

SOME ASPECTS OF THE APPLICATION OF THE ADMINISTRATIVE SYSTEM AND PUBLIC SERVICES REGULATION IN NORTH MACEDONIA

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Abstract

The process of selection in the employment and promotion of administrative and public civil servants is subject to permanent reform decisions in the legislation regulating the personnel policy in the public sector institutions of the Republic of North Macedonia. A part of that process is the legal and practical regulation of the system of public services in the country. Since the independence, the public administrative system and public service system have been constantly legally upgraded and developed in order to be constantly modernized in meeting the public interest of the Macedonian citizens. In doing the critical analysis, the historical data and various governmental documents and applicative legal provisions were considered. However, the main key legal documents that are analyzed are the effects of the present legal solutions defined in the Law on Administrative Servants and the Law on Public Sector Employees. However, besides the good intentions of the political elites during the last 25 years, the quality and, above all, the dynamics of adopting various legislative interventions at short intervals call into question the final results of the declaratively expressed reform efforts for an efficient, effective and transparent system of administration and public services in the Republic of North Macedonia. The conclusions set forth a new scope of professional discussions. The legal base of the administrative and the system of public services in the country needs to be further changed in order to secure more efficient and more transparent administrative procedures and system of public services in the country.

Keywords: public administration, administrative system, public services, regulation, North Macedonia

Introduction

The overall process of reform efforts started in 1999 with the adoption of the first Strategy for Public Administration Reform in the Republic of North Macedonia. In order to successfully implement it, in the course of 2000, the first Law on Civil Servants was enacted, as well as with a special act dated 29.08.2000, the Civil Servants Agency was established as an independent state body aimed at the full and consistent implementation of the laws that regulate the work of public and civil servants in the Republic of North Macedonia (Agency for Administration- The History of the Agency for Administration, 2018).

Since early 2011, this Agency has been transformed and has continued to function under the name of the Agency for Administration, which was aimed at the implementation of the newly adopted laws: the Law on Administrative Officers and the Law on Public Sector Employees. All the necessary steps towards the transformation of the agency and the effective implementation of the legislation were undoubtedly part of the so-called Public Administration Reform Strategy

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(2010-2015) (Ministry of Information Society and Administration, 2018), as well as the Revised Action Plan of the Strategy (2010-2015) (Ministry of Information Society and Administration, 2018).

Separation of the party from the state cannot be done without a consistent and professional application of the selection process in the employment and promotion of the administrative and public servants in the Republic of North Macedonia. The question arises: Do the existing mechanisms of selection in the recruitment and promotion of officials defined in the existing legislation lead to professionalism and political impartiality, i.e. separation of the party from the state?

Public services work for the common good - to satisfy numerous needs of public character in the society, i.e. satisfying the public interest of the citizens. The public service system arises as a result of the division of labor that exists in every society and there is no country in the world without a legally defined and functionally set system of public services. Since the independence of the Republic of North Macedonia to this day, the public service system has been constantly legally upgraded and developed in order to constantly modernize and increase the efficiency and effectiveness in meeting the public interest of the Macedonian citizens.

But, despite the good intentions of the political elites, the quality and, above all, the dynamics of adopting various legislative interventions at short intervals call into question the final results of the declaratively expressed reform efforts for an efficient, effective and transparent system of public services in the Republic of North Macedonia. In the following pages of the paper is given analysis of the present conditions of the system of public services as well as the legal bases for employment and promotion of the administrative and public servants in the country.

Public services in theory and its legal base in North Macedonia

Leon Digi is considered the founder of public service theory and in general its further development (Grizo, N., Davitkovski, B. and Pavlovska-Daneva A., 2008). He is advocate of the so-called a theory of social functions according to which administrative law represents nothing but a right to public services. In the words of Digi, “the public service is an activity whose executive management should regulate, provide and control, since it is necessary for the realization and development of social relations” (Grizo, N., Davitkovski, B. and Pavlovska-Daneva A., 2008; Public S., 2010; Slaninka-Dineva M., 2002). That is, any activity that must be secured, regulated and controlled by the managers, because it is necessary for achieving social interdependence and is accomplished only by the intervention of a managerial force is a public service. Another noteworthy definition for public services according to Digi is the following: “public services should organize activities whose stagnation, even the shortest, can lead to social disarray” (Grizo, N., Davitkovski, B. and Pavlovska-Daneva A., 2008; Public S., 2010; Slaninka-Dineva M., 2002).

According to other authors, such as Zhez, the public service is a technically organized procedure to meet the needs of the general interest. In that case, the organization of public services is constantly changing in accordance with the needs of a general nature i.e. it represents a legal situation. On the other hand, unlike Digi, Valin argues that the public service is part of the administrative law and one of its basic notions on which the science of administrative law is based. One of the most important theories is the socialist legal theory that tries to make a modification by bringing all scientific research into public services under the term social services (Grizo, N., Davitkovski, B. and Pavlovska-Daneva A., 2008; Public S., 2010; Slaninka-Dineva M., 2002).

In any case, in the literature there is a consensus on what the public service is. In other words, “the public service is a set of activities that are of common, general significance for all people and their organizations in a certain area, and whose performance is guaranteed and protected by different legal regulations”. This definition shows that the existence of each public service is based on two basic components: a sociological component (performing a particular activity, such as health, education, social and health care, culture, science, etc.) and a legal component, i.e. the legal

norm (Grizo, N., Davitkovski, B. and Pavlovska-Daneva A., 2008). With the development of civilization, the volume, i.e., the number of public needs, increases, and as a consequence, the number of public services increases. As a result, there is a need for privatization and decentralization of some of these public services. Accordingly, the citizens must be fully active during the process of design and practical implementation of the official policies in the process of delivering public services. By that, it can be provided “effective governance, strengthening the civil society access to important public information and providing opportunities for disadvantaged groups to contribute to policy making process” (Cipusheva, H., Memeti, M., Hadzimustafa, S., and Kreci, V., 2013). In doing so, three main principles are of particular importance in the functioning of the public services, such as: the principle of equality, the principle of adaptation and the principle of continuity.

In the legal theory, in addition to a legal-theoretical concept there is a constitutional-legal and ideological concept of public services. According to them, each public service receives a status of public administration whose regulation is governed by administrative law. According to Academician Ivo Krbek, public services have a specific role in those conditions when the administrative body does not appear as the carrier of the activity, but a special public service that functions under a special (particular) regime of law and is a part of the public administration (Grizo, N., Davitkovski, B. and Pavlovska-Daneva A., 2008).

Since 1991, with the constitutional solutions, the public interest in the Republic of North Macedonia is irrevocable, and even regulated by supremacy in respect of private interest and private property. In the Constitution of the Republic of North Macedonia, the Digi Solidarity Theory forms the basis of all considerations that social activities are public rather than private. In the Republic of North Macedonia attempts have been made to reform the public service system for a long time. This is done in stages on different legal grounds, namely: the first stage from 1991-2001, the second stage from 2002-2003 and the third stage from 2003 to the present day (Slaninka-Dineva M., 2002; Dimeski, B., 2016). The main goal of all reform efforts is to make a transformation in the performance of public services. As a result, expectations are more efficient, more effective and more productive performance of public services towards citizens. From 1991 until today, as a result of constitutional changes, all public activities experienced some kind of legal changes. Moreover, these changes began before the adoption of some Law on Public Services or the so-called Law on Institutions. It is worth mentioning that as early as 1992, the Government of the Republic of Macedonia submitted a proposal for the adoption of a Law of Public Services which, for inexplicable reasons, was withdrawn (Slaninka-Dineva M., 2002; Dimeski, B., 2016). According to the positive law of the Republic of North Macedonia, in addition to the Basic Law on Public Services or Institutions, there are also a number of *lex specialis* for different types of activities that are necessary for regulating matter in those areas. Public service reform is nothing more than an act of a country based on an appropriate strategy. In any case, when building the strategy for public service reform, citizens were not mostly consulted about possible solutions or effects that would arise from the new laws. The status of public services in the Republic of North Macedonia is clearly determined on the basis of Article 58, paragraph 1 of the Constitution of the Republic of North Macedonia, according to which “property and labor are the basis for management and participation in the decision-making process” (Slaninka-Dineva M., 2002; Dimeski, B., 2016). Another important characteristic is defined in Article 58, paragraph 2 of the Constitution of the Republic of North Macedonia, is that the public services are managed and decided on the basis of expertise and competence in accordance with the law, unlike other legal entities that do not have the status of public institutions and public services (Slaninka-Dineva M., 2002; Dimeski, B., 2016).

It should be noted that the Public Administration Reform Strategy since 1999 was one of the starting pillars for creating a professional public service. In support of its successful implementation, the Assembly of the Republic of North Macedonia in 2000 it adopted the first

Law on Civil Servants and by a special act of August 29, 2000, the Civil Servants Agency was established, which was later transformed and from 2011 continued to work as an Agency for Administration in accordance with the Law on Public Servants and the Law on Civil Servants (Agency for Administration- The History of the Agency for Administration, 2018).

In the last few years, the most important laws that regulate the issue of selective approach and decision-making in the employment and promotion of administrative and public servants in the Republic of North Macedonia are the Law on Administrative Servants and the Law on Public Sector Employees (Dimeski, B., 2017; Agency for Administration- Law on Administrative Officials, 2018; Agency for Administration- Law on Public Sector Employees, 2018). Also, another key document is the Code of Administrative Officers as a by-law (Agency for Administration- Code of Administrative Officers, 2018). The selection procedures for the employment of administrative officers are regulated, starting from Article 37 to Article 46 of the Law on Administrative Servants. In addition, from Article 48 to Article 52 of the same Law, the procedures for the promotion of administrative officers are described (Agency for Administration- Law on Administrative Servants, 2018). By analogy, the selection procedures in the recruitment or selection of candidates are covered by Article 20-d of the Law on Public Sector Employees (Agency for Administration- Law on Public Sector Employees, 2018). Without further elaboration of the selection procedures, it should be noted that for all of them it is common that the selection committee is formed by the secretary or the manager and that the final decision regarding the selection of employees and promotion is carried out by the secretary or the manager in public institution. Seemingly, there is nothing controversial about the overall selection procedures that should guarantee an objective, impartial and democratic selection of candidates for filling positions in public institutions. Political neutrality (under Article 16 of the Law on Administrative Servants) and the prohibition of political action at the workplace (under Article 38 of the Law on Public Sector Employees) provide for a politically impartial and objective decision-making process in terms of selection in employment and promotion of officers (Agency for Administration- Law on Administrative Servants, 2018; Agency for Administration- Law on Public Sector Employees, 2018).

The trends of development of the key legal base

A number of legal solutions have been altered and amended in recent years. The recent data shows that the areas of public services in the Republic of North Macedonia are subject to numerous and permanent changes and amendments to the legislation (Citizen Association- MOST, 2018) which consequently entails great insecurity, instability and mistrust on the part of the citizens in the efficient and effective functioning of the public service system. The Table 1 below presents the dynamics of development of the legislation in the field of public services in the Republic of North Macedonia.

Table 1. The amendments on law legislation of the system of public services during time⁷

Name of the legislation	Date of law enforcement	Total number of changes	Name of the legislation	Date of law enforcement	Total number of changes
Law on Bureau for education development	05.04.2006	6	Law on scientific research	15.04.2008	9
Law on higher education	22.03.2008	19	Law on culture	10.07.1998	13
Law on medical studies and medical professional advancement	05.02.2013	3	Law of protection of cultural inheritance	10.04.2004	13
Law on education for adults	23.01.2008	7	Law on sports	15.05.2002	15
Law on Primary education	27.08.2008	15	Law on media regulations	29.11.2005	7
Law on textbooks in the primary and secondary education	12.08.2008	11	Law on children's protection	22.02.2013	8
Law on student standard	02.02.2013	4	Law on social protection	02.07.2009	18
Law on professional education and training	16.06.2006	7	Law on persons with disabilities	31.07.1976	6
Law on High school education	28.09.1995	30	Law on Drugs and health issues	13.09.2007	13
Law on inspection in education	12.07.2005	11	Law on taking and using human parts for health issues	16.04.2011	8
Law on chemicals	13.11.2010	5	Law on food protection	16.12.2010	9
Law on Sanitary and Health inspection	16.06.2006	10			
Law on health insurance	07.04.2000	35			
Law on Health Protection	06.04.2012	12			

Source: Dimeski, B., 2016. Public Services in the Republic of Macedonia: Delivering of reforms or producing instability. Legal Dialogue, 10: 8-14. Institute of Human Rights, ISSN 1857 – 7644, Available from: <https://www.ihr.org.mk/p.php?pid=63>

The selection mechanisms mentioned above are crucial in turning the institutions into a democratic expression of the will of the citizens and establishing public institutions as a symbol of statehood, and not party affiliates and “employment bureaus” through membership in certain political parties. Moreover, if we consistently analyze the process in the selection of employment and the promotion of the officials, it will be concluded that despite the good intentions for creating professional public services, the most important link in the whole procedure is at the same time the

weakest link that throws big doubt on the citizen regarding the transparency of the total procedure. After all, possible abuses can be found in the part of the so-called discretionary decision-making, which in this case turns the Agency for Administration into an institution that is characterized by a highly centralized decision-making system, i.e. a concentration of political power at the top of the decision-making pyramid and a bureaucratic control system. The discretionary decision of the secretary in the case of administrative officials or the manager in the case of public officials when it comes to the selection of members of the selection committee in the course of employment or promotion, then the discretionary decision of the commission when adopting a draft decision and its further forwarding to the secretary or the manager for final selection of the candidate / candidates is a procedure that theoretically, but not practically guarantees, the non-interference of party politics in employment in state institutions (Agency for Administration- The Law on Administrative Servants, 2018; Agency for Administration- The Law on Public Sector Employees, 2018; Dimeski, B., 2016).

Some key recommendations

As a result of the excessive number of legal interventions in a short period of time, in certain categories of public services in the Republic of North Macedonia, completely new legal solutions are needed in order to overcome the ambiguities and ensure greater stability in the continuity of the functioning of the public service system. Without comprehensiveness and predictability in the medium and long term, the reform efforts in the public service system can be counterproductive in the overall legal system of the Republic of North Macedonia.

In order to avoid possible distrust in the part of political impartiality during the selection process in the recruitment and promotion of officials, some types of system solutions are needed which would provide some permanent security, of which the most significant would be the following (Dimeski, B., 2017):

- Since it is an agency that is fully responsible for building the democratic capacity of the institutions through the professional performance of the state's personnel policy, it is necessary for the administration of the Agency to be elected in direct elections as well as legal protection and prevention of any external political pressures and influences in order to protect the integrity of this institution as one of the most important “guards” of the democratic development of the state;
- Over time, it is necessary to form a special and specialized so-called Ministry of Public Administration similar to some other developed and developing countries in the region, Europe and even the world; and
- In order to fulfill the previous prerequisites for a professional and service oriented public service, it is necessary that all political parties that are in power or aim to conquer power in the Republic of North Macedonia should incorporate in their internal legal acts (Statutes, Rulebooks, etc.) special provisions that ensure that neither the position of government or opposition will affect the work and integrity of the system of institutions that manage and control staffing of public institutions.

As it is known, there are four types of the so-called political selection in the selection process for employment and promotion of public sector employees that have been identified in the literature: the spoil system (exclusively on party basis), the meritocratic system (merit system), the mixed system (a combination of the previous two systems) and a system of direct choice through voting as an expression of the will of the service users. Starting from this, and keeping in mind Art. 6 of the Declaration of the Rights of Man and the Citizen of 1789, a different value system are used in different countries in the world in the process of selection and promotion of public and administrative officials (von Guttner, D., 2016). Besides, the meritocratic system is the most perfect and most compatible for the development of democratic processes in society. Analyzing

the legal solutions, theoretically, the system of selection and promotion of the officials in the Republic of North Macedonia is a mixed system i.e. a system that contains elements of a spoil (decisions of political organs and bodies) and elements of the merit system (the test procedures, interviews, etc.). But is that really so? Is anyone in the country truly believes that indeed the elements of the merit system would apply to politically neutral citizens, not to mention political opponents of the party or the ruling parties?!

Regardless of which model of career would be applied in practice, the essence of the reforms is in the final results that would produce them. In the Macedonian conditions of living, the public administration has a huge role that consists in “identifying and understanding the needs in the society” (Davitkovski, B., Pavlova-Daneva, A., Davitkovska, E. and Gocevski, D., 2014). In this context, the ultimate goal of the reforms would be: “a small public administration oriented primarily to regulatory and monitoring functions, with a simple structure of public administration, in accordance with the principle of parliamentary democracy ...” (Markovik, N., 2014).

Conclusion

The development of public services in the Republic of North Macedonia is an indispensable part of the overall democratic development of the country. The reform features of the public services in the Republic of Macedonia since their independence to date are quite dynamic. In order to successfully and professionally respond to the public interest of the citizens, competent, highly professional and efficient public services are needed. But despite good intentions in this direction, legal solutions in the public service system are affected by numerous and more and more comprehensive changes that can produce unpredictability, instability and further distrust in the stability of the legal system.

In the newly proposed Ministry, highly competent and educated staff in the field of administrative law, public administration and public services will be selected exclusively according to the so-called Fresco classification of scientific areas, fields and areas adopted as Decree by the Government of the Republic of Macedonia in July 2010 (Dimeski, B., 2017). The discretionary powers of the secretary in the case of the administrative officials or the manager of public servants must also be removed and deciding upon the selection and recruitment procedures to be passed on to a professional team of professionals who, no matter how they would be defined (commission, body, etc.), they would decide anonymously, i.e. without knowing the personal data of the candidates in advance, but only the results of their performance on the basis of which they would make the decisions for employment or promotion. In order to exclude any doubt about possible bias in the decision-making, the members of the commission should not be known to each other, each of which, on the basis of its neutral expert assessment, would propose a candidate for employment or promotion. Finally, to apply consistently the Code of Ethics of Administrative Officers in the Republic of North Macedonia (An Agency for Administration- Code of Ethics for Administrative Servants, 2018), it must be systematically part of the legally prescribed generic trainings, that is, one of the most important criteria in the selection process of the promotion of the administrative and public servants in the country. However, the future will be the “best judge” of the effects of needed reforms in these areas mostly depending on the political will and the overall support from the professionals and general society at large.

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