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SERBIA

PUBLIC SERVICE AND THE ADMINISTRATIVE FRAMEWORK

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Introductory Note

The following report provides an update of the Sigma report delivered to the EC in summer 2006; i.e. it provides information on developments between June 2006 and June 2007. The report has been restructured so as to cover only the Republic of Serbia, thus taking account of the separation of Serbia and Montenegro in the summer of 2006.

The country's administrative culture is historically based on the Austrian tradition. There is a strong legal orientation, which is reflected in the large volume of general administrative legislation. However, possibly due to past political developments, Serbia is still struggling with an institutional culture and practices that foster opaqueness, non-cooperation, inefficiency, and politicisation in a large part of the public administration.

Despite the political stalemate since autumn 2006, significant progress has been noticeable insofar as the further development and implementation of the civil service legal framework is concerned.

Administrative Legal Framework

Constitution

After several failed attempts, parliament finally promulgated a new Constitution on 8 November 2006. Consensus on the new Constitution between the various political parties was mainly triggered by the political situation regarding Kosovo, rather than by the substantive content of the Constitution itself. Nevertheless, the new Constitution is in most parts in line with constitutional standards. Despite an otherwise rather positive judgment, the Venice Commission complained about contradictory and unclear provisions in the Constitution; it was mainly concerned about the regulation of guarantees of the autonomous provinces. The Commission also complained about the absence of a reliable translation. After its adoption by the National Assembly on 30 September 2006, the new Constitution was the subject of a referendum on 28 and 29 October 2006. The final result of the referendum was 53.04% in favour of the new Constitution. On 10 November 2006 the National Assembly adopted the Constitutional Act on the Implementation of the New Constitution of Serbia, which regulates the terms of electing the members of the National Assembly and the members of the new Supreme Cassation Court and also includes transitional provisions.

The Constitution contains only two articles on public administration, articles 136 and 137. Article 136 on the status of the public administration states that the administration is independent, bound by the Constitution and the law, and responsible (accountable) for its work to the government. In addition, according to this article the tasks of administrative bodies as well as the number of ministries are to be stipulated by law, while the internal organisation of ministries and other public bodies and organisations is to be regulated by the government. Article 137 on the public administration provides for the delegation of public powers and public services.

The Constitution contains an article on the Civic Defender (Ombudsperson), which gives this institution a constitutional status. The respective law had already been adopted in 2005.

The section on the courts regulates that courts are organised by law as courts of general and special jurisdiction (article 143); the Constitution does not define the courts of special jurisdiction, e.g. administrative courts.

The High Judicial Council (articles 153 to 155), established as an independent and autonomous body of 11 members, is to provide for and guarantee the independence and autonomy of courts and judges. The judiciary function is independent and responsible only to the Constitution and to the law; judges are independent, non-transferable and cannot be held responsible for their expressed opinions or for voting when in the process of passing a court decision. The status and organisation of the Prosecutor's Office and of the prosecutors themselves are similar to the status and organisation of courts and judges (articles 156 to 165). The Constitutional Court is an

autonomous and independent state body responsible for protecting constitutionality and legality, as well as human and minority rights and freedoms; its decisions are final, enforceable and generally binding.

Territorial organisation is regulated in part 7 of the Constitution, as are provincial autonomy and local self-government. Autonomous provinces and local self-government units (municipalities, towns and the City of Belgrade) have the status of legal entities. Substantial autonomy is guaranteed by the Constitution; however, this autonomy can be restricted by ordinary law, which under the given circumstances is unacceptable.

Constitutionality and legality is regulated in articles 194 to 202. These articles set out important legal principles for the functioning of the public administration, namely the hierarchy of legal acts, their publication, prohibition of retroactive effects of general normative acts, and the legality of the administration. The legality of final individual administrative acts, which decide on a right, duty or legally grounded interest, is subject to judicial review.

Ordinary legislation and regulations

The old Yugoslav laws – on *administrative procedures* and *administrative disputes* – are still in force. These laws were based on the pre-Yugoslav, Austrian legal framework. New drafts of these laws were produced in 2004 and submitted for public consultation. Comments to improve these drafts and to ensure their alignment with common standards were provided; however, no further action was taken by the Ministry of Public Administration and Local Self-Government (MPALSG). An ongoing CARDS project is aimed, inter alia, on assisting this ministry in reviewing and redrafting the General Administrative Procedures Law, however, the minister of the outgoing government decided not to take it any further.

New laws on the *Government*, the *State Administration*, and *Agencies* were adopted by parliament in 2005.

A *Law on Freedom of Information* was passed in early autumn 2003.

The *Law on the Prevention of Conflict of Interest in the Discharge of Public Office* was adopted in April 2004. The necessary by-laws were adopted in early 2005. The Republic Committee for Resolving Conflict of Interest held its first session on 18 January 2005.

A *Law on the Civil Defender* (Ombudsperson) was adopted in September 2005. A Council for Data Protection and an Anti-Corruption Council exist. The latter is an expert advisory body that is responsible for monitoring activities and proposing measures to prevent and fight corruption.

The *Law on Courts* has been passed by parliament. This law calls for the establishment by January 2007 of special administrative courts and one second-instance administrative court at republic level. However, these courts have not yet been established. For the time being, administrative justice is still delivered by special chambers in the 30 district courts, and the Supreme Court acts as a review instance.

Civil Service Legal Framework

As already mentioned, the new Constitution does not *expressis verbis* mention the civil service; it nevertheless states in article 77 that members of minorities should have the same rights as other citizens in terms of assuming public positions and administering public affairs. It also stipulates that an appropriate representation of members of national minorities should be observed in employment in the public sector.

The outgoing government, under the lead of the Legislative Secretariat, made considerable progress in the area of civil service. A new *Law on Civil Servants*¹ (*Official Herald of the Republic of Serbia*, no. 79/05) came into effect on 1 July 2006. The provisions on institutional and organisational arrangements, which

¹ This law will hereafter be referred to as the Civil Servants Act.

were required in order to fully implement the law, came into force eight days after publication of the law, i.e. in late 2005.

All necessary by-laws, such as decrees on recruitment, classification of positions and performance appraisal, have been adopted, as has a regulation on human resources plans for state authorities.

A new *Law on Salaries* was adopted in 2006 and entered into force in January 2007; the performance pay components of this law will be enforced in 2008 and 2011 after a trial period of the new performance appraisal system.

Currently, led by the Ministry of labour, Serbia is working on job classification and pay legislation for public services (health, education, etc.). A strategy, several pay scheme options, and a law have already been drafted in co-operation with the Ministry of Finance and in co-ordination with the trade unions.

Legal Framework Summary Assessment

There has still not been any progress regarding the Law on Administrative Procedures and the Law on Administrative Disputes. Apart from these two important pieces of legislation that are still missing, Serbia has now adopted an appropriate new general administrative legal framework, including the necessary by-laws. The progress made by the outgoing government and its commitment to public administration reform were remarkable.

1. Legal Status of Public Servants

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

The Constitution provides in article 77 a sound base for equal access to employment in the civil service and in the public service. In addition, it provides for appropriate representation of minorities.

The rights, duties and responsibilities of all civil servants (executorial and appointed positions²) are regulated by the *Civil Servants Act (Official Herald of the Republic of Serbia, no. 79/2005)*. This Act was adopted in September 2005 and came into force in July 2006.

The rights, duties and responsibilities of directly appointed staff, e.g. the General Secretary of the Government but also political advisors, are still regulated by the general Labour Law and by a specific Law on Labour Relations in State Bodies (LRSB) (*Official Journal of the Republic of Serbia, nos. 48/91 and 66/91*) and by many other pieces of legislation, which leaves their status rather unclear. For some time in autumn 2006 there was a clear will of the Government Secretariat for Legislation to draft a new law on functionaries (directly appointed and elected officials), with the support of a CARDS project, but due to work on the new Constitution and possibly to the influence of the parliamentary elections, a decision on this activity was left to the future government.

The new Civil Servants Act represents the core piece of legislation regarding the public service as well as the public administration reform in Serbia. It is generally in line with European standards.

Scope and Implementation

The new Civil Servants Act (CSA) defines the scope of the civil service in article 2 by defining a civil servant, a political appointee and a general service employee (this law does not apply to either political appointees or general service employees); thus the law differentiates clearly between political appointees and civil servants; further clarifications are provided in articles 33 ff. It sets unified principles for the civil service in state authorities, including equal access, the rule of law, neutrality, performance orientation, the merit system and professionalism. The new law fosters depoliticisation and continuity of the civil service. In addition, it creates an obligation for civil servants to take part in in-service training and to improve their knowledge and skills, which should ensure the increased capacity and improved quality of the Serbian administration.

Some special provisions still exist for special services, e.g. for customs and police officers.

2. Professionalism of the Civil Service

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

Recruitment and Promotion

The new Civil Servants Act (CSA) and the respective by-laws call for merit-based recruitment and promotion. This legislation, together with the regulations, clarifies the selection criteria, reduces considerably the positions to be filled by political appointment, and allows for transfers to be used as a

² Appointed positions are senior civil servants' positions, in particular those of assistant minister, secretary of a ministry, director and assistant director of an authority within a ministry, director and deputy of a government service, etc. (see article 33 of the CSA).

career development instrument. Moreover, it opens up the possibility of judicial review of recruitment and promotion decisions.

The new law maintains the obligation for new staff (except those in appointed/senior civil servant positions) to go through a trainee and probationary period, ending with an examination, as a prerequisite for obtaining tenure. The probationary periods are adequate as specified. However, in the past the probationary period was underutilised for training. The Human Resources Management Service (HRMS) has now developed a training programme which includes specific training of trainees. It remains to be seen whether this training programme, coupled with on-the-job training, will have a significant impact on the professionalism of the Serbian civil service in the medium term.

As concerns normal civil servant positions, recruitment is decentralised; however, the HRMS has a monitoring role, and all competition panels are obliged to include a representative of the HRMS. First experience with these panels has shown that panel members are not sufficiently trained to fulfil their tasks and to follow the respective rules and regulations. The HRMS has therefore started to provide training for panel members. With technical assistance it should be possible to ensure appropriate recruitment procedures in the medium term.

The content of the administrative examination has so far covered mainly legal issues and tested basically university knowledge alone. It is foreseen that this examination will in the future also test aptitudes and skills necessary in a professional and efficient public administration and will give some importance to civil service values, such as service orientation, responsiveness, and understanding of the concept of conflict of interest. It remains to be seen whether this intention will be realised quickly.

Senior management positions, as defined by article 34 of the CSA, must now be filled through competition. Internal competition has to precede open competition if the vacant position is in the core administration. An appointment to such a position is only possible if the candidate has passed the professional examination or the judicial examination. This procedure is intended to stop political appointments to senior management positions. In implementing the new CSA, all management positions (approximately 360) that were changed from political appointee positions to civil servant positions have been declared vacant and are currently being refilled through internal competition. After the testing and interviews the High Civil Service Council (HCSC) prepares a shortlist of three candidates, among whom the minister then may choose. Before the general elections³, 30 appointments had been carried out. The HCSC continued its selection procedures while no new government was in place and prepared about 50 shortlists. However, to avoid the suspicion of placing friends, the outgoing caretaker government did not proceed to appoint senior civil servants, and this task has been left for the new government. The deadline for the appointment of these senior civil servants is July 2007 (article 179 of the CSA, one year after enforcement of the law). It will not be possible to meet this deadline, given the long delay without a government. On 21 May the new government extended this deadline to May 2008.

The High Civil Service Council (HCSC) was established in May 2006. Its task is to prescribe types of professional qualifications, knowledge and skills to be assessed in competitions for filling vacancies, the manner of their verification, and the selection criteria. In addition, the HCSC nominates selection panels for senior civil servant positions and conducts disciplinary proceedings for this group. It has also been given the task of developing a code of conduct (not yet done, see below). The HCSC issued a decree on the selection procedure for senior civil servants in June 2006; the first vacancy announcements were issued only in September/October due to the summer break. The HCSC has stated that it will insist on the set prerequisites for senior civil service positions, namely nine years of experience, a university degree, and successful passing of a professional examination; only if these prerequisites are met may a candidate be accepted and participate in the competition. It was indicated that some political appointees, who held and still hold (until the completion of the recruitment process) senior management positions, had hardly finished secondary school, but their political party relations had been instrumental in securing their appointment.

³ The general elections took place in January 2007; the new government was only formed in mid-May 2007.

The current legal and institutional set-up should ensure greater professionalisation of the civil service, in particular the senior civil service. It is a positive move that senior civil servants are required to have experience in public administration and to have passed the examination before being appointed to a senior position. However, consideration could be given to providing the HCSC – in the medium term – with the power to approve the organisation of an external competition and the appointment of an external candidate without a professional examination in exceptional cases. However, in such cases the selected candidate would be obliged to pass the examination within the first six months of his/her appointment; otherwise he/she would have to be dismissed.

Ethnicity and Gender Aspects

The existing general legal framework and the new Civil Servants Act provide for minority rights and gender equality. The CSA prescribes equal access to the public service. There appear to be very few complaints by minorities regarding alleged discrimination or claims to support integration in the public sector workforce. However, judicial review of such complaints is foreseen by law.

Gender issues do not seem to be on the forefront of the agenda. At first glance, far more women seem to be in top management positions than in EU Member States.

Classification of the Civil Service

The Decree on the Classification of Civil Servants and the Decree on the Classification of Employees were enacted by the government on 29 December 2005 and 19 January 2006 respectively. The new classification is based on generally accepted criteria. The system was tested, and benchmark job positions were agreed, described and classified. A large number of job analysts from ministries and administrative district were trained. In addition, line managers were trained in the preparation of job descriptions. The new classification was carried out with a central implementation team, consisting of representatives of the Ministry of Public Administration and Local Self-Government (MPALSG) and of the Human Resources Management Service (HRMS), interministerial panels and job analysts in administrative bodies. It was supported and accompanied by the CARDS project. The new classification/grading was finalised in summer 2006; it has been largely accepted, although a few flaws remain, which are now being reviewed by the HRMS with some technical assistance. Although the HRMS has only a small staff, its training in job analysis, together with the large number of job analysts in ministries and the existing job descriptions for benchmark positions, should enable the appropriate classification of new or changed job positions in the future. The HRMS should also be in a position to monitor proposed systematisations and classification, avoiding overgrading and ensuring a consistent classification across the administration.

Rights and Duties

The CSA has regulated the rights and duties of civil servants in an adequate way in articles 12 to 24. Among other rights and duties, the CSA obliges the civil servant to refuse an illegal order and gives him/her the right to appeal against any ruling that affects his/her rights and obligations. In articles 25 to 31 it regulates possible conflicts of interest and incompatibilities in considerable detail. The application of the Law Governing the Prevention of Conflict of Interest in the Discharge of Public Function to senior civil servants is regulated in article 31 of the CSA.

The rights of civil servants include membership in a trade union. These rights are set out in article 17, which states that additional rights stated in the special collective agreement are to apply. Therefore the right to strike is guaranteed, although not stated, in the CSA.

The law neither allows nor forbids party membership; this issue could be regulated, however, by the special collective agreement.

The obligation of a civil servant to observe legality, impartiality and political neutrality as well as non-discrimination is regulated in articles 1 to 11 (*principles governing the work of civil servants*).

Grievances

In implementing the CSA (art. 142 ff), the Appeals Commission was created in July 2006. Its eight members, civil servants from various ministries, were appointed. The Commission is independent and reports to the Prime Minister. The President of the Commission holds the only full-time position in the Commission. The secretariat of the Commission is provided by the HRMS. The Appeals Commission decides for the whole state administration on appeals of civil servants against decisions of administrative bodies concerning their rights and duties. Appeals against the decisions of the Commission are decided by the administrative chamber of the Supreme Court. In the future these decisions will be made by the Administrative Court; the respective law has been adopted but has not yet been implemented.

In 2006 the Commission received 890 cases and made decisions in 840 of them. By April 2007 in approximately 20 cases an appeal against the Commission's decision had been filed with the Supreme Court. Given the backlog in the Supreme Court, final decisions on these cases may not be taken before the end of 2007.

Since the new salary law came into force, a great number of appeals have been filed. By mid-April 2007 the Appeals Commission had received 6100 appeals against the determination of the new salary. More than 6000 cases were decided within the legal delay of 30 days. In 99% of these cases the appeals were without any grounds. It is envisaged to evaluate the reasons for these salary appeals and to discuss with the relevant institutions so as to avoid similar cases in the future. In 2007 about 250 cases were regular cases, concerning disciplinary measures, duties and responsibilities, reassignments and transfers. In about 35% of the cases the decision taken by the minister was rejected by the Commission; generally the Commission then asks for a new decision to be made, taking into account its findings.

The Appeals Commission has considerably improved the rights of civil servants; previously complaints were submitted to the immediate superior, whereas now they are decided by an independent commission. In this way the Commission can ensure that appeals are decided in the same way across the state administration.

Professional Independence from Politics

The new CSA provides a clear distinction between civil servants and political employees. In addition, it has enlarged the group of career civil servants, to the detriment of political appointees, in management positions. These senior management positions are to be filled through internal competition. A panel appointed by the HCSC tests the candidates and produces a shortlist of a maximum of three top candidates. The head of the institution (e.g. minister) proposes one of these candidates to the government for nomination (article 34 of the CSA). If no candidate is chosen by the head of the institution, a new procedure must be initiated. The HCSC also set the rules for the selection of candidates. The President of the Council has reported only very rare attempts of politicians to interfere in the selection procedures; he also reported that the trust of candidates in a professional selection on merit has increased. At the same time, job security, as well as the rights of staff in terms of decision-making powers, has increased due to the new status of these staff as civil servants..

Integrity

The new Civil Servants Act (CSA) includes disciplinary regulations that are in line with general standards; it also includes regulations on incompatibility. A number of activities have been launched to prevent and fight corruption; inter alia, a Law on the Prevention of Conflict of Interest in the Discharge of Public Office was adopted in April 2004; besides conflict-of-interest rules, the law also regulates the disclosure of assets. The law covers public officials "pursuant to elections, appointment and nomination", which seems to be too wide a scope. Various institutions had already provided comments on the law in 2005; however, no amendments have been made so far. The Republic Committee for implementing the law is an autonomous and independent body, and the funds for its work are provided from the budget of the Republic of Serbia. The Republic Committee consists of nine members; it delivers annual reports to parliament and informs the public on a monthly basis of observed irregularities.

A code of ethics, which has to be prepared by the HCSC, has not yet been finalised. Given the rather comprehensive legislation that already exists, the HCSC is currently considering whether the code should have the form of detailed guidelines.

Corruption is still seen as a widespread phenomenon, despite the fact that the government has made a number of efforts to prevent and fight corruption.

Salary System and Pay Determination

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

The new civil service pay law was submitted to parliament in June 2006. Parliament enacted the law in July 2006, and the new salary system was introduced on 1 January 2007, despite the fact that there was no approved budget. The new scheme applies to the core civil service, including customs and tax and covers about 35,000 staff, in which the police and secret police are not included; the total number of civil servants is about 67,000.

The new system provides for a compression ratio of 1:9. Pay has increased by an average of 41.2%, except for the lowest grades. Thorough financial impact assessments regarding feasibility were carried out for various salary scheme scenarios, and therefore the considerable pay rise should be sustainable in the medium term.

For some groups, in particular staff working in tax and customs the salary reform in fact resulted in a considerable decrease in take-home pay. This decrease was explained by the non-transparency of the actual take-home pay in these services. With regard to some positions, the fact that the new salary law provides for time off instead of overtime pay has resulted in a considerable drop in salary. In some parts of the administration, in particular tax and customs, the previous system allowed for considerable bonuses, which have been discontinued under the new salary scheme. As the bonuses were often seen as a part of the basic salary, the real decrease in take-home pay has led to a considerable number of complaints to the Appeals Board.

In general, the new salary system should make it easier for the government to attract and retain qualified staff in the administration. Pay in the civil service now follows a unified system, which is transparent and does not allow for arbitrary supplements and uncoordinated changes in job classification. Distortions in the salary scheme, due to different classifications of similar jobs, have been basically eliminated due to the closely controlled implementation of the new classification system.

Salaries remain determined by a coefficient system whereby the multiplier is fixed annually and the coefficients are set by the classification.

A performance-related pay component will be introduced in 2011 (some smaller bonuses may possibly be awarded as early as 2008), based on performance appraisal. For the time being, these appraisals do not have an impact on remuneration, as the system needs first to be thoroughly tested and managers to receive sufficient training in carrying out performance appraisals.

The development of a new and unified salary system for the various professions in the public service (approximately 230,000 staff) has begun. A large number of benchmark jobs have been analysed and classified. Based on the information gathered, a unified pay and grading matrix, including four sectors (Health, Education, Culture and Labour), was proposed. This proposal included an average 34.8% salary increase. A financial impact forecasting model was provided to test several salary options. Unfortunately, as there was only a caretaker government for quite some time, a government discussion on these proposals for a new salary system for the public service could not take place. It remains to be seen whether further developments will take place.

Performance and Career Development

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

Performance appraisal

Under the previous legislation, performance evaluations were carried out every year but mainly as a formal exercise; they had basically no impact on either careers or bonuses. The new Civil Servants Act and the respective decree have introduced performance appraisal that is in line with modern principles. Guidelines for “appraisers” were adopted and made widely available; in addition, training was delivered. The performance appraisal will, as of 2011, influence the take-home pay by awarding merit steps for good performance; the appraisal will also be taken into account for promotion.

According to the new appraisal system, work objectives were set for the first time in late 2006. The first performance appraisal in line with the new system will be carried out at the end of 2007. Depending on the outcome of this exercise, it is envisaged to possibly improve the system, provide further training, etc. It was stated that possibly a limited amount of funds for performance bonuses may be provided in early 2008.

Training

Serbia has made several attempts to create an in-service training institution, which – due to internal difficulties – have not been successful despite the availability of foreign funding. In 2004/2005 a feasibility study regarding such a training institution was carried out under a CARDS project. A training strategy was adopted by the government in 2005.

Since the last Sigma report, a considerable amount of training of civil servants has been provided. The HRMS organised a series of seminars in 2006 and at the beginning of 2007, mainly with the support of international donors. The EAR has supported training through various projects, and it has been agreed that this support will continue in 2007 and 2008. This training was focused on ensuring the implementation of the new civil service legislation. The training started with the staff of the HRMS and was then extended to civil servants in the whole administration. The main areas of initial training were human resources planning, performance appraisal, and selection procedures.

The HRMS has prepared a Programme of Civil Service Training for 2007, which was adopted by the government on 29 March 2007. This programme, covering all bodies of the state administration, will be implemented by the HRMS. The main areas of the 2007 programme are organisation of the administration, the civil service system, modern management of the administration, public finance, European integration, and training of trainers. For the implementation of the programme, the HRMS is still depending on technical assistance, but it has started to develop new methods of financing civil servants’ training (combination of supplier-funded and buyer-funded models).

The HRMS moved premises in May 2007 and is now housed in the former federal government building. This building provides sufficient space for carrying out training, although a considerable amount of renovation and refurbishing will be necessary.

3. Management of the Civil Service

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

Central Management Capacity

The Human Resources Management Service (HRMS), foreseen in the Civil Servants Act (CSA) as the central HRM facility, was created in December 2005 to prepare for implementation of the new CSA. The HRMS has been allocated by law the powers to guide and monitor the adequate implementation of the CSA. The Ministry of Public Administration and Local Self-Government (MPALSG), created under the

previous government in 2002, has transferred step-by-step its HRM tasks to the HRMS; the transfer was finalised with the full enforcement of the law in July 2006.

The HRMS was in spring 2007 nearly fully staffed. It has 32 staff allocated to the various organisational units, in particular for competition procedures, support to the High Civil Service Council (HCSC) and the Appeals Board, training of civil servants, etc.

Following the rules of the CSA, which changed the position of director of the HRMS to a civil servant position, an open competition for the position was carried out in autumn 2006, and a new director was appointed in December 2006.

In its starting phase the HRMS was only responsible for supporting the HCSC and for providing training for civil servants. Since July 2006 it is assuming its full responsibilities, and it is still facing the usual initial problems concerning internal organisation, personnel, premises and financing.

The tasks of HRMS areas follows: advertising internal and public competitions; preparing the general human resources plan for the whole state administration and ensuring the proper implementation of the adopted plan; carrying out a co-ordinated modernisation of the state administration, including the development of the civil service system; participating in the drafting of respective legislation; providing opinions on rulebooks and staffing tables of state bodies; supporting and guiding state bodies regarding personnel management and internal organisation; managing the central personnel registry of civil servants and general service employees; managing the internal labour market, e.g. assisting civil servants with reassignments and work in project groups and assisting HRM units in finding the necessary personnel; drafting the training programme proposal for the general civil service and organising professional training in line with the adopted programme; and serving as secretariat to the HCSC as well as to the Government Appeals Board.

The HRMS moved from the republican government building to the former federal government building in May 2007. While there is sufficient space for the HRMS, modern technology is nevertheless largely missing (see Sigma's 2005 report to the EAR regarding projects for the State Union). Although it can be expected that cabling of the building, etc. will start soon, the current communication problems may slow down the speed of reforms.

In May 2006 the High Civil Service Council (HCSC) was created as a new consultative body, replacing the Civil Service Council (CSC) as a consultative body, with a different composition and different tasks to those of the CSC. The HCSC is responsible for the preparation and passing of standards for selection of civil servants and for the preparation of the Code of Conduct, and it plays an important role in the selection of staff for senior civil servant positions (which, prior to the new Civil Servants Law, were positions of political appointees).

At the time of the Sigma assessment mission, the HCSC had passed its Rules of Procedure and the "Regulation on professional qualifications, knowledge and skills assessed in the selection procedure, modes of their verification and selection criteria for employment". Regarding the selection of senior civil servants (e.g. director of governmental office), the HCSC appoints the members of the selection panel from among its members as well as additional experts in the specific field. The chairman of the selection panel is always one of the members of the HCSC. Administrative and technical support to the HCSC is provided by the HRMS.

The HRMS, the HCSC and the Appeals Commission together seem to provide a good institutional arrangement for unified management of the civil service. The necessary co-ordination between the various institutions should be ensured, given the fact that the HRMS acts as the secretariat for both the HCSC and the Appeals Commission.

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

In 2006 Serbia had about 67,000 staff in the public administration, 33,000 of whom worked in the Ministry of the Interior. The public service, e.g. health and education, accounts for about 235,000 employees.

The 67,000 staff include staff in the customs and tax administrations, the police and special organisations. Further staff reductions of another 10% were requested by the IMF and the World Bank in 2006. The number of staff was in fact further reduced by the outgoing government, despite the fact that the difficult economic situation and the high rate of unemployment made such a move politically difficult.

The main control exercised over staffing is now (since the introduction of the new CSA) the Human Resources Plan (HRP). Given the fact that no budget was adopted, only an interim HRP was adopted in January 2007 (pending adoption of the budget). This plan has to be approved by the Ministry of Finance and the HRMS. The HRP complements the staffing table (systematisation) insofar as the staffing table shows the projected staffing in the medium term, whereas the HRP shows only those positions for which a budget has been provided. This new procedure now allows an administrative body to directly ask the HRMS to publish a vacancy announcement for a position included in the HRP, i.e. without again passing by the Ministry of Finance. At the same time, the HRMS has to reject any request for recruitment if the position is not in the HRP.

However, in the past there was not sufficient capacity to monitor whether the classification of individual positions was justified and whether the given job description reflected real job content. At the end of 2005/ early 2006 several (12) job analysts were trained and then in early 2006 the whole classification was reviewed, with the support of a technical assistance project.

In the future the HRMS will have to monitor consistency. The staff registry, developed and implemented with external assistance, should be finalised soon. This registry, together with the quite clear classification decree, should make this monitoring task feasible once the HRMS is fully staffed and trained. The envisaged staffing is 50 staff, and the HRMS now has 42.

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

The existing legal framework and the new Civil Servants Act provide for social rights and fundamental freedoms of civil servants. Restrictions set out in the current and future legislation are similar to those enforced in EU Member States.

Trade unions have a rather important influence on the workforce. The implementation of the new salary and classification system can therefore be seen as an important achievement. This strength of the trade unions, coupled with the remaining high unemployment, makes it difficult for the government to implement all of the staff cuts requested by the IMF and the World Bank; staff cuts have nevertheless already been implemented.

4. Legality and Accountability

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

The Law on General Administrative Procedures is based on the former Yugoslav law of 1986, which in turn was based on the Austrian law of 1925. Some changes were made when a new law was passed in 1997 for the FRY. The law was last changed in 2001, when the penalty regulations were amended.

The law regulates basic principles of administrative procedures; however, it is rather complicated and creates very lengthy administrative procedures. In addition, there are numerous special administrative

procedures laws, which complicate the application of the appropriate legislation. Moreover, several issues that are important for a modern administration are not regulated, such as issues linked to electronic tools used in modern administration or in certain legal constructs, such as public law contracts or space planning.

Besides the fact that the administrative procedures are not regulated in accordance with current standards, they represent one of the barriers to investment and economic development.

New drafts of these laws – again rather complicated and not taking account of the needs of modern public administration – had already been produced in 2004 and submitted for public consultation. Comments to improve these drafts and to ensure their alignment with common standards were provided, inter alia, by Sigma; however, no further action was taken by the ministry in charge. A current CARDS project was supposed to assist the ministry in reviewing and redrafting the General Administrative Procedures Law, but the minister rejected this assistance. It remains to be seen whether the new government and the new minister will finally prepare a new draft and at the same time reduce the special administrative procedures to a minimum.

Internal supervision of the work of the administration is addressed in article 45 of the Law on State Administration. This article also states that a specific law on administrative inspection should be passed, but this has not happened yet.

An administrative inspection has nevertheless existed in the Ministry of Public Administration and Local Self-Government since 1995, when this responsibility was transferred from the federal level to the republican level.

Quality of Legislation

The quality of legislation varies between ministries, although efforts are increasing to improve quality through policy co-ordination, some training and strengthening of the Council for Regulatory Reform.

The Legislative Secretariat is in charge of checking the constitutionality and legality, including compatibility with the existing legal framework, of each new legislative act. However, the Secretariat is understaffed and usually does not have enough time to thoroughly check new legislation. In addition, the Secretariat is also responsible for the actual drafting of legislation, as regulated in the Law on Ministries. This drafting – supported by several donors – has included legislation that is relevant to this assessment, namely the Law on State Administration and the Law on Agencies, as well as the Law on Civil Servants (all adopted in 2005) and the by-laws related to, among others, the classification decree (2006) and the Law on Civil Servants Salaries. Despite the fact that the drafting of legislation by the Legislative Secretariat signifies the elimination of a control step, the co-ordination with all stakeholders was excellent, and as a result the new legislation is of good quality.

Review of legislation with regard to the SAP and EU compatibility is carried out by the Serbian Office of European Integration (SOEI), which has 42 staff. There is currently a conflict of competencies between the Legislative Secretariat and the SOEI, as neither body agrees to be in charge of “certifying” harmonisation.

The Council for Regulatory Reform was set up by ordinance in 2003 (*Official Gazette of the Republic of Serbia*, no. 41/2003). The Council is presided by the Minister of Economy; the other Council members are the deputy ministers of all relevant ministries. In the beginning the Council was tasked, inter alia, “to launch initiatives and proposals for amendments of the current laws, regulations and general acts and for the enactment of new ones and to give prior opinions on draft laws, regulations and general acts examined by the boards of the Government of Serbia insofar as these are relevant for the operation and development of private entrepreneurship and enterprises”.

By recent amendments to the Rules of Procedure (RoP) of the Government of the Republic of Serbia and of the Ordinance on Setting up of the Council for Regulatory Reform (*Official Gazette*, no. 113/2004), the role of the Council has been expanded. Article 34 of the RoP regulates in some detail the memorandum that must accompany draft proposals submitted to the government, which provides the reasons for adopting it as well as an analysis of the possible effects of the submitted draft laws, other regulations and

general acts. The analysis includes the foreseen costs to citizens and to the economy, in particular to SMEs, and a consideration of whether the possible effects of adoption justify these costs.

The Council meets at least once a month and is now supported by a considerable TA project of 2.4 million EUR. As the secretariat of the Council was staffed by only one civil servant, not much had really happened until now. However, a regulatory reform strategy now exists in draft, and it is foreseen to intensify the training in RIA and to carry out full pilot RIAs (at least two per year).

The opinion of the Council (and the opinion of the Legislative Secretariat) is a mandatory requirement before sending a law to the government for decision.

For the time being, the Council is very much geared towards economic development, and its work is targeted at the implementation of the OECD guidelines; however, in the medium and long terms it is intended to broaden RIA and possibly move it to the centre of government instead of housing it in the Ministry of the Economy.

Transparency in Public Administration

A Law on Freedom of Information has been in place since 2003. However, the basic tendency of secrecy in the public administration, coupled with the distrust of the citizen in the administration, hampers the full implementation of the law, so that real transparency has not yet been achieved, despite efforts of NGOs and leading figures in the administration.

Protection of Legality by Civil Servants

The law prescribes the duties of civil servants, disciplinary liability, and liability for damages; it also establishes hierarchical subordination. An administrative appeals procedure and judicial review exist. However, there are a multitude of special administrative procedures in addition to the General Administrative Procedures Law. Most of these laws are not fully in line with current standards. Moreover, the current Administrative Disputes Law does not call for full (factual) judicial review. These flaws in the current legislation may seriously hamper the full protection of the legality of administrative activities.

The existing legal framework and the new Civil Servants Act regulate the accountability and direct liability of staff in the public administration. However, implementation of the accountability principle is still limited, as hardly any responsibility is delegated to staff, i.e. the minister signs nearly everything and often takes responsibility for routine decisions. Since staff are generally not empowered to take responsibility for their work, it may take some time before they will think in accountability terms when preparing or taking decisions.

Ombudsman

The Law on the Civic Defender was adopted in September 2005. According to provisions in the law, parliament (the Constitutional Committee) should appoint the Ombudsman within six months (i.e. by January 2006) of adoption of the law; however, in April 2007 an appointment had still not been made. At the same time – with foreign assistance – a new law on a special Ombudsman for children is being drafted.

Judicial Review of Administrative Decisions

The new Law on Courts had already been passed by parliament when the last Sigma report was drafted. This law calls for the establishment by January 2007 of special first-instance administrative courts and one second-instance administrative court at republic level. None of these courts has been established yet. According to some sources the regulatory framework for creating the courts is not yet in place. In addition, administrative judges are lacking. It is hoped that under the new government these courts will be created by January 2008.

Judicial review of administrative acts is generally possible, but is currently excluded in certain cases by specific laws. These laws will have to be amended to allow for judicial review, as the new Constitution, in article 36 (human rights and freedoms), states that “..everyone shall have the right to an appeal or other legal remedy against any decision on his rights, obligations or lawful interests”. This general right is confirmed by

article 198 (constitutionality and legality), where it is stated that “*legality of final individual acts deciding on a right, duty or legally grounded interest shall be subject to reassessing before the court in an administrative proceedings, if other form of court protection has not been stipulated by the Law*”.

Judicial review is still carried out by a special chamber of the Supreme Court. The Administrative Disputes Law allows exceptionally for the review of facts and final decisions, but the court usually does not use this right but instead sends the file back to the administration with the request to decide again in view of the court’s opinion. The administrative chamber of the court is currently understaffed. This situation, coupled with the fact that judicial review of administrative decisions is inadequate, severely weakens administrative accountability. It also diminishes the guarantees to citizens, legal persons, etc. of adequate and just administrative decisions that respect basic European principles. This problem becomes even greater in view of the considerable room for discretion in substantive legislation. Together with unclear procedures and limited possibilities for appeal, this wide discretionary scope in substantive legislation can easily lead to arbitrary decision-making in the administration, legal uncertainty, and proliferation of corruption.

Assessment

The new legal framework for the civil service is in line with general European standards.

With regard to the general legal framework, in particular the General Administrative Procedures Law and the reform of the courts (including the creation of special administrative courts), there have been no significant changes since Sigma’s last report.

Overall, professionalism and efficiency in the public administration seems to have improved, although it remains insufficient. If the recently adopted training plan is implemented, the situation should further improve.

Human resources management skills have improved due to considerable training; however, quality varies between ministries. The heads of HRM units in several ministries have regular meetings twice a month and make co-ordinated efforts, for example when developing internal regulations.

The new civil service legislation provides adequate systems and procedures; the training of staff to apply this new legal framework in an appropriate way is continuing.

Recommendations

The legislation on administrative procedures and administrative disputes needs to be reviewed, adapted to current European standards, and implemented.

Training for the HRMS and HRM units needs to continue. In most administrative bodies the HRM units are insufficiently staffed; the HRMS will also need more staff to deliver its tasks in a professional and appropriate way.

Consideration should be given to the screening of existing staff to ensure that staff reductions do not target the best elements in the administration.

A centralised training facility should be set up and further curricula developed to provide for systematic in-service training that supports professionalism and efficiency in the public administration. The training facility should also create networks to foster co-ordination and co-operation across levels of government. The content of the professional examination needs to be reviewed urgently.