

Vladimir Mihajlovic, Researcher

The Senior Civil Service System in Serbia

12 Years of Simulated Depoliticisation

Following the adoption of amendments to the Civil Service Law (CSL) in December 2018, the Serbian Government has put the goal of depoliticisation on its 2019 agenda of priorities. The country has wrestled with this issue since the early days of its democratic transition, which started in 2000. This effort is one of the key preconditions of Serbia's admission to the European Union (EU). Also, the depoliticisation of the public administration is important for citizens, as the public interest is best served by professional, politically independent, and competent civil servants.

On 1 July 2019, the deadline for the implementation of the recently introduced CSL amendments related to the appointment of senior civil servants will expire. Open, transparent and fair recruitment procedures are among the most important tools for the depoliticisation and professionalisation of the public administration. Thus, if the government ensures full implementation of those legal provisions, 1 July 2019 will be considered as a milestone for the depoliticisation of the Serbian public administration, especially in terms of its senior civil service, that is the "professional civil servants employed in top-level management positions in the national civil service."¹

It remains to be seen what will happen on 1 July – will it mark the end of the politicisation of Serbia's public administration or not?

The politicisation of the senior civil service: putting the problem into perspective

Following the democratic changes that took place in 2000, Serbia embraced membership in the EU as a strategic national goal. Apart from some high-level political challenges, such as the lack of cooperation with the International Criminal Tribunal for the former Yugoslavia or the dispute over Kosovo's statehood, one of Serbia's key obstacles in the European integration process – faced also by all other Western Balkan countries – has been the limited capacity of the public administration to implement EU-required changes.



1. Uudelepp, A., Zielinski, W., Lemmik, J., Paabus, K. (2018), "Analysis of the Professionalisation of the Senior Civil Service and the Way Forward for the Western Balkans", *SIGMA Papers*, No. 55, Paris: OECD Publishing, p. 11.

In order to work towards EU membership, Serbia has had to undertake public administration reform (PAR), which also became a focus of the EU's conditionality towards the region as a whole. A crucial aspect of transforming the administration inherited from the previous regime and aligning it with modern European standards was the professionalisation and depoliticisation of the civil service. After decades of communism, which reinforced the link between the ruling political party and civil service, with the process of democratic transition governments finally began to focus on the introduction of a merit-based system. The Serbian Government adopted its first PAR Strategy in 2004, placing a strong focus on the senior civil service.

Nevertheless, a decade and a half into the reform process, direct political influence still plays a vital role in the senior civil service structure. There are two major limitations in the existing state of play. The first arises from the legally permitted option for ministers and the government to refuse to nominate and appoint candidates proposed through the formal recruitment procedure – an option they have taken full advantage of. The second is a direct consequence of a CSL provision allowing for the appointment of “acting managers” or “acting heads”, public officials temporarily occupying senior civil service positions, without prior selection on a competitive basis. This provision enables the government to appoint candidates from a preferred political party for instance, without following any recruitment procedure. The combined effect of these two limitations is that most top-level managerial positions in the Serbian administration – which should be occupied by highly qualified individuals – are currently political appointments, for whom there is no assurance of competence and overall fitness for senior civil service work.

Failure to ensure the depoliticisation and professionalisation of the senior civil service means that the capacity of the Serbian public administration is suffering, which negatively impacts the country's ability to advance towards the EU. However, the real problem with the lack of progress in this area is not how it limits the EU integration process itself, but rather the resulting incapability of the Serbian public administration to adequately respond to its citizens' needs.

Most top-level managerial positions in the Serbian administration – which should be occupied by highly qualified individuals – are currently political appointments, for whom there is no assurance of competence and overall fitness for senior civil service work.

First steps towards depoliticisation

The legal framework for a senior civil service system in Serbia was established in 2005 with the adoption of the Law on State Administration (LSA) and the CSL. This legislation drew a clear distinction between two categories of senior public managers – politically appointed state officials and professional senior civil servants. State officials include executive appointments such as ministers and state secretaries, while senior civil servants refer to directors, deputy directors, assistant directors, assistant ministers, or secretaries of ministries.

Ministers are elected to parliament based on proposals from the prime minister, while state secretaries are appointed by the government on the proposals of ministers. Ministers and state secretaries, therefore, serve with the specific governments that brought them in. On the contrary, senior civil servants are expected to provide an element of professionalism and continuity in the management of the administration. Thus, such senior civil servants do not rotate out after the end of a specific government's mandate. Nevertheless, senior civil servants are also appointed by the government on the proposals of ministers, but in line with previously defined recruitment procedures based on open and fair competition.

Drawing a clear distinction between these categories of senior public managers was a step forward in establishing a sound legal framework for the depoliticisation of management structures in the Serbian public administration in line with European good practice.

The distinction between political and senior civil service posts remained blurred.

Before the CSL was adopted, all senior public managers were politically appointed state officials. Given that the shift away from this process that this was a big change, the CSL envisaged transitional periods for these political appointees to be included into the new civil service regime. The CSL foresaw that provisions regulating the status of senior civil servants would not be applicable to politically appointed officials in this transitional period (until 1 July 2007).

In practice, however, things played out quite differently. The distinction between political and senior civil service posts remained blurred. In the years that followed the adoption of the CSL, the government continued with political appointments to senior civil service posts. Despite provisions setting the deadline to conduct public competitions and to determine the mandate of politically appointed persons (1 July 2007), the implementation of effective policy was postponed several times. Appointments made outside of competitions (in line with transitional provisions in the CSL's Article 179) were still in place in 2014, when a new model was created under the pretext of attempting to help to overcome the problem.

The “acting heads” model

With amendments to the CSL in 2014 (Articles 67a and 67b), it became possible to appoint acting heads to senior civil service positions without any competitive procedure (either internal or external competition). The duration of these “acting positions” is legally constrained to a maximum of six months. A competitive selection procedure needs to be initiated within 30 days from the date of appointment of an acting senior manager. In extraordinary circumstances, the law allows for these positions to be prolonged for a further three months if the competition procedure during the first six months proves unsuccessful, without the appointment of a new candidate.

However, the CSL does not explicitly detail whether the same person can be appointed twice as an acting head or whether a single senior civil service position (vacancy) can be filled more than once consecutively by an acting manager. Despite this, one could say that it was probably the intention of the article to ensure that any vacancy should be filled in by a competitively selected SCS as soon as possible. Nevertheless, since 2014 the government has been using this legal loophole to keep individuals in such acting positions for prolonged periods of time by reappointing the same person numerous times to various or the same vacant SCS positions.

The problem with the acting heads model is twofold. On one hand, it allows individuals to bypass competitive procedures and to enter the civil service, taking responsibility for important tasks such as policy making and an organisation’s day-to-day operations, including budget and programme development. Ministers may use this opportunity to appoint colleagues from their political party, as well as other candidates who would otherwise not pass the recruitment process.

On the other hand, this model allows ministers to hold competent senior civil servants whose five-year term in office has expired in a state of constant uncertainty. Instead of fully reappointing those who already performed the job (in the case that they were successful), ministers appoint them as acting heads. In this way, ministers create a situation in which knowledgeable and experienced associates do not have autonomy and independence in their work and can be replaced on a whim.

Reality check

Over the past years numerous policy studies, overviews, reports, and other documents have dealt with the lack of progress in Serbia’s effort to depoliticise its senior civil service. Research conducted within the WeBER project,² for instance, shows that in only one year there were 691 appointments to 282 senior civil service positions, which represents an average of 2.5 appointments per position.³ A major concern is that 94% of these appointments were to acting positions, while “in numerous cases the same names and positions reappeared several times in a single year, showing that employees are being kept in the acting status for a period longer than legally prescribed.”⁴

Furthermore, SIGMA⁵ has conducted reviews of the Serbian public administration against its “Principles of Public Administration” since 2015.⁶ In the SIGMA 2015 baseline measurement report it was noted that “politicisation of the senior public service persisted in the appointment of acting officials.”⁷ A similar conclusion – that political influence on filling senior managerial positions was not prevented in practice – was also noted in their 2016 monitoring report. This report stated that around two-thirds of senior civil servants in the government were still political appointees.⁸ The lack of progress was highlighted again in SIGMA’s 2017 monitoring report, which revealed that “despite attempts to fill all senior managerial positions on the basis of merit, serious concerns of direct and indirect political influence persisted with regard to both the recruitment and employment termination of senior civil servants.”⁹ The report stated that out of 55 competitions conducted in 2016, the government appointed only 11 senior civil servants. In this sense, it seems that “the legal possibility given to the heads of institutions [i.e. ministers] to avoid proposing a candidate from the ranking list has turned into a rule.”¹⁰ Finally, the SIGMA 2019 monitoring report states that “the number of acting heads in senior civil service positions remains high” while “the risk of direct or indirect political influence on managerial civil service posts continues to be high.”¹¹

Based on SIGMA’s findings, the European Commission concluded (in two country reports – 2016 and 2018) that Serbia “needs to implement its reform targets, professionalise and depoliticise the administration and make recruitment and dismissal procedures more transparent, especially for senior management positions.”¹²

2. WeBER – Western Balkans Enabling Project for Civil Society Monitoring of Public Administration Reform is a project implemented by the Think for Europe Network.

3. The measurement period was 1 June 2017 - 31 May 2018.

4. Djindjic, M., Bajic, D. (2018), “National PAR Monitor Serbia 2017/2018”, Belgrade: European Policy Centre (CEP), p. 8. and 82.

5. SIGMA – Support for Improvement in Governance and Management is a joint initiative of the OECD and the EU.

6. In 2014, the EC and SIGMA developed “Principles of Public Administration” which encompass six areas out of which one deals particularly with civil service.

7. OECD (2015), “The Principles of Public Administration Baseline Measurement Report Serbia 2015”, SIGMA, Paris: OECD Publishing, p. 53.

8. OECD (2016), “The Principles of Public Administration Monitoring Report Serbia 2016”, SIGMA, Paris: OECD Publishing, p. 25.

9. OECD (2017), “The Principles of Public Administration Monitoring Report Serbia 2017”, SIGMA, Paris: OECD Publishing, p. 77. and 76.

10. Mihajlovic, V, Protic, D. (2018), “A Good Public Manager – Which Profile of Senior Civil Servant Does Serbia Need?”, Belgrade: European Policy Centre (CEP), p. 15.

11. OECD (2019), “The Principles of Public Administration Monitoring Report Serbia 2019”, SIGMA, Paris: OECD Publishing, p. 19. and 21.

12. European Commission (2018), “Commission staff working document Serbia 2019 report”, Brussels: European Commission, p. 4.

In its most recent report, published in May 2019, the European Commission again stated that “political influence on senior managerial appointments remains an issue of serious concern, especially regarding an excessive number of acting positions.”¹³

New legal framework

Political pressure from the European Commission, based on findings and recommendations from SIGMA and national experts, led to the adoption of some amendments to the CSL in 2018. These changes addressed some of the deficiencies in senior civil service recruitment, including the high number of acting heads, but have not managed to limit ministerial discretionary power.

The current CSL envisages that only a civil servant already employed in the state administration can be appointed as an acting head, a very important step since an estimated half of senior civil servants in acting head positions are unqualified, without prior experience.¹⁴ Similar to what was done in 2006, the 2018 amendments to the CSL envisioned a transitional period for the implementation of its provisions related to the senior civil service. The current acting heads may remain at their posts until their mandate expires, but no later than 1 July 2019.

On the other hand, the current CSL fails to address the problem of the discretionary authority of ministers and the government when it comes to regular recruitment procedures. Ministers do not have to select candidates recommended by selection committees, and the government is not obliged to appoint nominees proposed by the ministers. Therefore, one can expect that the problem of the low share of actual appointments to SCS positions following the competitive recruitment procedure will persist even after 1 July.

What next?

Bearing in mind the upcoming deadline of 1 July 2019, in the short-term the government should implement the law as it is written and dismiss all acting heads who are not civil servants. At the same time, it should initiate recruitment procedures before the end of June. Around 200 senior civil servants are currently said to be acting heads. However, given that by the end of May not even one recruitment procedure had been finalised, there is a growing concern that the implementation of the law will fail yet again.

Regarding political influence in regular recruitment procedures, in the mid-term the government should adopt new amendments to the current CSL, requiring ministers to select candidates from lists proposed by selection committee. Also, the actual act of appointment could be left to the hiring minister, rather than to the government itself. Alternatively, in the case that the government remains in charge of formal appointments, it should be obligated to appoint candidates nominated by ministers.

On the other hand, civil society and other stakeholders, including the European Commission, should closely monitor the process and insist on open recruitment procedures for senior civil servants, and on a clear distinction between political appointees and professional civil servants.

In case the government does not meet these recommendations, political influence on the senior civil service is likely to remain high in the future. This would certainly slow down Serbia’s EU accession process, since administrative depoliticisation is a main element of the EU’s political criteria. Finally, failing in such reform would negatively affect Serbian citizens since incompetent politically appointed senior civil servants can hardly cope with the complexities of policymaking, legislative development, service delivery, and human resource management in the demanding pre-EU-accession context in which Serbia finds itself.

13. European Commission (2019), “Commission staff working document Serbia 2019 report”, Brussels: European Commission, p. 3.

14. There is no official data, but this estimation is based on a comparison of different expert opinions.

About the European Policy Centre

European Policy Centre - CEP - is a nongovernmental, non-profit, independent think-tank, based in Belgrade. It was founded by a group of professionals in the areas of EU law, EU affairs, economics and public administration reform, with a shared vision of changing the policy making environment in Serbia for the better – by rendering it more evidence based, more open and inclusive and more substantially EU accession driven. Profound understanding of EU policies and the accession process, the workings of the Serbian administration, as well as strong social capital combine to create a think-tank capable of not only producing high quality research products but also penetrating the decision making arena to create tangible impact. Today, CEP organises its work into four programme areas:

- 1) Good Governance, with a strong focus on horizontal policymaking and coordination;
- 2) Internal Market and Competitiveness;
- 3) Regional Policy, Networks and Energy;
- 4) Europe&us.