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MODERNISING THE CIVIL SERVICE

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Introduction

In many countries of Central and Eastern Europe, the reform and modernisation of their public administrations since the transition began has been likened to the “Europeanisation” of their institutions. Institutional approximation to the EU requires a new body of national legislation substantially in line with EC-law. Especially, civil services need to be aligned with standards prevailing in EU Member States intended to guarantee their professionalism and impartiality. New legislation needs to be drafted according to general principles for efficient law drafting too. This implies consultation, co-ordination and conflict-solving mechanisms, quality control and impact assessment.

However, the need for modernising the public administration and the civil service is much wider. The capacities of administrations have been and still are a high policy issue and a political condition for social and economic development in a globalized world. What is at stake is to create and develop governance capacities that could support the whole set of reforms necessary to ensure and protect citizens’ rights, to create better opportunities for business and to improve the quality of life of citizens. This is why civil service reform is being considered one of the most important general reforms in almost the countries, mainly those that are facing basic structural development challenges.

But a successful civil service reform needs political commitment. Ministers and especially the Prime Minister (or the President, depending on the constitutional structure of the executive) must be actively engaged in a civil service reform. Governing and opposition parties both must be convinced that a system reducing their powers to select, recruit and promote staff will serve them in the long run better than a system based on patronage.

I. Main administrative principles that need to be ensured

Some common administrative principles are widely recognised as of fundamental value for building modern public administrations and professional civil services. Such principles should be recognised and embedded in the legal system and fully respected by the public servants when performing their functions. These main principles are:

- 1) *Rule of law*, i.e. legal certainty and predictability of administrative actions and decisions, i.e. instead of arbitrariness there must be a guarantee for legality in public decision making and for respecting legitimate expectations of individuals.
- 2) *Openness and transparency*, i.e. scrutiny of administrative processes and of outcome of decisions in terms of consistency with pre-established rules, should be secured.

- 3) *Accountability*, i.e. civil servants should be accountable to superior administrative levels and to judicial authorities in executing responsibilities and powers vested in them to ensure fairness and compliance with pre-established rules.
- 4) *Efficiency and effectiveness*, i.e. public resources should be used efficiently and established policy goals should be effectively achieved. Legislation should be effectively implemented and enforced.

II. Common characteristics of civil services in EU Member States

The term civil service can mean many different things in terms of scope, size, organisation and human resource management and does mean many different things if one compares different countries. But there are also common features that help the practical realisation of the principles mentioned above:

- Public law: civil servants in many countries are subjected to public law (administrative law) and not to labour law (private law). Duties, responsibilities, certain rights and disciplinary liabilities have to be regulated by public law. Institutions for and distribution of responsibilities in management of civil servants are defined in public law, e.g. the civil service law, other public laws or government regulations.
- Labour Law: A wide spread trend is to harmonise employment conditions with the private sector and therefore make those conditions for civil servants subjected to labour law or collective agreements. But such developments never imply - and cannot imply - a change of the fact that the civil service legal relationships with the State are governed by basic civil service administrative law regulations when it comes to duties, accountability and disciplinary liabilities.
- Other Common features:
 - The civil service, as professional administration, is separated from politics with clearly defined political and professional posts
 - Civil servants are recruited and promoted through merit-based competitive and transparent procedures
 - Predictable career paths exist and civil servants receive appropriate training during their career
 - Legal restrictions exist on the free involvement of civil servants in politics and in economic activities
 - The pay scheme is established by law and determined individually on objective and transparent criteria.
 - Pay and other conditions of service aim to ensure that qualified individuals are recruited, trained, developed and retained and promote good performance.
 - Management of civil servants ensure that they perform well and that standards of service are homogeneous and respected across all public administration settings.
 - Personnel budgeting aims to be efficient and staffing and personnel costs can be appropriately controlled

- Civil servants and administrative authorities are obliged to take actions and decisions in a transparent and predictable way according to law, free of unjustified pressures, are subject to control and judicial review, and are held accountable for their actions.

III. Some ideas about the characteristics a civil service law should have

a) The objective of the law

The primary goal for a civil service law is not to define better or safer employment conditions for public employees. The primary goal is to define responsibilities and to safeguard professional quality and continuity and a performance in accordance with standards of administrative law and of efficiency targets. Certain improved employment conditions may become necessary, however, as important means to reach this primary goal. In summary, the objective of a law on civil service is to set up an institution of the state, which is essential to guarantee the continuity and the working of the state even in circumstances of political change or instability.

b) The scope of applicability of the civil service law

There are no standard solutions. Countries like Germany, Denmark, Italy, Austria and Luxembourg have a limited scope while countries like Belgium, Finland, France, Greece, the Netherlands, Portugal, Spain and Sweden have civil service laws covering all or most public employees. In most countries other laws usually exist in parallel, such as special statutes for police, border-guards, etc. and sometimes also for teachers and doctors as well as for officials in local self-government.

Considering that the primary objective for a civil service law is to define rights and duties for public officials performing certain functions on behalf of the state or of authorised state institutions, the scope of applicability of a civil service law could be restricted to those functions and officials. However, this is a political rather than technical issue. Each country should find the solution that best suits it.

c) The law-drafting approach

In several countries, following questionable legal traditions civil service laws are very detailed or even too detailed. There are many reasons for this. One is that the laws are often drafted without a clear view on what should be in the primary law and what other laws could regulate, be they government decrees or other regulations. This law-drafting approach might lead to problems the day the Government wants to change any of those details. Parliamentary agendas do not allow for making changes too often in an administrative law like a civil service law, which is at the roots of the administrative system and should be relatively stable. A civil service law should ideally be drafted as an Act containing principles and other important provisions only. Details should be regulated in government decrees or in other kinds of regulations issued under the law.

d) The transitional provisions

The transition to a new civil service deserves special attention in the law on civil service. How current or previous employees of the state should be able to qualify as civil servants under the new scheme and to what extent requirements applied to future civil servants should apply to current staff as well? In this respect the law should clearly provide for how, and during which time-period, existing employees will be able to qualify under the new scheme and what kind of support in terms of training and other development measures should be available for them to be able to do so. Provisions related to this aspect need also to be in balance with the yearly state budget as well as in balance with existing

capacities to screen, train and select candidates, which could mean that only a specified number of employees would be able to make the transformation each year.

IV. Main problems to overcome and attitudes to change

In countries without a civil service law no clear division exists between what should be political positions and what should not. In an administration staffed and managed under a labour code, it is in practise at the discretion of the Minister or the Head of the institution to select the staff. Although a public administration regulated by a labour code should not be defined as a spoils system formally, experience from Central and Eastern Europe shows that it becomes a spoils system in practise. In the long-term a spoils system means a lack of professional continuity and a lack of professionally independent input into the policy-making process and into administrative decision-making. The spoils system maintains a lack of delegation of responsibility to positions in government at levels lower than the political level. Policy-making, decision-making and co-ordination will in this kind of system continue to take place within the political realm of the administration only.

The political class and societal elites in many countries need to be convinced, or rather, converted to the idea that a professional public administration is not possible without a professional civil service.

V. The Civil service law and the reform of the administration

Establishing a civil service, or its professionalisation, is a question of introducing regulations defining duties, accountabilities and corresponding rights of staff as defined in a civil service law. But that is not enough. It is also a question of establishing the necessary institutions and management systems; but it involves more. It is in fact very much about:

- i) The legal, technical quality of substantive law, providing the substantive framework for decision-making, i.e. the “tool” for the civil servants and the source of information and prediction for the public.
- ii) The quality of procedural legislation, providing procedures for administrative decision-making, for co-ordination and for balancing of powers, for civil servants’ relations to and communication with the public, and providing opportunities for concerned physical or legal persons to have a say or to appeal.
- iii) The quality of financial and administrative accountability and control mechanisms, providing for transparency, for checks of decisions and including means for correction, prosecution and redress.

Civil service reform is not only the passing and implementation of a civil service law. It is to large extent also a question of creating and sustaining an administrative context in which civil servants can carry out their duties in a professional, responsible, reliable, impartial, transparent and controllable way.

Conclusions

To finalise I would like to make a few conclusions that are of importance for any reform leading to the modernisation of the civil service:

1. It is necessary to define the status of civil servants in a special public law, i.e. a civil servants act, a civil service law or similar, which should also clearly define the scope of the civil service.
2. It is necessary to recognise that the implementation of a civil service reform based on a new law is a long-term process. It could be done gradually for reasons of limited civil service

management capacities and financial constraints. A pragmatic and credible implementation of a civil service reform needs to recognise the need for special transitional provisions including special training efforts in the early stages of the reform.

3. It is necessary to define, and to separate from politics, the professional and permanent civil service staff, including top management positions and to protect the professional selection to these positions as well as the professional integrity of the position-holders.
4. It is necessary to establish a central capacity to ensure a homogeneous management of the civil service and safeguard equal quality standards of performance within all branches of government as well as the constitutional principle of equal access to public offices.
5. It is necessary to achieve a broad political consensus on civil service reform and especially on a new system for selecting, appointing and developing civil service staff and top civil servants in order to avoid manipulation of the system and instability when the government changes.

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