study suggests a strong interest in further specialised training and development of personnel managers across civil service institutions.

The limited capacity of personnel departments is also reflected in the role that they perform in the recruitment process. Most comments suggest that personnel departments merely observe the process. In decentralised systems such as Kosovo, they play a larger role in managing the recruitment process, for instance, by preparing questions for written examinations. However, their capacity to play a prominent role in the process is regularly questioned.

In order to improve the implementation of the merit recruitment procedure, it will be essential to strengthen personnel departments of recruiting institutions. In this first place, this will require additional specialised training for personnel managers. However, there is a need for a more fundamental cultural change that would upgrade the role of these departments from a focus on personnel administration to engagement in human resources management and development.

Monitoring capacity

In the Western Balkans recruitment processes are primarily monitored through the delegation of representatives from central civil service management agencies to selection commissions. They participate in the recruitment and selection in all countries except Kosovo where recruitment is fully decentralised. It is doubtful, however, whether this is sufficient to ensure a high quality of implementation and consistency across civil service institutions.

Western Balkan states have established additional mechanisms to monitor recruitment processes. In Montenegro, external experts are appointed to sit on selection commissions. In Kosovo, external observers from academia and civil society participate in the selection of senior civil servants. In Macedonia, the new civil service law requires delegation of a representative from the Secretariat for the Implementation of the Ohrid Framework Agreement. While these are very promising initiatives, they have so far not developed their full capacity.

In addition, Western Balkan states rely on a variety of ex post monitoring and inspection mechanisms. In Albania and Kosovo, civil service management is overseen by the Civil Service Commission and the Independent Oversight Board respectively. Both institutions are independent offices within the jurisdiction of Parliament. In the other countries, oversight and inspections are conducted by administrative bodies such as Ministries of Interior and Justice.

Even if oversight is routinely performed in the region, the HRM study suggests that it rarely leads to major interventions and corrections in the practice of implementation. The Independent Oversight Board, for instance, informs institutions if it picks up irregularities but there is virtually no follow up as to how institutions respond and review their practices.

In order to improve the implementation of recruitment procedures, it will be important to strengthen the monitoring capacity of oversight and inspection bodies. Moreover, there is considerable scope in the region to develop the monitoring role of civil society organisations. As developed in more detail in the chapter by Muk in this volume, the experience by Institute Alternative in Montenegro represents a case of innovative and effective monitoring (see Milosevic 2015; Muk 2016 in this volume). The role of civil society organisations should be developed with regard to external monitoring and evaluation as well as involving them more effectively in recruitment and selection processes.

Conclusion

The chapter has discussed the implementation of merit recruitment procedures in Western Balkan states. Based on the findings of the ReSPA HRM study, it identified factors that undermine the quality of implementation, in particular, the low effectiveness of merit recruitment procedures. Having discussed and compared a range of different factors, it is evident that there is no simple solution to fixing problems of implementation in the region.

The revision of legal frameworks will have to be a priority but experience tells that it is politically difficult and complex in administrative terms. The revision of examination systems will be demanding in terms of design and, in particular, implementation. Building the capacity of personnel departments and monitoring institutions will also require time and investment.

Increasing fairness and reducing the formal and informal role of politicians in recruitment and selection processes are likely to be the most challenging endeavours, as they will require both legal change and, in particular, cultural change among members of the political class.

This leaves, for the time being, an investment in the informational base of members of selection commissions as the most promising effort for central civil service agencies and their equivalent. Training commission members without addressing some of the more fundamental problems of the recruitment systems will not lead to major change. However, it will allow for an incremental improvement of the quality of implementation and, hopefully, raise the awareness of the benefits of merit recruitment in the civil service.

References

- Meyer-Sahling, J.-H. (2012) *Civil Service Professionalisation in the Western Balkans*. SIGMA Paper No 48. Paris: OECD Publishing. Available at [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=GOV/SIGMA\(2012\)1&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=GOV/SIGMA(2012)1&docLanguage=En)
- Meyer-Sahling, J.-H.; Lowe, W.; Van Stolk, C. (2015) Silent Professionalization: EU Integration and the Professional Socialization of Public Officials in Central and Eastern Europe'. *European Union Politics* Early online view, 21 October 2015. Available at <http://eup.sagepub.com/content/early/2015/10/16/1465116515608270.abstract>.
- Meyer-Sahling, J.-H.; Mikkelsen K.S.; Ahmetovic, D.; Ivanova, M.; Qeriqi, H.; Radevic, R.; Shundi, A.; Vljakovic, V. (2016) *Improving the Implementation of Merit Recruitment Procedures in the Western Balkans: Analysis and Recommendations*. Danilovgrad: ReSPA Publications. Available at www.respaweb.org.
- Milošević, M. (2015) *Monitoring Report: Recruitment and Promotion In State Authorities In 2014*. Podgorica: Institute Alternative.
- Muk, S. (2016) The Role of Civil Society in Promoting and Monitoring Civil Service Reform: The Case of Institute Alternative. In *Professionalisation of the Civil Service between Politics and Administration*, J.-H. Meyer-Sahling (Ed.). Danilovgrad: ReSPA Publications.
- Virant, G. (2016) Professional Standards and Selection Procedures for the Top Managerial Positions in the Civil Service: EU and Western Balkan Perspectives. In *Professionalisation of the Civil Service between Politics and Administration*, J.-H. Meyer-Sahling (Ed.). Danilovgrad: ReSPA Publications.

Chapter 3

Professional standards and selection procedures for top managerial positions in the civil service: EU and Western Balkan perspectives

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Separation between politics and administration

The Principles of Public Administration (SIGMA 2014), a comprehensive framework of standards of the European Administrative Space, indicate (p. 43) that 'modern, constitutional public service in a democracy is regarded as possible only when a set of conditions is in place', among other 'separation between politics and administration'.⁶

Political leadership and public administration both pursue public interests. However, their sources of legitimacy and their roles in a democratic society are different. Political leadership represents the will of the people, as expressed in a process of democratic elections, while public administration serves as a professional apparatus, responsible for professional policy advice to the political leadership and for effective implementation of the policies defined by politicians. The legitimacy of the political leadership rests upon the democratic electoral process (even though the executive branch is not directly elected in parliamentary systems, it is accountable to the direct representation of the people), while the legitimacy of public administration is based on professionalism and neutrality. Politicians are not necessarily professionals (in a technical sense) in their respective areas and, of course, they are *per definitionem* not politically neutral. On the other hand, civil servants are supposed to be highly professional in a technical sense and politically neutral. They have, as any other citizen, political rights such as freedom of political affiliation and freedom of expression (sometimes restricted to a certain extent), but their role is to serve the government and the public in a politically neutral way.

That is why the Principles of Public Administration stipulate that the division line between political and civil service positions shall be clearly determined (a part of the principle 1 of the

⁶ See SIGMA (2014) *The Principles of Public Administration*.

chapter Public Service and Human Resources Management. The principles also indicate where the division line should be drawn: 'the category / class / level of senior managerial positions in the public service, as an interface between politics and administration, is included into the scope of civil service'. It is clear from the wording of the Principles that the top managerial positions (secretaries general, directors general of policy area departments within ministries, heads of agencies responsible for implementation of policies) may not be defined as political and appointments to such positions may not be based merely on political discretion. Any attempt of politics to shift these positions (formally or informally) from the civil service to the circle of political appointments is clearly a violation of the Principles.

The pivotal role of top management in public administration

Why are the top managerial positions in public administration so pivotal? Why are they specially emphasised in the majority of civil service systems? Why are they underlined in the Public Administration Principles as well?

It is for two reasons. Firstly, due to the power vested in their positions, they have a crucial position and role in the system of public administration and their operations substantially affect the system. Secondly, they are positioned in immediate vicinity to the political positions of the prime minister, ministers and state secretaries (or deputy ministers) and politics is tempted to seize those positions as political spoils. That is why these positions must be 'protected' and treated with particular care⁷.

If secretaries-general, directors / heads of departments and heads of agencies are defined as political appointees or if appointment arrangements are so loose as in the case of political appointees, public administration would be beheaded and political category unduly extended. This could be detrimental for the functioning of the system as a whole.

The circle of 'top managerial positions' differs from country to country, but basically it includes the following positions:

- secretaries general of the ministries (in some systems conceived as 'the top of the pyramid', in others as one of the first-line management positions);

⁷ See, for instanc., <https://riigikantselei.ee/en/top-executives-civil-service>. 'Top-level executives in the civil service are some of the most important resources available to the Estonian civil services. Their leadership qualities, abilities to be role models and capabilities are the keys to the success of every organisation.'

- heads of policy departments in ministries (directors-general, in Western Balkan countries usually referred to as 'assistant (to) minister'),
- heads (directors, chief-executives) of agencies reporting to ministers and those reporting to the government or prime minister,
- heads of de-concentrated bodies of central government (administrative districts, administrative regions or similar).

Depending on the modalities of the system, the notion of top managerial positions usually covers approximately 100 – 200 positions in public administration (e.g. 96 in Estonia⁸, 180 in Slovenia where the notion includes 58 heads of de-concentrated bodies of central government). People appointed to these positions represent the highest level of the administrative pyramid, the junction or interface of public administration with the political leadership of the executive branch, and they hold significant power in the system of public administration and in the society as a whole, this power not being supported only by their formal status, but also by their competencies, long-term careers, experience and networks they build.

Top civil servants and EU affairs

Civil servants that occupy top managerial positions in the EU member states regularly meet their counterparts and high officials of the European Commission at meetings of the working groups. In order to be able to influence European policies and implement them effectively, they must have the proper competencies. This is even more important in times of presidency of a country over the European Council. Presidency requires top civil servants to chair the working groups, and, although they are professionally supported by the Council staff, much depends on their ability, knowledge and skills.⁹

Similarly, this applies to the candidate and potential candidate countries. Civil servants occupying top managerial positions in those countries have to cope with the challenges of the accession process, which require high-level abilities and knowledge. They are supposed to be the professional pillars of negotiating the terms of accession, of transposing the *acquis* to the national legislation and of building administrative capacities for the implementation of the *acquis*.

⁸ See <https://riigikantselei.ee/en/top-executives-civil-service>

⁹ For an analysis of the Europeanisation of civil service roles in new member states, see Fink-Hafner (2014) and Meyer-Sahling and Van Stolk (2015).

Standards of recruitment and selection for top managerial positions

The basic principle of recruitment and selection for the top managerial positions in public administration is merit. Given the importance of these positions within the system, it is of utmost importance to select the most competent people for aforementioned positions. If the general principle of the civil service is professionalism and merit-based recruitment, it is even *a fortiori* so for top managerial positions. A strategic approach would require high-prioritisation of top management within any civil service reform.

The Public Administration Principles clearly recognise this through the standards indicated under 'principle 4' in the chapter on public service and human resources management:

- The recruitment and selection process for senior managerial positions, either external or internal, is based on merit, equal opportunities and competition.
- The criteria for recruiting persons to the senior managerial positions are clearly established and disclosed.

It is clear that the principles require either internal or external competition for the job, meaning that the vacancy shall be internally or externally announced. There are objections to this requirement as it might in practice sometimes appear as rigid (this is familiar to HRM experts as the 'open competition vs. headhunting dilemma'), but in public administration, there are clear principled arguments to give preference to fishing with nets instead of harpoon, i.e. to open competition (either internal or external) instead of headhunting.

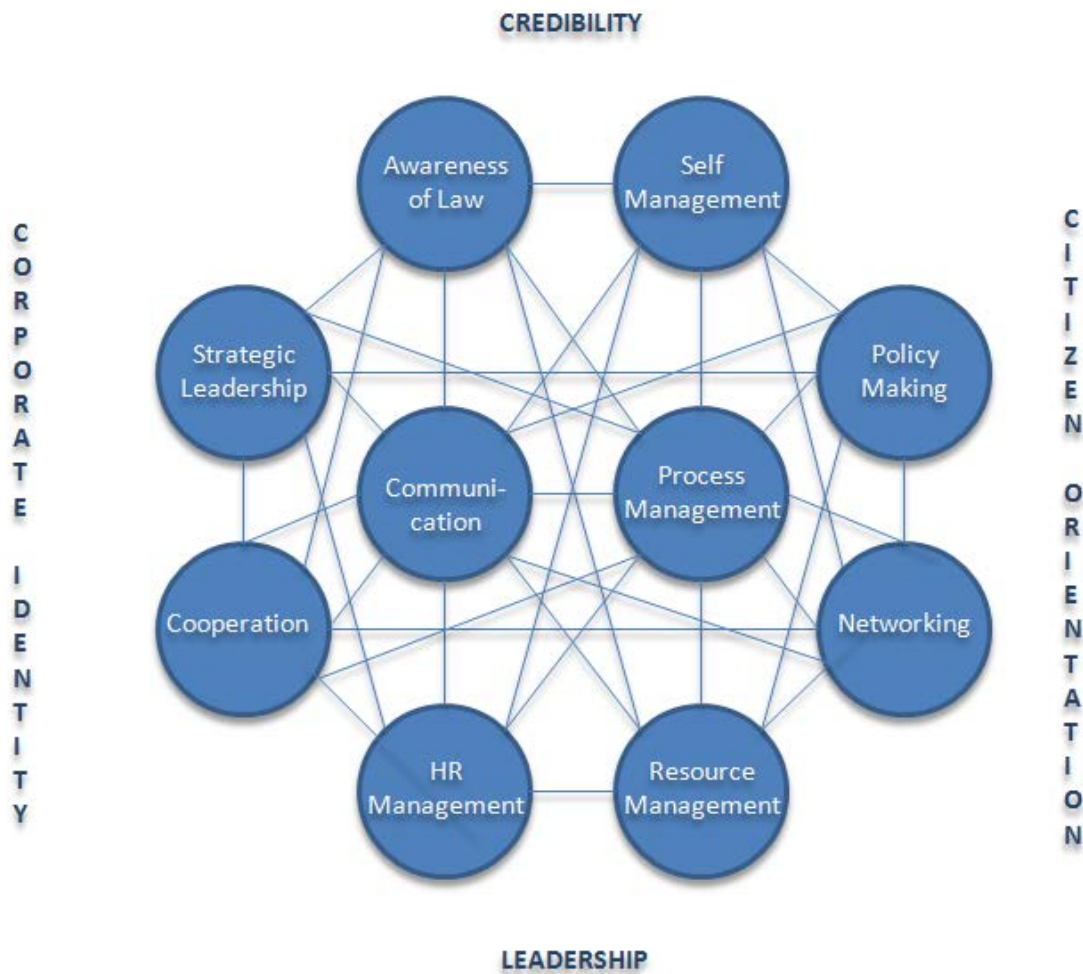
Recruitment and selection based on merit is closely connected with 'clearly established and disclosed criteria'. Namely, in order to select the best candidate based on their merit, one must first determine the criteria of 'being the best person for the job'. Here we meet the HRM concept of competencies as a term covering all human qualities relevant for the performance of a job. Competencies encompass knowledge, skills, experience, psychological characteristics and values. One of the main challenges of HRM is how to best match, on one hand, the competencies required for effective and efficient performance of a job, and, on the other hand, the competencies of an individual. To put it in a more simple form: it is all about how to best match a person with a job. To cope with this challenge, firstly a set of competencies required for a job, a picture of an 'optimal candidate' must be set. The set of competencies defined for the job should then serve also as a set of criteria for selection. The selection procedure should be oriented to recognising and evaluating the relevant

competencies of the candidates in the light of those criteria. The 'best person for the job' is the one whose personal competencies are the closest match to the competencies' profile of the job.

When top managerial positions are in stake, the approach to defining the set of competencies must be, due to the reasons stated above, much more meticulous. Through this set of competencies, we practically draw the profile of future top managers in public administration, the 'elite' that will manage and lead the system in accordance with the political guidelines of the government and ministers. Therefore, the standards and criteria related to competencies for the top managerial jobs must be set at a very high level. Let us try to enumerate some of the requirements which appear to be vital when it comes to the top managerial jobs in public administration:

- good knowledge of all aspects (legal, economic, political, EU) of the respective administrative area,
- good understanding of issues, challenges and policy dilemmas in the respective area, ability of problem-solving and strategic thinking,
- abilities and skills related to resources (particularly human) and process management,
- communication, negotiation and similar 'soft skills',
- proficiency in languages (English or French),
- knowledge and understanding of the system of public administration (principles, structures, relations, processes).
- An interesting example of a general competency framework for top managerial positions has been developed by the Estonian Government Office (Riigikantselei):¹⁰

¹⁰ See <https://riigikantselei.ee/en/top-executives-civil-service>



The Principles say nothing about who should be responsible to define the standards and criteria for the top managerial positions. It is quite obvious that setting the criteria is in and of itself a high-level professional challenge, so high-level experts should be involved in this exercise. It appears that the Principles leave discretion as to the determination of the body responsible for setting the standards and criteria. Some basic requirements can be determined by the law, but more specific issues must be regulated by secondary legislation issued by the government or a specially dedicated independent body.

Selection procedures for top managerial positions

As already mentioned, the Principles stipulate that the criteria for selection must be disclosed in advance to the selection procedures, and must be respected in the processes of

selection of the best candidate(s). Also, the Principles indicate that the recruitment and selection process for senior managerial positions, either external or internal, shall be based on merit, equal opportunities and competition. General requirements for the selection procedures related to all civil service positions (principle 3) apply as well, meaning that ‘the recruitment and selection committees include persons with expertise and experience in assessing different sets of skills and competences of candidates, with no political interference.’ Candidates who are not appointed have the right to appeal unfair recruitment decisions (unfair meaning, e.g., that the previously determined criteria had not been properly applied).

High-level standards for top managerial positions in combination with the general requirements for all recruitment and selection procedures in civil service require the establishment of highly professional selection boards. A possibility of a simplified procedure or involvement of politicians in the professional part of the recruitment and selection procedure is out of question. Whether politicians may have a say in the final decision on recruitment / selection, will be discussed in the following chapter, but there is certainly no space for them in the professional part of the recruitment and selection procedure.

Similarly to the issue of the body competent for determining the criteria, there are no specific stipulations on who shall appoint the selection boards. There are several options, from appointment by the government to designation of an independent body (like the British Civil Service Commission or the Civil Service Council in Slovenia).

Political discretion regarding top managerial positions: Yes, no or if certain conditions are met?

As shown above, there is no doubt that the highest possible standards should be set and met by civil servants in top managerial positions. From this point on, the question is whether politicians (prime minister, ministers, government as a collective body) may exercise any discretion when it comes to recruitment and selection of those civil servants. At first glance it would appear that Principle 4 is quite clear on that: direct or indirect political influence on the senior managerial positions is prevented.

However, there is no unified solution to this question in the EU member states. In the traditional British ‘Westminster system’ which rests upon the principle of absolute political neutrality of the civil service, politicians have no say at all in the recruitment and selection for

top managerial positions. This concept has been implemented by other countries as well (e.g. Ireland and Denmark). In other countries (France, Germany, Italy etc.), politicians have certain discretion regarding recruitment and selection of top civil servants. The system of 'political civil servants (politische Beamte)' or 'civil servants at government discretion (fonctionnaires a la discretion du gouvernement)' combines standards of high-level competencies on the one hand and political discretion on the other, when it comes to top civil service positions at the junction between politics and administration. *In short, a certain degree of political discretion exists but it is limited to selecting from the circle of highly professional candidates.*

The idea behind the concept of (limited) political discretion is the following: top civil servants are the closest collaborators of politicians and the politicians must have the possibility to participate in their selection and appointment; exclusion of politicians from the process could leave to dysfunctionalities in the politico-administrative processes of public governance. There must be some conceptual compatibility between a minister as the political leader of a ministry and his/her closest collaborators in the most senior positions in the administrative system. These ideas derive from a view that political and administrative segments of the executive branch of government are closely connected and that the separation of these two segments should not be too rigid.

That being said, we can conclude that inclusion of some political discretion in the selection of the candidates for the top civil service positions is not against the European principles. I believe that the SIGMA Public Service and HRM principle number 4 should be re-worded respectively. There should be some manoeuvre for the countries to develop their own concepts, not necessarily strictly following the Westminster model. Taking into account the tradition and the political and administrative reality in the candidate and potential candidate countries of the Western Balkan, it appears that following the French or German concept could be even more appropriate.

A possible solution is to separate two phases of the recruitment and selection procedures: the first one being strictly professional, politically unbiased and ensuring the highest possible standard of competencies of the candidates, and the second one being the opportunity for the government or minister to exercise a certain degree of political discretion. The real challenge is how to assure high quality of the first phase of the procedure instead of having it just as a facade for purely political appointments which is, in all honesty, the reality in many countries. A set of legal, organisational and managerial measures is needed to cope with this challenge. Genuine political will to assure the highest possible standards of recruitment

is of utmost importance – politics should restrain from interfering with the professional phase of the selection process and should provide a framework in which independent and highly professional mechanisms can be developed. In my opinion, in the case of the Western Balkan countries this is by far the most challenging condition for full compliance with the European standards and development of a highly professional and competent senior civil service.

Top civil servants: Permanent or limited terms of service for top managerial job?

The Principles of Public Administration stipulate that the termination of employment of civil servants holding senior managerial positions is only admissible in cases explicitly provided for, and under the procedural provisions established in the law. It is not clear whether the termination of 'employment' actually relates to termination of the managerial job, which does not necessarily lead to termination of employment but eventually to a transfer to another, non-managerial or lower managerial position. This would be a more meaningful interpretation than the *stricto sensu* one.

The principle is only about formal standards: rule of law, predictability and due process, while substantial requirements are missing. Does this mean that substantial conditions for termination of the term are left to political discretion of national legislators? This could be the case, bearing in mind that, here again, systems in the EU member states largely diverge. There are cases where top civil servants are appointed for permanent tenure (UK, Ireland), cases with limited terms of the top managers differing from those of politicians (Estonia) and even cases where the term can be terminated by discretionary political decision (France, Germany, Slovenia).

In the case of Slovenia, after change of government or minister, the latter can, upon discretion, terminate the term of a civil servant in a top managerial position within one year after assuming the office and transfer him/her to an adequate senior position (managerial or non-managerial). The same deadline applies after appointment of a civil servant to a top managerial position even with the same minister in office. It is referred to as a kind of 'probationary period' of compatibility between a minister and a top manager in public administration. Usually, this discretionary termination of term is applied to approximately 25 – 35% of approximately 180 top managerial positions, which enables a smooth transition without serious stress for the system of public administration. Discretionary termination is

usually applied for the directors-general of the policy departments, but rarely for heads of implementation agencies and heads of de-concentrated administrative district authorities.

Discretionary termination of term and change in top managerial positions is a logical consequence of political discretion in the processes of recruitment, selection and appointment. If minister A had the right to select a candidate from a shortlist, why would minister B be prevented from doing the same? Of course, termination of holding a top managerial position should be strictly separated from termination of employment, particularly in cases where a person holding a top managerial position had been a civil servant before appointment to the position.

Political discretion in selection and even replacement of civil servants on top managerial positions is not necessarily a problem, provided that highly professional, politically unbiased processes of recognising competent candidates precede the phase of discretionary appointment. Those procedures must lead to providing shortlists of candidates (possibly without rigidly defining the exact number of shortlisted candidates) who meet the high professional standards. The basic requirement for the recruitment and selection procedure is not about excluding politicians from any influence. It is about assuring highly professional candidates whose competencies meet the highest standards.

When the Western Balkan countries are at stake, one should be more concerned about how to ensure the highest possible level of professionalism of top civil servants instead of how to absolutely exclude politicians from any influence in deciding who will hold those positions. One should not only focus on the painting of a nice 'facade', which is unfortunately not a reliable guarantee for professional senior civil service, but rather on substantial issues of professionalisation of top management in public administration.

By way of conclusion: A culture of mutual respect between politics and the civil service is crucial

Behind all legal and procedural arrangements, there is always a set of values and features of organisational culture which matters far more than the law and formalities. There are countries with few legal provisions on the issue in stake, where top management in public administration operates on a very high quality professional level and no serious problems are encountered in politico-administrative relations. On the other hand, there are countries (particularly among the candidates for EU membership) where legal and procedural

arrangements are developed in detail, but as soon as one takes a look behind this surface, one finds purely political appointments without much concern about the competencies of the candidates. Development of both political and administrative culture takes time. Instead of a conclusion, let us enumerate some characteristics of systems with a fairly developed political and administrative cultures related to the issue of top managerial positions in the civil service and the politico-administrative relations:

On the political side the elements of a well-developed culture are the following:

- Politicians should encourage the establishment of mechanisms and procedures ensuring that only highly competent candidates can be appointed to the top managerial positions in public administration. They should be aware of the importance of a highly professional civil service and of the fact that the top managerial positions are crucial for the efficiency and effectiveness of the public administration system. They should also be aware that highly competent civil servants on senior positions are a precondition for a successful term of the government and that disrespect of this postulate can be politically detrimental for the system of public administration and also for a government in a democratic society. For them, preferring recruitment based on spoils instead of merit is absolutely out of questions.
- Politicians should respect the role of the civil service, professionalism of civil servants, their expertise and experience and rely on professional inputs provided by the civil servants.
- Politicians should provide a space of professional autonomy to the civil service, not entering into details where they do not possess the technical knowledge and skills. They do not tend to micro-manage public administration. On the other hand, they set clear strategies and guidelines for the operation of public administration so that public administration knows what objectives to pursue
- Politicians should primarily use advice of professional civil servants (instead of listening only to political advisors in their cabinets). Before making decisions, they should consult the senior civil servants. When issuing guidelines and orders to the civil service, they should provide reasons and carefully consider potential objections, although they should keep the right to the final say.

- Politicians should trust civil servants, even those appointed when the same politicians were not in the office. Their assumption in relation to the civil service should be trust rather than mistrust. Even in cases when they can opt for discretionary dismissals from top managerial positions (if the law allows them to do so), they should perform it only in exceptional cases, and when they do it, they should carry it out with due respect to the civil servants concerned (providing clear arguments and searching a solution for the dismissed civil servants which will keep them professionally satisfied).

On the administrative side:

- Civil servants should build their careers on their professionalism and competence rather than on political affiliation and loyalty. This applies to the most senior civil servants as well. Senior civil servants should be self-confident and aware that their competence is an asset.
- Senior civil servants should respect the role of politicians as legitimate representatives of the general public. They should understand that the politicians are elected to govern the country and that politicians are supposed to have a final say regarding all policy questions. Senior civil servants should respect and effectively carry out guidelines and orders issued by politicians.
- Senior civil servants should provide politically neutral advice. They should give honest answers to questions asked by the politicians. The 'Yes Minister' principle can apply to performing guidelines and orders (except if they are unlawful), however, it should not mean they must blindly agree with the politicians' opinions and statements. Civil servants speaking straightforwardly and honestly are a precious asset for any government.
- Senior civil servants should be oriented towards finding solutions for implementing change indicated in political strategies instead of searching for excuses why something is not feasible.

In an environment where the above-indicated postulates are generally respected, the legislative and procedural solutions will be easy to find. In the EU member states, the level

of political and administrative culture is reasonably high (albeit diverging from country to country). For the candidate and potential candidate countries development of political and administrative culture remains one of the most important challenges.

References

- Fink-Hafner, D. (2014) Post-Accession Politicization of National EU Policy Coordination: The Case of Slovenia. *Public Administration* 92(1): 39–54.
- Meyer-Sahling, J.-H.; Van Stolk, C. (2015) A Case of Partial Convergence: The Europeanization of Central Government in Central and Eastern Europe. *Public Administration* 93(1): 230 – 247.
- SIGMA (2014) *The Principles of Public Administration*. Available at <http://www.sigmaweb.org/publications/Principles-Public-Administration-Nov2014.pdf#page=10>.

Chapter 4

The challenge of civil service professionalisation:

Lessons from Poland

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Introduction

Universal human values as democracy, human rights and freedoms of each citizen, implementation of good governance principles in the government activity rightfully belong to the most important heritage of modernity. The members of the European Union, in particular, the consolidated democracies, have not only lived up to these values for a long time but the values have become an established norm of everyday life. Thus, not coincidentally, more and more countries become geared towards the European vector of development.

Despite the historical and cultural peculiarities of each country, the civil service always has the same mission and the same tasks: to provide for the professional, accountable, unbiased and politically neutral implementation of the tasks of the state. Whichever party is in power in the government, the civil servants have to implement the state policy with the same professionalism and diligence.

Poland has worked its own way to the adaptation of its public administration system to European standards of 'good governance', advancement of the system of legal and social foundations of effective functioning of the civil service and its human resources support.

The fall of the communist system at the end of the 1980s left a situation in which newly democratic states had no suitable administrative structure to deliver public services. In Poland, as elsewhere in the region, many institutions from the previous era (in this case of the People's Republic of Poland) were little more than facades. In effect, the real authority was exercised by Communist committees of the Polish United Workers' Party (PZPR). The government officials were used as instruments to ensure the interests of the communists holding power were put into effect and pursued. The fundamental aim of all the activity was to ensure that all spheres of life were kept under the closest scrutiny to the point where both citizens' privacy and their dignity were violated. On the other side of the coin, despite the

near-omnipresence of the administration at the time, the most basic needs and expectations of society could not be met.

The last two decades have brought a transformation that includes development of a new state system founded upon democratic principles, rather than a lack of respect for the rights of citizens, personal liberty, the rule of law, openness in public life, and the right to self-govern through the decentralisation of power.

The Poland of today has a structure, interrelations and divisions of responsibilities and tasks that were put in place by reforms. The most important of these were the reforms of local authorities at local community ('gmina' - basic unit of local government) level dating back to 1990, the reform of the government's economic centre in 1996, and the reform addressing tiers of administration and their roles of 1999.

A further key moment came with the National Assembly's adoption on 2 April 1997 of a new Constitution of the Republic of Poland. The new constitution would go on to serve as the bedrock of the Third Republic. It defines the Republic of Poland as a unitary state with a parliamentary and cabinet-based form of government.

The success of the first decentralising reform, with its attendant restoration of self-governing status to the local communities ('gmina') at basic level, encouraged further reform of local and regional administration. On 1 January 1999, a fundamental three-tier territorial division of Poland was introduced. The result was the shaping of non-central administrations at the local ('gmina'), county/district ('powiat'), and regional ('województwo') levels. In other words, this occurred at the local, county/district, and regional levels respectively. As of 1 January 2011, there were 16 regional self-governmental offices ('urząd marszałkowski') in operation. There was one regional self-governmental office responsible for regional administration in each region. Additionally, there were 314 county offices ('Starostwo') each led by the mayor ('starosta') in the given county. There are 65 towns or cities enjoying county rights and responsibilities and 2479 local communities ('gmina') with local authority offices each.

Post-1999, the decentralisation of public tasks was taken further. The legal basis for this was the 'Competence Acts' becoming law in 2006 and then 2009. These Acts conferred some of the powers previously held by the central governmental administration on other tiers, specifically on the regions. The Acts thus strengthened the regional dimension of 'województwo' rather than provincial when it came to the carrying out of public tasks. The main goal was to ensure a role for them as true hosts and managers of particular regions. This is essential for European Union membership and funding.

During this period, the shaping of a modern administration was influenced by the country's aspiration to see the quality of service and efficiency of public institutions improved. However, external factors, such as integration into the EU, were important as well. This process resulted in the modernisation of public institutions. While public administration remained a domain for member states, there was standardisation in certain areas of functioning including the Civil Service. There was also greater cooperation and interactions with other entities involved in public management and governance from within the states, as well as across Europe.

Political and economic reforms

The first major political and systemic reform involved the reactivation of broad autonomy at the local community ('gmina') level. The reinstatement of the local communities ('gmina') in 1990 put an end to five monopolistic aspects of the old communist state.

- The political monopoly of the communist state ended with the local elections of 1990 being the first fully democratic elections of any kind in post-war Poland.
- The monopoly of the homogeneous state power ended with local authorities obtaining a constitutional right to pursue many public functions in their own name.
- The monopoly of state property ended, and local community ('gmina') obtained legal status and received a sizeable share of state property conferred upon them by virtue of an Act of Parliament.
- The monopoly of public finances was brought to an end with local community ('gmina') receiving the right to engage in independent budgeting. This is different than the situation in People's Republic of Poland where local community ('gmina') budgets constitute a component of the central budget fully under central administration rules for management and supervision.
- The state administration in 1990 bringing a transfer of approximately 100,000 employees from the centralised government's administration to the local authorities.

The symbolic date for the end of this period is when the Constitution of the Republic of Poland was adopted. In the view of some researchers, the transformation continued after that point, and was not complete by Poland's accession to the EU in 2004. There are aspects evident of transformation before and after the EU accession date of May 1st 2004.

Before March 1999, Poland was accepted into NATO, but it was the EU entry that was influential in setting the second phase of modernisation and consolidation in motion.

The systemic transformation of the economy indicates a process where the old communist system, based on state ownership, central steering, and central planning of the economy, was left behind in favour of a free-market system founded upon private ownership and freedom of establishment.

Human resources management

The state's effective management demands professional, competent personnel. As of 2009, some 428,300 officials were employed in public administration, a majority (57%) of these on the three self-governmental tiers (outside the governmental administration). Following the breakthrough of June 1989, all political options and opinion-forming groups were of the view that one of the most important tasks for the new democratic Poland was to build a governmental administration based around civil service ideas and ideals.

Poland has a long civil service tradition extending back to the beginnings of the independent Polish state. The Act on the State Civil Service of 17 February 1922 in fact offered the first-ever comprehensive regulation of a corps of officials. The era of People's Poland was one in which civil servants were above all required to be loyal, the 'nomenklatura' system of (politically-motivated) appointments making promotion entirely dependent on such loyalty. The barriers to civil service development in the communist era lay in the politicisation of public administration, the failure to heed political neutrality principles, pervasive corruption, a lack of mobility on the part of employees and fragmentation of accountability for staffing policy. The system had nothing sensible to say about the recruitment, promotion, training or skills of staff. After 1989, work began on the creation of a professional and politically neutral civil service in Poland. All political options saw that it was one of the most important tasks that the democratic state should be strengthened, and a public sector founded upon the idea of a politically-neutral civil service built.

Three distinct periods to this process can be identified, as separated by transition periods: 1989–2006, 2006–2008 and since 2008. From 1989 to 1995, Poland resembled other countries in Central Europe in concentrating on economic and political reforms, while rather neglecting the public administration sector. However, an important task in this phase was the bringing into public administration of people from beyond the Communist Party approved list

or 'nomenklatura', i.e. individuals associated with the political opposition in general and 'Solidarity' movement in particular.

The years 1996–1997 brought the first of the aforementioned transition periods. The Civil Service Act entering into force on 5 July 1996 divided posts in public administration into those that were political (i.e. Minister, Deputy Minister and ministerial adviser, as well as the Governor ('wojewoda') in the provincial part of the central government administration) and hence subject to change with a change of government, and remaining posts that were to be politically neutral, continuing to be held by the same individuals irrespective of political changes. However, at that point the very procedure used to call the corps of officials into existence was unreliable. Exams open to those from one political option, run just before a change of government, were criticised, and justifiably so. It proved possible to nominate just 115 officials in the period between 1 October and 24 November 1996, before a halt was brought to the process. The government of Jerzy Buzek then abandoned the exam system and introduced a new Civil Service Act.

It was in the wake of the 1997 elections that work got underway on a new Civil Service Act, which was passed on 18 December 1998, and came into force on 1 July 1999. The Act provided that the Civil Service Corps, while giving effect to the constitutional principle that the tasks of the state be carried out in a professional, diligent, impartial and politically neutral manner, should also pay simultaneous heed to principles regarding the democratic nature of society. The Civil Service Corps was taken to comprise civil service employees working on the basis of employment contracts, plus nominated Civil Service officials ('Civil Servants' in capital letters) who were to be nominated.

The post of Head of the Civil Service (associated with a five-year tenure) at the same time conferred a status as an organ of the central governmental administration. Each office also came to have a Director-General post, whose holder was to ensure functioning and continuity of operation, conditions of work, activity in respect of Labour Code vis-à-vis employees and direct supervision of organisational units within the office as a whole.

The 1998 Act ushered in a period of the filling of managerial posts by way of competition. That was the theory, at least, though in practice the contests were participated in by few candidates, while use of the descriptor 'acting' in regard to managerial posts became a normal way of circumventing laborious procedures.

The second transition period was set in train by the 2006 Act introducing the National Personnel Reserve (cf. state staffing pool). The NPR was to be a group of individuals enjoying the right to take up managerial posts in public administration as and when these became available. These ranks of NPR members were then swelled by new recruits achieving success in the series of examinations run by the National School of Public Administration, and later also by those with doctorates.

Enacted by the Sejm on 21 November 2008, the new Civil Service Act ushered in a third period of development of the Civil Service that was characterised by more pragmatic solutions. Higher posts in the public administration are now to be filled by way of internal promotion, or in some cases by competitions that given Ministries or offices organise. The Act has also reinstated the position of Head of the Civil Service, who is now to be serviced by the Chancellery of the Prime Minister, and not – as previously – by a separate office.

Poland's Civil Service system is a mixed one that nevertheless has a prevalence of features typical of the career system. Attesting to this is the preparatory service, stability of employment for Corps members, automatic inflation-proofing of remuneration and the link existing de facto between number of years in post and pay received. In turn, elements of the posts system are to be seen in cases of open, competitive recruitment, the awarding of bonuses for competences appropriate to the given post and the filling of higher positions by means of competitive entry.

A feature of the Polish remuneration system entails the unjustified differences in pay levels maintained between one place of work for civil servants and another. Naturally enough, a system of this profile is regarded as unjust, most especially because it ensures different levels of remuneration in what are evidently analogous posts. The disparities in question may even be more than twofold. The base sum in the Budget Act, i.e. the figure used as a basis for calculating employees' remuneration, is raised annually in line with inflation. It is then multiplied by the so-called individual multiplier to supply the basis for the given member of staff's pay level. The multiplier system is designed to protect against excessive declines in real remuneration brought about by price rises. However, it serves at the same time to perpetuate differences in levels of remuneration between different ministries and offices that are rooted in the (rather distant) past. Automatic pay increases take money that could otherwise be deployed in a more motivating manner, and/or with the aim of curbing the disparities between different offices.

The introduction of a process of valuation of posts would obviously meet the expectations of members of the Civil Service Corps, who are quite understandably seeking fair treatment, and are struggling against all that is currently awry with management, most especially where remuneration is concerned, as well as the ensuring of conditions in which merit alone would determine what is earned now and what will take place in the future.

Such a transparent system whereby the level of remuneration relates to the quantity and quality of work done would enhance the sense of justice, and hence the ethos, associated with civil service as an idea and the Civil Service as a structure. Further, the remuneration system should link what is gained by employees with performance at work, in these circumstances becoming a motivation to good work and a stimulus to the efficient discharge of tasks conferred. In contrast, a system judged to be unjust (like the present one) serves as nothing more or less than a disincentive.

Financial and budgetary management

The rational planning of expenditure is only possible where the latter is set against defined tasks that an executive body intends to implement according to means allocated. The concept of the task budget comes from the idea of a budget as a plan for the funding of particular undertakings that seek to have effects determined in advance. Conceptualised in this way, a budget is treated as a plan for the financing of a precisely defined set of public tasks, each of which is funded within a budget framework and has both sub-tasks and indicators of successful task implementation ascribed to it. This was the reason Poland engaged in reforming public finances involving a shift in the basis for spending from the traditional budget to the task budget. To that end, steps were taken to improve the efficiency of supply of public services and goods. This should follow the traditional route of 'from better policy to better politics.' In line with Polish task-budget methodology, task formulation is regarded as a starting point for the introduction of work on task budgeting. Ministries are becoming the creators of their own priority tasks list classification systems that best meet their own needs in terms of generating supporting information. The structuring of the budget for a defined number of tasks and sub-tasks is a product of flexibility of allocation and spending of resources, stabilised classification, and clarity legibility – between 4 and 7 tasks are identified for each budget part. Each Ministry has its own specific list of tasks.

On 27 August 2009, the Sejm adopted a new Public Finances Act ushering in major changes with respect to both the financing of non-central tiers of administration and the

tasks and powers granted to regional clearinghouses. Specifically, the latter was charged with monitoring the three separate, independent tiers of non-central administration that deliver public services to local and regional communities, as well as, unions or associations.

Among other things, the Act brings about changes in the organisational forms of units within the public finance sector. It also introduces the Multiannual Financial Forecast by expanding and fleshing out the financial planning perspective, designating new limits to indebtedness specific to given units of administration at local, county or regional level and obliging the head of each unit in the public finance sector to introduce efficient and effective internal control by management.

Accountability and corruption

The building of democratic institutions and a free-market economy was accompanied by such undesirable phenomena as nepotism or cronyism, and corruption. Recent years have thus seen Poland take steps to curb these scourges, as well as to raise the level of accountability of officials and politicians alike for the action they take.

A key feature of the civil servant is his/her political neutrality, inasmuch as that there may be no public manifestation of political views, nor any membership of political parties. A distance should also be kept from all political influences or pressures that might arouse suspicions of bias. There is thus an essential need for the line between the roles of politicians and civil servants to be drawn and maintained.

The Civil Service Act 1988 introduced provisions on civil service ethics. One of the primary duties of the civil service 'official' (nominated Corps member) is the impartial pursuit of allotted tasks. Moreover, such a Civil Servant may not be guided in his/her activities by individual or collective interests, but only by the public good and the national interest. The Civil Service Code of Ethics introduced in 2002 serves as standards for conduct developed from the Civil Service core values laid down in Art. 153 of the 1997 Constitution of the Republic of Poland, denoting professionalism, diligence, impartiality and political neutrality. Officials are to act in line with the rule of law, treat all recipients of public services impartially, and work diligently, reliably and professionally. They should display loyalty to their office and to superiors, only declining to carry out instructions where that would result in a crime committed and unlawful activities. They should notify superiors of cases where they receive instructions that are not in line with the law. They should extend equal treatment to all

participants in Polish administrative affairs and not be subject to any influences arising out of personal commitments. They cannot require, expect, or accept, either directly or indirectly any material benefits. After leaving the Service, they may not take up employment with enterprises whose matters they have monitored or otherwise dealt with previously.

A division into spheres that are either political or bureaucratic (in the scientific sense of the latter term) was introduced into law by the 1996 Act on the Organisation and Means of Operation of the Council of Ministers and on the Scope of Activity of Ministers.

The starting point for this was a belief that the efficient operation of the administration requires the separation of political administrative functions from functions of the executive administration while setting the parameters for political and civil service spheres to work together on the professional implementation of government tasks. The Act offers a legal basis for the establishment of politicians' offices and bureaus within the Polish administrative framework. The remits of such offices are set by the internal regulations of each Ministry with the scope and level of detail varying. A specific role is played by the Political Office of the Prime Minister, which is also the Prime Minister's Advisory and Analytical Team.

The way in which the civil service side of operations will be organised is set out in the Civil Service Act. It affirms the Civil Service's objective of safeguarding the professional, diligent, impartial, and politically neutral implementation of state tasks.

The systems of recruitment for members of politicians' offices and for civil servants are quite different. The staff at politician's offices are recruited for the time their political superior, a Minister or Deputy Minister at a Ministry or a Governor heading up a provincial administration, remains in office. In contrast, civil servants are employed by an open recruitment process, usually for an indefinite period.

An appropriate relationship between politicians and civil servants is one of the key issues of public administration. The method of filling higher administrative posts should ensure the appropriate level of professionalism of those in managerial posts. It should take into account the need for a subordinate and superior to enjoy the kind of confidence in one another that is essential if a government's manifesto is to be implemented. The politicisation of public administration may encourage political party influence at the expense of civil service professionalism. At the same time excessive de-politicisation could weaken the electorally-approved leadership of politicians which is necessary if reforms are to be brought in and pushed through.

Conclusions

Since the reform of the systems of governance and public management is incomplete, huge challenges await public administration in Poland. Unfortunately, European Union accession did not prove enough of a stimulus for a further makeover and streamlining of the structure of public institutions to take place. The challenges facing Poland's public administration should promote efforts to guarantee its efficiency of action. The old model of an administration based on bureaucratic rationality was eliminated in most European countries and it was replaced by models of managerial public governance.

Another element worth considering in the next few years is the transparency of public administration. Citizens' confidence in government suffers when state officials have conflicts of interest as they make decisions in respect of public affairs. Furthermore, units of public administration should be capable of shaping policy by introducing strategies and programs in a manner in line with a professional policy-making process. When a public problem is identified and needs to be solved, its limits are determined, alternative solutions are considered, and options weighed. A choice of action is made, implementation follows, measures are pursued and, perhaps most importantly, an evaluation takes place at the end. What is needed is not merely the skill to identify problems, but also an ability to plan appropriately, and carry out an assessment of what has been done. It is also necessary to engage in ex ante and ex post evaluation, to prepare an implementation process professionally, and to be effective in managing that process through to its effective conclusion.

In post-1989 Poland, the Civil Service became an important element underpinning socio-political change in the country. The new challenges it faces are steadily increasing requirements for the public administration's professionalism and creativity, the accountability of state officials, and action in accordance with the law. Therefore, all of these values need to be introduced and instilled comprehensively. Then they can be the subject of on-going monitoring. Most importantly of all, the values come directly from of the Civil Service Corps' core principles, as outlined in the Constitution. It requires state tasks to be implemented in a professional, diligent, impartial and politically neutral manner.

Increased interactions of the public and private sectors of recent years present new challenges. While transparency in public life increases and citizens gain better and fuller

access to public information, the increased interest from the media and NGOs is leading to modifications of policy on preventing conflicts of interest.

Over the last two decades, different governments made more or less successful attempts to achieve personnel reform in the governmental administration. Those observing the process the Polish Civil Service built and perfected, may be forgiven for suggesting that the greatest challenge is the need for mechanisms to safeguard administrative employees from improper interpretations of the role they play in the operations of the country. They are not the political groupings heading up successive governments.

Completion of public finance reforms will be crucial to the achievement of modern governance of public tasks and public-sector expenditures. It is important that mechanisms are introduced to facilitate a concentration of resources in selected spheres. This could be achieved by a cohesive combination of the system of long-term financial planning and the objectives and priorities designated at the level of overarching development strategies.

Chapter 5

How to recruit and retain the best people in the civil service: Lessons from Latvia's experience before and after the economic crisis

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Introduction

The chapter addresses the topic 'How to recruit and retain the best people in the civil service: What have been the main crisis and post-crisis challenges and what lessons can be drawn from the Latvia a new EU member states. The chapter is based on information provided by legal acts, policy planning documents, available studies and surveys as well as personal experience and long-term observations.

Latvia joined the EU eleven years ago - in 2004. Since then the country has experienced rapid economic growth and shortly after – the economic slowdown, followed by the severe austerity measures. Between 2009 and 2011, the Latvian government carried out a programme of fiscal adjustment, which resulted in substantial wage reductions and job cuts in the public sector. The number of public sector personnel was cut mechanically, with rather limited analysis. During the crisis period, Latvia implemented a series of ambitious reforms but one of the negative side effects of these reforms was the freezing of professional development of the civil service. Experienced and talented people left the public service. Therefore recruiting and retaining the best people has been the biggest challenge for the last few years.

Studies show that highly qualified professionals can be attracted and motivated by providing the opportunity to work in an international environment (BISS, O.D.A., 2015). Membership in the EU offers such an opportunity, as the public employees have to actively participate in different working groups and forums on an international scale. Moreover, in the first semester of 2015, Latvia held the presidency of the EU Council. It was both a unique opportunity and a challenge. The public administration had to identify the pool of talented

experts available in the state budget institutions and take a wise decision to invest in the development of the people who will be involved in the presidency. Now the managers have to find the instruments to motivate and retain *presidency people* in the public administration.

The post-crisis years can be marked as a good start for changing the mind-set of the public sector. One of the objectives defined in the public sector policy planning documents is to form a small, professional and results-oriented public administration. In order to achieve it, a competency-based approach to human resource management has been applied. Currently, the competency approach is being integrated into the selection and performance appraisal processes. The decision was made to implement a competency-based selection because it helps recruit and select the most suitable persons for the job while a competency-based performance appraisal allows the assessment of competencies required to achieve excellence as well as to identify development needs. Implementation of the competency management encourages the discussion of values in public administration: what are the common public sector values, are they put into practice, are the values transforming over the time, are the public employees familiar with those values, how to communicate the values to society?

The following principles were defined more than a decade ago and are well-known to those who work for a common good: loyalty, political neutrality, professionalism, legal competence, stability and transparency (Constitution, State Civil Service Law).

Studies show that, among other strengths that make the public administration an attractive employer, stability is highlighted as a crucial factor. It is very important not to misunderstand the stability concept and replace it with the stagnation. Stability should still be associated with the development and progress, not status quo.

Political neutrality has always been among the core principles of the public sector. The State Civil Service Law (effective since 2001) defines the political neutrality as follows: A civil servant while discharging his or her duties shall be guided only by professional criteria and shall not depend on political influence in decision-making. In practice this principle is sometimes interpreted in a way that allows avoiding responsibility of the civil servant. Namely, politically neutral does not mean that a person does not bear responsibility for planning, process management and decision taking.

The objective of the chapter is to analyse the experience of human resource development in public administration in Latvia in turbulent times and to propose lessons that could be worthwhile for the Western Balkan countries.

General information

Civil servants are hired under the State Civil Service Law for an indefinite term, with the exception of senior managers. Senior managers are appointed for a fixed term (5 years). Other public employees are hired under the Labour Law, also for an indefinite period of time. Remuneration and social guarantees for both categories are governed by a single law 'On Remuneration of Officials and Employees of State and Local Government Authorities' and are, therefore, aligned across the two categories. The State Civil Service Law is currently in the process of being replaced. The new draft Public Service Law in Latvia shall bring all public sector employees under one legal framework, and hence promote mobility within the public administration. Civil servants will still have higher admission requirements and accountabilities. However aspects such as job protection and transparent, competitive merit-based recruitment will be extended to all public employees. The draft Public Service Law is adopted by the Cabinet of Ministers and passed at the first reading of the Parliament. According to the Rules of Procedure, the draft law shall be considered in three readings by the Parliament.

The civil service of Latvia is primarily position-based. Civil service positions are open to external recruitment, although some vacancies are filled by reassignment.

The State Civil Service Law states that in order to ensure good administration, especially efficient fulfilment of the tasks of the civil service and the public trust in the civil service and to improve the qualification of a civil servant, a civil servant may be transferred to any other civil service position for a definite or an indefinite term in the same or another institution, without an open competition and justification of admissibility and usefulness of the transfer. The basis of the transfer may also be a justified request by the civil servant.

Candidates who apply for a civil service position shall comply with the job criteria and competencies, which are assessed during the job interview, and sometimes in a written examination. Recruitment guidelines are set by the State Civil Service Law but the recruitment and selection process is decentralised to the ministry/agency level. The suitability of candidates for a vacant civil service position shall be assessed by a commission but the head of institution shall make the final decision regarding the selection. Merit is

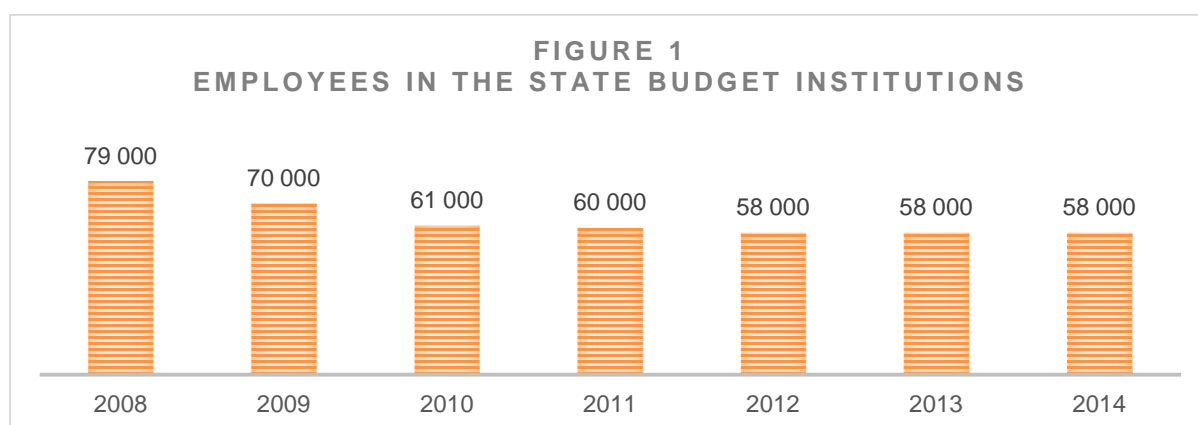
ensured via the use of recruitment panels, open competitions and also online publication of all vacancies, hence ensuring transparency and objectivity.

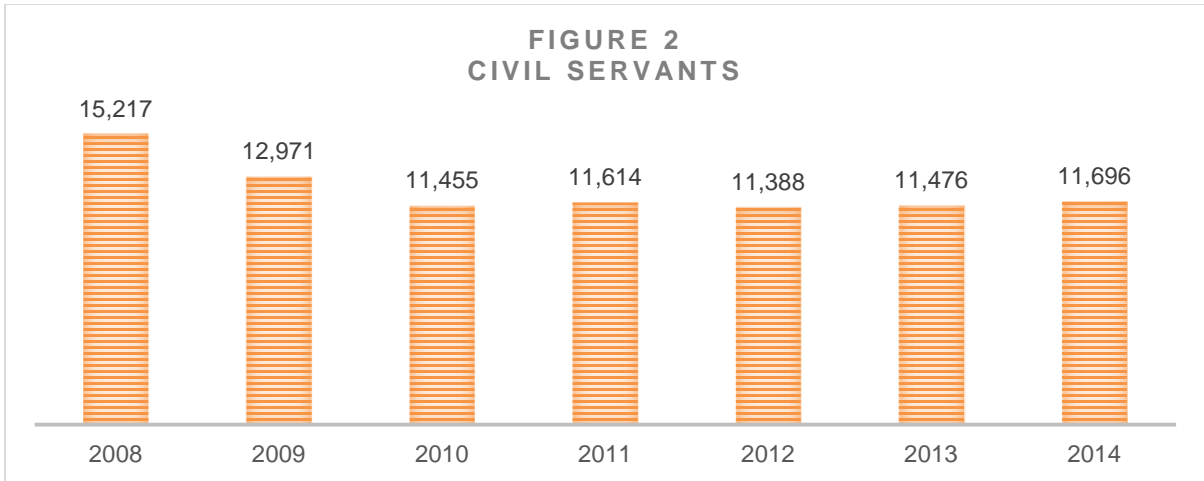
The general principle in the position-based civil service is that promotion in the central public administration is carried out through open competition for specific positions, which are often open to external recruitment. Civil servants may be transferred within public administration without open competition.

Impact of the crisis

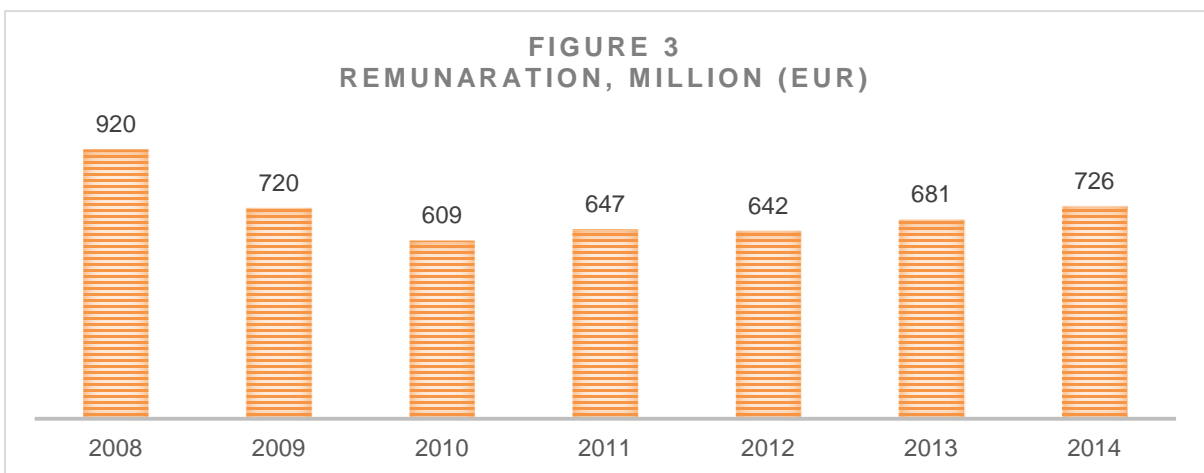
One of the public sector's objectives set forth during the economic turbulence period was a small, professional and results-oriented public administration that works for the common good. The percentage of the public employees in the workforce was widely discussed during and after the crisis. The percentage of nation's public workers is affected by a political and social culture that determines what tasks are assigned to the government. According to the Guidelines on the Public Administration Policy Development (2014), the optimal number of employees in the general government sector of Latvia shall be 8% by 2020 (proportion of employees in the general government sector is calculated from the total number of population).

The Latvian state budget institutions employ approximately 58000 public employees. This number is the result of significant reductions undertaken to respond to the economic and fiscal challenges that country experienced during the global financial crisis. Between 2008 and 2014, the total number of employees in the state budget institutions decreased by 27%.





Those public sector employees, who did not lose their job, experienced a significant income fall. The budget allocations for the public sector salaries have been gradually increasing since 2011 while the salary level of the pre-crisis period has not been achieved yet.



Several steps have been taken over the last years to equalise salaries across all public sector institutions. This has been accomplished by developing a remuneration system that is based on the uniform job classification system and associated pay bands determining a minimum and maximum salaries for the given job classification and rank. The job catalogue contains 56 job families, each of which has a number of different levels.

The impact of the crisis could be seen from different angles. The positive side of the crisis is the opportunity to learn and develop. Since 2006, when the unified remuneration system came into force, it has been recommended to apply the same principles for remuneration policy also to local governments. By 2010 local governments were somehow forced (because of the severe economic conditions) to join the public sector remuneration system,

which means that now the state and local government institutions have the same legal framework for setting salaries. The above-mentioned job classification system helps both to standardise pay and to review and restructure organisational hierarchy. Revision of the organisational structures could be named among major benefits of the crisis, because it helped to ascertain about the tendency to establish deputy positions within the units of the institution (causing the paradox that sometimes the number of subordinates was less than the managerial level positions), to find out the disproportion between the support function, policy planning and implementation function (namely, too many people classified in the support function), as well as to fix the duplication of some functions. The next phase of the job classification process is to link it with the competency-based profiles in the job design by focusing on the organisations' priorities, values and needs.

The Latvian School of Public Administration (public sector's training centre) was established in 1994 with the objective to provide training for a limited number of specified groups of public employees, namely, civil servants. Initially the training of civil servants was centralised and basically provided by the Latvian School of Public Administration. Training of the public sector employees has been decentralised in response to the fiscal crisis. This decentralisation resulted in 88% reduction of budget allocations for the Latvian School of Public Administration in 2009. Today the Latvian School of Public Administration competes with other training companies to offer and provide training that complies with the needs of the public sector. During the economic crisis, the state budget allocations for the professional development measures were frozen. They were mostly determined by two factors: funding of the EU funds and the implementation of structural reforms. This means that the training activities were basically available to the limited number of public employees, who were involved in the administration of the EU funds, implementation of the structural reforms or reduction of the administrative burden. The positive effect of the crisis was that the Latvian School of Public Administration had to expand the field of its operation and enter into the free market. This means that the scope of the clients of the Latvian School of Public Administration is not any more limited to the civil service.

A new competency based performance appraisal system became effective in 2013. This system encourages a culture shift from the process-based management to the management by objectives approach. The system is integrated in an online application, which provides a significant degree of transparency and accountability, as achievement of objectives, performance of duties and competency assessment of each individual can be made visible and comparable (at the institution's and public sector level).

The system was designed to facilitate the cascading of objectives, which means that institutions, when setting the annual objectives, shall take into account the Government Action Plan (strategic programme). The new system is linked to the training needs, professional development and career planning.

Post-crisis challenges

The population of Latvia is declining. Therefore, public administration will have to continue to implement measures aimed at developing an administration that corresponds to the size of the state by paying increased attention to enhanced functional efficiency and implementation of new and innovative mechanisms for management of institutions and cooperation thereof.

Skilled and highly motivated managers are one of the most important driving forces of the public administration. The progress of reforms, the optimisation of processes, focus on results and the provision of high-quality services directly depend on the professionalism and leadership of the manager and his/her ability to collaborate with the officials at political level. In the collaboration process, the role of politicians is to give directions for the development, but the responsibility of the civil servants is to put them into a legal framework. The political will and networking between professional and political level is crucial when the public administration reforms are initiated and communicated to civil society.

Specific conditions for accountability, selection, assessment and rotation of managers are established in order to develop and motivate senior managers.

Political neutrality has always been among the core principles of the public sector defined by the State Civil Service Law (in force since 2001). The law "On the Prevention of the Conflict of Interest in Activities of Public Officials" addresses the importance of this principle for the specific group of civil servants – senior managers. According to the law, the Director of the State Chancellery and his or her deputies, Secretaries General and their deputies are not permitted to combine their public office with an office in a political party or association of political parties.

According to the Law on Disciplinary Liability of State Civil Servants, one of the disciplinary offences is the failure to observe political neutrality while discharging official duties. The possible penalty ranges from reprimand to dismissal, without any right to qualify for posts in the public administration for one year.

It is important to distinguish between the political and professional level when designing the organisational structure of public sector institutions. The excessive role of a political factor negatively influences the selection of appropriate candidates and their appointment, and is somehow indicative of the lack of capacity of the public administration. Although the political level should be involved in the decision-making regarding the appointment of the head of institution, the merit principle shall dominate. One of the solutions to limit the negative influence of a political factor is to centralise the recruitment and selection of senior managers and involve independent experts and social partners in the selection process. Since September 2015, the selection of senior managers is centralised and organised by the State Chancellery. It involves representatives of non-governmental sector who are the observers of the process (transparency) and independent personnel experts for the assessment of competencies (professionalism, objectivity).

To have highly qualified managers with leadership skills, public administration will invest into the development of the senior managers. During and after the crisis, public sector employees did not receive targeted training and development. The State Chancellery has piloted a talent management programme for young managers. The programme was implemented in 2012 and 2015. In 2016, the State Chancellery will launch a comprehensive and targeted seven years' development programme for senior managers. This substantial investment into the development of senior public managers will be financed by the European Social Fund and is available because of Latvia's membership in the EU.

Remuneration is a crucial precondition for attracting and retaining good managers. Austerity policy had a negative effect also on top level salaries in the public sector. There is a principle in Latvia that the Prime Minister's position should be the highest paid post in the Government and all other posts should be below it. The salary of the Prime Minister should be linked to economic growth. While middle-level (expert) salaries in the Latvian public sector may be somewhat competitive with those in the private sector, management salaries are not at all.

Employee satisfaction surveys show that the financial factor is of crucial importance. It is one of the characteristics of an attractive employer, mentioned among others. Interesting and exciting work content is the factor that motivates professionals and helps recruit and retain highly qualified experts (State Chancellery, 2014). The EU Membership requires an active involvement of public officials in different working parties and networks at the EU level, as well as sharing of information and good practices among European countries. Moreover, in

the first semester of 2015, Latvia was presiding over the work of the EU Council, which was a unique and challenging experience. The presidency gave an opportunity to be the part of the team (together with Italy and Luxembourg as Trio countries) that set the agenda of the EU for a period of 18 months. The presidency put the country in the spotlight, and it means very high responsibility for everything that was taking place during the presidency semester inside and outside Europe. To organise and successfully hold the presidency, the most important resource is the human capital, because the presidency is as good as the people involved. Preparation of the presidency offered a great opportunity to develop best people available in the public administration and provide them with a unique experience and knowledge. Now managers will have to find the instruments to motivate and retain *presidency people* in the public administration.

The development and coordination of human resource policy in public administration is centrally provided by the State Chancellery while the planning of the remuneration policy of the public sector is a responsibility of the Ministry of Finance. In the last three years, Latvia has made a big step towards the development of the human resource policy. The following examples illustrate this: IT-based performance appraisal system, new approach to the field of job design, and a centralised competency-based selection procedure for top managers. At the same time, no significant reforms can be observed regarding the remuneration policy. The pay system is still experiencing the post-crisis effect in terms of the amount of the salaries. It is more popular to cut spending than to do the opposite, especially in the eyes of society.

In order to put the above-mentioned public sector objective - small, professional and results-oriented public administration – into practice, highly professional employees, first of all, should be responsible and should value integrity. To retain and motivate professionals, the public administration should be attractive as an employer. It is important for the public administration to act as a single employer, thereby, avoiding competition inside the system. The principle– equal pay for equal work – was taken into account when developing the remuneration system in 2006, but it is complicated to apply this principle into practice because of the difference in the budget resources allocated to the institutions. The monthly salary and the social package depend on the budget of an institution, i.e. they are determined within the framework of existing budgetary resources that even further contributes to diversity of public administration institutions. Furthermore, there is a significant wage range (the minimum and maximum level of salary) in the regulatory framework. The provisional proposal for narrowing the wage range has been on the agenda for several years; however tangible

activities do not follow. The brain drain to the private sector and abroad, as well as to other public institutions can be observed as the result of today's remuneration policy.

According to the data, there is also large turnover in public administration. At the same time, there is a somewhat misleading impression regarding turnover. Most people who leave the institution do not leave the public sector; therefore, the public administration does not lose the knowledge. In case an employee wants to change the career, but stay in the public administration, he or she shall apply for a vacant position. The selection of a person who is already in the public service is waste of resources. This is why *it is very important to implement a mobility system within the public administration.*

Recruitment in combination with mobility can ensure professionalism in public service. Experts, who were interviewed within the framework of the study (BIS, ODA, 2015), emphasise the necessity to pay more attention to mobility of employees within the public administration. Horizontal mobility of employees has to be supported, because it allows for gaining more extensive experience, an insight in various work content, better understanding of cross-sectoral issues and promotes collaborative environment within the public administration. At the moment, the reassignment does not happen in a planned manner, and it is not established in the system. A person, who wants to stay in public service and, at the same time, change a position, has to rely more on his or her individual motivation and the level of energy in order to organise it for himself/herself.

For example, there were special policies to attract and retain the staff that ensured Latvia's Presidency of the Council of the European Union. There were a number of motivational measures for the personnel involved in ensuring the presidency - the training for development of professional competences, additional work remuneration and social guarantees. The public administration institutions were responsible for personnel attraction and motivation and the process was coordinated by the Secretariat of the Latvian Presidency of the Council of the European Union. However, there is a lack of common policy on how to retain this knowledge after the Presidency. A majority of employees of the Secretariat of the Latvian Presidency of the Council of the European Union who want to stay in public service have to organise professional development in the public sector themselves.

Another major challenge is to implement the basic principle of recruitment – the right person, in the right place, at the right time. At the time of economic crisis, the first step was to cut the vacancies. From this, the line managers learned that it is better to take somebody than nobody. They broke the basic principle of recruitment. That is why they often complain about

the level of job security in the civil service and advice to reform this system. Public administration is not a training ground for all kind of experiments. Public institutions should take more serious recruitment and selection procedures, which also involve job design – to understand what kind of person is needed for a particular position. This is a question about core competencies and core values. The core of the applicants' personalities is formed by their values and motivation (BIS, ODA, 2015).

When hiring a person whose values are contrary to the principles of the public administration, there is a high risk that this person will have low motivation. The managers will also find it difficult to create a positive and results-oriented work environment in the institutions. Therefore, it is essential to assess the applicants' values and motivation for work during the selection process. It is advisable to search for the applicants with high level of motivation in the public sector, which is characterised by the interest in policy-making, social consciousness and the willingness to work for the public good. The studies show that high public sector motivation positively correlates with loyalty to work in public service, better relationship at work and often with better work quality (BIS, ODA, 2015).

During the selection process, the motivation of the candidates to work for the public sector should be assessed as it has a significant impact on the results and quality of work. After the successful selection, among other challenges, the manager has to establish and maintain an environment that motivates and stimulates his or her subordinates.

Conclusions

During the crisis period, the decision on how to save the resources at the institutional level, namely, whether to cut the staff or reduce the salaries or both, was taken by the heads of institutions. The above-mentioned fact means that the crisis had an uneven impact from institution to institution. A result is serious capacity loss in some of the public administration sectors.

It is important to ensure the development of a uniform human resource development policy of the public administration in one institution. It will prevent fragmentation of the human resource development policy planning that requires additional resources and it will provide a clear vision on human resource development.

Human resource development policy is the most essential part of the public administration development policy. Otto von Bismarck has already said: with bad laws and good civil servants it's still possible to govern. But even the best laws can't help with bad civil servants.

Three pitfalls that threaten the achievement of the objective - effective and innovative public administration: 1) mediocrity (each public administration institution should strive for the constant improvement of quality and excellence); 2) consultants-coordinators (politically neutral doesn't mean no responsibility about the decisions, public administration experts should be able to take responsibility and manage processes); 3) stability (the system wants "stability", but, if such stability enters into force and the processes of change stop, it means the stagnation of the system. We could call it "a misunderstood stability"; it is important to understand that the maintenance of the state of status quo is some kind of development and it requires management's effort).

The political and administrative apparatuses are not opposites. Rather, they are two sides of the same coin. What unites these two sides is work in the public interests and the aim to improve socio-economic conditions.

The support of the Chief Executive is very essential to the Administrative Manager of an institution. Help of politicians is crucial for the achievement of an institution's objectives.

Recommendations

Public administration should act as a single organisation and employer and develop a uniform human resource policy according the core values of the public administration, which are set in collaboration with and networking between the political level, public service and society. There is the need to define three core values, which characterise the essence of the public administration. In the long-term, all values have been put into practice in daily work of public administration; in relations with society and behaviour of employees.

In order to strengthen the capacity of human resources as well as to motivate the best people, public administration should invest in their development. The investments should be targeted and meaningful. Namely, no major investments will be made without a development and retention plan.

In order to ensure successful implementation of the human resource policy, it is necessary to develop an IT tool for centralised management for human resource processes (for example, analysis of vacancies and rotation opportunities in the public administration, job classification, job design and talent management tool, discussion forum for human resources managers).

Public administration should pay attention to rotation within public administration, by offering temporally horizontal mobility opportunities to and from the private sector. Horizontal mobility of employees and rotation ensure professional development, better understanding on cross-sectoral issues and promote collaborative environment. Mobility promotes diversity in the employment of the public administration and knowledge sharing.

Complexity in the external environment requires the ability to change and adapt. Nowadays, the goals of the public administration are effectiveness, flexibility, innovations and striving for constant improvement of quality and excellence. Public administration should change the mind-set about suitable organisational structure and culture for public administration and ensure more flexibility within public administration.

References

- Baltic Institute of Social Sciences (BISS) and Organisation Development Agency (ODA) (2015) *The Study on the Future Role and Development of the Public Administration*. Riga. Available at http://www.mk.gov.lv/sites/default/files/editor/the_study_on_the_future_role_and_development.pdf.
- State Chancellery (2014) *Survey of Employee Satisfaction on Human Resource Management Processes*. Unpublished manuscript.

Part 2

Integrity Management in the Civil Service

Chapter 6

Institutional integrity: Reforming public institutions and managerial schemes

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Introduction

Institutional integrity is a major asset inspiring citizens and other institutions, at domestic and international level, to bestow confidence to a given public institution. It is at the basis for international cooperation and the foundation of democratic public governance. This paper is a reflection on the policies and managerial schemes that would be helpful in building or reinforcing public institutions' integrity. These policies are different, albeit complementary, from those needed to promote individual integrity of public officials.

Attaining an acceptable degree of institutional integrity requires deliberately drawing institutional designs that protect public integrity, to draft legislation that displays no intentional loopholes and to set up managerial mechanisms and control systems. This paper will primarily focus on institutions, not individuals. In spite of their importance, the paper will purposely overlook detailed discussions on topics such as conflict of interests, individual ethical dilemmas, rights and obligations of public officials or ethical training.

Corruption is pervasive in many countries. No country is corruption-free, although there are jurisdictions that fare better than others in preventing and combating corruption. According to many, the degree of control over corruption depends on the robustness of people's trust in public institutions and governments. Indeed, the impact of corruption on trust is devastating. Corruption is one of the main destroyers of confidence, as it corrodes the very social fabric of trust, which particularly includes trust in governments and in public institutions of a nation.

Trust is difficult to conceptualise or measure, and may be culturally contingent but it is a well-established tenet that mistrust increases transaction costs in human, institutional and economic interactions. As a consequence, in the absence of social confidence, the production of public goods is hampered, as it thwarts the protection of individual freedom, collective security and democracy. Economic development and international cooperation

become very difficult if not impossible to achieve. 'Public goods are the building blocks of civilisation'.¹¹ There are voices that suggest, by looking at China and other non-democratic regimes, that economic development is possible without freedom and democracy. Yet the long-term sustainability of such developments remains to be seen.

In many nations, we have been witnessing the weakening of social and political trust.¹² Some observers equate that weakening to a crisis of civilisation. In fact, rebuilding trust in governments has become a major concern in every international policy discussion. Rebuilding trust occupies a prominent place on the policy agenda of international organisations. It is clearly the case in OECD and EU countries, but also elsewhere, e.g. in certain Arab, South American and Asian countries. Regaining the trust of citizens in governments is today one of the main components of the internationally promoted 'good governance' policy agenda.

Public confidence and systemic institutional integrity: Credibility, reliability, resilience

Building integrity at the national level represents a major effort to be carried out if citizens' trust is to be regained by governments and democratic institutions. In order to recuperate citizens' trust in institutions, reformers need to act upon various components underpinning trust, namely, credibility of policies and reliability and resilience of the public institutions called to implement them. Policy implementation has to be as credible as policy design.

Policy credibility means reassurance that public policies are genuinely designed to promote and serve the public interest while emanating from a democratic debate. Government policy-making responds to incentives and constraints. Therefore the structure of government incentives and constraints affects policy choices. Transparency is a precondition for policy credibility, especially concerning lobbying and conflicts of interest of decision-makers. A regime of asset and interests' disclosure, a good scheme to access public information and to protect whistleblowing are part and parcel of any credible transparency policy. In addition,

¹¹ This idea was suggested by Columnist Martin Wolf in the Financial Times of 24 January 2012 ('*The World's hunger for public goods*'). The author enumerates a thought provoking lists of public goods which includes economic stability, security, science, a clean environment, trust, honest administration and free speech. He argues that '*the history of civilisation is a history of public goods. The more complex the civilisation, the greater the number of public goods that need to be provided. Ours is far and away the most complex civilisation humanity has ever developed.*' At <http://journalisted.com/article/30ywo>

¹² See, among others, the series of World Values Surveys (1981-2012), which provides data to observe the erosion of societal trust in public institutions. Available at http://www.worldvaluessurvey.org/index_paperseries

credible policy implementation by reliable and resilient public institutions and organisations are necessary supplements of credible policy designs.

Institutional reliability and resilience of public bodies are major generators of public trust. They are ensured by institutional designs and managerial arrangements able to prevent or quickly remedy failure. One major failure is possibly corruption. These arrangements are purposely built up in the administrative and political systems. A system that is committed to ensuring institutional resilience is able to reduce reasonably the recovery time needed for the system to come back to normal once a failure has occurred. This notion resembles to what Nobel Prize Winner Douglass C. North (1993, 2010) named 'adaptive efficiency' of institutions.¹³ It is also related to the fact that corruption, as an accidental failure of the system, may occur, but reliable and resilient governance systems have the remedies ready and embedded in their architectural design, allowing them for a rapid recovery. The capacity to recover quickly from corruption marks the difference between systemic and accidental corruption.

In order to foster reliability and resilience, the institutional design also needs to acknowledge the complexity of the public governance system and therefore the fact that it needs constant attention, monitoring, supervision and evaluation, i.e. a sound subsystem of checks and balances.

Additionally, improving systemic resilience and reliance requires a rewards subsystem that encourages expected behavior. Rewards have to encompass the entire compensation scheme, including professional motivation and self-esteem, not only the monetary remuneration.

Promoting reliability and resilience in a complex institutional environment involves that the system shows deference to expertise. Trust appears if professional experts prepare decisions with full responsibility and autonomy regardless of the specific position they occupy in the chain of command and if they are held accountable for those decisions. Finally, reliability requires that decision-making procedures ensure predictability and contestability before independent systems or instances such as the judiciary.

¹³ According to North, adaptive efficiency is a society's effectiveness in creating institutions that are productive, stable, fair, and broadly accepted and, importantly, flexible enough to be changed or replaced in response to political and economic feedback.

Corruption dislodges good governance and professionalism

The protection and enhancement of the institutional integrity is part and parcel of the good governance agenda to rebuild trust in public institutions. Good governance, a result of soundly combining the work of public administration, the judiciary and politics is severely hindered if corruption is widespread and anti-corruption policies are weak or non-existent.

Corruption is fundamentally a political problem, which negatively affects the governance system as a whole in a country, including its international relations and its national security. Corruption cannot be fought exclusively with administrative or judicial remedies. The anticorruption effort requires much more. More specifically, fighting corruption implies getting actively involved in politics. It calls for an effort geared towards building up the necessary political alliances able to counteract the political constituencies supporting corruption and state capture.

Fighting corruption also means adopting specific, suitable good policies, legislation, and institutional designs. Corruption is the outcome of a given bad public policy, which is in place either by action or omission. Those bad public policies are generally aimed at weakening administrative controls through wild de-regulation, biased regulatory decisions responding to undue or illicit lobbying, or patronage in the managing of public resources, including the civil service and public procurement. All these human generated misfortunes produce the incapacity of the state structures to govern at the service of the public interest. In some countries, unrestricted and unrelenting economic liberalisation and deregulation are thought to have brought 'an era of big corruption', which in turn is a 'major security threat and is eating into the vitals of the state, enfeebling internal security and crimping foreign policy'¹⁴

Other societal actors may contribute to a national anti-corruption effort, but the bulk of responsibility lies in public institutions, especially in governments, as they should take the lead in policy-making and in enforcing legislation. Bad policies are not corrected with training in ethics and public involvement through citizens' participation schemes, but they are principally counteracted with good policies and sound institutions, which are a fundamental responsibility of governments and legislatures.

¹⁴ See Brahma Ch., '*Perils of becoming a republic of scandals*', referring to India. In *The Hindu Newspaper*, 7 December 2010, but this could be applied to most developing and some developed countries, too. At <http://www.thehindu.com/todays-paper/tp-opinion/perils-of-becoming-a-republic-of-scandals/article936547.ece>

Corruption is not only bribery. Corruption is more than bribery. Corruption is the corruption of politics, which means all kind of actions where political actors, public officials included, breach the rules of the democratic political game and put their narrow private interests before anything else. Corruption is the most corrosive harm to the social fabric of trust shaping the architecture of any democratic political regime and society. The reversion from pursuing the public interest to pursuing the personal, private profit is a major betrayal of the power entrusted by citizens to public officials. The private interest involved is not necessarily only personal and direct, such as making illicit profits from public office, but also indirect: it could benefit not only the public official himself but also the political party that appointed him. Corruption is also capturing policies, abusing power, illegal financing of political parties, buying votes, granting favours, and trading in influence.

International experience shows that administrative corruption, in the judiciary or in civil or military administrations, is almost impossible to eradicate or even to reduce if corruption is not eradicated or reduced in public life in general and in politics in particular. It is difficult to eradicate because corruption has its own constituency. In highly corrupted countries, politicians, judges, military men and civil servants may have an interest in maintaining an inefficient public administration and an ill-performing judiciary. The corruption constituency endeavours to build trust among the actors who take part in illegal exchanges favouring illicit and dense social networks. These illicit networks swap personal favours and bribes while nurturing political clienteles. Political corruption nourishes and reproduces these networks.

Where corruption is high, there is neither political equality nor any possibility whatsoever for public administrations to act impartially in the application of laws. Therefore the professionalism of the civil service is severely impaired or dislodged from public life. Preferential treatment for the most corrupt is the rule in political regimes where corrupt networks hold the public power.

Anticorruption is a state-wide effort: It cannot be dissociated from broader governance reform efforts

Certain legal, administrative and institutional arrangements may either underpin or undermine integrity in public life. Instruments and mechanisms should be in place to preserve integrity in the behavior of public officials whose powers and prerogatives are directly or indirectly set down in constitutional provisions. Parliaments, governments (in their European continental meaning, i.e. the Council of Ministers as a Constitutional body),

political parties and their fund-raising practices, electoral campaigns, the judiciary, the military (especially public procurements) and public administration arrangements should be thoroughly analysed and evaluated.

Deep assessments independently conducted against agreed good practice and international standards are not only helpful, but indispensable to build institutions capable of protecting integrity, fostering public trust and mustering a large societal support. This is true with regard to any public governance reform effort, but is particularly indispensable when it comes to the military and, in general, to uniformed and armed forces, which by definition hold enormous powers, sensitive intelligence and huge procurement budgets under a thick veil of confidentiality for the sake of the national security. In the military, police and intelligence sectors it is often difficult to distinguish the public interest from the interests of the military industry and the personal interests of military officers and politicians.

In addition to the above-mentioned assessments, other two assessments may be useful. One should analyse the focus, quality and effectiveness of national strategies or measures in fighting corrupt behaviour and practices, including in the private sector. The other consist of putting at work international instruments for harmonising anti-corruption policies and cooperation across countries, a decisive instrument indispensable for combating trans-national organised criminality, which is a main source and focus of corruption, and a major threat to security and peace.

The overall integrity framework in a country should also include institutional integrity plans and the involvement and cooperation of certain elements of the society at large, but in particular, businesses, the academia, the media and NGOs. However, we will not address here the manifold ways and means in which civil society organisations may interact and influence –for the best as well as for the worst-- the development and effectiveness of integrity instruments in public life. The anti-corruption responsibility ultimately belongs to the governments, legislatures, and the judiciaries, not to NGOs.

International advice is valuable provided that standard-setting multilateral international organisations or bilateral cooperation schemes do not impose any specific institutional or organisational solutions. International policy dialogue should concentrate principally on governance principles to be guaranteed and outcomes to be produced rather than exclusively on the ways and means to achieve them. This is crucial to prevent cultural rejection of foreign imposed models presented as having universal application.

A poor embedment of anticorruption bodies in the broader political and administrative institutional landscape is deemed to be a main cause of failure. The primary lesson to be drawn from the international experience in managing anti-corruption bodies is that the priority should be to concentrate reform efforts on strengthening all the democratic control systems of the country, political, judicial and administrative. This will contribute to make institutions more resilient. Several institutional strategies are needed and should concur in any national pro-integrity policy because the anti-corruption war has to be waged in several fronts. A caution is however needed: Enhancing institutions for democratic public governance has taken generations in many developed countries, which indicates that leaping over historical phases may prove to be unfeasible.

Specialised, independent anticorruption agencies may be crucial in helping the relevant bodies (especially the police, prosecutors and judiciary) to enforce existing legislation effectively, reviewing the existing legal framework and proposing amendments to fill gaps and legal loopholes as well as in raising public awareness on the evil consequences of corruption.

But it is the government and legislatures the ones that need to be committed to reforming basic governance systems in order to make them function effectively. It is the governments, the ones that have to break the 'vicious circle of bad government' and approximate their performance to a 'good administration' ideal, as mandated by article 41 of the European Charter of Fundamental Rights.¹⁵

Conclusions and recommendations

1. Anticorruption strategies should understand that the institutional dimension for integrity (institutional design, penal and administrative law together with administrative control and management systems) should be constructed in parallel with the personal dimension for integrity (conflict of interests) if citizens' confidence in public institutions is to be regained.

¹⁵ The 'vicious circle of bad government' is a metaphor used to describe an endless spiral, which originates in the lack of impartiality, which leads to the absence of credibility of government (mistrust). It continues by justifying tax evasion, which consequently leads to state incapacity to provide basic public services such as security, education or health. And it ends up in increased mistrust in public institutions and finally back to the departure point of even less impartiality, state capture by vested interest and increased arbitrariness in public decision making. And the spiral goes on and on until someone is able to break that 'vicious circle'.

2. 'Good administration' and 'good government' are not possible in environments lacking 'good and relatively corruption-free politics', i.e. where public governance is poor. Without good administration aspirations professionalism in the public service is unlikely to develop.
3. Rebuilding public trust in government institutions is a major preoccupation in international discussions. Regaining trust necessarily goes through genuinely factoring the anticorruption effort in broader public governance reform efforts. Corruption corrodes trust, destroys the credibility of government policies and undermines the reliability and resilience of public bodies. Corruption is successfully combatted only by improving public governance.
4. The endeavour towards building a robust public integrity system in a country is manifold and multifaceted and requires the sustained commitment and convergence of many sectoral efforts and strategies. A single institution concentrating all anti-corruption powers is likely either to fail or to represent an obstacle if it is captured by illicit undertakings.
5. Any strategies will need to combine actions on the preventive side (institutional capacity building, conflict of interest regulation, training, working procedures, policy evaluation, professionalisation of the civil service, predictable and contestable decision-making procedures, institutional integrity plans, etc.) and repressive side (disciplinary and criminal law).
6. International organisations should cease imposing specific approaches and models. The policy dialogue with countries should focus on principles and results. Countries should be free to find their own institutional and organisational solutions, provided that they underpin those principles and facilitate the attainment of those results. Any foreign imposed institutional solution is likely to be rejected by the local culture and will be hardly sustainable.

References

North, D.C. (2010) *Understanding the Process of Economic Change*. Princeton University Press.

North, D.C. (1993) *Economic Performance Trough Time*. Nobel Price Lecture on 9 December 1993.

At http://www.nobelprize.org/nobel_prizes/economic-sciences/laureates/1993/north-lecture.html

Chapter 7

Cultivating a spirit of integrity: EU and Western Balkan perspectives

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Introduction

If society is structured in such a way that it undermines people's attempt at either knowing or acting upon their commitments, values and desires, then such a structure is inimical to integrity. Any attempt to strive for integrity has to take account of the effect of social and political context. The kind of society, which is likely to be more conducive to integrity, is one, which enables people to develop and make use of their capacity for critical reflection.

Transparency International refers to integrity as 'behaviours and actions consistent with a set of moral or ethical principles and standards, embraced by individuals as well as institutions that create a barrier to corruption.' (Transparency International 2009) Preserving the civil service from the danger of corruption requires usually a set of measures ranging from rotation in sensitive positions, assets disclosure to the adoption of codes of civil service ethics dealing with issues such as conflict of interest and the acceptance of gifts. Other measures related to civil service compensation, but also to public procurement, audit and others should also be regarded as contributing to this objective.¹⁶

According to the TI Global Corruption Barometer 2009: 'Perceptions of many public institutions remain negative. The public continues to identify political parties as the institution most tainted by corruption, while the direct experiences of respondents indicate that the police, followed by land services and the judiciary, have the greatest propensity to extort bribes. The result is that key institutions in society, in particular institutions central to the integrity and accountability of government and for guaranteeing people's rights, are compromised. There can be little doubt that corruption undermines the legitimacy both of government and those who govern in many countries.'¹⁷

¹⁶ Transparency International

¹⁷ Global Corruption Barometer (2009) Executive Summary.

Integrity framework management is in general the assessment and monitoring of whether in an institution, a public official follows standard procedures in providing public services in a fair and transparent manner and that the services are not processed based on the personal propensity towards a special condition or inducement. Integrity framework management concerns the complementarity of compliance and integrity strategies. A compliance strategy is aimed at regulating the application of laws, rules and regulations concerning ethical behavior. An integrity strategy is aimed at developing shared norms and values. The goal of compliance is to prevent illegal behavior; the goal of integrity is to foster responsible behavior.

The chapter is a technical review that begins with a short overview of philosophical elaborations of the notion of integrity followed by the legislative dimensions and key international and regional initiatives of assessing integrity frameworks related to the prevention of corruption.

The recent trends show two paths in developing integrity standards: An institutional and a personal path. The latest trend in the institutional integrity combines compliance and risk assessment methodologies that lead to the development of integrity plans for institutions. The methodology was developed in Slovenia and followed by the Serbian Anti-Corruption Agency. This methodology is spreading across the region of the Western Balkans including Macedonia.

Personal integrity initiatives began much earlier with the introduction of asset and conflict of interest declarations in anti-corruption measures. They are present in almost all existing anti-corruption legislative acts across countries. Some have specialised integrity agencies such as the Romanian National Integrity Agency. The majority has these measure among the authorities of the anti-corruption agencies, both preventive and law enforcement.

What is integrity and how it can be managed?

The chapter is based on indirect sources of information, using academic papers that explain the philosophical concept of integrity and official reports of the anti-corruption agencies in Europe that have legal and institutional experience in integrity management.

Integrity is a rather new term and it is very rare to find a definition that will define the concept and scope. The Merriam-Webster dictionary use the following definition: firm adherence to a code of especially moral or artistic values: **incorruptibility**.

According to Cox et al (2013), integrity is one of the most important and often-cited virtue terms. It is also perhaps the most puzzling. For example, while it is sometimes used virtually synonymously with 'moral,' we also at times distinguish acting morally from acting with integrity. Persons of integrity may in fact act immorally—though they would usually not know they are acting immorally. Thus one may acknowledge a person to have integrity even though that person may hold importantly mistaken moral views.¹⁸

When used as a virtue term, 'integrity' refers to a quality of a person's character; however, there are other uses of the term. One may speak of the integrity of a wilderness region or an ecosystem, a computerized database, a defence system, a work of art, and so on. When it is applied to objects, integrity refers to the wholeness, intactness or purity of a thing—meanings that are sometimes carried over when it is applied to people.¹⁹

Integrity is also attributed to various parts or aspects of a person's life. We speak of attributes such as professional, intellectual and artistic integrity. However, according to the authors, the most philosophically important sense of the term 'integrity' relates to general character. Philosophers have been particularly concerned to understand what it is for a person to exhibit integrity throughout life. Acting with integrity on some particularly important occasion will, philosophically speaking, always be explained in terms of broader features of a person's character and life.

What is it to be a person *of* integrity? Ordinary discourse about integrity involves two fundamental intuitions: first, that integrity is primarily a formal relation one has to oneself or between parts or aspects of one's self; and second, that integrity is connected in an important way to acting morally, in other words, there are some substantive or normative constraints on what it is to act with integrity.²⁰

A related approach to integrity is to think of it primarily in terms of a person's holding steadfastly true to their commitments, rather than ordering and endorsing desires. 'Commitment' is used as a broad umbrella term covering many different kinds of intentions,

¹⁸ Cox, D.; La Caze, M.; Levine, M. (2013) Integrity. *The Stanford Encyclopedia of Philosophy* (Fall 2013 Edition). Edward N. Zalta (Ed.). Available at <http://plato.stanford.edu/archives/fall2013/entries/integrity/>

¹⁹ Ibid.

²⁰ Ibid.

promises, convictions and relationships of trust and expectation. Because we find ourselves with so many commitments, of so many different kinds, and because commitments inevitably clash and change over time, it will not do to define integrity merely in terms of remaining steadfastly true to one's commitments.

The self-integration and identity views of integrity see it as primarily a personal virtue: a quality defined by a person's care of the self. Cheshire Calhoun argues that integrity is primarily a social virtue, one that is defined by a person's relations to others (Calhoun 1995).²¹ The social character of integrity is, Calhoun claims, a matter of a person's proper regard for his or her own best judgment. Persons of integrity do not just act consistently with their endorsements, they stand for something: they stand up for their best judgment within a community of people trying to discover what in life is worth doing. As she puts it:

Persons of integrity treat their own endorsements as ones that matter, or ought to matter, to fellow deliberators. Absent a special sort of story, lying about one's views, concealing them, recanting them under pressure, selling them out for rewards or to avoid penalties, and pandering to what one regards as the bad views of others, all indicate a failure to regard one's own judgment as one that should matter to others. (Calhoun 1995: 258)

Another way of thinking about integrity places moral constraints upon the kinds of commitment to which a person of integrity must remain true. There are several ways of doing this. Elizabeth Ashford argues for a virtue she calls 'objective integrity'. Objective integrity requires that agents have a sure grasp of their real moral obligations. (Ashford 2000: 246)²²

Mark Halfon offers a different way of defining integrity in terms of moral purpose. Halfon describes integrity in terms of a person's dedication to the pursuit of a moral life and their intellectual responsibility in seeking to understand the demands of such a life. He writes that persons of integrity:

'Embrace a moral point of view that urges them to be conceptually clear, logically consistent, apprised of relevant empirical evidence, and careful about acknowledging as well as weighing relevant moral considerations. Persons of integrity impose these restrictions on

²¹ Calhoun, C. (1995) Standing for something. *Journal of Philosophy* 92: 235–260. Carr, S. (1976) The integrity of a utilitarian. *Ethics* 86: 241–46.

²² Ashford, E. (2000) Utilitarianism, integrity and partiality. *Journal of Philosophy* 97: 421–439.

themselves since they are concerned, not simply with taking any moral position, but with pursuing a commitment to do what is best'. (Halfon 1989: 37.)²³

All of the accounts of integrity the authors have examined have a certain intuitive appeal and capture some important feature of the concept of integrity. There is, however, no philosophical consensus on the best account. It may be that the concept of integrity is a cluster concept, tying together different overlapping qualities of character under the one term.

Having integrity is not on this view an all or nothing thing. To say a person has integrity is to make an 'all things considered' judgment: something that we may say of people if we know—and even if they know—that in certain ways and about certain things, they lack integrity.

References to different types of integrity, such as intellectual and artistic integrity, abound in the philosophical literature on integrity and everyday discourse. Because integrity involves managing various commitments and values, one might conjecture that such types of integrity are simply manifestations of a person's overall integrity, or of their personal integrity. However, there are many people who we are inclined to say have intellectual but not personal integrity—or who have more of the former than the latter. If there is a radical disjunction between the type of integrity, which is demanded in one sphere of life, and another, integrity overall or personal integrity, may be undermined, or at least profoundly challenged. There may, for example, be conflict between types of integrity, such as between intellectual and moral integrity. (Code 1983: 268 – 282, Kekes 1983: 512 – 516).²⁴

A related question is how different types of integrity are associated with moral integrity. Stan Godlovitch (1993: 580)²⁵ says that professional integrity, for example, is weaker than moral integrity, and is more like etiquette. For him (1993: 573), integrity 'trades between the norms of unity and honesty'. More specifically, Godlovitch (1993: 580) argues that the responsibilities of performers, for example, are quasi-moral; they are not truly moral because they are internal to the profession. However, it seems plausible to maintain that professional integrity is better understood as an important contribution to the living of a moral life.

²³ Halfon, M. (1989) *Integrity: A Philosophical Inquiry*. Philadelphia: Temple University Press.

²⁴ Code, L. (1983) Father and son: A case study in epistemic responsibility. *Monist* 66: 268–282.

Kekes, J. (1983) Constancy and purity. *Mind* 92: 499–518.

²⁵ Godlovitch, S. (1993) The integrity of musical performance. *Journal of Aesthetics and Art Criticism* 51/4: 573–587.

Professional integrity is specific to the sphere of a profession, but not entirely independent of morality.

Even where the social and political dimensions of integrity are discussed, integrity is often seen as largely a private or personal affair—albeit one with important implications in the public sphere. Less attention has been given to ways in which social (e.g. family, business, religious) and political (e.g. forms of government) structures and processes may affect personal integrity.

If integrity is as central and important a virtue as recent work on the topic suggests, then ideally the institutions—including forms of government and economic arrangements—that help shape our lives should be structured in ways that promote integrity. Arguably, this is not the case, and why it may not be the case, and how to change it, is as much a problem for social and political philosophy, and ethics generally, as it is for philosophical psychology.

Susan Babbitt (1997: 118) says that an adequate account of personal integrity must ‘recognize that some social structures are of the wrong sort altogether for some individuals to be able to pursue personal integrity, and that questions about the moral nature of society often need to be asked first before questions about personal integrity can properly be raised’. Questions about integrity may turn out to be, not about the relationship between individual characteristics, interests, choices and so on, and a society, but rather about what kind of society it is in terms of which an individual comes to possess certain interests, characteristics, and so on.

Babbitt explicitly links personal integrity to political and social structures in a way that broadens the concept of integrity. What she says is applicable to all of the views that we have discussed. But her account also enables us to raise questions about the relationship between social structures and personal integrity. The most general question is what kinds of society and what kinds of practice within a society are most conducive to personal integrity?

If society is structured in such a way that it undermines people's attempt at either knowing or acting upon their commitments, values and desires, then such a structure is inimical to integrity. And if integrity is connected to well being, then adverse social and political conditions are a threat—not merely an ultimate threat, but also a daily threat—to well being. The twentieth century technical term for this mismatch is alienation. Alienation results when people are so confused or conflicted—are relentlessly exposed, for example, to the social

manufacture of incompatible desires—that they take on roles they mistakenly believe they want or deceive themselves about wanting.

Those who are oppressed seem to be in a paradoxical relation to integrity. On the one hand, members of oppressed groups would seem to be deprived of the conditions for developing integrity: the freedom to make choices how to act and think. As Babbitt (1997: 118) notes, one needs to be able to make choices in order to develop the kinds of interests and concerns which are central to leading a life of integrity. A capacity for reflection and understanding enables one to work toward integrity even if it does not ensure that one achieves an ideal of integrity.

Any attempt to strive for integrity has to take account of the effect of social and political context. The kind of society which is likely to be more conducive to integrity is one which enables people to develop and make use of their capacity for critical reflection, one which does not force people to take up particular roles because of their sex or race, to advance their career or any other reason. Societies and political structures can be both inimical and favourable to the development of integrity, sometimes both at once.

As Leszek Kołakowski²⁶ stated, the cultural role of philosophy is not based on presenting the truth but on cultivating a spirit of truth.

Facing that we cannot adopt an agree-upon definition of integrity that will be relevant for all specific circumstances in internal affairs, nationally and internationally, this chapter argues that it is crucial to cultivate a spirit of integrity.

Integrity management as an anti-corruption tool

There are many approaches to manage integrity frameworks, and depending on the approach that countries use different measures are applied and interacted. Traditional management relied on the assessment and monitoring of laws, codes of conduct, or administrative procedures. Nowadays, this management includes the assessment and monitoring of institutional culture and ethics. It holds that in assessing corruption and integrity frameworks of specific institutions, precise information and careful analysis is required — broad perceptions provide little basis for designing reform programs.

²⁶ Leszek Kołakowski was a Polish philosopher and historian of ideas (1927 – 2009).

Country examples

Countries face similar challenges when managing integrity frameworks regardless of the method they apply:

- Defining integrity framework to measure
- Ensuring credible and reliable assessments
- Applying results to policy changes
- Ensuring follow-up and accountability

Recently an additional element of the preventive anti-corruption agencies is their role of developer, facilitator and implementer of risk assessment methodologies and integrity plans in national and subnational institutions. These models have been developed in Serbia and Slovenia. Macedonia is moving in the same direction.

In Slovenia and Serbia the anti-corruption agencies have developed a model for the development of integrity plans for public sector institutions. The model is based on consultations with a working group that represented public sector institutions. It defines processes and risks that are common to all public sector institutions.

Slovenia

The Prevention of Corruption Act in the Republic of Slovenia (2004) defines an integrity plan as ‘measures of legal and practical nature, which eliminate and prevent the possibilities for the occurrence and development of corruption in a body.’ The new Law on Integrity and Prevention of Corruption²⁷ (LIPC) expanded some of the investigative and sanctioning powers of the CPC and made it not only the national focal point for prevention of corruption, but also for lobbying oversight, whistle-blower protection, and integrity of the public sector and expanded its reach beyond the public into the private and business sector.

The amendments to the LIPC in June 2011 strengthened the **Corruption Prevention Commission’s** (CPC) powers to scrutinise financial documents from the public and private sector and to hold accountable magistrates, officials, public servants management and boards of public enterprises for corruption, conflict of interest or breach of ethics.

²⁷ Integrity and Prevention of Corruption Act. Official Gazette of the Republic of Slovenia no. 45/10, 26/11 and 43/11

The CPC is assisting public and private institutions in the development of integrity plans (tools and internal control mechanisms aimed at the identification and curbing of corruption risks within a given organisation) and monitoring their implementation.²⁸ The expertise of the CPC related to the preparation and development of integrity plans and the preparation of measures for the prevention of corruption are commercialized for private sector users and can be conducted upon the receipt of payment.²⁹

Serbia

In Serbia, Integrity plans are also implemented for public sector institutions. They need to be adopted by state bodies and organisations, autonomous territorial bodies and local state bodies, public services and public companies. The Anti-Corruption Agency (ACA) has legal power to make and publish assessments of integrity, i.e. guidelines for the development and implementation of integrity plans.³⁰

The integrity plan shall include legal and practical measures that eliminate and prevent possibilities for the occurrence and development of corruption, in particular, the assessment of exposure to corruption for a particular institution; data on the person responsible for the integrity plan; description of the work process, decision-making procedures and identification of activities that are particularly exposed to corruption, as well as tasks and activities, i.e. functions an official may not perform during discharge of public office and manner of control thereof; preventive measures for the reduction of corruption. The ACA's guidelines for developing integrity plans also refer to the private sector but there is no other activity in this regard.

Serbian Anti-Corruption Agency (ACA) cooperates with other state bodies in drafting regulations in the field of fight against corruption and issues guidelines for developing integrity plans in the public and private sector. As explained by the Serbian officials³¹ an integrity plan is one of the anti-corruption preventive mechanisms for the implementation of risk assessment for the corruption.

²⁸ Article 12 of the Integrity and Prevention of Corruption Act. Official Gazeete of the Republic of Slovenia no. 45/10, 26/11 and 43/11.

²⁹ Ibid line 22

³⁰ Law on the Anti-Corruption Agency. Article 58 and 59

³¹ Thematic Compilation of Relevant Information Submitted by Serbia, Article 6 UNCAC Preventive Anti-Corruption Body or Bodies https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/Serbia.pdf.

An integrity plan is aimed at strengthening institutional integrity and presents a document created as the result of a self-assessment of exposure of an institution to risks of corruption and other irregularities. It contains measures for prevention, reduction and elimination of the identified risks. By drawing up an integrity plan, the institution shall assess possible threats, problems, and chains of events that may lead to corruption before corruption takes place.

An internal check-up of the institution functioning is performed, regulations are assessed in order to see whether they are such to prevent or enable corruption, as well as quality of human resources and practice (organisation), method of decision-making, what the extent of discretion powers is in key fields of the institution functioning (public procurements, finances, human resources, information), as the first step towards the improvement of the institution integrity.

The Law on the ACA prescribes an obligation for the state bodies, organisations, bodies of territorial autonomy and local self-government, public agencies and public companies to adopt their own integrity plans. In the process of preparation and implementation of integrity plans the ACA has a consulting and control role. The consulting role of the ACA is reflected in the preparation of the Guidelines³² for the preparation and implementation of integrity plans, as well as for the training of persons appointed to prepare integrity plans at the institutions. In the course of 2012 approximately 3,950 representatives of the state institutions were trained on integrity plans (notion, significance and method of preparation).

According to the records of the ACA, the total number of the institutions that are obliged to prepare their integrity plans amounts to 4,483. In order to provide quality preparation and implementation of integrity plans by such a large number of obligors, the ACA developed 69 models of integrity plans (in the form of web application) suitable for various types of institutions.

The integrity plan includes 'common areas' (management finance, public procurements, documentation, human resources, security); 'area of ethics and personal integrity'; and 'specific areas/competences'.

This concept is an attempt to further elaborate the issue of integrity of an institution. Slovenia stipulated within the Law on Integrity and Prevention of Corruption (LIPC) a fine of between 400 and 4000 EUR that shall be imposed on a responsible person of a body or

³² Official Gazette of no. 80/10.

organization that fails to draw up and adopt the integrity plan within the time limit (Article 86). Serbia did not stipulate any legal sanctions for not implementing risk assessment and/or integrity plans.

Romania

In other countries like in Romania there are specialized national integrity institutions. The National Integrity Agency (NIA) was established with the Law no. 144 from 2007.³³ The NIA has inspection powers and supervisory functions in respect of officials (assets, conflicts of interests, incompatibilities). The functioning of the NIA is based, in the first instance, on the area of exclusive competence in preventing and combating incompatibilities and conflicts of interests, sanctioning the failure to submit in time the assets and interests disclosures, identifying the significant differences between the changes intervened in the wealth and incomes achieved in the same period, performance of the prevention and awareness. In the second instance, the NIA has the attribute to notify other authorities or public institutions if there are found elements of breaching the tax or criminal legislation.

The NIA has access to all documents / records from public authorities or any other public or private persons (tax registers, personal ID databases, motor vehicle register, real estate register, F.I.U. databases, land register, etc). The NIA performs evaluation activities ex-officio or upon notification by any individual or legal entity. The assessment of wealth, conflicts of interests and incompatibilities is performed during the mandate of public dignities and within three years after its end.

Macedonia

The State Commission for Prevention of Corruption in the Republic of Macedonia also has inspection powers and supervisory functions in respect of official's assets, conflicts of interest and incompatibilities as well as for controlling of political campaign financing.

The SCPC collects the asset declaration forms, updates the register and publishes the data on the web. The SCPC also collects the statements of interest, providing an opinion on conflict of interest of the officials. The register of the asset declarations is well established, updated and transparent. It is easy accessible and searchable for the general public.³⁴

³³ Law on the Establishment, Organization and Functioning of the National Integrity Agency, as amended by Government Emergency Ordinance no. 49/2007.

³⁴ http://dksk.org.mk/imoti_2/

However, there is no clear list of state officials and the CSPC has no access to other agencies databases in order to check the validity of the declarations. For validation of the asset declarations, the SCPC cooperates with the Tax Revenue Office. The officials are obliged to submit asset declarations in parallel to the SCPC and to the Tax Revenue Office, which is entrusted with the task to validate the data in the declarations.

The concept of integrity in the UNCAC Convention

This concept of integrity has also been strongly incorporated in the UNCAC where in the Article 5 as a part of preventive anti-corruption policies and practices it recommends that: 'Each state party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. In the Article 8 related to the Codes of conduct for public officials it states: 'In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.'

Conclusion

Integrity is a contested concept. There has been debate among philosophers that have not to an agreement on the definition of the concept. Positions in the debate vary. There is one position that the integrity framework management concerns the complementarity of compliance and integrity strategies defining the latter as a tool aimed at developing shared norms and values. The majority of the authors have tried to identify the concept of a person of integrity. Ordinary discourse about integrity involves two fundamental intuitions: first, that integrity is primarily a formal relation one has to oneself or between parts or aspects of one's self; and second that integrity is connected in an important way to acting morally.

In any of the attempts the term has been perceived as a mixture of moral and other values and the dictionary use the term **incorruptibility** after the explanation in the definition: firm adherence to a code of especially moral or artistic values.

The concept of integrity has become part of anti-corruption legislation and the UNCAC as the global anti-corruption treaty. However, approaches towards integrity differ. In some

cases such as Slovenia, Serbia and Macedonia, integrity management tools are developed for institutions in the public sector. Other anti-corruption mechanisms such as the conflict of interest and asset control mechanisms are not clearly identified as integrity management tools even though they address the issue of personal integrity. There is good experience in both directions that should be analysed in more depth and implemented in a coherent and well-organised manner. Ultimately, the key issue is to cultivate a spirit of integrity in public administration.

Chapter 8

Integrity and access to information: The Croatian experience

Anamarija Musa, Information Commissioner, Croatia

Introduction

Contemporary societies are increasingly becoming concerned with transparency understood as the availability of information about the organisation, processes and decision-making in public administration and governance system. On the one hand, the functioning of democratic control depends heavily on the availability of relevant and timely information on the work and the decision-making of political and other public bodies. On the other hand, the effective exercise of individual rights is possible only if citizens enjoy the access to timely, complete and user-oriented information on the way and the modalities of exercising their rights as well as the possibilities of using the public services. As a consequence, a certain level of transparency and openness is necessary for the functioning of democracy and public administration as well as for individual and community development (Hood and Heald 2006, Piotrowski 2010). Transparency and openness are considered to be the cornerstones of good governance and the European Administrative Space (Cardona 2005) – transparency presupposes an active government that is disclosing and publishing information, either at its own initiative or prompted by citizens' request, while openness includes active citizens who use open channels of communication towards government to give their opinions and recommendations in the process of policy-making or policy implementation (Héritier 2003).

As a principle of public administration, transparency has its legal form – *the right to access to information* (hereafter: RTI; terms such as freedom of information – FOI, or access to information – ATI, are also used) upon which the access to information regime is built. The RTI regime is composed of (a) the legal framework for implementation of the right to access to information (material and procedural law) and (b) the institutional setting which supports its implementation. The global trend of the adoption of the *RTI legislation* has been visible since 1960s, when democratic countries inspired by the Swedish 18th century example have started to enact RTI laws. The first modern RTI law was adopted in the United States in 1966, followed by Denmark, Norway, France, and the Netherlands in the 1970s, but the

explosion of the RTI laws in late 1990s and the first decade of the 21st century in more than 100 countries became a global phenomenon. The process was induced by the spreading of democratisation and anti-corruption processes as well as the diffusion of the good governance concept, with user orientation of public administration and increased use of the information and communication technology (e-government). The content of the laws and the best examples of RTI provisions have been widely discussed and determined in various model laws (e.g. Article 19, 2001), so that contemporary standards include, among others, principle of maximum disclosure, broad scope of application (public administration, judiciary, legislature, public sector), definition of information (any written or recorded data), limited exclusions that are subjected to the public interest test, flexibility of procedure, as well as the right to appeal and sanctioning by the independent institution.

The *institutional support to the RTI legal framework* implementation differs from country to country and includes ombudsman institutions and courts (e.g. Sweden, Denmark, Poland), specialised agencies (Switzerland, Montenegro, Albania) or commissions (France, Belgium, Italy) and commissioners (UK, Ireland, Scotland, Slovenia, Croatia). In some cases these institutions (agencies, commissioners) are also responsible for personal data protection or they are watchdogs of human rights (ombudsmen). The institutional choice depends on the politico-administrative traditions, as well as language similarities or the international organisations influence (Berliner 2014, Musa 2015).

The access to information and the integrity are two complementary concepts because the RTI institutions are at the same time the *integrity institutions* and *institutions of integrity* (Grebe and Woermann 2011, Gurzawska 2015). Firstly, the RTI institutions as *integrity institutions* can be considered as a part of so-called 'integrity branch' – a group of institutions designed to oversee public administration by enforcing proper behaviour and recommending good practices (Spiegelman 2004, Field 2012). These watchdog institutions include, among others, ombudsmen, audit institutions, RTI institutions, anti-corruption agencies, public procurement controllers, and other institutions with the role to control and monitor public administration by preventing corruptive and illegal activities, incentivising legal behaviour and sanctioning misbehaviour, as well as by promoting and recommending good practices in order to increase the overall quality of the public administration. The development of integrity branch can be treated as product of general rise of control in public sector (Hood et al 2004) and an expression of the audit society (Power 2005).

Second, and perhaps even more important, is that the RTI institutions have to preserve their own integrity by properly exercising their functions. Their institutional integrity includes the

absence of corruption and other misconduct, adherence to the rule of law and effective implementation of the law which is supposed to lead to the accomplishment of tasks and to the realisation of outputs which are expected by the legislation – more transparent and open public administration and governance. The contemporary RTI standards (e.g. Article 19 2001) require that the institutions are independent in order to be able to exercise their role. The independence is basically seen as a prerequisite of politically autonomous decision-making and integrity of institution. Independence is a guarantee that the institution will serve as a neutral arbiter in conflicts between requesters and public bodies. Moreover, the independence is inevitably linked to the accountability of the institution, and the two together should ensure that the legal framework is effectively enforced.

This chapter discusses the relationship between RTI institutions and integrity. The main argument is that not only the RTI institution is responsible for preserving the integrity of public administration, politicians and public sector as a whole, but it also needs to build and maintain its own integrity in order to be able to exercise this role. The integrity of institution is related to its independence, accountability and the effectiveness. However, in the process of building and maintaining its integrity, the RTI institutions are facing many challenges, as shown by the Croatian experience.

The integrity of access to information institutions

It is illusory to expect that public administration will act transparently and thus with integrity only because certain people (or even most of the people in certain country) believe in these values. In comparative practice it is noticeable that many good RTI laws are not implemented and that the gap between the quality of the law and general perception of transparency (or absence of corruption, for example). This goes for many other legal arrangements. In neoinstitutional theory (March and Olsen 1989) it is believed that people behave in certain way either if they are seeing some benefits or want to avoid costs (logic of consequence) or if they believe it is appropriate to do so, when they internalise the values that are promoted by certain behaviour, usually by using acceptable instruments (logic of appropriateness).

Institutions, here in the meaning of institutionalised organisational forms and laws as rules, are instrumental to achieving certain goals and values by ensuring desirable behaviour. Institutions are important – they do matter (March and Olsen 1989) - they structure the behaviour and course of action; they enable interactions, frame expectations and offer

stability in the uncertain environment. They are patterns of behaviour and system of rules, which should effectively guide the actors to undertake desirable actions and thus enhance the accomplishment of goals. Hence, the rule as an institution (the RTI law) and an organisation as an institution (the RTI oversight mechanism) should provide structured patterns of behaviour for the purpose of achieving transparency.

The existence of a legal framework alone is not sufficient to achieve the goal of transparency. It is necessary that the logic of consequence or logic of appropriateness are put in practice so that the public bodies either face the consequences of improper behaviour (e.g. political or financial sanctions) or internalise certain norms of behaviour and values, which takes a certain time. For that reason, organisations supporting the RTI legislation are important. Legal regulation which grants certain right is usually backed up with some sort of institutional setting in order to ensure enforcement and to protect the regulated right, as well as to solve the conflicts between those that are demanding their rights and those who are supposed to grant these rights but for some reason (legally justified or not) are avoiding to.

The role of RTI institutions, as other integrity institutions, is to reduce the complexity, arbitrariness and uncertainty of the administrative application of law (Field 2002) and to ensure that the public bodies act transparently. In doing so, the watchdog institutions act as both police patrol mechanism (by conducting investigations and instituting other ex officio procedures, monitoring the application, determining the good practices), but also fire alarm mechanism of control, by allowing citizens to press the alarm button in case they spot the behaviour which is not in line with legislative prescriptions (McCubbins and Schwartz 1984).

In order to be able to exercise its integrity-preserving role for the system, the RTI institution has to maintain its own integrity. Thus, when talking about the effectiveness of the RTI regime, it is necessary to assess the integrity of the institution, which supports it. As discussed in the introductory chapter, there are different types of institutional support for the RTI regime – from ombudsmen, courts, agencies, commissions and commissioners. However, recent standards of RTI legislation (Article 19) as well as the current trends in RTI regime development include the establishment of independent institutional oversight for the protection the RTI.

The terms of integrity, independence, accountability, capacity and effectiveness are often used in order to describe the desired image of the RTI institution. In essence, the RTI institution acts with the integrity if, on one hand, it is independent and accountable, and effective in implementing the RTI legislation, on the other hand. Thus, its institutional

features and practical implementation should ensure that the goals of legislation are achieved. Otherwise, the institution might be considered as dead: 'An institution which does not work or which is haphazardly enforced or routinely evaded has little integrity.' (Grebe and Woermanns 2011: 4). Hence, the integrity includes the capacity for effectiveness – the capability of the institution to effectively achieve desired goals of the legislation. It can be seen as comprised of sufficient independence, accountability and effectiveness.

The concepts of independence and accountability have been widely discussed in the literature on independent (regulatory) agencies (e.g. see Gilardi 2005, Verhoest et al. 2004). In order to act effectively, similarly to the independent (regulatory) agencies, the RTI institutions have to be at the same time independent and accountable, or, in other words, work autonomously and under adequate control. The *independence* of an institution requires sufficient managerial autonomy (legal, financial, managerial and organisational), as well decision-making autonomy backed up with political independence, which in essence means sufficient professionalism of its leadership and staff. These features should ensure that the RTI institution acts independently, in line with the legislative framework, without the intrusions and pressures from politicians or controlled bodies, and autonomously with regard to day-to-day organisation of its work and processes. The corresponding *accountability* arrangements include legal, financial and political-democratic control of the institution. They are necessary for the effectiveness of institution, since they include the reporting on the results, and it is mostly ensured by the ex ante legal mechanisms of control (such as financial regulations, administrative procedure regulation) and ex post control instruments, such as the judicial review of decisions or the reporting to the parliament. Both independence and accountability have legal (de jure) and practical (de facto) dimension (Gilardi 2005) and the difference between two dimensions might be attributed to the level of institutionalisation of the institution and contextual factors. In other words, in fully democratic politico-administrative systems formal requirements coincide to a great extent with informal practices.

Finally, it is necessary for the RTI institutions to *effectively* perform their tasks and to achieve desired outcomes. This demand closely relates to what Lodge and Wegrich (2015) call delivery capacity – the possibility to 'make things happen', but also to other aspects of administrative capacity, such as coordination and analytical capacity (ibid.). In practice of RTI institutions, it basically relates to its resources, such as financial basis and personnel, processes and instruments it uses to enforce the legislation as well as the level of professionalism and integrity of its leadership and the employees. The capacity is also affected by the legislative framework, which grants certain powers to the institution

(regulative capacity, as the fourth dimension). Thus, the integrity of institution depends not only on *de jure* independence and accountability mechanisms, but also on the *de facto* effectiveness of the institution, which derives from its capacity (Brown and Head 2005).

A short overview of the development of the Croatian access to information regime

The development of the Croatian RTI regime can be observed through three stages of the regulation and implementation of the material and procedural elements of the RTI law as well as the institutional setting - the nascent phase (2003-2010), the adolescent or intermediate phase (2011-2013) and the mature phase (since 2013).

The *nascent phase* (2003-2010) started with the adoption of the first Law on the right of access to information in 2003, which introduced the right to access to information. Although the 2003 Law was a significant step forward in the process of the introduction of transparency principle in public administration, it suffered from significant shortcomings with regard to procedural and material elements and the absence of adequate institutional support for its enforcement. In other words, the key standards of the RTI legislation, such as public interest test or independent appeal procedure, were not regulated. For example, the appeals were decided by the same institution, which issued the first instance decision thus contradicting the main legal principle – *nemo iudex in causa sua*, so the locus of protection was in practice in hands of the administrative judiciary. Although such systems exist in some European countries (e.g. Scandinavian countries), in order to be functional it is necessary that other contextual elements are in line with the main legal standards. However, due to the fact that during this phase the administrative procedure and administrative justice system had not been reformed, the system as a whole did not allow for a significant improvement in the overall level of transparency.

The *adolescent or intermediate phase* (2011-2013) began with the 2011 amendments of the Law, following the inclusion of the right of access to information in the Croatian constitution in 2010. The new legislation had significantly improved the RTI regime by broadening the scope of the public bodies, new definition of information, better procedural position of the users, the inclusion of the definition of information in line with international standards, and the introduction of the public interest test. But most importantly, the oversight powers (appeal procedure) were given to the independent institution – Agency for data protection, similar to the solution in several European countries, such as UK, Hungary or Slovenia. The

system of protection of the right to access the information had been significantly improved, with several key decisions of the Agency, which opened the door for greater transparency of public administration.

Finally, the new *mature phase* began in 2013 when the new Law was adopted (and further amended in 2015), introducing the recent RTI legislation standards regarding the scope of public bodies covered by the Law, the list of exclusions and the public interest test, better procedural safeguards, as well as the new obligation for public bodies as regulated by the EU Directive on the reuse of public sector information (2003/98/EC, 2013/37/EU) – they have to make information available for further re-use for commercial or non-commercial purposes in the machine readable and open format. The most significant breakthrough of the Law was the establishment of the new, specialised independent body for the protection, monitoring and promotion of the RTI whose powers also include investigation and sanctioning. The purpose of this institutional change was to back up the new legislation with a strong and specialised institution that will be able to effectively protect and promote the right of access to information.

The development through three stages was driven by the process of Europeanisation in the field of public administration, human rights and the fight against corruption, as well as the development of the e-government and the use of ICT in public administration, with a great role of the civil society which was pressuring for the reforms (Musa 2015a). Similar developments in the legal and institutional framework can also be noticed in the other legal regimes that have purpose to ensure integrity, such as public procurement or the conflict of interest legislation. With the purpose to ensure the application of the European administrative space standards (such as legal certainty and the rule of law, accountability, transparency and openness, efficiency and effectiveness; see Cardona 2005) the recent reforms of administrative procedure (2009), administrative justice (2010) but also civil service legislation (from 2005 onwards) can also be seen as facilitators of these developments.

Ensuring *de jure* and *de facto* integrity of the Information Commissioner

As discussed in the previous sections, the first step in ensuring the integrity of an RTI institution is to design the appropriate mechanisms of independence and accountability, and then put them in practice by ensuring effective implementation of the legal framework.

Several internationally recognised model laws define institutional (and procedural) standards of RTI legislation, such as The Inter-American Model Law on Access to Public Information (2010) or Article 19 Model Freedom of Information Law (2001) (Musa 2015). The model laws determine model provisions aimed to ensure institutional independence, accountability and effectiveness, and are used as benchmarks for assessing the quality of RTI legislation (such as RTI ratings, www.rti-rating.org).

The Croatian Law on access to information (2013, 2015) envisages the establishment of the independent institution for protection, monitoring and promotion of the right of access to information and the reuse of public sector information – the Information Commissioner (IC). The Law grants the *formal independence* of institution in several aspects, such as a) *legal autonomy* – the IC has legal personality and independently acts as the separate institution; b) *organisational and managerial autonomy* – the IC autonomously arranges its internal work and organisation and manages human resources in the Information Commissioner’s Office (ICO), but is limited by general legal framework on internal organisation of public administration, administrative procedure and the civil service legislation (which can be considered as the elements of *ex ante* control or accountability); c) *financial autonomy* – the separate budget should be ensured for the functioning of the institution, what means that the IC decides on the necessary funding; d) *decision-making autonomy* (with restricted powers to issue binding regulations) – the IC autonomously issues its decisions on appeals, investigations and to a certain extent on sanctioning, and also adopts general acts (Criteria on costs of information), in accordance with the Law. In addition, the IC autonomously uses its other prerogatives, such as monitoring instruments and promotional measures.

There are several safeguards to ensure (e) *political independence*, mostly through the appointment and dismissal conditions and procedure of the IC and the status of the personnel. The underlying principle is that the professionalism and expertise act as barriers to politicisation and arbitrariness. First, the IC should have proper academic qualifications and work experience, the moral character and the professional reputation in the field of human rights, media freedom and democracy development, and should not have been a member of political party nor convicted for criminal offences. Secondly, appointment process is open to the public and transparent – anyone can apply for the position (a public call), information on candidates (their biographies) is open to the public, and the short list of candidates is publicly available. Upon examination of applications, two parliamentary committees (the Constitution and political system committee, led by parliamentary majority, and the Media and informatisation committee, led by opposition party) jointly and publicly conduct interviews with the candidates. Both committees have to agree on two candidates,

and the short list of two candidates is then forwarded to the Parliament, which casts a final vote. The transparency of procedure should ensure that unfit candidates are excluded, and that the shortlisted candidates are experts in the public eyes. Thirdly, the removal from office has to follow the same procedure and the conditions are specified by law. The IC is also granted adequate salary and is appointed to the 5-years term of office. The Office employees are civil servants; their salaries are slightly higher than in public administration (comparable to those of civil servants in Ombudsman's office) and the prescribed recruitment procedures, as well as the rules on conflict of interest and ethical conduct have to be applied.

The accountability of the IC and its office is ensured by several control mechanisms, such as a) *legal control* by the review of decisions by the High administrative court (*ex post*) and the legal framework determining the material law and the applicable procedure (Law on RTI, Law on administrative procedure), as *ex ante* control mechanisms; b) *financial control*, by applicable budgetary and financial management regulations; c) *political-democratic control*, by application of transparency principles and, most importantly, annual reporting to the Parliament on the implementation of the Law and its work. The accountability is also ensured by the political independence, as described above, as well as the application of the conflict of interest legislation (e.g. declaration of interest, asset declaration) and public procurement legislation, which should ensure that the IC and the Office act with integrity and in public interest.

However, to build and maintain the integrity of the IC and the Office, the above mechanisms for ensuring independence and accountability, which are formally defined, have to be supplemented with the practical arrangements, which allow for the effective fulfilment of the tasks and goals of the institution. In other words, the formal arrangements have to be put in practice and fully functional as to achieve the institutionalisation of the RTI system as a whole. Thus, contrary to the underlying belief that the biggest victory (of the civil society, media, citizens) is to enact the proper RTI law, the main challenge of the RTI system is the full institutionalisation and integrity of the institution. In other words, it is necessary to bridge the gap between the formal establishment to the real world effects, which are recognised and legitimised in the broader context - by public bodies, politicians and citizens. Full institutionalisation is based on regulative, normative and cultural-cognitive aspect (Scott 2008) – rules have to be in place and have to be exercised (e.g. information requests answered, appeals decided, investigations conducted, sanctions imposed), actors and stakeholders have to believe that the system is appropriate to achieve desired goal (e.g. citizens are submitting requests and appeals or inform on improper behaviour; decisions of

the IC are respected and implemented by the public authorities, etc.) and finally, the system has to be taken for granted, internalised in the value system of all actors, who eventually start to believe that transparency is the standard immanent to the public administration.

In order to achieve the full institutionalisation the RTI legal framework and the integrity role, the proper legal arrangements have to be supported by the practical capacity of the IC to act independently, accountable and effectively and thus with integrity. The *de jure* system needs to experience its full *de facto* realisation. The practical challenges in ensuring effectiveness are numerous, but here two main elements are discussed – the resources the RTI institution has at its disposal to effectively implement the law, and the role of professionalism for the integrity.

Without sufficient resources – money, people and time, it is not possible to deliver what is determined by the legal framework, or in other words – to ‘make things happen’ (Lodge and Wegrich, 2015) The capacity of institution can be severely undermined by the restrictions in financial resources which do not allow for the exercise of its functions, and it can be used by politicians to prevent the implementation of the legislation. In addition, the public spending cuts have negatively affected the ICs’ budgets across Europe. According to one IC survey (CFOI 2014), 80% of all IC institutions that participated in the survey experience the problem of insufficient budget compared to their responsibilities, while the number of appeals is constantly increasing, as citizens become increasingly aware of their rights in constant increase. Similarly, the list of tasks is constantly being broadened – in the last few years the governments that participate in the Open Government Partnership, a global initiative to promote transparency, openness and e-services, have been implementing their Action plans, while the RTI institutions in the EU are confronting tasks related to the implementation of the EU directive on the re-use of public sector information.

Similarly to the experience of other ICs who have to balance with the ever-growing list of tasks and limited resources, the budget of Croatian IC was from the start insufficient for the implementation of the broadly defined responsibilities. The consequence was a lack of staff, and a lack of financial resources for implementation of activities, including the application for the EU funds, since they have to be co-financed by the applicant institution. Although the basic budget of slightly less than 200.000 Euro was increased on two occasions for additional 20-25% and currently is 300.000 Euro, it still limits the capacity and forces the prioritisation among equally important activities. These circumstances have led to delayed functioning of investigation mechanism (inspections), and have forced the IC to postpone the activities such as the comprehensive monitoring or awareness raising campaign in order to

be able to face a growing number of appeals. In addition, with restricted personnel capacity (only four employees in 2014, eight mid 2015), the Office had to put effort in building the new institution, fulfilling all necessary requirements with regard to organisation, processes and financial management. Thus the insufficient funding and consequently lack of staff have been negatively affecting realisation of the goals of the IC and the effectiveness of the RTI framework.

Moreover, there is an additional effect on the perception of the institutional integrity by the wider public – the adoption of a high quality legal framework (most often because of external pressure, such as the EU, or the pressure from civil society) leads to the growing expectations of civil society, media and citizens, as well as the public administrators themselves, that all misconduct and corruption will soon be eradicated. When these expectations are not met, the IC institution is first to blame for not being effective enough. Its integrity is thus being compromised, which in turn creates a vicious circle of low trust in the integrity of institutions and then low trust in the integrity of the system as a whole.

One of the reasons for such development might be in the fact that Europeanisation in SEE and CEEs is usually perceived as being shallow (Goetz 2005) – the carrots and sticks approach leads to a formal adoption of the laws granting certain rights or establishing certain procedures which are (formally) in line with the principles of the European administrative space, but the full implementation is often missing. The efforts of external and internal actors (the EU, civil society) in form of pressure towards the government tend to cease with the adoption of the legal framework, as their efforts are moving towards other targets. Similar experience, at least in Croatia, is shared with other watchdog institutions, such as the ombudsman or the conflict of interest commission. These developments may partially explain the incongruity of the RTI ratings of the RTI legal framework and general perception of transparency (measured as the perception of corruption). For example, Croatia's RTI Law is rated fourth at the RTI rating scale (out of 102 countries), while corruption perception is still high (61st out of 175 countries in 2014).

One of the causes of retarded or absent implementation can be found in the low credibility of politicians and generally undeveloped democratic processes. Politicians are thus incentivised to establish the institution to fulfil formal requirements set by external actors (e.g. EU pressure to enhance protection of human rights or implement anticorruption policy) and the expectation of internal stakeholders, such as civil society, but they do not expect that their reluctance to support real effects of the institution will be punished by the electorate. In other words, in the countries in democratic transition the credibility of

politicians does not have significant weight - they can get away with this type of behaviour with no real consequences for their power. A possible solution for the problem of credibility of politicians in young democracies, which negatively affects the effectiveness of integrity institutions, is the strengthening of professionalism. Expert leadership and professionalism of civil servants can help in building domestic and international professional networks, foster innovative practices and increase performance according to professional standards, thus strengthening the integrity of the institution and the system as whole. The role of normative pressures through professionalisation and networking is widely known to have a positive effect on institutional change (Powell and DiMaggio 1991). The experience of the Croatian IC shows that the development and internalisation of professional norms in the system can accelerate and support the proper behaviour among public bodies. The instruments used by Croatian IC for increasing the level of implementation of the Law are mostly focused on the education and the development of good practice, which help building of the professional commitments and professional standards in the area of access to information among networked information officers in the public bodies. The development of value commitment in the organisational field (Clemens and Cook 1999) is thus replacing the lack of the capacity for coercive action of the oversight mechanism.

Moreover, professionalism is a key value in the IC institutions, as a tool for ensuring integrity. The commitment to the value of transparency, public service motivation and the development of organisational spirit among employees of the Office are critical elements of the institutional integrity building. In practice, this means that the employees are fully engaged in achieving institutional goals, even above what is expected of them according to their job descriptions or formal requirements. This feature is contextual, and can be fostered by the pure lack of having proper people for the job, but to some extent it can be promoted by firm entry requirements and stronger professionalism standards in the civil service as a whole. In addition, the social skills in the meaning of 'ability of actors to induce cooperation in other actors in order to produce contest, or reproduce a given set of values' (Fliegstein 1997:11) are necessary to ensure cooperation in the network. The personal values of IC and the Office employees have to correspond to the institutional values, thus giving them ability to make 'sense of a particular situation and produce shared meaning for others and bring about cooperation' (ibid. 38), even when they lack coercive mechanisms to ensure enforcement. These skills are important when facing the politicians too – the current experience shows that social skills are beneficial for attaining institutional goals aimed at capacity building (e.g. ensuring funding), thus replacing the inexistence of political ties.

In conclusion, the integrity of the Croatian RTI system rests, on one hand, upon the elements of independence and accountability determined by the legal framework and exercised in practice, and on the continuous efforts to effectively implement the Law, on the other. Although the effectiveness of the institution is negatively affected by the lack of the capacity due to the restricted financial resources, this shortcoming is in practice substituted by the enthusiastic determination and social skills of the IC and the Office to 'change the minds' of colleague civil servants by creating networks whose members share professional standards and ethics of transparency.

Conclusions

As a principle of public administration, transparency has its legal form – the right to access to information (RTI), which is ensured by the legal framework (RTI Law) and the institutional support for the implementation of the Law. The RTI institutions – most often commissions, commissioners or agencies – are given oversight powers. They decide on appeals or conduct investigations and possess the responsibility to establish and promote good practice and monitor the implementation of the law.

As a standard of good governance and the European Administrative Space, transparency has a role to ensure accountability of public administration, to ensure the exercise of individual rights, to lower misconduct and corrupt behaviour, to legitimise decisions, and to increase public trust in institutions. These roles define RTI institutions as watchdog or integrity institutions, which oversee the public administration system's implementation of the legal framework.

Secondly, and perhaps even more important, the RTI institutions have to preserve their own integrity in order to properly exercise their role. In order to be perceived as institution with integrity, the RTI institution has to act independently and accountably, on one hand, and be effective in implementing the RTI legal framework, on the other. The independence and accountability mechanisms are defined by the legal framework in a way that should ensure that institution acts independently, insulated from political and other pressures, but at the same time its work and results are controlled by the Parliament, citizens and other control mechanisms such as judiciary or other integrity institutions. But even more importantly, the IC institution needs to be able to make things happen and to achieve the real world effects, which result in transparent and open public administration.

These processes require resources, such as time, money and people, but also a favourable institutional context in accordance of the principles of good governance and European administrative space – the proper functioning of other elements of political and administrative system, from democratic institutions and the rule of law, to the legal regulation of public administration elements and processes (civil service, conflict of interest, financial management, administrative procedure, judicial control, e-government). If the contextual elements are not favourable, it is extremely hard for the integrity institutions to contradict the thesis that the good institutional models cannot function in unfavourable (or simply different) institutional environments. However, at practical level, the adequate capacity of the institution with regard to the financial resources as well as the professionalism, individual integrity and public service motivation of the employees, are critical for implementing the law and eventually achieve greater transparency.

In conclusion, in order to have fully functional RTI regime, which will ensure the integrity of public administration, it is necessary to (a) adopt the high quality RTI legal framework with regard to material law, procedural elements and institutional setting; as well as to (b) ensure independence and accountability of the RTI institution and its effectiveness in the given context.

Recommendations

The above discussion offers several key recommendations to practitioners, especially to the legislators, governments, and RTI institutions. Practitioners are strongly advised to

- Design the independent institution for the access to information according to accepted international standards that ensures its independence and accountability
- Develop other elements of institutional context in order to ensure proper functioning of the institution and implementation of the RTI legislation, such as civil service legislation and conflict of interest administration which should promote professionalism and integrity of the IC and the Office staff as well as the administrative procedure and administrative disputes legislation which should ensure proper implementation of the law and the achievement of the goals of the RTI legislation
- Ensure that sufficient resources are allocated to the RTI institution for the purpose of effectiveness and capacity to implement the RTI legislation; or, in other words, let the IC to do its job

- Invest in building professionalism and integrity of public administration and the politico-administrative system as a whole in order to ensure that the principles of good governance and the European Administrative Space such as the rule of law, accountability, transparency and openness, efficiency and effectiveness are implemented.
- Support the functioning of external watchdogs such as the civil society organisations and the media in order for them to be able to exercise their monitoring role over politicians and public administrators and to point to the cases of misconduct, lack of transparency, unethical behaviour or corruption cases

References

- Article 19 (2001) *Model Freedom of Information Law*, July 2001. A Model for a freedom of information law drafted by Toby Mendel, Head of Law Program at Article19.
- Brown, A.J. and B. Head (2005) Institutional Capacity in Australia's Integrity Systems, *Australian Journal of Public Administration*, 64: 84-95.
- Cardona, F. (2005) *The European Administrative Space. Assessing Approximation of Administrative Principles and Practices Among EU Member States*. Paris: SIGMA/OECD. Available at <http://www.sigmaweb.org/dataoecd/33/46/35678337.pdf>
- Clemens, E. S. and J. M. Cook (1999) Politics and Institutionalism: Explaining Durability and Change. *Annual Review of Sociology* 25: 441–466.
- Berliner, D. (2013) Follow Your Neighbor? Rational Emulation and the Design of Transparency Policies. KFG Working Paper Series, No. 55, November 2013, Kolleg-Forschergruppe (KFG) 'The Transformative Power of Europe', Freie Universität Berlin.
- Field, C. (2012) *The fourth branch of government: the evolution of integrity agencies and enhanced government accountability*. Paper presented at the 2012 AIAL National Administrative Law Forum, Adelaide, 19-20 July 2012. Available at <http://www.ombudsman.wa.gov.au/Publications/Documents/speeches/AIAL%202012%20Conference%20Paper%20Chris%20Field%20Final.pdf>
- Fliegstein, N. (1997) *Fields, Power, and Social Skill: A Critical Analysis of The New Institutionalisms*. Available at <http://www.irle.berkeley.edu/culture/papers/Fliegstein3.pdf>
- Gilardi, F. (2005) The Formal Independence of Regulators: A Comparison of 17 Countries and 7 Sectors. *Swiss Political Science Review* 11(4): 139–167.
- Goetz, K. (2005) The New Member States and the EU: Responding to Europe. In S. Bulmer and C. Lequesne (eds.) *The Member States of the European Union*. Oxford, New York: Oxford University Press.
- Grebe, E. and M. Woerman (2011) *Institutions of integrity and integrity of institutions. Integrity and ethics in the politics of developmental leadership*. Development leadership program Research Paper No. 15. Available at

<http://publications.dlprog.org/Institutions%20of%20Integrity%20and%20the%20Integrity%20of%20Institutions.pdf>

- Gurzawska, A. (2015) *Institutional integrity. Satori: Principles and approaches in ethics management*. University of Twente, <http://satoriproject.eu/media/1.e-Institutional-Integrity.pdf>
- Hood, C., Heald, D. (eds) (2006) *Transparency: The Key To Better Governance?* The British Academy. New York: Oxford University Press
- Hood, C., James, O., Peters, G.B., Scott, C. (2004) *Controlling Modern Government. Variety, Commonality and Change*. Cheltenham: Edward Elgar
- Héritier, A. (2003) Composite Democracy in Europe: The Role of Transparency and The Access of Information. *Journal of European Public Policy* 10(5): 814-833.
- Lodge, M., Wegrich, Kai (2015) *The Problem-Solving Capacity of the Modern State. Governance Challenges and Administrative Capacities*. Oxford: Oxford University Press.
- March, J. G. and J.P. Olsen (1989) *Rediscovering Institutions: The Organisational Basis of Politics*. New York/London: The Free Press.
- McCubbins, M.D. and T. Schwartz (1984) Congressional Oversight Overlooked: Police Patrols versus Fire Alarms. *American Journal of Political Science* 28(1): 165-179.
- Musa, A. (2015) *Institutional Support for Access to Information Laws*. Paper presented at the 4th Global Transparency Research Conference, 4-6 June 2015, Lugano, Switzerland.
- Musa, A. (2015b) Pravni i institucionalni aspekti prava na pristup informacijama. *Zbornik radova Pravnog fakulteta u Zagrebu* (forthcoming).
- Piotrowski, S.J. (ed.) (2010) *Transparency and Secrecy*. Lanham, Boulder: Rowman & Littlefield Publishers.
- Powell, W. W. and P. J. DiMaggio (eds.) (1991) *The New Institutionalism in Organizational Analysis*. Chicago: The University of Chicago Press.
- Power, M. (2005) The Theory of the Audit Explosion. In E. Ferlie, L. Lynn and C. Pollitt (eds.) *The Oxford Handbook of Public Management*. Oxford: Oxford University Press.
- Scott, Richard W. (2008) *Institutions and Organizations: Ideas and Interests*. Sage Publications.
- Spigelman, J. (2004) The Integrity Branch of Government. *Australian Law Journal*, 78(11).
- The Inter-American Model Law on Access to Public Information, AG/RES. 2607 (XL-O/10) was adopted on June 8 2010. Available at http://www.oas.org/en/sla/dil/docs/AG-RES_2607-2010_eng.pdf
- Verhoest, K., B. G. Peters, G. Bouckaert and B. Verscheure (2004) The Study of Organisational Autonomy: A Conceptual Review. *Public Administration and Development* 24: 101–118.

Part 3

Civil Society and Civil Service Professionalisation

Chapter 9

The role of civil society in promoting civil service professionalisation: The Croatian experience

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Introduction

As an important part of political criteria for EU accession, public administration reform has been continuously addressed in the enlargement process, as a necessary pre-requisite for implementing the reforms needed for EU integration. Substantial IPA assistance has been provided to enlargement countries in this area in the past, both under national programmes and the multi-beneficiary programme. In the new Enlargement strategy, the Commission has proposed to address public administration reform more systematically by structuring and focusing the work and reporting according to six horizontal key reform areas, defined in detail by the Principles of Public Administration, which the European Commission developed in cooperation with OECD/SIGMA during 2014: i.) strategic framework of public administration reform, ii.) policy development and coordination, iii.) public service and human resources management, iv.) accountability, v.) service delivery and vi.) public financial management. The new European Commission approach should address and remedy some of the main weaknesses of civil service systems in enlargement countries, particularly the low degree of rule effectiveness combined with a low degree of reform sustainability (Meyer-Sahling 2012: 7).

In order to enhance political accountability and deeper understanding of necessary reforms leading to greater transparency, de-politicisation and meritocratic recruitment processes, particular emphasis is put on building capacities of civil society and enhancing an enabling environment for its development and greater involvement in reforms. Despite substantial EU investments in projects and programmes of civil society in the past, its role in promoting and monitoring the professionalisation of civil service in enlargement countries remains widely neglected. By focusing on the case of Croatia, as a new EU member state facing the challenges of ensuring sustainability of public administration reforms in the post-accession period, this article seeks to identify key mechanisms used by CSOs to promote and influence civil service professionalisation before and after the country's EU accession. We

argue that the durability of mechanisms for active involvement of civil society in these reform processes depends to a great extent on the readiness of governments to ensure higher level of proactive transparency and open data, but also to promote more enabling legal, financial and institutional environment for civil society involvement in public policy-making. In the first part, we reflect on the enabling environment concept and discuss key pre-requisites that allow CSOs to act as independent ‘watch-dogs’ over public administration related reforms before EU accession. Then, we offer an overview of CSO capacity building activities contributing to their stronger involvement in shaping and implementing civil service reforms, with the support of the EU funding schemes. After presenting various mechanisms used by CSOs to influence civil service professionalisation and highlighting several case studies, we finally reflect on possible contribution of CSOs to the post-accession sustainability of public administration reforms.

Key prerequisites for CSO involvement in promoting and influencing professionalisation of civil service

In order to enable civil society organisations to effectively monitor the compliance of the country’s public administration with requirements of transparency, de-politicisation, meritocratic recruitment and other civil service professionalisation related principles and standards, governments need to ensure a favourable environment, in which CSOs will develop as autonomous actors and agents of change. Key aspects of the favourable environment have been recently explained very clearly in the DG Enlargement Guidelines for the EU support to civil society in enlargement countries 2014-2020. Namely, countries wishing to join the EU need to have ‘an appropriate legal, judicial and administrative environment for exercising the freedoms of expression, assembly and association, without disproportionate or unwarranted state interference’. In addition, an enabling financial environment is required allowing CSO to pursue public benefit activities through favourable tax rules for private donations, membership fees and philanthropy. Finally, enabling rules are needed for CSOs participation in policy-making and monitoring the reforms a country needs to implement to qualify for EU membership. In that context, ‘adequate structures and mechanisms for CSOs’ cooperation with public institutions as well as free, clear and accessible flows of information on matters of public interest through structured durable mechanisms are of critical importance’ (DG Enlargement Guidelines, p.2).

Soon after the beginning of the EU accession negotiations, the Croatian Government adopted the first National Strategy for the Creation of an Enabling Environment for Civil

Society Development 2006-2011, which was drafted in close government-civil society cooperation. This Strategy and the related Action Plan initiated important positive changes in the legal, institutional and financial framework for civil society development, especially by improving the standards of public consultations, which gradually opened space for an increased role of civil society at all stages of public policy implementation. In addition, by the beginning of the EU accession negotiations, the Croatian system of public funding for advocacy CSOs was well established, particularly due to the National Foundation for Civil Society Development's schemes of multi-annual operating grants for CSOs acting as watchdogs in the areas of good governance, rule of law, human rights, democratisation and related areas. In combination with substantial EU funding schemes, this provided strong impetus to building capacities of CSOs for monitoring the performance of public administration in implementing EU *acquis* reforms.

Besides, the Croatian institutional set-up for promoting government-civil society dialogue, in the forms of Council for Civil Society Development (set up in 2002) and Government Office for Cooperation with NGOs (established in 1998), kept opening new opportunities for debates on the progress of EU *acquis* related reforms and contributed to gradual transformation of styles of governance across public administration bodies.

In addition to creating more favourable legal, institutional and financial environment for the work and development of civil society as well as for CSO-Government dialogue, one of the key challenges for effective CSO's engagement in formulating new policies and monitoring of the implementation of crucial reforms was the timely access to information, proactive transparency and opening relevant data held by public sector. Due to an accelerated pace of the EU accession process, with most legal acts being adopted through urgent procedure, the CSOs' influence on policy formulation was rather limited.

On the other hand, many government bodies established permanent advisory bodies enabling more objective oversight of the implementation of key strategic documents within their field of work. For the purpose of following the progress of reforms foreseen by the National Strategy of Public Administration Reform 2008-2011, National Council for the Evaluation of Modernisation of Public Administration Reforms was set up. Apart from Government and Parliament representatives, the Council gathered also members from civil society, academic community and trade unions and served as the formal institutional mechanism for monitoring key civil service reforms. The final evaluation of the Strategy implementation showed that 89% of measures were implemented. The progress of the

Strategy implementation was closely followed by the National Anti-Corruption Council where CSO representatives were present, too.

Building capacities of CSOs for monitoring public administration reforms during EU accession process

Despite rather limited access of CSOs to policy formulation during EU accession negotiations, specific characteristics of the country's accession process based on strict and systematic benchmarking and reporting on the implementation of the formally adopted EU *acquis*, the scope for civil society's contribution and active participation has significantly increased at the stage of implementation, monitoring and evaluation of public policies. In order to ensure the availability of independently gathered evidence on the actual implementation of the public administration reforms, the EU, under the IPA 2008 programme, supported grant schemes focused on building capacities of civil society organisations for monitoring transparency, openness and accountability of public administration bodies.

The strengthened capacities of CSOs for securing adequate feedback from constituencies, end-users or beneficiaries of public services and to produce reasonably independent shadow monitoring reports for the Progress Reports of the European Commission, provided CSOs with valuable entry tickets to domestic policy-making arenas. As these grant schemes were co-financed by the Croatian Government, this was also a formal recognition of the valuable contribution of watchdog and advocacy initiatives to building internal Croatian capacities for monitoring key policy reforms and strengthening credibility of country's efforts undertaken during the EU accession process (Vidačak and Škrabalo 2014: 173-174).

In addition to EU funds driven monitoring, a network of 70 civil society organisations was established as a national watchdog coalition Platform 112, with the aim of ensuring joint monitoring of the closing of accession negotiations in Chapter 23, throughout the year of 2011. In the absence of the access to official documents on the progress of negotiations and negotiating positions, the Platform 112 monitoring activities were enabled by a leakage of closing benchmarks which provided a framework for detailed shadow reports focused on shortcomings in actual implementation of government commitments as well as on other problems in the policy fields which have not been adequately addressed in the scope of accession. The positive experience of this complex collaborative monitoring of Platform 112, followed by substantial media coverage and high responsiveness of the EU officials and,

eventually, Croatian government, served as a basis for setting up a new government monitoring agenda with focus on reform tasks to be pursued upon accession.

Platform 112 monitoring activities were particularly significant during the final stage of the EU accession ratification process because they kept re-opening space for civil society-government dialogue on the most difficult reforms in the country. It is precisely the regular practice of dialogue and the regular debate on evidence-based CSO monitoring reports that proved to be the most effective capacity-building exercise for both government bodies and civil society organisations.

The Croatian experience showed that many communication and assistance instruments the EU was using throughout the accession process to encourage candidate countries to comply with 'soft' measures and standards in the field of good administration (SIGMA, twinning, technical assistance service projects, etc.) need to be combined with investments in civil society capacity-building, more strict emphasis on access to information, proactive transparency of government bodies and media independence. Finally, investments in CSO capacities need to go hand in hand with appropriate awareness raising and training of top officials and civil servants on benefits of open and transparent dialogue with CSOs on all aspects of civil service reforms related processes. It is only through proactive transparency and openness of data on country's achievements in the area of public administration reforms, in parallel with rigorous monitoring of precise indicators in this area, that sustainable results can be expected.

Exploring various mechanisms for civil society influence on civil service reform

In addition to the activities already mentioned above, this section will provide an overview of other key mechanisms used by civil society to influence civil service reforms, illustrated by concrete case study examples from the EU funded projects. It will be shown that CSOs tend to rely on a combination of various instruments (advocacy campaigns, training seminars, high-visibility events, web monitoring tools, awarding best performers in State bodies, research studies, shadow monitoring reports, taking part in advisory bodies and other institutionalised structures for dialogue, etc.) to ensure greater effectiveness of their efforts.

Awarding best performers in 'good administration' in national and local government bodies

Based on the detailed methodology of monitoring of performance of national public administration bodies (Index of Good Governance, 2012) in the areas of access to information, fiscal transparency and accountability, public involvement in policy-making, managing conflict of interest and other areas relevant for 'good administration', one of the most prominent Croatian CSOs, 'GONG', organised the Award ceremony called 'Right to Good Administration' to reward the top three performers in Croatia's public administration. The ceremony received very good media coverage and contributed to the positive competition among government bodies, raising the awareness among high officials, civil servants and wider public about the standards and principles of 'good administration'.

Since 2009, similar research was conducted by GONG and Association of Cities every two years among local government bodies. The research is focused on the transparency and openness of the work of regional and local government units (LOTUS project findings, 2012). The findings of the LOTUS research regularly receive a lot of media attention, and are often quoted by local politicians as proof of transparent work of their local administrations, which confirms the influence of this research.

Within the framework of the EU IPA funded project, GONG also conducted thorough research on public administration reforms in Croatia, focusing also on the quality of the civil servants' recruitment process and various aspect of the de-politisation and professionalisation of civil service.

Civil servants' integrity observers – web tool for monitoring public procurement practices in Croatia

The association Partnership for Social Development developed an advanced database for monitoring the integrity of civil servants in conducting public procurement both at national and local administration levels (<http://integrityobservers.eu>). In addition, partnership agreements were established with selected cities and municipalities for joint monitoring of the integrity in public procurement. Finally, a series of training seminars on the application of integrity standards were organised for local and national governments' civil servants.

Developing partnership agreements with government bodies for improving transparency and preventing conflict of interest

Within the framework of the IPA project 'Civil Society and Public Institutions – Partners in Increasing Transparency through the Elaboration and Implementation of Conflict of Interests Prevention Policy', Transparency International Croatia designed and delivered training programme for civil servants on effective ways of recognising and preventing conflicts of interest. Besides, a manual was designed for civil servants, gathering best practices from EU member states.

This was followed by signing agreements with relevant ministries for joint monitoring of transparency standards and improving the effectiveness of conflict of interest prevention policy.

Encouraging transformation of governance styles through training seminars for local civil servants

Within IPA 2008 project: 'Active Civil Society – Guarantee for Real Reforms', the Association Cenzura Plus conducted 17 training workshop for local civil servants on effective and meaningful public consultations on local policies; improving access to information at local government level; raising awareness on integrity and anti-corruption standards, and good administration principles. Besides, advocacy letters on implementing high standards in the above mentioned areas were sent to hundreds of local government units. Finally, detailed research on the citizens' perception of public administration performance was conducted and results widely disseminated.

In general, the above-mentioned EU funded projects increased the capacities of CSOs and raised their profile and influence in domestic policy arenas, both at national and local levels. Very often ministries started to show greater readiness for cooperation with CSOs due to relevant research analysis and high public visibility of events where research findings were presented. Nevertheless, the sustainability of results of these projects largely depends on the availability of alternative sources of direct and indirect funding of public advocacy CSOs working in the areas of anti-corruption and public administration reforms which require highly developed skills and specific expertise, but also stronger relations with academic community

and solid potential for mobilisation of wide spectrum of volunteers. In this regard, a very advanced legal and institutional set-up for public funding of CSOs in Croatia, both from domestic and decentralised EU funding, proved to be very beneficial. Here it is particularly important to point out the role of the National Foundation for Civil Society Development, predominantly managed by independent non-profit sector experts, which provides three-year operating grants for a number of 'watch-dog' CSOs, helping them constrain mission drift and ground their activities in core values.

Prospects for post- EU accession contribution of CSOs to civil service reforms

By the end of the EU accession negotiations and following extensive civil society advocacy efforts, the Croatian Government adopted several strategic documents that provided additional impetus for horizontal reforms of public administration, openness, transparency, accountability and inclusive public policy-making. In April 2012, an Action Plan for the implementation of the initiative Open Government Partnership in the Republic of Croatia 2012-2014 was passed. Besides, after a one-year long process of public debate, the National Strategy for creating an enabling environment for civil society development for the period 2012-2016 was adopted in July 2012, as a result of a broad consensus among civil society, government and business representatives about the strategic priorities in this area until 2016. The National Strategy introduced, among others, new measures for strengthening capacities of civil servants for effective involvement of CSOs and interested public in policy formulation and implementation. These two strategic documents launched a number of important legislative changes, including the new Law on Access to Information which also paved the way for more systematic progress in the area of proactive transparency, open data and conducting meaningful stakeholder consultations at all levels of public administration. Besides, changes of Rules of Procedures of Government and Parliament were adopted to ensure greater accountability and openness of all public bodies, but also to promote greater responsiveness to inputs gathered from civil society and other stakeholders, as one of the key prerequisites for ensuring durability of reforms undertaken during the EU accession process.

Upon accession, as part of fulfilling ex-ante conditions for using European Union structural funds, namely European Social Fund, new Strategy of Public Administration Reform 2015-2020 started to be developed, in close collaboration with the representatives of civil society organisations. After series of public consultations, the Strategy was adopted by the Croatian

Parliament in June 2015. It puts strong emphasis on modernising citizen-oriented public services and improving human resources management and merit-based recruitment processes in civil service, in partnership with key stakeholders in society. The adoption of the Strategy paves the way for the programming of approximately 100 million Euros from the European Social Fund for 'better governance' related reforms.

Finally, one of the most significant post-EU accession reforms undertaken by the Croatian Government relates to a series of new e-public services launched within the framework of the e-citizens project, which directly responds to most essential European public administration principles, contributing to better policy-making, improved service delivery and enhanced citizens and CSO participation in strategic development and implementation of public administration reforms.

Among key components of the e-citizens project, one should particularly stress e-consultations portal (esavjetovanja.gov.hr), which introduced radical transparency of policy-making in Croatia, enabling open monitoring of the quality of performance and responsiveness of government bodies by civil society and the wider public. The annual reports on public consultations on new laws, other regulations and acts, conducted by the Croatian Government bodies in the period 2010-2014 (as one of the indicators of openness of public administration), shows a significant progress in proactive transparency and open policy-making achieved in the post-EU accession period. Namely, in 2014 Croatian government bodies launched 544 public consultations, which is an increase in 1033% compared to 2011 when only 48 public consultations were organised. During that four-year period, there was also a 4000% increase in number of contributors to public consultations (Croatian Government Report, 2014). Citizens, CSOs and various interest groups are showing growing interest in discussing draft policies. Increasingly high expectations of performance of government bodies in this area, especially when it comes to the quality of the government feedback on the reasons for not accepting certain written proposals for amendments of draft legal acts, have contributed to gradual transformation of styles of governance and building competences of civil servants for more open and inclusive dialogue.

Besides, the open data portal was launched, providing new incentives for the proactive publishing of data held by public sector, with the aim of encouraging the re-use of data for economic purposes, but also to offer civil society and other interested stakeholders new tools for effective oversight of the work of public administration. In the first few months, more than one hundred data sets were published in re-usable, machine readable formats, while

other datasets are being prepared, based on consultations and demand from citizens, civil society, business sector and academia. One can only imagine positive effects of the re-use of open data relevant for civil service reform trends (recruitment, profiles of civil servants, detailed budget spending, salaries, etc.) not only for academic research, but also for the quality of the overall monitoring of the professionalisation of civil service by actors of organised civil society.

Concluding remarks and recommendations

This article has highlighted a number of possible mechanisms civil society can use to influence public administration reforms both before and after the accession, such as advocacy campaigns, training seminars, high-visibility events, web monitoring tools, awarding best performers in State bodies, research studies, shadow monitoring reports, taking part in advisory bodies and other institutionalised structures for dialogue, etc. Some of these instruments are driven by EU-funded projects, while others are genuine products of domestic circumstances and policy processes.

Without any doubt, a number of the EU funded projects increased the capacities of CSOs for participating in the development and monitoring of civil service reforms and contributed to raising CSOs' profile and influence in domestic policy arenas, both at national and local levels. However, in order to be durable and effective, these investments in CSOs' capacities need to go hand in hand with appropriate awareness raising and training of top officials and civil servants on benefits of open and transparent dialogue with CSOs in all areas of civil service reforms related processes.

The overview of Croatian experience confirms that the sustainability of mechanisms for active involvement of civil society in the public administration reform processes in the post EU accession period largely depends on the readiness of governments to ensure higher level of proactive transparency and open data, but also to promote more enabling legal, financial and institutional environment for civil society involvement in public policy-making.

Institutionalising various forms of the structured dialogue with civil society, establishing mechanisms of independent oversight and joint monitoring of key civil service reforms may lead to higher degree of rule effectiveness and, eventually, to the irreversibility of reforms.

References

- European Commission (2014) *DG Enlargement Guidelines for the EU support to civil society in enlargement countries 2014-2020*. Available at http://www.tacso.org/doc/doc_guidelines_cs_support.pdf
- European Commission (2014) *Enlargement Strategy and Main Challenges 2014-2015*. Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: COM(2014) 700 final, 8.10.2014 Brussels. Available at http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-strategy-paper_en.pdf
- GONG (2013) *Indeks dobrog upravljanja u Hrvatskoj – rezultati istraživanja*. Zagreb. Available at http://www.gong.hr/media/uploads/duh_izvjestaj.pdf
- GONG (2013) *Pretpostavke uspješne provedbe reforme državne uprave u Hrvatskoj - Analiza ključnih dionika reforme*. Zagreb. Available at http://www.gong.hr/media/uploads/q_izvjestaj_final_04-03-2013.pdf
- GONG (2012) *Nalazi istraživanja 'Lokalna odgovorna i transparentna uprava i samouprava – LOTUS*. Zagreb. Available at <http://www.lotus.gong.hr/>
- Meyer-Sahling, J.-H. (2012) *Civil Service Professionalisation in the Western Balkans*. SIGMA Paper No 48. Paris: OECD Publishing. Available at [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=GOV/SIGMA\(2012\)1&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=GOV/SIGMA(2012)1&docLanguage=En)
- SIGMA (2014) *The Principles of Public Administration*. Available at <http://www.sigmaweb.org/publications/Principles-Public-Administration-Nov2014.pdf#page=10>.
- Strategija razvoja javne uprave za razdoblje od 2015. Do 2020. Godine (Narodne novine br. 70/2015)
- Jadranka, J. (2009) Glavni rezultati provedbe Strategije reforme državne uprave, *Hrvatska javna uprava* god. 9. (2009.), br. 1., str. 29–43
- Vidačak, I. and M. Škrabalo (2014) Exploring the Effects of Europeanization on the Openness of Public Administration in Croatia. // *Hrvatska i komparativna javna uprava - Croatian and Comparative Public Administration*. 14 (2014) , 1; 149-187
- Vlada Republike Hrvatske (2015) *Izvešće o provedbi savjetovanja sa zainteresiranom javnošću o nacrtima zakona, drugih propisa i akata u 2014. godini*, usvojeno na sjednici Vlade 5.3.2015. Available at www.vlada.gov.hr
- Vlada Republike Hrvatske (2015) *Izvešće o provedbi Akcijskog plana za provedbu inicijative Partnerstvo za otvorenu vlast u Republici Hrvatskoj* usvojeno na sjednici Vlade 7.10.2015. Available at www.vlada.gov.hr
- Vlada Republike Hrvatske (2015) *Izvešće o provedbi Nacionalne strategije stvaranja poticajnog okruženja za razvoj civilnog društva*, usvojeno na sjednici Vlade 23.7.2015. Available at www.vlada.gov.hr

Chapter 10

The role of civil society in promoting and monitoring the civil service reform: The case of Institute Alternative

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Introduction

The role of civil society in promoting and monitoring the reform and professionalisation of the civil service and public administration reform (PAR) in general has so far been underestimated. The research on this topic in the Western Balkans has been scarce; mainly due to the fact that CSOs, in their nascent period during the transition from communism in the early 1990s, have been characterised by a watchdog function, which do not go into the nitty-gritties of the analysis of policy-making and implementation. Nonetheless, in recent years there has been an increase in the number of non-governmental actors that engage in policy research including comprehensive work in the area of good governance.

With the European Union (EU) attaching more importance to PAR, as reiterated in its most recent Enlargement Strategy (European Commission, 2015), and formulation of the Principles of Public Administration (SIGMA 2014), the professionalisation of civil service gains even more importance and requires a sound focus of civil society. Despite the sometimes overly technical requirements of the EU accession process, most of the PAR principles are closely related to a more professional civil service, which is of high relevance for the overall democratisation of the region, especially in the Montenegrin context of allegations that public sector employment is often used in exchange for electoral support (Freedom House 2015).

The formulation of Public Administration Principles for EU Enlargement countries compensates for the lack of an *acquis* in this area and, along with other initiative and regional goals, including the criteria grouped under the cross-cutting pillar Governance for Growth of the Development Strategy South East Europe 2020, provides a framework for streamlining a research and monitoring methodology of CSOs with regards to civil service professionalisation.

Given this background and context of increased awareness on importance of PAR, this paper aims to provide an overview of potential activities of CSOs in the field. It is an insider's perspective on the potential tools for monitoring, research, advocacy and communication campaigns which can be pursued by non-governmental actors. It further discusses the position of civil society organisations and the mechanisms through which they are able to influence the course of civil service reforms directly and/or in collaboration with the EU and other international organisations. Well-organised monitoring and in-depth research grouped with well-targeted communication campaigns and advocacy remains a winning formula for CSOs to engage in PAR in the region. In other words, experience of IA shows that communication towards both national and international stakeholders and wider citizens-oriented campaigns, anchored in evidence-based policy research, only have a wider effect if grouped together. The remainder of the chapter provides a more detailed overview of IA's most notable achievements, with the specific lessons for CSOs on how to get involved in PAR in general and civil service reform specifically.

IA's Pioneering Efforts in Reforming Montenegro's Public Administration

Civil society engagement in public administration reform (PAR) has been for many years heavily neglected in Montenegro. NGOs were engaged in PAR only via few *ad hoc* efforts that were donor driven and with limited success. IA (founded in 2007) identified PAR as one of its key research pillars and introduced a number of research, monitoring, publishing, and communication and advocacy actions.

The overall objective of IA's PAR programme is to improve efficiency, effectiveness and accountability of public administration (government, local government, public services). This program has been especially dedicated to harmonisation of legislative framework and practices with the principles of European administrative space, organisation and rationalisation of public administration; merit based recruitment and career advancement as well as the quality of the law making and policy development.

Since 2009, IA produced several analytical papers, monitoring reports, commentaries on draft legislation, inputs and commentaries on draft strategic documents, took part in the PAR Strategy Working Group and participated in the Working Group on drafting the Law on Civil Service and State employees (ZDSIN). IA engaged in cooperation with the Ministry of

Interior via a Memorandum on cooperation signed in 2013, communication and cooperation with OECD-SIGMA and direct communication with the European Commission.

In December 2012, IA published a comprehensive analysis, which covered PAR efforts in Montenegro conducted between 2002-2009 and an initial track record of the PAR Strategy 2011-2016 (Muk et al 2012). The analysis is also a good example of the manner, in which civil society can compensate for the lack of official reports on the reform progress, since the PAR strategy was scarcely monitored by the government. In addition, this comprehensive, baseline analysis provided substantial resources for further activities within the PAR area.

In addition to the Civil Service Reform oriented activities, IA has recently completed the region-wide research project 'Performance Audit and Policy Evaluation: On the Same or Parallel Tracks' which was supported by the Regional Research Promotion Programme in the Western Balkans (RRPP) and financed by the Swiss Agency for Development and Cooperation (SDC). The project is implemented by TEN (Think for Europe) members and lead by the Belgrade-based Center for European Policy (CEP), the Skopje-based European Policy Institute (EPI) and IA.³⁵ Currently, IA also implements the project '*Governance for Montenegro's Growth - It Depends On Us!*', which is implemented with funding by the Regional Cooperation Council (RCC) under the RCC's South East Europe 2020 Strategy.

Civil Service Reform

The most important IA actions in the area of civil service reform are the monitoring of recruitment and promotion of civil service and the analysis on human resources management at the senior civil service level. Apart from acting as watchdog and meeting a policy research function, IA has offered practical advice for prospective and current civil servants by developing a series of info-graphics, which explain in details recruitment procedures and the framework for the protection of candidates' legal rights. In addition to this, IA, in mid-2015, launched a separate website mojauprava.me with a section that allows whistle-blowing against malpractices in the civil service.

The IA's most recent Monitoring Report on Recruitment and Promotion in the Civil Service was published in May 2015 (Milošević 2015). The publication revealed that 'two years into implementation, the contribution of the Law on Civil Servants and State Employees towards

³⁵ For more details, see <http://www.rrpp-westernbalkans.net/en/research/Current-Projects/Governance/Performance-Audit-and-Policy-Evaluation--On-the-Same-or-Parallel-Tracks-.html>

establishing a merit-based employment system in state administration has been limited due to inconsistent application of new rules and poor competition for vacancies'. It was further noted that the low competitiveness of the recruitment procedure and the wide use of discretionary rights by heads of state authorities to select from the list of top five candidates has undermined efforts to establish a merit-based recruitment system.³⁶

The Report also showed that the promotion of civil servants and state employees is virtually non-existent because, during the reporting period, not a single decision on promotion was passed. This suggests that the legal provision allowing promotion only into the next higher pay-grade is not the right solution for motivating and retaining highly skilled staff.

According to the report, in 2014 the number of complaints against heads of authorities' decisions has more than doubled compared to 2013. A big portion of the complaints has been filed against decisions on the selection of candidates, decisions on re-assignment and the performance appraisal. Out of the 322 complaints and decisions that IA analysed as many as 222 were upheld. Most complaints were adopted due to formal mistakes by state authorities when administering the recruitment procedure.

Transparency, apart from the responsiveness to the recommendations and criticism coming from the civil society, is one of the key features of public administration, which determines the manner in which the relations between institutions and civil society will evolve. With regards to the monitoring of human resource management practices in the civil service, the transparency of lists of ranked civil servants was at a relatively high level.

However, it is more difficult to obtain data from state authorities, due to the high costs of accessing the information. With CSOs struggling to ensure financial sustainability and with some projects amounting to only few thousands Euros, it is challenging to budget costs for access to information. For example, IA had to pay over 500 Euros for obtaining the data required for the 2014 monitoring of recruitment and promotion in state authorities. Old-fashioned data management further implies that state authorities are not accustomed to keeping files in electronic format and hence not allowing the use and re-use of data.

³⁶ For similar findings, see the ReSPA HRM study (Meyer-Sahling et al 2016).

Senior Civil Servants: Serving the Party or the People?

Another good example of civil society's engagement in PAR is IA's analysis 'Professionalisation of the Senior Civil Service in Montenegro: Between State and Politics' (Milošević 2014). The analysis, which scans the most important aspects of the senior civil service from recruitment and dismissals to the performance appraisal, political neutrality and professional trainings argues that Montenegro has only formally set the boundary between professional functions and political appointments in state administration. It further notes that, despite certain amendments, the legal framework is still plagued by inconsistencies and imprecise norms that have an adverse effect on the overall efforts towards professionalising the state administration.

According to the existing regulation, senior civil servants do not need to be experts or specialists in the area they cover. On average, they are typically required to have an undergraduate degree in social sciences and have at least three years of working experience in managerial positions or positions requiring autonomy. The awareness of the need for their further professional development is low, which results in their very low participation in trainings offered by the Human Resources Management Authority.

The legal framework is ridden with shortcomings especially when it comes to conditions for dismissal of heads of authorities. Performance appraisal of senior managers is superficial and is not anchored in specific benchmarks, which would allow planning of their professional development and assessment of specific competencies. The rigid wage policy for state management staff also leaves little room for flexibility and additional stimuli. As a consequence, relatively low salaries are often been supplemented through additional remuneration for membership in various working bodies and state enterprises' managing boards.

Another reason for concern raised in the analysis is that 'the nominally professional nature of the senior civil service is in reality subject to direct political influence through informal practices'. A considerable number of senior civil servants, at least 90 of them, are members of managing and advisory bodies of political parties currently in power. This indicates that Montenegro's senior civil service firmly under control of the ruling parties. One of the key recommendations of the analysis is the adoption of a special competency framework for senior civil servants, which would contain a list of all the necessary skills senior civil servants

must possess. This would be a good starting point for further professionalisation of these positions (Milosevic 2014).

My Administration (mojauprava.me)

The interactive online platform My Administration (mojauprava.me) was launched by IA within the project ‘State Administration in Montenegro – Equal for All!’ and financially supported by the US Embassy in Podgorica. Since its establishment, 17 well-argued complaints have been submitted. These complaints have a twofold purpose: By revealing the implementation of procedures on the ground, they increase transparency of human resource management and understanding of the procedures, in addition, however, they are valuable research input, which provides evidence for further advocacy activities by IA.

According to the complaints submitted to ‘moja uprava’³⁷, testing procedures and dis-respect for the ranking lists of civil servants at the end of the recruitment procedure are the most common causes of dissatisfaction among candidates for jobs in state authorities. Candidates often express their dissatisfaction for not being selected for the position even though they received the highest ranking after the testing procedure despite the fact that the Law on Civil Servants and State Employees stipulates that the top-ranked candidates should be recruited. Only exceptionally, with special justification and after an interview, the head of authority can select another candidate. However, the cases submitted via the My administration platform suggest that justifications are either often missing or not convincing. Namely, decision-makers often refer to criteria, which have already been scored through skills assessment, and favour candidates who have already worked at the state authority or use largely subjective categories such as personal impression and motivation as decisive for recruitment of specific candidate.

These cases corresponded to the findings of our Monitoring Report Recruitment and Promotion in State Authorities. Other complaints that have been addressed to our organisation mostly refer to irregularities during the testing procedures and incorrectly scored tests. Candidates also warned that some candidates have privileged access to practical tests for testing competences for a given job, which are being prepared by the hiring authority and thus lack external scrutiny. The testing should hence be performed by the Human Resource Management Authority (HRMA).³⁷

³⁷ The most illustrative complaint, in this respect, states: ‘You can do the general part of the testing procedure perfectly but when it comes to the special part, it is very difficult to pass because you don’t know what to study or

The contribution to the proper implementation of the law can be achieved by other means as well, which is demonstrated by IA's approach to disseminate information and advice to all interested citizens. IA prepared a guide for candidates of jobs in state authorities. 2,000 copies were printed and distributed with the assistance of the Human Resources Management Authority. This activity also demonstrates a strategy of completing civil society's engagement from silent observer, researcher, to a watchdog that offers practical assistance and compensates for the lack of monitoring capacity by of official institutions. These institutions, indeed, are often overburdened with other work.

CSO Communication and Advocacy

As advocacy aims to move ahead from output (policy briefs, for example) to outcomes (a change of law or practice, for example), it is difficult to plan and difficult to foresee what will be needed to achieve this kind of impact. CSOs often have no information when best to interact with decision-makers or what kind of activity will be requires. When creating a project budget, CSOs are encouraged to focus on specific, measurable outputs and outcomes but budgeting an advocacy campaign is rarely possible because at the time of planning the research it is hard to know what kind of advocacy strategy will be most suitable.

IA has employed various strategies to communicate its findings and reach policy-makers. Government officials consider CSO engagement as barrier for effective law making and favour more receiving comments from outside (EC) than engaging in domestic policy debate. In order to build trust between two sides and to persuade policy-makers that civil society acts in line with high-level professional ethics, we most often provide draft versions of our policy papers for review. Recently, we have also used closed type policy events to discuss certain findings and recommendations with policy-makers. Such events provide more room for discussion with government officials and civil servants, since they are much more open and eager to engage in high-quality, honest dialogue in the situations when they are not subject of public pressure and media attention.

CSO have a responsibility to keep their full independence and provide a critical view of government actions when appropriate. IA engages in public debates and provides strong, evidence-based criticism of government actions with regards to civil service reform and

what literature you should use (the state authority won't provide that information). Only the one for whom the position is kept (and 98% of public announcements are 'set up') knows the questions and often even the answers, in advance, bearing in mind that the officers for personnel affairs prepare the questions'.

PAR. Some illustrative examples include the reaction to the draft PAR strategy for the period 2016-2020. The debate urged authorities to allow for more substantial contributions from the public and pointing out cases of wrong-doing related to senior civil servants, which are not necessarily illegal but do not follow the principles of human resources management aimed at professionalisation.³⁸ It is disappointing that during the 2015 public consultations about the new PAR Strategy for Montenegro, only two CSOs provided written comments to the draft text. It suggests the need for more active involvement of CSOs and awareness raising in order to increase the level of understanding that this reform is of utmost importance.

Still, one of the most efficient ways to communicate CSO findings is via European Commission, by comments and contributions to the reports issued on progress and level of preparedness of the countries in light of the EU membership talks. The new methodology for the preparation of country reports, which has been applied in 2015 and which also highlights PAR as an area of major interest, should be regarded as a clear signal for CSOs to boost their capacities in the field of good governance. Therefore, EU integration backed by domestic pressure from CSOs and professional civil servants and freed from undue political influence are the most powerful instruments for promoting change in public administration.

Conclusion

Civil society organisations undoubtedly have an important role in PAR and Civil service reform, especially, in a relatively small country such as Montenegro, which inevitably suffer from limited administrative capacities and thus require not only external scrutiny but also external support. This support is multifaceted and may, as IA's record suggests, vary from policy monitoring, research and analysis to the use of innovation tools and technologies in order to bridge the gap between citizens and public bodies. Therefore, civil society should use multiple channels to advocate change. These channels include Working Groups (Government and Parliaments), as demonstrated by the examples of IA's participation into the Working Groups for the PAR Strategy or amendments to the civil service law. Closed type policy dialogue events with stakeholders provide a space for honest exchange of views and recommendations and can be used as a soft advocacy tool for passing the necessary policy decisions. Nonetheless, in the context of the still not adequately transparent and responsive institutions, wider public pressure and continuous evidence-based advocacy are often a must. Coalitions with other NGOs and partnership with media in this respect is added

³⁸ For more details, see <http://institut-alternativa.org/reagovanje-visoki-rukovodioci-nijesu-licna-svita-ministara/?lang=en>.

value of each advocacy campaign. Experience of Institute Alternative shows one of the possible paths for proactive engagement in PAR. Governments should not only improve openness for CSO inputs and activities but also support further capacity-building and specific project activities.

Recommendations

1. CSOs should be more actively engaged in PAR and in the countries of the region,
2. They should promote the Principles of Public Administration (Public Service and Human Resource Management) and use them as a framework for their further activities along with other region-wide activities such as the SEE 2020 Strategy,
3. Public bodies should uphold the Open Data Initiative and improve their data management in order to allow for a greater accessibility of information to CSOs,
4. They should also improve responsiveness to civil society inputs by improving public consultations and coordination of policy and law-making procedures,
5. Governments and parliaments should design public funding programs for the support of CSO capacity-building and specific PAR related projects,
6. CSOs should explore opportunities for regional communication and cooperation in PAR related projects and activities,
7. ReSPA should continue to collect and provide information and experience of CSOs engaged in PAR,
8. ReSPA should promote opportunities for cooperation between CSOs and national governments from a regional perspective.

References

- European Commission (2015) Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions: EU Enlargement Strategy, Brussels. Available at http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_strategy_paper_en.pdf
- Freedom House (2015) *Nations In Transit: Montenegro*. Available at https://freedomhouse.org/sites/default/files/NIT2015_Montenegro_0.pdf.
- Meyer-Sahling, J.-H. (2016) Merit Recruitment in the Western Balkans: How to Improve the Quality of Implementation? In *Professionalisation of the Civil Service between Politics and Administration*, idem (Ed.). Danilovgrad: ReSPA Publications.
- Meyer-Sahling, J.-H.; Mikkelsen K.S.; Ahmetovic, D.; Ivanova, M.; Qeriqi, H.; Radevic, R.; Shundi, A.; Vljakovic, V. (2016) *Improving the Implementation of Merit Recruitment Procedures in the Western Balkans: Analysis and Recommendations*. Danilovgrad: ReSPA Publications. Available at www.respaweb.org.
- Milošević, M. (2014) *Professionalization of the Senior Civil Service in Montenegro: Between State and Politics*. Podgorica: Institute Alternative.
- Milošević, M. (2015) *Monitoring Report: Recruitment and Promotion In State Authorities In 2014*. Podgorica: Institute Alternative.
- Muk, S., Marović, J., Marić, B., Popović, M., Milošević, M. and Sošić, M. (2012) *State Administration Reform in Montenegro: Between Ambitious Plans and Real Possibilities*. Podgorica: Institute Alternative.
- SIGMA (2014) *The Principles of Public Administration*. Paris: OECD Publishing. Available at <http://www.sigmaweb.org/publications/Principles-Public-Administration-Nov2014.pdf>.
- Ubaldi, B. (2013) *Open Government Data: Towards Empirical Analysis of Open Government Data Initiatives*. OECD Working Papers on Public Governance, No. 22. Paris: OECD Publishing. Available from: <http://www.oecd-ilibrary.org/docserver/download/5k46bj4f03s7.pdf?expires=1447770164&id=id&accname=guest&checksum=AD0819BA72D917F555DB4452CB9E3D3E>