

POLICY BRIEF



Legal Insight into Macedonia's newly approved Law on Public Servants

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Introduction

Looking back and analyzing the flow of the reform process on the public administration in Macedonia there's a perception that this is a never-ending and quite complex process. All governments to date have never expressed any fatigue or dilemmas in relation to the reform. However, this willingness has not been all the time complemented with the right actions and strategies that would "incarnate" the idea of an ideal public administration system. The battle for power among political parties has many times undermined the general interest. Hence, the critical stand of the international factor toward the development of the reform, being closely monitored by them.

The current government's willingness to give priority to the EU agenda is mostly expressed through drafting laws compatible to the EU Aquis Communautaire. One of them is also the already approved Law on Public Servants, which was proposed by the Ministry of Justice. The initiation for drafting this law itself had opposite reactions, praised from ones and faced with strong opposition for the envisaged legal provisions from others.

Introduction¹

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The current government's willingness to give priority to the EU agenda is mostly expressed through drafting laws compatible to the EU Aquis Communautaire. One of them is also the already approved Law on Public Servants, which was proposed by the Ministry of Justice. The initiation for drafting this law itself had opposite reactions, praised from ones and faced with strong opposition for the envisaged legal provisions from others.

The experts particularly, and those articulating the voice of the opposition, expressed series of negative remarks on the approach to the entire procedure of approving the law.

"The law needs to be urgently abolished. A completely new version should be drafted. It has to ensure broad consultation process with all stakeholders. In fact, the most serious excess during the preparation of the law is that no consultations with the Trade Unions were made. If this law is to be approved, it will be in parallel functioning with the Law on Civil Servants, which is not a common practice for any other country. The law does not address the issue of salaries of public servants and does not refer to any other legal provisions that would regulate this issue".²

Commenting on the proposed draft, Pece Grujoski from the Trade Union stated that "unlike Macedonia's case, the preparations for the Slovenian Law on Public Servants lasted almost 4 years. They were taking place in coordination with the Government and the Trade Unions. Additionally, no one from the employees in the public sector has information regarding the law and what changes and implications will it pose toward their work positions".³

¹ This Policy Brief has been prepared in cooperation with Ms. Dijana Mijovic, Lawyer and Former Deputy Public Prosecutor of the Republic of Macedonia.

² Ana Pavlova Daneva, Zakonot za javni sluzbenici itno da se povlece od Sobraniето, *Utrinski Vesnik*, No. 3226, 06.03.2010, available at: <http://www.utrinski.com.mk/default.asp?ItemID=FDC35E6984409449B482B05688EB5A82>

³ Pece Grujoski, *Ibid*

Another reaction coming from the Trade Union was about the allowance of only 30 % when the public servant is suspended, as well as about the chance a public servant to be dismissed after within four months his/her performance has been twice evaluated as “unsatisfactory”. The public servant may be transferred to another working place, without geographical and time limitations. Additionally, the right to decide on the transfer of the public servant will fall exclusively on the superior, which in practice will be largely misused.

Gazing into the Law

The Law on Public Servants is undoubtedly a step forward in the Public Administration Reform (PAR) stream in Macedonia. Its importance lies exclusively on the fact that it is mainstreamed toward resolving the status of thousands of employees in the public administration, which are not included under the group of civil servants. It is foreseen that the law will regulate the status of the people employed in the sector of health, education, culture, social protection, and those working for public enterprises. Given the huge number of employees affected by this law, the Macedonian authorities should have prepared the ground for undertaking this initiative couple of years ago. The express time it was approved makes it impossible to believe that all stakeholders and all employees have been in time informed and consulted about the initiative. The authors of the Law revealed that the Slovenian Law has been referred to and used as template for drafting the text of the Macedonian law.

It has to be admitted that the signals sent by the Trade Unions, domestic experts, and to a certain extent by the opposition, endorsed by the wider audience, were mostly not taken in regard during the procedure of approving the law. In order to mirror this, one should just count the number of rejected amendments that were proposed by the opposition.⁴ This led to boycott of the voting by the opposition, thus the law was voted and approved by the ruling coalition, without wide consensus. The law will be applicable one year after its enactment in the parliament. Therefore, the effects produced by the enacted legal provisions are yet to be felt and seen.

Issues to be re-considered for the improvement of the legal provisions:

1. Recruitment in the public service

The law envisages that vacant positions can be filled through:

⁴ During the second-reading of the Law taking part at the Committee on the Political System and Inter-Ethnic Relations, there were 38 amendments filed. Out of them, 31 amendments were rejected.

<http://www.sobranie.mk/ext/materialdetails.aspx?id=36eb8aba-44f0-49f7-b102-51dc2611d319>

- external call;
- internal call;
- assigning public servants to another position within the same institution;
- transferring public servants from one institution to another.⁵

As it can be seen, the provisions are quite superficial. There are no clear criteria based on which the recruitment decision (one of the above-mentioned) would be made. Choosing among several options for recruitment doubtlessly grants the superior with huge discretionary power, which leaves a lot of room for political abuse. Additionally, having in regard that the Regulations on Systematization of Workplaces envisage opportunities of promotion, including internal call as a way of recruitment becomes unnecessary.

2. The size of the public service

Unlike the Law on Civil Servants which gives a concrete number of people whose status is regulated by this Law, the Law on Public Servants gives no information at all in regard to the number of people affected by this Law. Some widespread figures range from 90.000 to 150.000 people employed in the public service. Massively occurring “temporary employments” have in a longer term highly contributed to these jeopardizing figures.

3. State examination

The law does not specify anything that is in relation to state examination and professional examination. Contrary to this, a good example is the Slovenian Law which gives a very detailed description of how the exam should look like. (Table1)

Table 1. Contents of professional examination

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1. constitutional order and the institutions of European Union and its legal system;
 2. the system of legislative, executive and judicial powers, and their mutual relationship;
 3. local self-government;
 4. the system of public finances;
 5. the operation of state bodies and the bodies of the local self-governing community
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⁵ Law on Public Servants, *Official Gazette of RM*, No.52, 16.04.2010

administrations;

6. the system of administrative law, administrative procedure and administrative dispute;

7. legislative procedure;

8. the rules of office operation, including electronic operation, the rules of the protection of personal and other data, and the rules of the production of other materials.

4. Dismissal programs

There is no information at all about dismissal programs, which serve as solid method for dealing with reorganization of public administration bodies in circumstances of large number of employees within a body (redundancy of public servants).

5. Determining incompetence

There are no criteria stated based on which officials can be deemed incompetent for their positions. For example, determining incompetence in the Slovenian Law has been regulated by the Article 141 which states that: "Officials shall be deemed incompetent for their positions: 1. if the body, or organizational unit headed by the official, fails to achieve the expected work results that would assure the quality and the efficient service of the body, or the organizational unit, in accordance with the body's action program; 2. if recurring errors or a serious fault in the service of the body occur in the field of activity of the body, or of the organizational unit headed by the official."⁶

6. Special Laws

At the end of many articles which regulate certain issues, it is stated that the issues are to be regulated by a special Law. This will doubtlessly complicate the implementation process of the Law as for resolving an issue, besides the Law on Public Servants, many other special laws will have to be consulted.

7. Imprecision of terms

In the Article 44, there is an imprecision of some of the stated terms. Having in regard that it is related to a crucial issue such as termination of employment, the term "occurrence of detrimental consequences toward the institution" is very large for interpretation. It would

⁶ Slovenia's Civil Servants Act,

<http://unpan1.un.org/intradoc/groups/public/documents/NISPAcee/UNPAN012613.pdf>

be better if it is precisely stated what damage it refers to, and what extent of damage represents basis for termination of employment.

8. Employment contracts

The inexistence of the provisions related to employment contracts is another missing element, which is not the case with the Slovenian Law. The latter gives a detailed description of how the employment contracts should look like.⁷ (Table 2)

Table 2. Contract of employment, elements envisaged in the Slovenian Law

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1. the names of the contracting parties;
 2. the body in which the civil servant will work;
 3. the duration of employment;
 4. the work post or the position, in which the civil servant will work, or the data on the type of work with a brief description of work;
 5. the date of the commencement of work;
 6. the place of work;
 7. clause on full-time or part-time working hours
 8. other data stipulated by this Act or by a particular law governing the status of civil servants in the bodies;
 9. clause on basic salary and possible supplements related to the work post;
 10. clause on annual leave;
 11. clause on working hours;
 12. clause on the period of notice;
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13. statement that the employer may unilaterally amend specific provisions of the contract in conformity with the law.
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⁷ Ibid

Recommendations

Based on Analytica's analysis, concrete recommendations for improving the Law on Public Servants are presented below.

- 1) The room for huge discretionary rights of the superior (as in article 14) should be set to a minimum.
- 2) The exact number of public servants has to be finally made public.
- 3) Given that the entire PA needs to be right-sized, inclusion of concrete dismissal programs becomes an important imperative.
- 4) Methods of determining incompetence should be precisely stated (the Slovenian case mentioned in the analysis above is a good example).
- 5) Removing the clause on Special Laws (encountered in series of articles) is a good way for simplifying the implementation process of the Law.
- 6) Imprecision of terms, as in the Article 44, should be replaced with a precise wording and explanation. This will remove both the occurring vagueness and the room for misinterpretation.



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“Legal Insight into Macedonia’s newly approved Law on Public Servants”

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