



THE NEVERENDING STORY OF SENIOR CIVIL SERVICE DEPOLITICISATION IN SERBIA

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Political influence on public administration is as old as administration itself. Given that civil servants are the ones who implement government policies, having control over them means controlling the institutions that execute political power and implement policies. This control also opens opportunities for rewarding loyalists and achieving political interests. When reduced to a minimum, such political manoeuvre is less likely to have a lasting impact on an administration's functioning, but when it becomes overwhelming, a state apparatus can be completely captured by transient political actors, in the service of interests other than public.¹

For a modern democracy, seeking to join the EU, professional and depoliticised civil service is necessary, not only for the sake of fulfilling membership conditions, but to enable society to achieve its socio-economic development potentials, and citizens to exercise their rights. In Serbia, however, international organisations and domestic civil society have reported on the issue of civil service politicisation since the start of democratic transition two decades ago. Still, the depoliticisation process, exceptionally prominent when it comes to the top echelon of the state administration - senior civil service (SCS), has gone unaccomplished to the present day.

There are at least three inter-connected aspects of the SCS politicisation. First, acting senior civil servants, appointed temporarily until the right candidate is selected in the competition procedure, have become a regular instead of a temporary solution for filling in managerial positions, eliminating the principle of merit for recruitment. Second, the very process of appointment of acting managers has become heavily compromised by frequent extensions of acting periods, beyond legal limits, constituting a perpetuated rule of law violation. Finally, even when competition procedures for SCS positions are implemented, there are additional and completely obscure political vetting procedures, due to which candidates proposed in the legal process often do not get appointed by the Government.

Since public administration reform belongs to the fundamental negotiation cluster that the EU microscopically observes, SCS politicisation has become an obstacle on Serbia's EU path over the years. However, a more severe consequence is that, by politically controlling the administration, the Government makes decisions and policies at the expense of rule of law. Altogether, these bring forward principal concern that if politics does not let the civil service be, Serbia will simply entrench in weak institutions in an unforeseeable future, unable to unlock country's development potential and improve citizens' quality of life.

¹ State capture can be defined as "the exercise of power by private actors - through control over resources, threat of violence, or other forms of influence - to shape policies or implementation in service of their narrow interest". See: Andreas Fiebelkorn, *State Capture Analysis: How to Quantitatively Analyse the Regulatory Abuse by Business-State Relationships*, World Bank Group, 2019, p. 19, available at: <https://bit.ly/3nW10XA>.

POLITICISATION THROUGH APPOINTMENT OF ACTING MANAGERS

The main method for politicising the SCS in Serbia has been through appointment of acting managers into these positions. While the notion of acting managers was introduced with the 2014 CSL amendments as a possibility for exceptional situations, in practice it has been used almost uncontrollably.² The PAR Monitor 2021/2022 findings inform that, at the end of the 2021, half of all appointed persons in the SCS were in acting status (52%, or 213 out of 408).³ The remaining positions were filled by competitively selected individuals, based on either internal or external competition procedure. This share represents a slight improvement compared to the 2019/2020 monitoring, considering that at the end of 2019, 68% of the SCS positions were filled by acting managers and around a third were competitively staffed.⁴ Regardless of this somewhat positive trend, however, the Serbian administration remains predominantly run by temporarily appointed staff who should serve only as caretakers.

The international organisations monitoring Serbia's EU accession process have repeatedly warned that the proliferation of acting managers is problematic from the perspective of EU membership conditions. The European Commission has for some time recognised this chronic issue and in its 2022 report for Serbia repeated once again the recommendation to the Government to reduce the excessive number of acting positions. Along these lines, the latest OECD/SIGMA report for Serbia also confirmed that the share of SCS positions filled using acting appointments has remained outstanding,⁵ stating that "it is becoming obvious that the Government and its ministers have not accepted the recruitment system as established by the legislation, and the provisions of the law are not abided by."⁶ Despite the diplomatic language which characterises these international reports, it is clear that Serbia's EU partners recognise the severity of the problem and have kept it high on the PAR agenda over the past years.

FROM A PAR PRIORITY TO A RULE OF LAW VIOLATION

Mostly faced with the pressure of the EC, the Government did make some efforts to keep the issue at bay, albeit failing to truly tackle the problem and its rule-of-law repercussions. The 2018 amendments to the Law on Civil Servants (CSL) introduced a new limitation that only permanent, regularly recruited, civil servants could be appointed to acting SCS positions from there on.⁷ With the same amendments, the Government also tightened the provisions on maximum duration of acting appointments by specifying that once the legally permitted maximum duration expires, a SCS position is to remain vacant until the Government appoints a candidate using the proper competition procedure. More than four years later, however, no evidence suggests that these legal solutions have lived up to their purpose and influenced the practice. Moreover, the Government does not keep records on whether persons appointed to acting positions are already hired as civil servants,⁸ while in the past years several prominent acting managers were clearly not appointed from within the civil service ranks.⁹ Rather than curbing the problem, the effect of the tightened legal provisions coupled with the unchanging practice has created a full-blown rule-of-law violation issue.

The gravity of the problem is demonstrated mainly through breaches of the time limits of acting appointments, evident from the sheer number of appointments to acting positions within a single year. The CSL envisages for such appointments to last for a maximum of six months, which can, in exceptional cases, be prolonged for another three months. Yet, the annual number of individual appointments exceeds by far the total number of such positions in the administration. For instance, the total number of SCS jobs at the end of 2021 was 408, but the Government had made 696 acting ap-

2 Article 67a of the Law on Civil Servants stipulates that until the appointment of a senior civil servant, one or more acting civil servants can be appointed without internal or public competition. Law on Civil Servant, Official Gazette 79/2005-13, 81/2005-11 (correction), 83/2005-21 (correction), 64/2007-3, 67/2007-26 (correction), 116/2008-76, 104/2009-27, 99/2014-7, 94/2017-5, 95/2018-366, 157/2020-3.

3 PAR monitoring cycle 2021/2022 was conducted from January 2022 to October 2022.

4 Miloš Đinđić, Milena Lazarević, Dragana Bajić, Stefan Stojković, *National PAR Monitor Serbia 2019/2020*, 2021, p. 82, available at: <https://www.par-monitor.org/par-monitor-reports-2019-2020/>.

5 Over 60% for both 2019 and 2020, OECD/SIGMA, Monitoring Report Serbia, 2021, p. 76, available at: <http://www.sigmaweb.org/publications/monitoring-reports.htm>.

6 Ibid, p. 63.

7 Art. 67a of the Law on Civil Servants, Official Gazette 79/2005-13, 81/2005-11 (correction), 83/2005-21 (correction), 64/2007-3, 67/2007-26 (correction), 116/2008-76, 104/2009-27, 99/2014-7, 94/2017-5, 95/2018-366, 157/2020-3.

8 Human Resource Management Service of the Government (response to the request on free access to information request from 15 August 2022).

9 Vladimir Mihajlović, Miloš Đinđić, *The COVID-19 Crisis in Serbia A New Reality, Yet Old Habits Remain Within the Civil Service*, May 2020. available at: <https://cep.org.rs/en/blogs/the-covid-19-crisis-serbia/>.

pointments during that year only.¹⁰ In the years before, the same practice could be observed.¹¹ Moreover, in 2021, only about 48% of the appointments were related to unique persons, with the remaining 52% being reappointed individuals, two times or more times within a single year.¹² Accumulated over time, such repetitions result in numerous cases where a single person remains an acting manager for several years. What is more, acts on appointments are often adopted retroactively, which means they cover the period of duty that has already happened in the past.¹³ As the data on individual appointments is publicly available and verifiable, resulting in a large body of evidence, it demonstrates a dangerously carefree attitude to these repeated violations of the rule of law by the Government.

In recognition of the implications of this issue on the rule of law in Serbia, the EU has included it into accession negotiations as an interim benchmark within Chapter 23 – Judiciary and Fundamental Rights. Hence, the governmental Action Plan which lays out plans to fulfil the Commission's benchmarks clearly foresaw completion of all commenced competition procedures for filling in SCS vacancies, including those occupied by acting managers.¹⁴ Additionally, the Commission has clearly pointed out the ongoing violation of legal framework, stating that the Government has "continued to appoint non-civil servants – occupying two thirds of total acting posts - after [the] legal deadline".¹⁵ However, the Government has shown little progress in meeting these midterm benchmarks, while Serbia's EU accession process has come to a standstill for reasons related to both rule of law and other high-level political obstacles.

POLITICAL VETTING OF SCS APPOINTMENTS

Finally, the way the Government exerts political influence and control over the SCS goes beyond the CSL framework and spans also the governmental appointment procedure. Namely, the official working body of the Government – the Personnel Commission – is tasked with proposing to the Government all appointments and dismissals that are within its remit, SCS included.¹⁶ This commission fully operates outside of the scope of civil service merit based regime: the CSL does not mention it; it is established through the Government Rules of Procedure; and its members are mainly politically appointed officials (ministers and state secretaries).¹⁷ The CSL clearly states that, upon completion of the competition procedure, the head of a recruiting administration body proposes a candidate to the Government for appointment. However, the Commission has a formally recognised role of discussing, and thus, filtering the appointment proposals, before submitting them for Government approval. As noted by the EC, "appointment decisions for management positions can be overturned by a government personnel committee after the selection process has been finalised at the institutional level."¹⁸ At the same time, this commission's work is completely opaque, there is no criteria for approving proposed candidates for appointments and no record of its deliberations. Considering these factors, the Personnel Commission can be reasonably considered an additional layer of political vetting and exertion of political influence over the SCS, both those proposed for appointment following the legally prescribed procedure and those proposed as acting managers.

Civil servants also recognise the influence of politics over the recruitment, dismissal as well as work of their top managers. Based on the 2022 PAR Monitor survey, 43% of respondent civil servants said that senior civil servants are, "often" or "always", appointed thanks to political support, whereas those who responded with "rarely" and "never" accounted to mere

10 Human Resource Management Service of the Government (response to the request on free access to information request from 15 August 2022), and from the archive of the Government sessions, available at: <https://www.srbija.gov.rs/dokumenti/2430>.

11 Miloš Đinđić, Milena Lazarević, Dragana Bajić, Stefan Stojković, *National PAR Monitor Serbia 2019/2020*, p. 82.

12 Findings of the PAR Monitor 2021/2022, source of data is the archive of the Government sessions.

13 See: Nemanja Nenadić, *Ništavo vršenje dužnosti, probuđeno tužilaštvo i sud kojem „nije jasno“*, 05.10.2022, available at: <https://pecanik.net/nis-tavo-vrsenje-duznosti-probudjeno-tuzilastvo-i-sud-kojem-nije-jasno/>.

14 Interim benchmark 2.2.6, activity 2.2.6.2, Revised Action Plan for the Chapter 23 – Judiciary and Fundamental Rights, July 2020, available at: <https://www.mpravde.gov.rs/sr/tekst/30402/revirirani-akcioni-plan-za-poglavlje-23-i-strategija-razvoja-pravosudja-za-period-2020-2025-22072020.php>.

15 European Commission, Serbia Report 2022, p. 16 and 17, available at: https://neighbourhood-enlargement.ec.europa.eu/serbia-report-2022_en.

16 Art. 31, Rules of Procedure of the Government, 61/2006-3 (consolidated text), 69/2008-3, 88/2009-72, 33/2010-6, 69/2010-3, 20/2011-10, 37/2011-3, 30/2013-4, 76/2014-3, 8/2019-79 (other decrees), available at: <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/ministarstva%20poslovnik/2006/61/1/reg>.

17 Art. 9 of the Rules of Procedure stipulates that membership of the Government's commissions and committees consists of the Government members, state secretaries, and the persons appointed by the Government.

18 European Commission, Serbia Report 2022, p. 17.

15%.¹⁹ Moreover, an unconvincing share of 27% of respondents agreed that their top managers can reject an illegal order from a minister, or another political superior, without endangering their position,²⁰ while 17% neither agreed or disagreed and 36% did not know.²¹ The interviewed former and present SCS have observed the practices of “informal recruitment” such as dismissing appointees with no political affiliation. In some cases, heads of administrative bodies would even check the political suitability of the candidate selected in the competitive procedure, before making an appointment proposal to the Government.²² All of this suggests that politically backed appointments and dismissals as well as weak protection of SCS from undue political influence are widely recognised practices in the administration. Such a working environment negatively affects the career path within the civil service and the motivation of civil servants, who become aware of the difficulty of advancing to SCS positions without making political compromises.

REPEATED RECOMMENDATIONS, FALLING ON DEAF EARS

Politicisation of SCS in Serbia is a deeply rooted problem. The question, after years of raising red flags, is not how to eliminate it but whether there is any way to allay it. There are several key recommendations to remedy or prevent more crippling politicisation, which SIGMA/OECD, the EC and domestic CSOs have repeated numerous times:

- The Government should urgently cease the practice of appointing and reappointing acting managers and start making appointments of senior civil servants in accordance with the legal provisions.
- In line with the CSL, the Government should only appoint existing civil servants to acting positions, with proper justification, i.e., until the competition procedure is completed, and successful candidate appointed.
- Appointments of senior civil servants should be exempt from the competence of the Government Personnel Commission.
- Appointment proposals by heads of administrative bodies for filling in the senior-level vacancy should be directly forwarded for approval at the Government’s sessions.

Yet, it is clear by now that rule effectiveness is low, that the improvements of the CSL alone are not sufficient, and that the calls for action by domestic or international actors fall short of incentivising change in political behaviour.

The SCS politicisation problem analysed in this paper is grave not only from the perspective of public administration reform, as it promotes the interests of party politics at the expense of the principle of merit, but also tops the list of rule-of-law issues, as the Government itself repeatedly and openly violates the law. Still, this side of the problem – the broader implications of ravaging SCS politicisation on rule of law and beyond – has not been highlighted enough. Knowing that rule of law is a *conditio sine qua non* for EU membership, it will certainly continue to handicap the accession process in the future.

What is more, the consequences extend beyond simply failing the EU accession conditionality and include legal uncertainty resulting from numerous acts signed off by individuals illegally holding SCS positions. In the future, it is possible to expect legal proceedings against illegal decisions, possibly with consequences on major state projects or rights and obligations of citizens and businesses. Anecdotal evidence suggests that such cases have already been filed, but official information about them is difficult to obtain, calling for new research in the years to come. For that reason, in addition to the proposed recommendations, a crucial step forward will be for the civil society and international actors to raise the priority of SCS politicisation in Serbia to the top of the rule of law reform agenda. Treating it predominantly as a public administration issue would contribute to further deterioration of the rule of law in the country, with negative repercussions for both the political system and the society as a whole.

19 Survey of the attitudes of civil servants in Serbia, conducted in the period 18.04-20.05.2022. Total number of respondents N= 1440. The survey was conducted online, using the self-interviewing method via the Survey Monkey platform.

20 Total agreement is the sum of responses “agree” (19%), and “strongly agree”(8%).

21 53% of respondents that were either neutral or did not know.

22 Interviews conducted within the PAR Monitor cycles 2021/2022 (6 August 2022), and 2019/2020 (12 October 2020, 8 December 2020).

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