

Problems and Challenges on the Path of Making the Civil Services in the Western Balkans Professional and Non-Political

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A non-political and professional civil service is usually mentioned in the reform projects. The paper will attempt to provide some reasoning for the need of a professional and non-political civil service as well as a working definition for professional and non-political. The main reasons that cause low priority of public administration reforms in the transition countries are described. A brief overview of the situation in the Western Balkans region with regard to the reform of the civil service has been done.

Key words: public administration reform, civil service – the Western Balkan region, professionalism, depoliticization

Introduction

There is a general assumption that the need for a professional and non-political civil service is self-evident.** A non-political and professional civil

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service is usually mentioned in reform projects as an objective in public administration reform and as a requirement for a sustainable reform.

This paper will attempt to provide some reasoning for the need of a professional and non-political civil service as well as a working definition for professional and non-political.

This general requirement for a professional and non-political civil service existed also for the new member states of the EU (since 2004). Not all of them fully complied with it in the first place; some have fallen back into strong politicisation after accession and others are now – after becoming members – finally making a serious effort to professionalize and depoliticise the civil service.

Given this development, the need for a professional and depoliticised civil service does not seem self-evident and it is possible to question it.

Is there really a valid reason to set such a requirement? If yes, why is it so difficult for transition countries to understand and to accept the need for a professional and depoliticised civil service, and to implement it?

Over the recent centuries, the opinions regarding the need for such a civil service were rather divided. When Prussia and other European states started to develop a professional career system, based on merit, the USA developed the spoils system. However, nowadays all developed civil services are based on the principles of merit, professionalism and non-politicisation, even if these principles are implemented in different ways.

Brief History

As a short reminder; in the early 19th century, in the US, President Jackson (1829–37) maintained that »performance in public office required no special intelligence or training« and rotation in public office would ensure that the federal government did not develop a class of corrupt civil servants set apart from the people. His supporters advocated the spoils system on practical political grounds, viewing it as a way to reward party loyalists and build a stronger party organisation; Jacksonian Senator William Marcy of New York proclaimed, »To the victor belongs the spoils«.

The corruption and inefficiency bred by the system reached staggering proportions in the administration of Ulysses S. Grant (1869–77). In 1881, President James Garfield was assassinated by a disappointed office seeker. The Pendleton Act of 1883, introducing a civil service commission and a merit system, served as a response to this assassination. In reality,

the Pendleton Act was far from introducing a merit system. The act covered only a rather limited number of positions at the federal level only. Strangely enough, the Act had a provision whereby outgoing presidents could provide their own political appointees with permanent civil service positions by simply converting their jobs to civil service jobs. As government changed quite frequently in those days, civil service positions increased quickly. Nowadays, the US has a merit system, though top positions are still rather politicised.

The UK Civil Service has been in existence in its modern form since 1854 as a result of the Northcote–Trevelyan Report. Prior to the 1854 reform, civil servants had been appointed to office by ministers without regard for qualification or age but in return for political support or personal interest. Since then and until Ms. Thatcher became Prime Minister, the UK civil service was known for its complete depoliticization, manifested by interdiction of party membership; obligation to resign before running for a political office; no changes in the top civil service if government changes. The civil service is said to be to some extent »politicised« since Ms. Thatcher, as since then the ministers may chose their senior civil servants between short-listed candidates whereas before it was only the head of the civil service or the CSC who did the selecting and choosing.

The German civil service in its present form goes back to the end of the eighteenth century when it was first regulated in the Prussian General Code of 1794. This code saw the incorruptible civil servant as a basis for achieving the ideal type of the rational legal rule of bureaucracy.

Frederic the Great wanted to ensure that all citizens were treated equally, but also that the law was clear and that citizens could read and understand the law. At the same time, civil servants had to receive enough money to live a decent life. Consequently, bribery and corruption were serious offences.

The prevailing philosophy was confirmed in the law on »Civil Service of the Reich« (»Reichsbeamten-gesetz«) enacted in 1873. It was enshrined in the German Basic Law (art. 33) after the Second World War, by emphasising the traditional principles of the professional civil service. Recognized as such are merit, loyalty, political neutrality and moderation, dedication to public service, lifetime occupation, salary according to the maintenance principle (»Alimentationsprinzip«), and subjection to special disciplinary regulations.

Finally, Max Weber states the ideal civil servant is to decide »sine ira et studio«, without any influence of personal motives or emotional influence, free of arbitrariness and incalculability, especially »without regard to

the person in a strongly formalistic way according to rational rules and – where those fail to be applied – according to ‘factual’ consideration of expediency» (Weber 1964).

Definitions

Despite the fact that there is obviously a broad consensus that public administration and the civil service should be *professional and non-politicised*, the understanding of these terms seems not to be without variations. Therefore, a definition of these notions, as they are understood in this paper, is given here.

A professional public administration and civil service in the larger sense is understood as a stable service based on continuity and institutional memory that ensures legal certainty. It acts in a transparent way and observes the rule of law. If government changes or is otherwise not in place for a longer time, then public administration with the civil service ensure the continuity of service delivery and functioning institutions.

In order to achieve and sustain professionalism, the staff working in public administration, usually civil servants at least in the European continental tradition, should be recruited and promoted on merit through transparent competition. They should be well trained for the profession and enjoy specific training for the position; i.e., the staff should know all legislation and rules applicable in their specific position together with the relevant court decisions, and should apply these in the appropriate way.

The civil service staff have to be aware (and act accordingly) that they first and foremost serve to the common good. Staff have to be aware of and respect the fact that in a state/government evidently there are contradicting objectives in different policy areas that all need to be served. Priorities have to be set by the political level so that the objectives are brought into a workable compromise and the work aligned to the prime objective: respecting and serving the common good.

Nota bene, professionalism of the civil service does not necessarily translate into a career civil service even if, as a principle, a career civil service provides more easily for continuity and institutional memory.

A non-political public administration and civil service should be understood as non-partisan, i.e. as impartial. Being impartial is accepted as a condition sine qua non for professionalism in public administration. Being impartial as a civil servant translates into serving the government of the day

in a loyal way, so that the policy goals of the government are implemented in an appropriate way. It also translates into delivering professional advice by providing complete information so that an informed decision can be taken by the government, even if the policies and politics of the government are contradicting the personal ideas of an individual civil servant.

Being impartial as a public administration translates also into recruitment and promotion of civil servants based on merit and not on party affiliations and/or friendships.

Only if these conditions are fulfilled and if public administration is appropriately controlled, internally and externally, it seems possible that both, citizens and politicians can build trust in public administration.

Implementation Problems and Possible Reasons

The need for a professional and non-political civil service is widely understood and propagated in industrialised countries as a prerequisite for creating and maintaining favourable environment for economic development: Simultaneously, it is a condition *sine qua non* for a responsive administration at the service of all citizens and for the appropriate delivery of public services.

Given that there are sufficient examples showing a clear link between good professional administration and economic development, it is difficult to understand why in most transition countries the reform of public administration is rather slow, and rarely seen as a priority.

After observing and trying to analyse this phenomenon in transition countries over the years, a reasonable conclusion seems to be that there are several factors that make public administration reform a low priority topic.

- Politicians underestimate the importance of public administration reform for sustainable economic development, as in some transition countries economic development may well occur without public administration reform. At least in the early phases of the transition, low labour costs coupled with a rather well trained workforce may easily cover up for costs created by a slow and non-transparent administration, lack of legal certainty, cumbersome procedures and insufficient judicial control of public administration. The investments are made, but they may be withdrawn after a short while due to the problems with public administration, as we can observe in some of the new member states.

- Another reason for the politicians to put public administration reform on the back-burner could be that they want to keep public administration at their service, in order to – among other reasons – serve their vested interests or to keep the possibility of distributing high-ranking positions or other perks to their supporters and friends. It became generally visible in transition countries outside the CARDS region that this behaviour hampers continuous economic development in the medium-term period; the same phenomenon may soon be observable in the CARDS region.
- The existing civil service workforce seems more often than not to support and foster the reluctance of politicians to introduce a merit based professional civil service. Civil servants in place employed before the reform started, are often hostile to change. To them, change seems to have no positive incentives; it implies increase of the workload, adapting to a new legal environment, more responsibility, loss of networks, trusted relationships and possible perks, and all this usually added to a pertaining low salary. At the same, time young professionals entering the service at that point in time or during the reform efforts are often frustrated by the slow pace of change, the lack of delegation and little responsibility they are allowed to take, which besides the salary issue seems to be an important reason for the high staff turnover among young professionals.

The observed prevailing behaviour of politicians and the older generation of civil servants can be partially explained by the history of this region and in particular by its post conflict situation. The emergence from a more or less communist single party environment coupled with a war has created a general lack of trust; this has had impact on all areas of social interaction, e.g. politics, public administration as a whole, the feasibility and acceptance of a merit system, work relations between different ethnicities, trust in colleagues who are not close friends. In addition, anecdotic evidence shows that there are citizens who actually expect politicians and civil servants to accumulate wealth in a questionable way while in office and who also expect easy access to well paid jobs if they have friends who have obtained an important position.

These attitudes still exist to a varying degree in the countries in the region; they also vary among the levels of government. However, over the years, considerable change (though not yet sufficient) can be observed. A larger number of politicians are aware that they need highly qualified staff whether or not they are friends, and a constantly growing number of civil servants understand the need for change and reform.

Besides these possibly historic reasons and subjective impressions, there also seems to be a number of more readily assessable, external and more objective reasons for the slow process.

The first general observation to make here is that the expectations regarding the speed of reform processes and tangible positive changes are usually too high and therefore timeframes are too short. To speed up the civil service reform, some countries have copied laws from other countries without reviewing their quality and adapting them to the specific circumstances or used foreign and/or local experts instead of the civil servants to do the day-to-day job.

In most countries consultation and communication with the stakeholders and beneficiaries was insufficient *during* the process of developing and drafting the legislation. The public consultation, which usually takes place at the end of the process, did not replace the ongoing consultation, as it was more a marketing exercise than a serious consultation. It seems obvious for an observer that the »reformers« and drafters of the new legislation underestimated the need to build a constituency for reform in order to find the necessary support for its implementation. As a consequence, the new legislation was often produced, but full implementation and sometimes even partial implementation proved to be difficult if not impossible. Not only was there lacking support by the political level, there was also a lack of understanding among those civil servants who should apply the new legislation as they had neither been involved in the process nor sufficiently informed and trained to adequately apply the new legislation. It is obvious that the difficulties of implementation and the staffing needs were often underestimated.

It would, however, be too easy to just blame politicians, civil servants and citizens in transition countries for the slow or even hardly existing public administration reform, and in particular the civil service reform. Donors, consultants, and sometimes national reformers, returning from some far away countries, have to take a considerable part of this blame, too.

Donors and consultants wanted quick results and a successful project thus neglecting the national context, the interdependency of some reforms, and sometimes even the democratic procedures, e.g. consultations with the stakeholders. In some of the countries, consultants together with national reformers tried a complete change of historical structures, institutions and legal traditions, i.e. a revolution instead of an evolution. As a result, there was hardly any capacity to implement the very demanding reforms, leave alone that citizens could not follow the reform logic. Therefore, it took an even longer time before those concerned with the changes were able to understand them and could start to implement; however, these

reforms often just failed all together and the new regulations were simply not implemented.

For example, based on foreign models, agencies were created to speed up the reform, staff was hired outside the stricter civil service rules, and particularly, the low pay scales were introduced. These agencies were fully independent without any control mechanisms, but simultaneously often did not have the powers to enforce the new legislation. Sometimes the tasks of already existing bodies were duplicated, sometimes political responsibility was completely blurred, e.g. when administrative bodies were charged to draft legislation and to directly submit them to the government without any real obligation to coordinate with the ministries.

In the general public administration reform it happened that services had been abolished, possibly due to some misleading advice of experts, which had later to be recreated. New laws were drafted and adopted while existing laws regulating the same substance were not reviewed and/or abolished. Civil servants, who had to apply the legislation, were (and often still are) confronted with the legislation drafted according to different legal traditions and therefore following different structures in their legal logic. Citizens who should comply are often lost and sometimes unable to decide which legal act should apply and how it should be interpreted.

Regarding the civil service legislation in transition countries, in the beginning it was often drafted by consultants only; it was usually inspired by their respective national background. The tradition and existing situation were often neglected. For example, a fully open competition for all positions in the civil service was introduced to improve quality and professionalism. It was neglected that in a transition country with generally low salaries there was little incentive for qualified persons working in the private sector to apply for a job in the public sector. On the other hand, this open competition could easily lead to more arbitrary recruitment, and thus to more politicisation and nepotism, high turnover, especially after elections, and very reduced promotion possibilities for the existing staff, and finally that it would all result in less professionalism and lower quality of the civil service.

Status Quo in the CARDS Region

General Issues

After a first rush of reforms, often never really implemented, in most countries of the region the reform seems on a good path at the end of 2007. Ear-

ly laws on civil service and general administrative legislation have been, or will be reviewed. Recently adopted legislation basically seems adequate, even though some individual provisions may not be fully in line with general European standards yet. The implementation over the next couple of years may therefore show the need for some smaller amendments. At the same time, an evaluation should be carried out to assess if the new legislation can ensure the merit system and if the objective of a professional high quality civil service can be reached with the current legislation.

The main flaw in all transition countries is the lack of delegation of responsibility. Job descriptions and classifications show responsibilities and competencies for advisors and experts which usually do not exist in reality.

Another weak point, which needs to be addressed urgently, is the weakness of service mentality and the considerable lack or even inexistence of training for low grades. It results in the fact that normal citizens still often get the same bad treatment from public administration and that thus even considerable reforms do not necessarily translate in service improvement for citizens.

Civil Service Legislative Framework

Except for the two more recently adopted civil service laws in Croatia and Serbia, the civil service legislation in the region should be seriously reviewed (Serbia and Croatia should evaluate their legislation in about two years to assess if their legislation is appropriately implemented and if amendments are needed).

The existing civil service legislation is generally too detailed, often includes rather cumbersome and superfluous provisions that make the procedures lengthy and expensive. The scope of the laws is often unclear, as well as other provisions. In the whole region, it can be observed that politicians try to take advantage of unclear provisions or to water down or to circumvent good legal provisions of the legislation so that possible vested personal or party interests can be served.

Specific problems persist in Bosnia and Herzegovina and Kosovo. BiH has, generally speaking, acceptable civil service legislations despite certain flaws. However, the four different civil service laws, which individually may be acceptable, seem unacceptable within one single country even if it has a multi-level governance structure. The differences between the laws, most likely due to the fact that different projects assisted in the drafting and that they were drafted in different years without coordination, will need to be harmonised urgently. Only a harmonised, not necessarily

identical, legislation can ensure equal service standards and professionalism across the countries, and allows for mobility between the different civil services. Both, equal standards (needed also for other legislation) and mobility are necessary as a backbone for economic development. In BiH, a working group to harmonise the civil service legislation exists. However, there are doubts about the seriousness of the group as progress is hardly visible.

In Kosovo, a complete overhaul of the existing civil service legislation is necessary, to finally develop the necessary professionalism in the civil service. Drafting is under way; however, the resources allocated to this endeavour seem insufficient. Time and effort needed to draft a well structured, clear, and implementable law that meets the set objectives, have possibly been underestimated.

All countries in the region seem to review their civil service legislation; some of the known amendments are definitely for the better, others seem to indicate a step backwards. In any case, the necessary review of the older legislation seems to be rather slow and often secretive, so that the plan and actual amendments are not known until they are adopted by parliament. There is a certain fear that some amendments may in fact water down the good existing provisions.

Recruitment

Application procedures are often costly for the applicants. Politicians and »good friends« still try to get around the rather transparent, though lengthy, recruitment procedure.

In most countries, short lists of suitable candidates are drafted after the testing and – at least for the top positions – the minister (head of the administrative body) has the right to choose among those short-listed. Unfortunately, in some countries, this short list includes everybody who fulfils the minimum requirements so that the recruitment ends up being more or less arbitrary and the merit system is not respected. In some countries the recruitment procedures have to be restarted if fewer than three candidates are on the short list. Dismissal or recruitment violating the existing legislation remains a problem in the region. Only in a few countries review bodies and administrative courts (or respective chambers of the Supreme Court) now have the capacity and competencies to effectively deal with this problem; in others, they lack capacity, sometimes they have not even sufficient competences.

However, it has to be pointed out that in most countries procedural provisions regarding recruitment are currently reviewed and streamlined; espe-

cially cumbersome and superfluous provisions are already or will be abolished. One can hope that vested interests will not outweigh efficiency and transparency arguments and that therefore the situation will improve.

Regarding the recruitment to junior positions in the civil service, the implementation of the provisions of the civil service legislation is usually better. Still some improvements are necessary and appropriate implementation has to be ensured in all administrative bodies.

Promotion

Management positions are still often filled by outside candidates even if inside candidates do exist. Only very few civil service legislations call for internal competition first. Larger reshuffles happen when governments change and these are often motivated by party politics and/or friendship. Anecdotic evidence shows that more often than not internal competition is not done because it would be too much work to do the competition procedures twice and it would be difficult to inform all public administration bodies of such a competition. A rather serious flaw in the legislation of several countries is the provision that in-house candidates have to submit the same papers as an external candidate (which is often costly) even though all of this information should already exist in the files of the personnel department. These provisions are currently reviewed. Another problem found in some civil service legislations in the region is that promotion is conditioned by obtaining some additional formal degree without linking the degree to the task performed. For example, it is irrelevant for the promotion if the special qualification is necessary for the tasks performed and/or if the person with the degree actually performs the tasks for which the degree is necessary or at least useful.

Until now, there has been very little experience with »fast stream models«. However, some countries have introduced a linkage between performance appraisal and waiting time for promotion. The scheme is still in a trial period; an evaluation of the scheme is planned. In most countries in the region, merit plays only a limited role in promotion to senior positions, for the time being. However, the situation varies not only within the region but also in the ministries of the same country.

Politicisation and Nepotism

Politicisation and nepotism continues to persist in the region to the detriment of professionalism. However, there are some countries where top

civil servants try hard to implement the merit system and improve professionalism. It is a positive development that politicians are becoming increasingly aware that a non-professional administration affects negatively on the overall performance of public administration and in the medium term on economic development and the satisfaction of citizens with public administration.

However, the problem remains in the circumstance that not enough politicians and business people have yet understood that politicisation and nepotism guarantees good business and/or jobs for friends only during one mandate. If no changes are visible to citizens, they may use their voting rights more frequently to express their lack of satisfaction with the politics and behaviour of the government.

Salaries

The salary system and salary levels were the weak point in all transition countries and they are a weak point in the CARDS region, too. This problem needs to be addressed to urgently. Retaining qualified staff to conduct the necessary reforms in order to create the appropriate administrative environment for economic development seems only possible if public service salary levels allow for a decent living.

The reforms of the salary system in the civil service are finally under way, which is a considerable progress, even if the salaries in most countries remain low. In some countries, only the top positions (often political appointees) have had considerable salary increases, while the salaries in junior positions of university graduates remain insufficient. Ensuring a civil service able to foster economic development will require an urgent review of this situation.

Unfortunately, most countries have not reviewed their supplement system yet. It seems that instead of reforming the salary system, supplements are paid to specific services or units in a ministry, or to individuals for participating in a working group or for language skills even if they are not necessary for the job. There seems to be a multitude of possibilities. This practice hampers the mobility of civil servants, restructuring of public administration, as well as cooperation, especially if the supplements are paid to central coordinating units. Only very few countries in the region have already addressed this problem. Up to now, a serious reform seems to have happened only in one country. Like in many other transition countries, several countries in the region adopted new salary laws, which then were not implemented as the fiscal base was neglected.

Motivation

The motivation of civil servants seems to be a general problem, despite the fact that everywhere in the region one can find extremely motivated civil servants. Sustainable motivation seems to be hampered by several factors. These are the lack of delegation and little responsibility given to junior grades and low career chances in the countries where outside recruitment for promotion positions remains the rule. In some countries, only years of service and not merit counts for promotion, in some foreign degrees ensure a fast career, in others they do not count at all.

Decent salary levels remain a major issue, especially as long as highly qualified staff is scarce and the international community competes with public administration(s) for qualified staff.

Still, comparative experience seems to indicate that more responsibilities and a better career path would improve motivation even though national salary levels will never be able to compete with the salaries of the international community.

Ways Out of the Dilemma

It seems necessary to create awareness among politicians that in the near future nationalistic and patriotic arguments may not be good enough to get the votes, as citizens will expect visible change. If the economic situation does not improve and the bad services persist while corrupt behaviour gets more to the open, the voting behaviour may change.

Politicians and senior civil servants should make an effort to develop trust in the civil service so that a non-partisan professional civil service can develop.

To develop professionalism and continuity, when selecting senior civil servants, preference should be given to well-trained in-house candidates. At the same time, more responsibility should be delegated to junior staff and advisors, while directly applicable training for staff at all levels should be improved, in most countries.

To promote a professional and non-political civil service, a clear line needs to be drawn between political advisors and senior civil servants. Political advisors exist neither in all countries of the region nor in all EU Member states. However, if creating political advisors could be a feasible way to create a non-political and professional civil service, this possibility should be considered.

The system of incentives and sanctions as provided for by the civil service law should really be implemented.

In some countries, the international community could possibly put more pressure on the governments to actually implement the adopted legislation, i.e. to provide for adequate funding, staffing, and to create an efficient and professional public service. At the same time, the international community should make a real effort to meticulously implement the existing laws, rules, and regulations and not to find excuses for themselves.

PROBLEMS AND CHALLENGES ON THE PATH OF MAKING THE CIVIL SERVICES IN THE WESTERN BALKANS PROFESSIONAL AND NON-POLITICAL

Summary

A non-political and professional civil service is usually mentioned in reform projects. The paper will attempt to provide some reasoning for the need of a professional and non-political civil service, as well as a working definition for professional and non-political. The main reasons that cause low priority of public administration reforms in the transition countries are described. A brief overview of the situation in the Western Balkans region with regard to the reform of the civil service has been done.

Some countries in the region have made considerable progress in reforming their civil services over the last couple of years, other seem to have fallen back.

As can be observed in all industrialised countries, civil service reform is an ongoing process; the civil service must adapt to a changing environment. Civil service has to be efficient and effective, it has to provide the feasible environment for economic development, and it has to deliver the necessary services to citizens in an efficient way. All this calls for ongoing efforts.

The countries in the region have come a long way since 2001. However, they should not slow down their efforts and some may even need to increase them if they want to meet EU standards and then keep up the pace, given that the European member states are permanently making an effort to adapt their civil services to the changing world, i.e. the demands of the economy and citizens.

Key words: public administration reform, civil service – the Western Balkan region, professionalism, depoliticization

PROBLEMI I IZAZOVI NA PUTU PROFESIONALIZACIJE I DEPOLITIZACIJE DRŽAVNE SLUŽBE U ZEMLJAMA ZAPADNOG BALKANA

Sažetak

Profesionalizacija i depolitizacija državne službe obično se spominje u projektima reforme uprave. Članak pokušava argumentirati u prilog potrebe profesionalizacije i depolitizacije državne službe te dati radne definicije profesionalizacije i depolitizacije uprave. Opisuju se glavni razlozi zbog kojih reforme javnih uprava tranzicijskih zemalja imaju nizak prioritet. Dan je kratak pregled situacije u pogledu reforme državne službe u području zapadnog Balkana.

Neke zemlje regije učinile su zadnjih godina značajan napredak u reformi državne službe, dok su druge nazadovale. Kao što se vidi iz razvijenih zemalja, reforma državne službe je stalan proces, jer se ona mora prilagodivati promjenjivoj okolini. Državna uprava mora biti efikasna i efektivna, osigurati povoljni okoliš ekonomskom razvoju i pružati nužne javne usluge građanima na efikasan način. Sve to traži stalno nastojanje za napredovanjem.

Zemlje u regiji prošle su dug put od 2001., no ipak ne bi smjele usporavati svoje napore. Neke od njih morale bi i pojačati reformska nastojanja ako žele ostvariti europske standarde i držati tempo, imajući u vidu da zemlje članice Europske unije i same stalno ulažu napore u prilagodbi njihovih državnih službi promjenjivim okolnostima, naročito očekivanjima gospodarstva i građana.

Ključne riječi: reforma javne uprave, državna služba – područje zapadnog Balkana, profesionalizacija, depolitizacija