



## **SIGMA**

### **Support for Improvement in Governance and Management**

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

## **SERBIA**

### **PUBLIC SERVICE**

#### **ASSESSMENT MAY 2008**

#### **Introduction**

This report updates Sigma's June 2007 assessment report on the Public Service in Serbia. During the assessment period only few and relatively minor changes have occurred in the civil service regulatory framework and practice, as it has been a period dominated by political unsteadiness, with two major nationwide elections, presidential and legislative, as well as for local and regional governments, and the political attention has focused mainly on the Kosovo issue.

As a consequence, the changes that have occurred in the civil service have mostly a managerial character rather than a policy-making nature. The evidence gathered during the assessment exercise shows that significant progress has been made since the last report with regard to the most technical aspects of the implementation of new legislation on administrative organisation and civil service. In spite of initial difficulties and resistances, the new structures, instruments and processes introduced by the Law on Civil Servants (CSA) have now been established. However, the actual implementation of the administrative legislation enacted in 2003-2005 is proceeding at a slow pace – particularly in some areas. The staff of some of the independent bodies that were created by that legislation to deal with key aspects of the public administration and integrity systems (the government's Anti-Corruption Council, Conflict of Interest Commission, Commissioner for Freedom of and Access to Information) are now feeling a lack of government support, and some harbour serious doubts about their future role (or even possible dissolution). Two main exceptions to this somewhat discouraging situation are the government's Service for the Management of Human Resources (HRMS – Civil Service Office) and the Civic Defender (Ombudsman).

From a managerial viewpoint, completion of the enactment of the basic legal framework for the public administration and the civil service should pave the way for a shift in focus towards the introduction of modern management practices and techniques (strategic planning and policy development, impact assessment, results-oriented management, internal audit, quality and performance assessment in the management of public functions and services, etc.). It should be borne in mind that, while much progress has been made with regard to the statute and management of the core state civil service, this professional group represents only a small part of the total number of employees working in the public administration and in the management and delivery of public services.

A negative aspect is that the process of selection of candidates for senior civil service positions (referred to as "appointed positions"), representing some 360 senior management posts, has not been completed. The final appointments are to be made by the government from among the candidates shortlisted by the High Civil Service Council (HCSC). There is a risk that the new government resulting from the 11 May general election may reject the candidates proposed by the HCSC or otherwise try to influence the final outcome of the process so as to ensure that the candidates finally appointed are more in line with the new government's political composition.

The political climate during the assessment period has not been favourable to reforms. The governing coalition composed in March 2007 has experienced constant internecine strife, primarily on the issue of Kosovo's status, which was complicated by the presidential elections of January 2008. This discord culminated in February 2008 when, as a consequence of the unilateral proclamation of Kosovo's independence, annulled by a Government Decision of the Republic of Serbia on 19 February 2008, the coalition government collapsed and new parliamentary elections were called to take place on 11 May 2008, when local and regional elections are also to be held. As usual, all political parties consider these elections to be crucial for the future of the nation. At present Serbia has a caretaker government that is able to run only the ordinary affairs of the state. The negotiations with the EU on the Stabilisation and Association Agreement (SAA) had been concluded and an agreement was ready for adoption, but the Netherlands has objected to its adoption before the issue of Serbia's co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY) is resolved.

## **1. Legal Status of Public Servants**

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

#### ***Constitution***

The 2006 Constitution contains "fundamental principles" that prohibit discrimination on any grounds (article 21) and guarantee the protection of human and minority rights (article 22). Article 53 recognises and guarantees, as a fundamental right, the right of citizens to participate in the management of public affairs and to assume public service functions on equal conditions. In addition, with respect to national minorities, article 77 provides for the appropriate representation of members of national minorities "when taking up employment in state bodies, public services, bodies of autonomous province and local self-government units".

The Constitution (article 55) also guarantees the right of public servants to political affiliation and party membership (except for the ombudsman, judges, public prosecutors, military personnel and police). The basic labour rights of all employees (article 60), including the right to trade union membership and the right to strike, are recognised for civil servants, although those rights may nevertheless be restricted by the law in accordance with the "nature or type of business activity", which gives constitutional grounds to the possibility of restricting the exercise of fundamental rights to a group of citizens (e.g. civil servants) for the sake of the public interest. Similar limitations are registered in article 46 with regard to the fundamental right to free speech.

Article 6 of the Constitution prohibits the performance of public functions in cases of conflict with other functions, occupations or private interests (as a fundamental principle), under the conditions established in law.

More generally speaking, the Constitution (article 136) establishes the independence of the public administration, which is only bound by law and accountable to the government.

Although the 2006 Constitution contains scattered references to the civil service in the sections referring to fundamental rights and to the organisation of public powers (including that of the public administration), these references are sufficient to provide an adequate constitutional basis for defining the crucial aspects of the civil service.

#### ***Ordinary Legislation***

The Law on Civil Servants (CSA) was published in the *Official Herald of the Republic of Serbia* no. 79/05 and entered into effect on 1 July 2006. All necessary by-laws, such as decrees on recruitment, classification of positions and performance appraisal, have been adopted, as has a regulation on human resource plans for state authorities.

After the 2007 elections, the government prolonged the deadline for appointment of senior civil servants (referred to as appointed civil servants or functionaries) from July 2007 to May 2008. As this postponement has already occurred, most probably this deadline will not be met, due to delays in proposals for the appointments by ministries to the Human Resources Management Service (HRMS). At present some 100 recruitment procedures of senior civil servants are in progress.

A Law on Salaries was adopted in 2006 and entered into force in January 2007; the performance pay components of this law were meant to be applied in 2008 and 2011 after a trial period of the new performance appraisal system, but this has been postponed (see below).

Rights, duties and responsibilities of directly appointed political staff, e.g. the General Secretary of the Government but also political advisors, are still regulated by the general Labour Law, 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 spring and autumn 2007 there was a clear will of the Government Secretariat for Legislation to draft a new law on functionaries (directly appointed and elected officials), but due to the presidential and later the parliamentary elections this activity was left to a decision of the future government. One of the main problems here is the fact that the status and remuneration of politically appointed civil servants are still regulated by old and inadequate legislation.

### *Scope of the Civil Service*

The CSA (article 2) considers civil servants, in a relatively vague way, as being those professionals who deal with general legal, financial, accounting and/or clerical tasks, and informatics and whose job description includes tasks from the domains of the state administration, courts, Public Prosecutor's offices, the Public Attorney's office, services of the National Assembly, Presidency of the Republic and Government, Constitutional Court and "services whose management is elected by the National Assembly". All of these domains together are referred to as the "state authorities".

The administrations of the two autonomous provinces (Kosovo and *Voivodina*), as well as the administrations of local self-governments, are not included within the scope of the CSA. However, the Autonomous Province of *Voivodina* has a regulation concerning its personnel, the content of which is very similar to that of the CSA, and Kosovo, administered by the UNMIK under Resolution 1244<sup>1</sup>, has its own civil service regulations. The Ministry of Administration and Local Self-governments is responsible for the elaboration of a new statute for the local public service, which will replace, for this group of public employees, the "Employment in State Authorities Act" of 1991 (as amended in 1998, 1999 and 2002).

General service employees (employees in state authorities whose job descriptions relate to ancillary technical tasks) are not civil servants within the scope of the law, but labour contractees.

A number of professional groups in the state civil service are subject to separate and specific statutes: police and security forces, foreign affairs personnel, customs and tax officers, prison services, defence and armed forces. One of the main problems with regard to some of these corps is that their regulations and management practices are still far from the accepted standards in democratic countries; especially security and information services seem problematic<sup>2</sup>.

Employees of public services such as education and health are not considered as civil servants. The employment status and working conditions of these groups are governed by general labour law, including collective bargaining agreements between the government and representative trade unions, which also apply to general service employees working for state authorities.

The CSA does not apply to "political" advisers that the Prime Minister, Deputy Prime Minister, ministers and other public officials, such as the Speaker of the National Assembly, are legally entitled to appoint in limited numbers under contracts governed by labour law.

The CSA thus defines the scope of the civil service in article 2 by defining civil servants, political appointees and general service employees; the law thus differentiates clearly between political appointees and civil servants; further clarifications are provided in articles 33 ff.

However, there has been pressure – mainly from the specialised services of the Ministry of Finance (tax, customs, etc.) – to secede from the civil service corps in order to obtain higher salaries. Similarly, the civil servants in parliament and in the judiciary maintain the position that their specific work deserves a separate set of rules, particularly with regard to ranks and promotions. This means that if the relevant institutions fail to support the notion of a unitary civil service, the system could be fragmented. It should nevertheless be

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<sup>1</sup> Since June 1999, in accordance with UN Security Council Resolution 1244, the province of Kosovo has been governed by the United Nations Interim Administration Mission in Kosovo (UNMIK).

<sup>2</sup> See the Report of the Special Representative of the UN Secretary-General on the situation of human rights' defenders, Hina Jilani, approved by the UN General Assembly on 4 March 2008 (A/HRC/7/28/add.3), page 16 and ff.

borne in mind that judiciary and parliamentary civil servants are usually subject to different regulations in most EU Member States, even though they are governed by the same principles of merit and professional capability as the general civil service.

In 2007 Serbia had about 67,000 staff in the public administration, of whom 33,000 were working in the Ministry of the Interior. The 67,000 staff include staff in the customs and tax administrations, the police and special organisations. The public service, e.g. health and education, counts for about 235,000 employees. Across-the-board staff reductions of 10% had been requested by the IMF and the World Bank in 2006. The government in fact reduced staff numbers, despite the fact that the strained economic situation and the high rate of unemployment made such a move politically difficult.

***The 2005 Law on Civil Servants (CSA) provides a sound basis for the development of a professional and efficient civil service in state institutions. Implementation of this new legal framework – which in the main is up to European standards – is proceeding at a slow pace, insofar as it depends on managerial responsibilities. Implementation of policy has been halted during the assessment period due to political instability.***

***However, specific statutes in force for particular professional groups –especially security forces and information services – need to be reviewed and modernised so as to align them with basic principles and rules that should apply to the entire civil service.***

The legal instruments governing the employment relationship of personnel working in public services such as education and health, as well as in local self-governments, should be reviewed or renewed so as to complete a comprehensive legal framework for all those working in public services. This framework – with the necessary specificities – should embed the basic principles of public service across the various statutes for different professional groups.

## **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***

Recruitment is not totally based on merit, as managers can choose one candidate from a shortlist made up of the three best-scored candidates irrespective of the score obtained by the selected candidate and without any legal obligation to give reasons for the specific choice made and for the rejection of those not chosen (article 57 of the CSA). However, that decision is an administrative act based on managerial discretion, which may be appealed before the administrative court, where reasons for the decision are scrutinised so as to ascertain whether managerial discretion has been used in the public interest. The merit system would be better guaranteed if the law would make it mandatory for the manager to simply choose the candidate who had scored the best, thus removing any managerial discretion, because the public interest is better served if the constitutional right (articles 53 and 21 of the Constitution) to non-discriminatory, equal access to the civil service is adequately protected in recruitment procedures. The 2005 CSA nevertheless introduced positive changes in the way in which civil servants are to be selected and recruited. All vacancies in state authorities are now publicly advertised on the institutional website for internal recruitment and in the *Official Herald* for external recruitment. They are open to all citizens meeting the recruitment requirements under equal conditions, and the overall selection of candidates is based on their professional qualifications, knowledge and skills.

The general requirements for entering the civil service (article 45) stipulate that any adult citizen of Serbia who satisfies the required professional qualifications and other requirements prescribed by a statute, other regulation or decree on the internal organisation and staffing table, may enter the civil service, except if his/her previous employment with a state authority had been terminated due to a serious breach of employment-related duties or if he/she had been convicted of a crime resulting in imprisonment for more than six months. In addition, a university degree and at least nine years of relevant professional experience are required to qualify for a senior position.

No recruitment can be made unless the post is vacant and has been included in the “systematisation” and “human resources plan” of the relevant institution and in the budgetary allocations for the relevant fiscal year. Each recruitment procedure has three successive phases in the case of failure of the preceding one: it

starts with an internal recruitment within the institution, followed by an internal recruitment within the civil service, and terminates with an external recruitment announced to the public at large. This scheme is reputed to be long (it lasts some three months), but it results in better quality recruits.

The CSA and the Regulation on Conducting Internal and Public Competitions clarify the selection criteria, reduce considerably the number of positions to be filled by political appointment, and allow for transfers to be used as a career development instrument.

Recruitment procedures are under the inspection of the Administrative Inspectorate, and decisions made by selection panels or by the appointing authorities can be appealed to independent boards of appeals (one for organisations depending on the government; one for the judiciary and public prosecutor's offices; others for parliament and other institutions). The decisions made by these boards of appeals are subject to judicial review.

### ***Recruitment of Executorial Positions***

“Executorial” or “operational” positions (from senior counsellor to junior clerk) are to be filled preferably through the reassignment of a civil servant already working for the same or another state authority (with or without promotion). The recruitment authority may nevertheless decide to fill the vacancy through an internal competition. If this procedure turns out to be unsuccessful (e.g. the selection panel finds that none of the candidates has satisfied the selection criteria), an open competition is to be called to fill the vacancy. Competitions are managed by a selection panel, which ends up proposing a shortlist of a maximum of three candidates, from which the recruitment authority chooses the candidate to be reassigned to the position or to be newly employed.

A six-month probationary period applies to all those who are employed in the civil service for the first time. The CSA obliges new staff (except for staff in 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 induction training for those undergoing a probationary period.

The recruitment of staff for executorial civil servant positions is decentralised, but the HRMS has a mainly monitoring role as it controls the correctness of the recruitment procedure and ensures that it is based on merit, but also provides technical assistance to the recruitment panel. All competition panels must include one representative of the HRMS. First experience with these panels has shown that the panels were not sufficiently trained to fulfil their tasks and to follow the respective rules and regulations. The HRMS therefore started to provide training for members of competition panels.

The content of the administrative examination has so far covered mainly legal issues and tested basically university-level 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 as well as give some importance to civil service values, such as service orientation, responsiveness, and absence of any conflict of interest. It remains to be seen whether this intention will be implemented quickly.

The handling of recruitment procedures is nevertheless progressively improving, although the members of recruitment panels still do not fully understand the terms of reference for recruitment. The HRMS, with the help of an upcoming Norwegian TA project, intends to create a “central assessment centre”.

### ***Recruitment of Senior Civil Servants***

A key positive change is that, under the 2005 CSA, some 360 positions formerly reserved for political appointees were classified as senior civil service positions and declared vacant, while a process to refill them through internal competition was opened. Senior civil service positions (referred to as “appointed” positions in articles 33 and 34 of the CSA) encompass positions ranging from directors/ assistant directors of integrated services up to secretaries and assistant ministers in ministries (and in special organisations directors, deputy directors and assistant directors). They are to be filled through either internal or open competition and administered by a selection panel designated by the High Civil Service Council (HCSC), in which only one of the members may be a civil servant from the state authority to which the vacant position belongs. Internal competition has to precede open competition if the vacant position is in the core administration.

This procedure is intended to eliminate the use of political appointments for senior management positions. A direct appointment to one of these positions is only possible if the candidate has passed the professional examination or the judicial examination.

After the testing and interviews, the HCSC prepares a shortlist of three candidates, from whom the minister may then choose. The duration of appointment to a senior civil service position is five years, but the appointment may be extended. According to the HCSC, one half of all candidates for senior civil service positions are external, but their number is rather low (an average of two or three candidates per post) because it is quite difficult to meet the requirements and salaries are low. Nevertheless, the system is assessed as positive by the HCSC.

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, manners of their verification, and selection criteria. In addition, the HCSC nominates selection panels for senior civil servant positions and conducts disciplinary proceedings for this group of civil servants. It also was entrusted with preparing a Code of Conduct, which it promulgated on 29 February 2008. The HCSC issued a decree on the selection procedure for senior civil servants in June 2006, and the first vacancy announcements were issued in September. The HCSC reported that they were very demanding with regard to the prerequisites for participation in the competition for a senior civil service position, namely nine years of experience, a university degree and successful passing of the professional examination. The President of the Council reported only very rare attempts on the part of politicians to interfere in the selection procedures; he also reported that the trust of candidates in a professional selection based on merit has increased.

The introduction of the new recruitment system for senior civil servants was, and still is, difficult. The process of selection and final appointment of candidates for “appointed” positions through open competition was launched before the 2007 elections and resulted in the recruitment of 30 individuals. This appointment process was stopped and then resumed at the end of 2007 and then postponed again, with a new deadline set for 1 May 2008, which once again has not been met. Most probably this new deadline will not be met due to the government’s resignation in February 2008 and the calling of new elections. These successive postponements affect some 100 posts, most of them positions of assistant ministers and heads of units within ministries

The system described here applies to the state administration and the services of the government only, whereas the civil service in the judiciary, parliament, the Prosecutor’s Office and other state authorities is regulated by the respective by-laws issued by the Supreme Court of Serbia, the Administrative Committee of Parliament or the Secretary of Parliament, the Public Prosecutor, etc. These authorities, unlike HRMS and HCSC, have not received significant technical assistance by the EU or other donors related to human resources management.

### ***Equal Access: Ethnicity and Gender***

The 2006 Constitution (article 77) establishes that the ethnic structure of the population is to be mirrored in the staff of state bodies, public services and bodies of autonomous provinces and local self-governments units, and that an appropriate representation of those ethnic groups is to be guaranteed. This principle obviously enshrines constitutionally the ethnicity principle in the civil service, to the detriment of the civic principle established in article 1 of the same Constitution, therefore making it difficult to develop a civil service based on professional merit. The existing general legal framework as well as the Law on Civil Servants (CSA) 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. In any event, 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, but this does not indicate any preferential treatment of women in the Serbian public administration. The problem is more psychological, as there is a far greater outflow of men from the state administration than women because, as some studies have shown, men seem to be more willing to give up stable state jobs for less stable, but better paid, positions in the private sector.

## ***Promotion***

Promotion is regulated in articles 87-89 of the CSA. Promotion may be vertical, by climbing to higher positions within the hierarchy, and horizontal, by obtaining additional remuneration (steps) without moving to another position.

Vertical promotion may be achieved either through internal competition or thorough good performance. A civil servant may advance by either reassignment to an immediately higher-ranking executorial position or by appointment to a senior civil service position or a higher-ranking senior position within the same or another state authority (article 87-1). When there is a vacant post and the civil servant satisfies the requirements for that post, the manager may reassign a civil servant who has been consecutively given the “outstanding distinction” mark twice or the “distinction” mark four times to an immediately higher-ranking executorial position (article 88-1). Civil servants who achieve exceptional working results may be promoted more rapidly.

A civil servant may also advance without changing position by assignment to a higher salary class (article 87-3), in accordance with the Law on Civil Service Salaries. Promotion to a higher salary class within the same salary group depends on performance appraisal only. Promotion to a higher salary class within the same group also represents a balanced remedy to the limited possibilities of promotion to higher-ranking job positions within the civil service.

In legal terms, political affiliation considerations are completely excluded from recruitment (even for top managerial positions) and from mobility/promotion rules and procedures, as well as for pay determination. However, in spite of all of the legal provisions and guarantees, according to some sources it seems that still today it is possible for a new government to exercise some influence on appointments for senior civil service positions, and even for positions at lower levels. It is to be noted, in this respect, that positions classified for “appointment” are filled by a decision of the government, which may reject the candidates shortlisted by the High Civil Service Council and call for a new competition. It also seems to be still feasible for ministers and state secretaries (the two main political positions) to circumvent the main purpose of the new recruitment procedures (selection based on professional qualifications and merit) by various means.

It can be concluded that the actual Serbian public service is only partly independent of political parties; the CSA has contributed to a certain depoliticisation, but the impartiality mechanism embedded in the system is not difficult to circumvent as it is relatively new.

The new civil service system in Serbia is being implemented in a “cultural” framework in which, for decades, access to positions and jobs in the public administration, as well as internal promotion, was largely based on political affiliation, patronage or cronyism. As a result, although enormous progress has been made in recent years, the introduction of the new rules and procedures laid down in the CSA is still hampered by long-lasting “cultural” habits and traditions.

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

The Law on State Administration (2005) and the Law on Civil Servants (CSA) provide a clear classification of civil service positions, encompassing two main groups: “appointed” positions (senior civil servants) and “executorial” positions. Within each of these two main groups, the various positions are clearly defined, on the basis of the tasks and professional qualifications required. Senior civil servants are those holding powers to direct and co-ordinate the activities of a state authority (article 33, CSA). In the state administration, these positions include assistant minister, secretary of a ministry, director and assistant director of an administrative body within a ministry, director and deputy director of a special organisation or of a government service, director of the government’s general secretariat, director of an administrative district, and the public attorney.

Executorial positions (article 35, CSA) are defined negatively as those that are “not appointed”, i.e. those that are not senior positions even if they involve the management of internal units within a state authority. In the state administration these positions include senior counsellor, independent counsellor, counsellor, junior counsellor, associate, junior associate, clerk and junior clerk.

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. These classifications are based on generally accepted criteria. The systems were tested, and benchmark job positions were agreed, described and classified. A large number of job analysts from ministries and administrative districts were trained. In addition, line managers were trained in the preparation of job descriptions. The classification was

carried out with a central implementation team, consisting of representatives of the Ministry of Public Administration and Local Self-Government (MPALSG) and the HRMS, inter-ministerial panels, and job analysts in administrative bodies.

The classification and grading were finalised in summer 2006 and were largely accepted, although a few flaws remain and are being reviewed by the HRMS. The staff of the HRMS have been trained in job analysis, and this training, together with the expertise of job analysts in ministries and existing job descriptions for benchmark positions, should enable the appropriate classification of new or revised job positions in the future. It should also be possible to monitor proposed systematisations and classification, avoid over-grading and ensure a consistent classification across the administration. However, a “job description catalogue” being prepared by a working group, composed of HRMS civil servants and members of an EU CARDS project team, is still in the drafting stage, since this work was interrupted several times in 2007 and stopped again in March 2008.

In contrast with the state administration and governmental service, the classification provided by the CSA and the Decree on the Classification of Civil Servants have caused major problems in the judiciary, as the classification established in these pieces of legislation conflicts with the one established by the previously enacted Law on Organisation of Courts. The previous law envisaged a position of law clerk to assist judges, and candidates for such a position would be required to satisfy very high professional criteria, often equal to those required of candidates for the position of judge. The classification of the civil service established in the CSA and in the Decree of Classification is too problematic for judicial offices and should perhaps be amended to prevent their application to those positions that would require more specific regulations under the responsibility of the Ministry of Justice. In practice, the judiciary continues to use the classification contained in the Law on the Organisation and Functioning of the Judiciary, which is *lex specialis* and therefore considered of preferential application.

***In summary, the 2005 Law on Civil Servants (CSA) provides for a clear distinction between civil servants and political employees. It has in addition enlarged the group of career civil servants to the detriment of political appointees in management positions, thus opening possibilities for professionalisation. These senior management positions are to be filled by competition open to internal and external candidates and selected by a panel appointed by the High Civil Service Council (HCSC). The Council also sets the rules for the selection of candidates. At the same time, job security and rights of staff with decision-taking powers have increased due to their new status as civil servants, so it can be expected that political interference and attempts thereof will decrease.***

***However, in spite of the undeniable positive aspects of the new regulations on recruitment and classification of the civil service, the merit system is still not fully guaranteed and remains fragile, as recruitment decisions are still based too heavily on managerial discretion and this discretion is the final criterion for recruitment. There is a persistent confusion between the idea of the publicity of vacancies and the idea of merit-based recruitment. Publicity is necessary, but it is not sufficient to guarantee a merit-based recruitment system. An excessive dose of discretion in recruitment, coupled with the ethnicity principle of article 77 of the Constitution, will hamper the professionalism of the civil service, which can only be achieved by putting into practice meritocratic principles.***

### ***Rights and Obligations, Especially the Protection of Integrity***

Certain principles imposing obligations are stated in a general way in articles 5-11 of the CSA: legality, impartiality, political neutrality, accountability, advancement based on professionalism and performance, improvement of skills through training. The principles of impartiality and political neutrality are laid down in the CSA as being among the overarching principles governing the statute and work of civil servants, to the extent that civil servants “may never express or advocate” their political beliefs at work. Civil servants may be members of political parties, with the exception of certain officials who are explicitly banned from such membership by the Constitution. More specific rights and obligations are stated in articles 12-31.

The CSA does not include the right to stability or tenure in the list of general rights of civil servants (articles 12-17). However, civil servants recruited, from inside or outside the state administration, to hold a civil service position in the “executorial” group, and who have completed the probationary period, have the right to indefinite tenure. This tenure can only be terminated as a result of disciplinary procedures for serious breach of duty or in the event of the unjustified rejection of a reassignment to another position in the same or different state authority that does not require the incumbent’s consent.

The tenure for senior civil servants is five years, subject to possible extension(s) for (an) equal period(s). This period can be shortened under some circumstances, including the abolition of the position because of administrative reorganisation or early dismissal resulting from a disciplinary sanction, unsatisfactory performance, or a recommendation of the Committee for Resolving Conflicts of Interest.

The CSA regulates rights and duties of civil servants in an adequate way in articles 12 to 24, which include the obligation to refuse an illegal order (article 18) and the right to appeal against any ruling that concerns the civil servant's rights and obligations (article 16).

### ***Conflict of Interest***

In articles 25 to 31 the CSA regulates conflict of interest. According to the CSA, a civil servant may not establish a commercial entity, carry out entrepreneurial activities, or hold any sort of managerial function in a legal entity, unless by appointment of the government or another state authority. When hired or appointed to a civil service position, a civil servant must transfer any property right in a commercial enterprise or company to a third person, and provide evidence of having done so. Civil servants cannot accept any gifts, favours or other benefits in relation to the discharge of their duties, either for themselves or for other persons. They cannot use their positions in a state authority to exercise any kind of influence on their own rights or on the rights of persons related to them.

Employment or work outside the administration (either for other employers or as self-employment) may be authorised by the head of the relevant organisation, provided that such employment is not prohibited by a statute or other regulation, does not create prospects of potential conflict of interest, and does not affect impartiality in discharging civil service duties.

No permission is required to carry out scientific research, write and publish materials subject to copyright, or work with cultural, artistic, humanitarian, sports or similar institutions. However, even in these cases the head of the organisation may forbid this additional work if it interferes with the regular work of the civil servant or damages the reputation of the state authority in which the incumbent is serving. For civil servants in "executorial" positions, compliance with incompatibility rules is to be ensured by the managers of the organisations in which they serve, or by the Human Resources Management Service (HRMS).

The Constitution (article 6) makes it a constitutional obligation for public officials and civil servants to refrain from incurring any conflict of interest. The Law on Prevention of Conflict of Interest in Discharge of Public Office, passed in 2004 (*Official Herald*, no.43/04), rightly defines the notion of conflict of interest as appearing when an official has a private interest that affects or could affect the discharge of his/her public office (article 1). The definition of conflict of interest is fundamentally in line with the OECD Guidelines, as it is linked to impartiality and covers both actual and potential conflicts of interest, which is in line with mainstream continental European practice. However, the general definition is followed by a rather casuistic list of conflict-of-interest situations.

The scope of the Conflict of Interest Law includes politicians at all levels of government as well as managers of public enterprises and excludes conflict of interest affecting judges and prosecutors, which is to be regulated in a separate law. Civil servants (other than senior civil servants) are also excluded from this law, which states (article 2) that a separate law is to regulate conflicts of interest concerning this group.

The application of the Conflict of Interest Law to senior civil servants is referred to in article 31 of the CSA. Senior civil servants are subject to this law, which means that they are obliged to submit declarations of assets and interests at the beginning and at the end of their term of employment. In addition, compliance with the rules on conflict of interest is monitored by an independent body, the Republic Board (see below). Surprisingly, article 31 of the CSA, by making a cross-reference to the Law on Conflict of Interest, extends its scope to include senior civil servants. This provision states that "statutory legislation and other regulations governing prevention of conflict of interests in the discharge of public office, as well as the provisions of this statute on outside work and ban on establishing commercial entities and/or public services and/or undertaking entrepreneurial activities shall apply to civil servants holding appointed positions".

In this way, the CSA likens senior civil servants to politicians, and this association of the two groups is a move in the opposite direction to the one specified in the same CSA whereby a clear differentiation is made between political and civil service positions. In addition, it may be disproportionate to subject politicians and senior civil servants to the same asset disclosure rules. It would perhaps have been better if the CSA had established the conflict-of-interest and incompatibility regime of the whole civil service in a self-contained

way, because conflict-of-interest situations of politicians and of civil servants stem from very different realities and have very different consequences on public trust in the government.

However, in contradiction to the above assumption, the GRECO Evaluation Report of June 2006 surprisingly recommends “expanding the application of the Law on the Prevention of Conflict of Interest in the Discharge of Public Office so that it would include all public officials who perform public administration functions”<sup>3</sup>. The Serbian Ministry of Justice responded in December 2007<sup>4</sup>, indicating that this recommendation was partially implemented and also hinting at the fact that the prevention of conflict of interest is sufficiently regulated in Serbia by quite a large number of legal provisions, including the Constitution, CSA, Law on Local Self-governments, Law on Health Insurance, Law on Public Agencies, Law on the National Electoral Commission, and Law on Higher Education.

The Law on Conflict of Interest establishes a Republic Board for Resolving Conflicts of Interest as an autonomous and independent body funded from the state budget (article 3). According to article 18, the Republic Board is to issue instructions and forms and to render opinions necessary for implementing this Law, maintain a register of property of officials, decide whether an action or failure to act by an official constitutes a violation of this Law and, if so, pronounce measures and perform other tasks set out by law. All competent bodies are required to immediately deliver to the Republic Board, at its request, required facts and evidence. Article 19 describes the composition of the Board: nine members (three chosen by judges of the Supreme Court from among renowned legal experts, one chosen by the Bar Association from among its members; the remaining five are chosen by the National Assembly from a list of ten individuals recommended by the Serbian Academy of Science and Arts. Board members are elected for a period of five years and may not be re-elected.

The Board has a secretariat supporting its professional, administrative and technical services. The secretariat is understaffed in view of the 30,000 officials legally targeted by the Board and whose declarations of property it should examine. In April 2008 the secretariat comprises five staff members, while in 2006 the staff were 10-strong; the systematisation foresees 13 positions. The Board reports yearly to the National Assembly. It has no investigative powers, and produces only recommendations; it cannot impose disciplinary sanctions, except for staff employed in its secretariat.

According to the UNDP<sup>5</sup>, “in order to successfully carry out its mandate and identify conflict of interest, the Board should be able to cross-reference data with other bodies, such as the Tax Administration of the Ministry of Finance. However, this cannot be done due to privacy protection provisions in the Law on Prevention of Conflict of Interest and Tax Regulation. In 2006, the Tax Administration announced ‘cross examinations’ (a new tool to identify tax evasion, often interpreted as a ‘source of enrichment’ check). This should facilitate the inclusion of data collected by the Board in such checks. At the same time, the Board itself would have good reason to compare data in its possession with tax administration evidence (in case of doubt about whether an official had declared all their property). Unfortunately, the modalities of such cooperation were never discussed between the Board and the Tax Administration.”

The Board is set to become the future Anti-corruption Agency, foreseen in article 6 of the United Nations Convention against Corruption (UNCAC)<sup>6</sup>, which will be in charge of conflict of interest, political party financing and control of asset declarations.

According to the Ministry of Justice (December 2007)<sup>7</sup>, “three-and-a-half years have passed since the Law on Prevention of Conflict of Interest in the Performance of Public Functions has been in effect, and a little under three years since the establishment and activation of the Republic Board for Resolving Conflicts of Interest. In the first half of its term of office, the Republic Board initiated about 1,300 proceedings, ordered almost 400 non-public and 140 public measures, issued several hundred opinions and several dozen legal opinions, and its Secretariat compiled records on about 13,000 public officials, registered over 19,000 property and income reports, and processed about 17,000 such reports.” However, the Republic Board shows a manifest lack of capacity to cope effectively with conflict-of-interest resolution.

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<sup>3</sup> GRECO Evaluation Report on the Republic of Serbia, adopted at its 29<sup>th</sup> Plenary Meeting, Strasbourg, 19-23 June 2006, recommendation xvii [available on the Council of Europe website].

<sup>4</sup> Ministry of Justice (December 2007), “Report of the Republic of Serbia on Measures Taken in Order to Comply with the Recommendations of the Group of States against Corruption (GRECO)”, Belgrade, page 28 [available on the website of the [Ministry of Justice](#)].

<sup>5</sup> UNDP Serbia (June 2007),: “[The Fight against Corruption in Serbia: An Institutional Framework Overview](#)”, page 27.

<sup>6</sup> UNCAC was ratified by Serbia in October 2005. Serbia has also ratified the Council of Europe Criminal Convention against Corruption, but not yet the Civil Convention.

<sup>7</sup> [Ministry of Justice](#) [see preceding footnote number 10, page 28].

The Law on Conflict of Interest correctly places the responsibility on public officials (article 4) to identify, notify and disclose their relevant private interests (e.g. written statement on ancillary employment and insertion of declared conflict-of-interest situations into the minutes) as well as to take the necessary steps for appropriate arrangements (e.g. approval by the employer). However, some measures are not clearly linked to the objectives of the law. For example, it is not clear whether the declaration of assets is linked to the prevention or to the detection of conflict of interest. Another issue is the procedure for making *ad hoc* declarations when conflict of interest arises. In order to make it effective, it would also be advisable to set up mechanisms and strengthen capacity to review periodic declarations of assets, together with the employer, so as to identify actual conflict-of-interest situations or situations that could lead to conflict of interest in the future (potential conflicts of interest).

The Code of Conduct was adopted by the High Civil Service Council (HCSC) on 29 February 2008. The Code sets out in detail the standards of integrity and rules of behaviour of civil servants in state public offices and administrative districts and informs the public of the kind of behaviour that they can expect from civil servants. The HCSC explains that the delay in adopting the Code was due to the fact that the Council members were hesitant as to whether the Code should take the form of detailed guidelines rather than that of a legal instrument, since rather comprehensive pertinent legislation was already in place. Finally, the Code was promulgated as a collection of behavioural guidelines.

However, it would be advisable to revise the list of “grave breaches of employment-related duties” contained in article 109 of the CSA in order to introduce breaches to rules in the Code of Conduct, which are directly related to behaviour related to constitutional values and service to the public, as legal causes for serious disciplinary action. Violation of the Code of Conduct is quite surprisingly only deemed to be a “minor breach of the employment-related duties”, according to article 108-5 of the CSA. Disciplinary arrangements (in particular, the typified “breaches of employment relationship”), while very much focused on obligations arising from the “employment relationship” and not so much on “service to the public” obligations, would probably allow for a more balanced legal treatment of work-related obligations and public law values.

### ***Corruption and Anti-Corruption***

The 2005 Penal Code (articles 367 and 368) considers it a crime to solicit and accept bribes, both as givers and takers. Likewise, the unlawful collection of payments is a crime (article 362). The majority of civil servants are not corrupt, however, since there are few opportunities to be corrupted, as they do not take decisions. Only heads of institutions take decisions. However, there is the usual giving and taking of bribes in the areas of tax, customs, public procurement, and especially in the Direction for Common General Affairs, under the Prime Minister, in charge of building infrastructure management and repairs. Universities have also been involved in bribes (case of the Faculty of Law in Kragulevac).

According to a recent report<sup>8</sup>, “perceptions and regular media reports of arrests suggest considerable levels of petty corruption in the public administration bodies. However, there is insufficient data to support any firm conclusions about trends. Corruption arising from heavy regulation, licensing and inspection regimes, as well as taxation and customs, still have the biggest impact on business, and on small and medium-sized enterprises (SMEs) in particular. Administrative corruption is likewise largely responsible for the inequity in the access to social services – healthcare, pensions, and education – hitting the poor and other vulnerable groups hardest. There are other opportunities and incentives for corruption across the public administration: opaque and contradictory rules, excessive discretion of individual civil servants, non-merit based criteria for employment and promotion. A Public Administration Reform Strategy focusing on fiscal decentralisation and civil service reform began to be implemented in 2005, but results have been modest. Some of the measures, notably the criteria for selection of higher level appointees and the system of evaluation and advancement, appear to have the opposite of the intended effect of attracting and retaining qualified staff. As in some other sectors, notably the police, the distinct lack of a political leadership committed to reform has prevented systemic changes.”

In general, however, the control of administrative corruption seems to be progressively increasing, but political corruption is still seen as an important problem in Serbia, with no clear solution in sight. Anti-corruption initiatives of the government have for the most part been inconsequential and rather cosmetic, and they have hardly been supported by a real political will. The financing and management of political parties

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<sup>8</sup> See Trivunovic, Marijana, Vera Devine and Harald Mathisen in: CHR. Michelsen Institute (2007), “[Corruption in Serbia 2007: Overview of Problems and Status of Reforms](#)”, R2007:4, Bergen, Norway, page 2. [available at [www.cmi.no/publications](http://www.cmi.no/publications)].

seem to be the major source of corruption or even of state capture, according to some analyses<sup>9</sup> : “Large-scale and systemic state capture, which is the root of widespread corruption, is acquiring such proportions in Serbia that it may undermine the success of its transition. In Serbia, political parties are the main agents being used to appropriate state and public assets. They are systematically expanding their political and financial power, influence and ability to employ their relatives and party cronies, and promote the personal and corporate interests of the political and economic elites in control behind the scene. The appropriation of state institutions and functions by the political party leadership is being carried out by the use of a variety of mechanisms.”

The same line of argument is seen in other reports<sup>10</sup> : “Fragmented and unstable coalitions have very damaging implications for the whole political, legal and moral system. Governments spend the majority of their energies on bare survival, on permanent redistributions of sinecures and privileges. To stay in power, many acts of corruption and violations of the legal system have been ignored. Whole segments of the civil service have been occupied by incompetent and unqualified persons from small parties. This has several direct economic consequences: insecurity of property, foreign investment, delay of the beginning of public enterprise restructuring. The domination of social demagoguery in public discourse is accepted equally by all political parties, so that any ideological and value differences between them have disappeared.”

An Anti-Corruption Council was established in 2001 as an advisory body to the government. This means that legally the Council has the status of a governmental “working body”. Such a status does not imply institutional guarantees of independence. However, the mandate of the Council and its members is not limited, and the Council has its own budget appropriation, which is not usually the case for other “working bodies”. The task of the Council, as defined when it was first established by government decision in December 2001, is to examine activities in regard to the fight against corruption, to propose measures to the government for the efficient combating of corruption, and to follow through their implementation and propose bills, programmes and other acts and measures in this area. The Council may have up to 13 members appointed by the government. Distinguished domestic and foreign researchers who, based on their knowledge and reputation, could contribute to the work of the Council may also be appointed as members. In reality no government members or managers of other governmental organisations have been nominated, and the current 10 members are independent personalities (six university professors and four lawyers), who have been appointed by virtue of their reputation for integrity and excellence in their respective fields, according to the UNDP. The OSCE mission to Serbia is an associate member of the Council.

The Anti-Corruption Council has publicly criticised government policies, which seems somehow inconsistent with its advisory role. Nevertheless, it seems to enjoy a good reputation with the public and with certain media, even though it seems rather irrelevant and unable to perform its advisory role, as it is usually ignored by the government and other public administration bodies, especially since 2006 when a number of its members resigned. The Council has often adopted too activist an approach, has frequently issued public statements that are not always based on sufficient evidence, and has “encroached” on the jurisdiction of other public bodies, which has also contributed to its current marginalisation. However, a very different reason for the Council’s low political position could also be its focus on capture of the state by tycoons and its insistence on denouncing the very heart of the problem of Serbia’s system of governance, which is partisan power-sharing and utilisation of the state for party interests<sup>11</sup>, as indicated above<sup>12</sup>.

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<sup>9</sup> See Pestic, Vesna Pestic (March 2007), “State Capture and Widespread Corruption in Serbia”, CEPS Working Document No. 262, Centre for European Policy Studies (CEPS). [available at [www.ceps.be](http://www.ceps.be)].

<sup>10</sup> See Djurkovic, Misa Djurkovic (March 2006), “Political Parties in Serbia: Source of Political Instability”, Balkans Series 06/10, Defence Academy of the United Kingdom, Conflict Studies Research Centre. [available at [www.da.mod.uk/csre](http://www.da.mod.uk/csre)].

<sup>11</sup> See Petrovic, Milan (2005), “2006 Constitution of the Republic of Serbia as a Legal Framework for Party Oligocracy”, in: *Facta Universitatis*, Series Law and Politics, Vol. 3, No. 1, pp. 17-24.

<sup>12</sup> These two points are well illustrated by the magazine *Le Courier des Balkans*, issues of 17 and 27 March 2008. In the former one may read : « Dans la transition économique des années 2000, beaucoup ont perdu, quelques-uns ont gagné gros. Ces derniers, les tycoons, ont amassé des fortunes en tirant profit du monopole économique que leur assurent les responsables politiques, tous partis confondus. Dans ce système de « rente institutionnelle », qui pourrait bien avoir intérêt à entrer dans l’Union européenne armée de son Conseil et de son Inspection de la concurrence ? In the latter one may read : « Le 11 mai auront lieu des élections législatives cruciales en Serbie. Mais ce même jour, les électeurs devront aussi renouveler les conseils municipaux. Peu spectaculaire, le scrutin municipal est pourtant crucial pour tous les partis politiques : le contrôle des municipalités représente en effet l’une de leurs principales sources de financement. Attribution de postes selon des critères politiques, permis de construire, marchés publics et corruption... Enquête sur ces enjeux locaux”.

According to Dejan Anastijevic<sup>13</sup>, the main obstacle in fighting organised crime and corruption is the unreformed security sector. Serbian security agencies, which played the pivotal role in setting up organised criminal groups throughout the 1990s, currently operate with barely any legal or parliamentary supervision. In December 2007, after much delay, the new Law on Oversight of Security Services was passed by parliament, giving more authority to the Parliamentary Security Board, which can now exert some control over the security agencies. Despite these feeble attempts to establish some oversight, the three main security agencies still control parts of the media, economy and political life in Serbia. The present situation is convenient for Serbia's security organisations: as long as the country is in crisis, the government weak, and there is tension in Kosovo and on the international stage, no one will question their privileged position, nor dare to investigate their activities.

A much delayed draft law on anti-corruption is now ready for adoption after the May 2008 election. According to this draft law, a new agency is foreseen to be established to deal with anti-corruption and conflict-of-interest issues, together with a Special Anti-Corruption Prosecutor. The Anti-Corruption Council is foreseen to continue working with the government in an advisory capacity.

***In summary, corruption in the civil service in Serbia is not a major problem, in spite of the serious bribe-risk areas in customs, tax administration and health care, and the opaqueness of the security and information services, which are outside the scope of the civil service. Mechanisms to protect the integrity of civil servants are rather weak and ineffective, however. Major sources of concern are the existing political corruption and the risks of undue state capture, which easily permeate administrative structures and some essential state services.***

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

The Law on Salaries of Civil Servants was passed in July 2006 and the new salary system was introduced on 1 January 2007. The new scheme applies to the core civil service, including customs and tax, and covers about 35,000 staff, it does not include police and secret police [as indicated above, the total number of civil servants is about 67,000]. The new system provides for a compression ratio of 1:9. Pay has increased in 2007 by an average of 41.2%, except for the lowest grades. The new salary system should make it easier for the government to attract and retain qualified staff in the administration. The salary for a counsellor now amounts to the equivalent of 440 EUR per month.

The system set up the 2006 Law on Salaries of Civil Servants applies to both the holders of "appointed" and "executorial" positions, and is coherent with the classification of the civil service insofar as it is based on a basic salary established by the Budget Law, to which a coefficient applies (assigned to every rank in the standard classification of jobs).

The Law on Salaries of Civil Servants, inspired by the World Bank, is very restrictive concerning bonuses, overtime and other types of remuneration beyond standard salaries. Therefore, the only way in which managers may reward the best performing civil servants with a salary raise is through vertical promotion to vacant positions classified in higher ranks. The new salary system for the civil service has benefited mostly the holders of middle-rank positions. For some groups, such as staff working in tax and customs, but also drivers in general services, the salary reform has in fact resulted in a considerable decrease in salaries by freezing them, which was explained as being due to the non-transparency of the actual take-home pay in these services.

In the tax and customs administrations, the previous system allowed for considerable bonuses. These bonuses were discontinued under the new salary scheme. As the bonuses were often seen as part of the basic salary, the real decrease in take-home pay has led to a considerable number of complaints (some 6,100) to the Appeals Board.

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 classifications. Distortions in the salary scheme, due to different classifications of similar jobs, have been basically eliminated due to the new classification system,

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<sup>13</sup> "Organised Crime in the Western Balkans", paper presented at the *First Annual Conference on Human Security, Terrorism and Organized Crime in the Western Balkan Region*, organised by the HUMSEC project in Ljubljana, 23-25 November 2006. See also "What's Wrong with Serbia?", 31 March 2008, in European Stability Initiative (ESI), Discussion Papers available at <http://www.esiweb.org/index.php?lang=en&id=310>.

the implementation of which was closely controlled. 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, based on performance appraisals. For the time being, these appraisals do not have an impact on remuneration. The reasons for this are that the system needs to be thoroughly tested first and managers need to be given sufficient training in carrying out performance appraisal.

Other separate pieces of legislation on salaries are foreseen for local governments, public officials (including “political” positions in the state administration, judges and prosecutors) , and other public employees in public services, for whom the old 2001 Salaries Law still applies. The salary legislation on local governments is being prepared by the Ministry of State Administration and Local Self-Governments (MSALSG). The other two pieces are to be prepared respectively by the Ministry of Labour and the Legislative Secretariat of the Government. Civil servants subject to special statutes have their own salary system.

A problematic issue is that the “rationality” of the new salary system for the civil service is being put into question by recent proposals formulated by the Ministry of Finance, involving salary raises for some professional groups within that ministry, through a revision of the coefficients assigned to certain positions. Likewise, both parliament and the Constitutional Court have tried to escape from the system by requesting a differentiated “base salary” for their staff.

A new Law on Salaries for Public Employees is in the drafting process in the Ministry of Labour. The development of a new unified salary system for the various professions in the public services, ca. 230,000 staff, has begun. A great 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 services could not take place, and it remains to be seen whether any further developments will take place.

Lower-rank civil servants are now mobilising the trade unions so as to obtain a salary raise that reduces the 1:9 ratio. In fact, while the Budget Law for 2008 foresees an increase in salaries of 8% for the year (3% in April and 5% in September), the government and trade unions have already agreed that this increase will be applied mainly through the “coefficient” so as to reduce the ratio between lowest and highest salary to 1:6.

Public employees in general services, who are outside the scope of the civil service law and subject to labour law, do not have the chance to be promoted to higher-ranking positions. In compensation, the possibility exists to grant some of them an additional “bonus” worth 50% of the monthly salary every three months, with a maximum bonus equivalent to two full monthly salaries per year. A maximum of 1% of the total monthly payroll can be used for this purpose.

Seniority does not exist any longer as a salary component, as it has been absorbed and factored into the basic salary. There is still a bonus for seniority (0.4% a year), but it is scheduled to be abolished in 2011.

***Salaries are fixed by law or other legal instruments and the management has almost no discretionary leeway to determine individual salaries of civil servants. This situation could deteriorate, however, when a performance-related pay scheme is introduced. Discretion of managers to determine individual salaries is much greater for public employees than for civil servants.***

### ***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 formalistic exercise; they have had basically no impact on either careers or bonuses. The 2005 Law on Civil Servants (CSA) and the respective decree introduced a performance appraisal exercise that is in line with modern principles. Guidelines for “appraisers” were adopted and made widely available, and training was delivered. The performance appraisal will influence, as from 2011, the take-home pay by awarding merit steps for good performance; the appraisal will also to be taken into account for promotion.

Work objectives were set for the first time in late 2006 in accordance with the new performance appraisal system. The first performance appraisal in line with the new system was carried out at the end of 2007 and beginning of 2008, when training was delivered on appraisal interviews and performance appraisal. The data processed so far on the first exercise show that the evaluators generally still have a problem with the interpretation of the grades and their application to actual performance achievements. That confusion usually leads to the assignment of higher grades than deserved, which was to be expected.

### ***Job Description***

The generic profiles for every position are described in the CSA itself. Beyond that, the classification of jobs and the detailed criteria to be used for job descriptions are governed by government regulation (see above). In accordance with such criteria, internal by-laws of every state authority (“systematisation”) contain the types of jobs, the number of jobs of each type, and the requirements for holding such jobs. These by-laws are prepared and finally adopted by the relevant authority, but in fact under the close supervision of both the Ministry of Finance and the government’s Human Resources Management Service (HRMS). The classification contained in the CSA does not apply to police officers, customs and tax officers, and civil servants working on security-related affairs or in penitentiaries.

### ***Training***

Article 10 of the CSA specifies that a civil servant has the right *and* obligation to vocational training corresponding to the needs of the state authority in which he/she is employed. The CSA then goes on to distinguish between professional (vocational) training and “additional education”. Articles 96-97 regulate professional training, while articles 98-99 deal with additional education of civil servants.

The CSA does not provide for an explicit link between professional training and promotion. However, as promotion is heavily dependent on the grades received in the performance appraisal of civil servants (performed annually for each civil servant), which is itself more directly related to professional training a civil servant undergoes, there seems to exist an indirect link between training and promotion. However, if a civil servant receives an unsatisfactory grade in the appraisal process, he/she may be given additional professional training in order to increase the chances of receiving a better grade in the “special appraisal”, which is conducted only for those who have been graded as unsatisfactory in the ordinary appraisal process. Such civil servants “may be included in the regular professional development programmes made for all civil servants or he or she may be offered special programmes intended for civil servants marked with ‘unsatisfactory’.”<sup>14</sup> One may conclude, therefore, that undergoing professional training may substantially improve the results of a civil servant in the appraisal process, thus eventually increasing his/her chances of being promoted.

In the absence of a civil service school or training centre, the HRMS is striving to co-ordinate and strengthen existing training programmes and resources. Some state authorities (Tax Administration, Ministry of Interior, etc.) are already implementing standing or ad hoc training programmes and are even managing their own training facilities. The Serbian European Integration Office (SEIO) also provides extensive training on the *acquis communautaire*. The HRMS intends to establish a civil service training centre in the near future.

At the same time, the HRMS has already developed and implemented a training programme for civil servants across the state administration, as mandated by the CSA. The role of the HRMS is for the time being that of a supplier of a certain type of training for civil servants working in the various ministries. The HRMS has also started to set up and equip some training facilities on its own premises.

During the assessment period, a considerable amount of training for civil servants was delivered, mainly with the support of international donors. In March 2007 the government adopted for the first time an annual training programme for civil servants. The draft programme was prepared by the HRMS with the support of DIAL, an EAR-funded project. The programme has been printed in the form of a booklet and is also available on Internet. The EAR supported the training through various projects; this support is continuing in 2008. The training focuses not only on ensuring implementation of the new civil service legislation, but also on broadening both vertical and horizontal topics. Main areas of initial training were human resources planning, appraisal and selection procedures. In 2007 a total of 2500 civil servants attended training courses organised by the HRMS.

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<sup>14</sup> Zlatanovic, I. and S. Antonijevic (2007), *Professional Development of Civil Servants in the Republic of Serbia*, DIAL, Belgrade, page 8.

In 2008, the HRMS is implementing a new Annual Training Programme, with a focus on “professional development for civil servants in state administration authorities”. The HRMS has prepared a Programme of Civil Service Training for 2008, which was adopted by the government on 31 January 2008. This programme has been extended and improved in comparison to the training provided in 2007, covers all bodies of state administration, and will be implemented by the HRMS. The main areas of the 2008 programme are constitutional order, governmental system and state administration, civil service system, human resources selection, modern administration and management in the state administration, projects in state administration, public finance system, European Union, transparency, general topics, training of trainers, and foreign languages. For the implementation of the programme, the HRMS is still very dependent on donor-provided technical assistance, but it has started to develop new methods for financing the training of civil servants.

The HRMS moved premises in May 2007 and is now housed in the former federal government building. The building provides sufficient space for carrying out training, and at the beginning of 2008 funds were obtained from the National Investment Programme to finance training equipment. The HRMS now has six new training rooms; two rooms are equipped with technology for simultaneous translation and one with PCs.

There is no duplicate of the HRMS within the judiciary or parliament, and the training on human resources management within those two branches has been neither as extensive nor as supported by donor funds as the HRMS training for the civil service.

### ***Civil Service Attractiveness***

Salaries in the civil service are competitive with salaries in the private sector only at the level of “appointed positions”. The current salaries in “executorial” positions are only attractive for young graduates without any professional experience. For this reason, it is difficult to retain good young professionals in the civil service because they often decide to leave their civil service positions for better remunerated jobs in the private sector after a few years of service. The CSA (article 88-2) provides for the possibility a fast-track promotion scheme, which would enable a young professional to obtain a rapid promotion to a higher rank, but this CSA provision somehow contradicts the requirements set in the Law on Salaries of Civil Servants concerning years of relevant professional experience needed for possible promotion to higher positions (even through internal competition).

However, a high level of unemployment (given the unreliable statistics, this figure ranges from 15% to 30%, depending on the source<sup>15</sup>) makes a poorly paid job in the public sector attractive for young graduates, but the tendency, after a few years in the public service, is to leave for better paid jobs in the private sector, especially in banking, insurance companies and local agencies of international organisations, which tends to disrupt the domestic job market. The relatively secure job tenure that the public service offers makes it also attractive for women, who thus secure a regular income for their households.

## **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 HRMS***

The main institution, the Human Resources Management Service (HRMS), foreseen in the Law on Civil Servants (CSA), was created in December 2005 – with the appointment of its director, a civil servant – to prepare for implementation of the new law. The HRMS is the leading organisation conducting the implementation of the new legislation adopted in 2005-2006 and is under the direct responsibility of the Prime Minister.

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, progressively transferred its HRM responsibilities to the HRMS. The transfer was finalised with the full enforcement of the law in July 2006.

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<sup>15</sup> For example, for the Survey on Labour Force 2001-2006, the 2006 level of unemployment was 20.9%, whereas the National Employment Office indicated for the same year the figure of 27.9%. For 2007 the National Employment Office indicated a level of unemployment of 26.8% (Source: Basic Economic Indicators, provided by the Serbian Chamber of Commerce).

The main overall responsibility of the HRMS is to carry out “specialist tasks related to human resources management in the state administration”, and specifically to:

- Co-ordinate the reorganisation of the state administration, including the development of the civil service system, and participate in drafting civil service and administrative legislation as well as provide opinions on rulebooks and staffing tables (systematisation) of state bodies;
- Advise state administration authorities (ministries and specialised organisations) and services of the government on human resources management, prepare the general human resources plan for the whole state administration and ensure the proper implementation of the adopted plan;
- Perform tasks of importance for the implementation of the human resources policy of the government, such as 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;
- Advertising vacancies in the state administration and services of the government;
- Organise professional training of civil servants;
- Establish and administer (as an electronic database) the Central Personnel Registry on civil servants and general service staff in the state administration authorities and services of the government;
- Serve as secretariat to the High Civil Service Council (HCSC) as well as to the government Appeals Board.

In addition, the HRMS co-ordinates an informal network of HRM units of state administration authorities and government services, mainly through provision of advice and support for their work in the implementation of the provisions of the new legislation. In turn, these HRM units are in frequent contact with each other, particularly among the authorities that are related or depend on the same ministry, which contributes to enhancing a sense of a unitary civil service.

The HRMS was slightly understaffed in the spring of 2008. According to the systematisation, it should have 50 staff, but currently (April 2008) it has 42 staff, allocated to the various organisational units, in particular for recruitment competition procedures, support to the HCSC and the Appeals Board, training of civil servants, etc. Selection procedures for several managerial positions in the HRMS are underway.

As indicated above, the HRMS moved to better premises in May 2007. After overcoming initial difficulties with equipment and communication, HRMS is currently fully able to carry out its functions. Besides the above-mentioned training facilities, in the new premises there are also rooms for meetings of the HCSC and the Appeals Board and rooms for selection panels.

The establishment of the HRMS has fulfilled a need that has been recognised for a long time, allowing the HRM units in state authorities to initiate a movement from routine management of “personnel affairs” to a broader and much more modern concept of human resources management (apart from increasing transparency in recruitment processes across all state administration bodies). Also, the training programme developed by the HRMS and approved by the government has been most welcome in all state authorities. As indicated above, many civil servants from various authorities have already participated in the training programme.

### ***The High Civil Service Council (HCSC)***

The CSA established a High Civil Service Council (HCSC) of nine members (experts or professionals, appointed by the government), which acts as an independent consultative body empowered to produce regulations on the type of professional qualifications, knowledge and skills to be evaluated in the procedures for selection and recruitment of civil servants, as well as the methods for their verification; selection criteria for appointments; and the Code of Conduct.

Regarding the selection of senior civil servants<sup>16</sup>, the HCSC appoints the members of selection panels from among Council members, together with additional experts in the specific field. The chairman of the selection

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<sup>16</sup> See above, under the recruitment section of this report (2.1).

panel is always one of the members of the HCSC. Administrative and technical support to the HCSC is provided by the HRMS.

### ***Appeals Board or Appeals Commission***

In implementing the CSA (art. 142 ff), an Appeals Commission was created in July 2006, and eight members – civil servants from various ministries – were appointed. The Commission is independent and reports to the Prime Minister. The President of the Appeals 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 appeals will be decided by the Administrative Court, for which the respective law has been adopted but is not yet implemented.

Apart from the 6,100 claims on salaries (see above), in 2007 about 250 cases were regular cases, concerning disciplinary actions, duties and responsibilities, reassignments and transfers. In about 35% of the cases the decision taken by the minister was quashed by the Appeals Commission; generally the Commission then asks for a new decision, taking into account its findings.

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

***The existing institutional arrangements for the co-ordinated management of the civil service within the state administration seem appropriate and sufficient to ensure the uniform implementation of the new legislation across the entire state administration, and this should bring about substantial improvements in the professionalisation of the civil service and in the modernisation of the HRM function. However, the process of renovation, updating and modernisation of the HRM function in the state administration has just started. The newly established foundations seem to be consistent, and the future of this key function in the administration that depends on the government would look promising elsewhere, but the current political upheavals in Serbia may prove to be fatal to a still fragile civil service management structure.***

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

With regard to human resources, there are two main planning and control instruments. These planning instruments have been developed at the level of every single state authority, although they are “co-ordinated” (for the time being, supervised and consolidated) by the HRMS and the Ministry of Finance. The first instrument, which involves medium to long-term planning and is closely linked to organisational decisions, is the “systematisation” or “staffing table”. The staffing table (systematisation) represents the “ideal” or prospective lists of civil service positions in any given state authority, ordered by groups, ranks and number of positions, in combination with the internal organisational chart or “organigramme”.

The second instrument is a short-term planning, which is closely linked to the annual budget. This is called the “Human Resources Plan” (HRP) and must contain all of the positions for which the state budget will provide funding in any given fiscal year. 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 prospective staffing in the medium term, whereas the HRP shows only those positions for which there are budget funds provided. In practice the HRP is becoming more and more the key staffing control instrument, as it links vacancies to the budget. As no budget was adopted in 2007 due to the elections, the provisional HRP was adopted and amended twice in 2007.

Positions included in the HRPs that are vacant, or will become vacant during the year, are the only ones for which new staff can be recruited. Since both the HRMS and the Ministry of Finance are involved in the process of approval of these HRPs, they are a key instrument for the control of staff ceilings and personnel costs in the state authorities. This procedure now allows an administrative body to ask the HRMS directly to publish a vacancy announcement for a position included in the HRP, i.e. without passing again through the MoF. At the same time, the HRMS is obliged to reject any request for recruitment if the position has not been included in the HRP.

Overall, the system is proving to be quite reliable in terms of controlling staff ceilings and personnel costing.

The HRMS will have to assign resources to monitor consistency in the future. The Central Personnel Registry, which has been 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. As indicated above, the HRMS currently has 42 staff instead of the 50 foreseen in the systematisation.

***Consequently, even if the system may prove to be reliable in the control of staff ceilings and costs, the maintenance of the civil service registry, along with closer monitoring by the HRMS in co-ordination with the Ministry of Finance, will be required in order to keep personnel costs fully under control.***

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

The existing legal framework and the new Law on Civil Servants (CSA) provide for social rights and fundamental freedoms of civil servants. Restrictions stated in the current and future legislation are similar to those enforced in EU Member States. The rights of civil servants include membership in a trade union. These rights are extended in article 17, which states that additional rights included in the special collective agreement will also apply. The right to strike is guaranteed by the Constitution (article 60), although it is not specifically stated in the CSA.

Although members of the general civil service have the right to trade union membership and striking is allowed, the role of trade unions or other staff representatives in staff management is rather limited. The notion of staff committees or professional associations operating within public institutions is almost unheard of in the public sector. Neither the HRMS nor the HRM units in state authorities have any regular, institutionalised relationship with trade unions. Moreover, trade unions as such are not represented in the HCSC or in the Appeals Board. The activities of public service trade unions are regulated by the Labour Code, enacted in 2005.

Trade unions nevertheless have a rather important influence on the workforce in public services. Considering the rather fierce resistance demonstrated by the trade unions towards certain aspects of the new civil service laws, the successful implementation of the new salary and classification system, together with reduction of the workforce, can therefore be seen as important achievements. However, the trade unions consider that these laws are disastrous and lack the capacity to reform the public administration, which is still politicised and patronised by political parties.

This relative strength of the trade unions in the public sector, coupled with the high unemployment rate, makes it difficult for the government to implement all of the across-the-board staff cuts requested by the IMF and the World Bank.

The Administration and Jurisprudence Trade Union is integrated into the Confederation of Autonomous Trade Unions of Serbia and is a member of the European Federation of Trade Unions. It has 32,000 members and is the most representative of civil servants and public service employees. Its income comes from membership fees, not from the state budget. This trade union negotiates with the government, the IMF and the World Bank, although the social dialogue with the government still needs to be improved, according to the trade union.

***The government and trade unions representing public employees should discuss, agree upon and implement – if necessary, by enacting appropriate legislation – effective mechanisms for ensuring the more active participation of staff representatives in the management of the new system and in the permanent improvement of working conditions and of the working environment.***

## **Recommendations:**

1. The legal instruments and management practices governing the employment relationship of staff working in public services – such as national security, education and health – as well as in local self-governments should be reviewed so as to complete a comprehensive legal framework for all staff working in public services. Such a framework – with all of the necessary specificities – embeds the basic principles of a democratic public service ruled by law across the various statutes for different professional groups, including especially the security and information services.
2. The merit system in the management of the civil service is fragile, although evident improvements have been made to professionalise the civil service. The merit system in recruitment procedures should be strengthened by reducing managerial discretion.
3. The government that will be in place as a result of the 11 May 2008 election should finalise, without procrastinating, the selection process of professional candidates for the senior civil service. These appointments should be based on the proposals submitted by the High Civil Service Council (HCSC).
4. Efforts should be made to strengthen the capacities of the Human Resources Management Service (HRMS), with particular focus on the development and implementation of training programmes and monitoring mechanisms.
5. The HRMS has been set up as a centralised training facility. Further curricula need to be developed to provide for systematic in-service training that supports professionalism and efficiency in the public administration. The HRMS should also strengthen networks so as to foster co-ordination and co-operation across levels of government. The content of the professional examination needs some improvement.
6. Mechanisms to protect the integrity of civil servants should be made more robust, effective and credible. Decisions concerning the Anti-Corruption Council and the Republic Board for Resolving Conflicts of Interest should be adopted soon, so as to provide a better legal and institutional framework for ensuring the integrity of public officials and civil servants and the strengthened effectiveness of the fight against corruption (especially in government, the administration and public services). Distinct regulations of conflict of interest for politicians and civil servants are needed.
7. An in depth analysis of HRM capacities and needs in state authorities from the viewpoint of requirements for the effective preparation for EU accession should be undertaken by the HRMS and the government's European Integration Office, with a view to preparing an operational plan for the strengthening of human resources management capacities in state authorities to support the EU integration process.

Government and trade unions representing public employees should discuss, agree upon and implement – if necessary, by enacting appropriate legislation – effective mechanisms for ensuring the more active participation of staff representatives in the management of the new system and in the permanent improvement of working conditions and of the working environment.