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THE PROSPECT OF JOINING THE EU AND CIVIL SERVICE REFORM IN THE REPUBLIC OF NORTH MACEDONIA

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Abstract: *The Republic of North Macedonia, a candidate country in the EU, is continuously subject to conditionality in relation to establishing a professional and effective public administration from the EU institutions and from the civil society. This paper employs the qualitative methodology of process tracing to find out whether the EU conditionality has managed to establish a merit-based civil service. The data are gathered and analyzed for a period of ten years while analyzing the legal and institutional structure of the civil service. The findings identify the factors that hampered or prolonged the implementation of reforms and they offer insights on the conditions necessary for the civil service reforms to take place.*

Keywords: *EU Conditionality; Public Administration; Civil Service; North Macedonia*



INTRODUCTION

The Republic of North Macedonia (hereinafter: NM) is continuously subject to EU conditionality in relation to establishing a professional and effective public administration. This reform is one of the most important dimensions of institution building since its division from the former Yugoslavia, at the same time it remains one of the most problematic area of reform. The country is continuously being assessed as poor in relation to successful implementation of public administration reforms, in particular the de-politicization of the civil service (Country Report 2008-2018). A similar view is hold by the CSOs who assess public administration as “extremely politicized and used as one of the main pillars of political party clientelism (European Policy Institute, 2017).A politicized administration in NM is “perceived to be a lingering legacy of the socialist regime that the transition to democracy has not managed to eradicate” (Analytica 2011).

In order to analyze the extent of the Europeanization of the civil service in NM, in this research we analyze all the actions taken and reforms performed by the state. The key and most comprehensive yearly reports are Commission country reports, and the SIGMA yearly reports that assess the PAR processes. Other governmental reports, non-governmental, and international reports will be included in the analysis. All these documents will be analyzed by paying particular attention to the chronology of events in order to identify detailed connections between the causes and effects of specific developments.

Moreover, in regards to the period of analysis, a ten-year period of analysis of these documents will be conducted. 2008 is selected as a starting year for Macedonia because it is an important year when the Council of the European Union came out with a decision “on the principles, priorities and conditions contained in the Accession Partnership with the former Yugoslav Republic of Macedonia and repealing Decision 2006/57/EC” (Official Journal of the European Union). In this decision special reference was made to merit based recruitment of civil servants.

State of Play

A general overview of the progress/regress made in PAR is provided in the country reports. Figure 1 shows the trend in NM on compliance data with PAR requirements deriving from the EU.

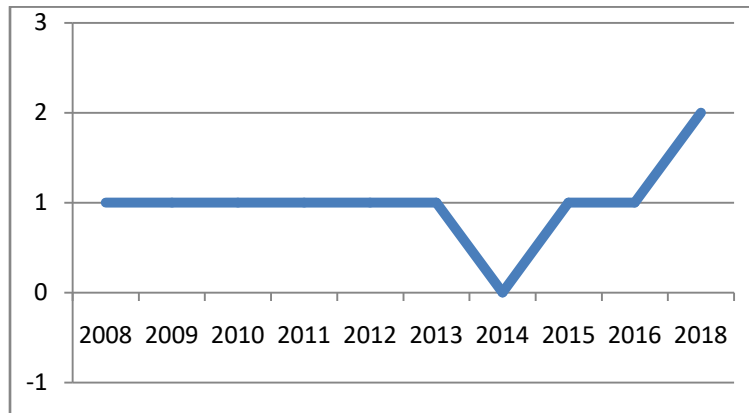


Figure 1: Compliance data collected through an analysis of EU country reports.
(Source: Commission Country Reports 2008-2018)

The above graph shows that 2008- 2013 the country has undergone no major changes, as such it remains in a similar stage or level of progress with the public administration Commission requirements. In 2014, the EC observes zero progress made in complying with PAR related reforms and as such is considered as a status quo year. 2015 and 2016 are assessed as progress made indicating that changes took place; while 2018 was the first year in a decade time to have been assessed as good progress made. Below we trace the developments throughout these years to analyze the impact of the EU conditionality mechanism on these reforms. From a bigger picture this research looks at the progress/regress made in the context of negotiations with the Union. It should also be highlighted that these reforms shall be put into context, as the reorganization of the administration including reforms in the civil service are a dynamic process that have an impact across all government institutions. Thus, they demand political leadership and effective horizontal and vertical coordination among all government institutions.

Furthermore, in addition to the progress measured in terms of fulfilling last years' country report recommendations, the EU in 2015 started to measure the country's' level of preparedness- readiness to take on membership obligations. Since the data was available only from 2015 resulting only in a three-year period, 2019 is also included to have one more year of assessment.

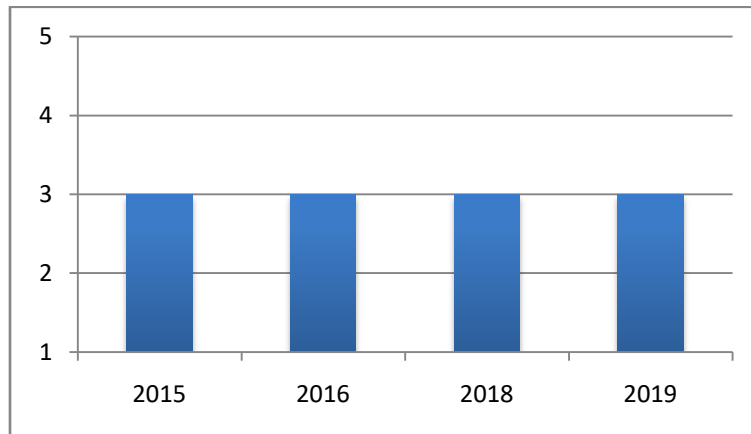


Figure 2: Level of Preparedness to take on membership obligations.
(Source: European Commission Country Reports 2015-2019)

On a scale of one to five, NM in the last years seems to remain in the same level of preparedness -moderately prepared. This assessment indicates that the country has undergone some changes in public administration, while it does not indicate in what particular dimension of PAR they took place. In the below sections, we analyze whether these changes pertain to the civil service.

The 2008-2012 Civil Service Reforms in North Macedonia

Furthermore, in 2008 Progress Report it was noted, "Objective and merit-based criteria are not consistently used in recruitment and promotion" (Progress Report 2008). In 2009, the key remaining point of concern is the politicized recruitment in the entire system of civil service. During that year, a high committee on PAR, chaired by the prime minister to give political priority to the reform was established. This committee met every month; however, its conclusions were not systematically and effectively implemented. Thus, with the purpose of streamlining the discussion on public administration, a Special Group on PAR was established under the Stabilization and Association Agreement platform, holding its first meeting in September 2010 (Progress Report 2010). Another major problem highlighted in the 2010 progress report is the high number of temporary posts in the administration. This form of employment was not in line with procedures set in the law and does not guarantee merit-based recruitment and transparency during the process, as required by the SIGMA principles. In addition, there were cases when senior positions were filled with staff under temporary contracts.

Overall, politicization of the public service remained a critical problem during this period and the number of public servants was acknowledged to be rather high, though the exact number was not made public by institutions independent of the requirements coming from the EU and from the civil society.

On the other hand, the de-politicization of civil service remained a persistent requirement by the European Commission. The only progress highlighted was the adoption of the Law on Public Servants and police reform. The assessed progress with the latter was related with the entry into force of the Law on Internal Affairs that aimed to ensure professionalism and de-politicization of officials in the Ministry of Internal Affairs. As one might note, the only progress reported by the Commission was bounded to the adoption of two laws, while major problems remained with non-merit based recruitment, temporary contracts, ambiguity related to the number of public servants, and performance assessment. A new was adopted in 2010, the Law on Public Servants (Official Gazette of the Republic of Macedonia 52/2010). The Law redefined the status of employers in the public sector, and as such it included all groups of employers coming from public enterprises, fund, regulatory bodies, and other. This law also gave competences to the Civil Servants Agency including “preparation of an annual plan on fair representation, reports on disciplinary procedures and staff appraisal, training of public servants, and keeping of a public servants registry” (Progress Report 2010). Furthermore, the government adopted a public administration strategy with an action plan for its implementation (2010-2018). The adoption of the strategy indicated a concrete action by the government to proceed with the reforms in public administration in general. The Commission reported that the political responsibility for PAR remained with the High Committee on Public Administration, led by the Prime Minister (Progress Report 2011).

During this year, the managerial and operational responsibility was transferred to the new Ministry of Information Society and Administrative Agency (MISA), while the CSA was transformed into an Administrative Agency (AA) with oversight responsibilities. These changes were considered as positive and driving for PAR reforms. In 2011, the Law on civil servants was also amended to include new aspects selection and promotion. However, the Commission evaluates that various weakness remain in legislation related to recruitment, promotion, termination of contract, and appointment of senior manager position within the system. On the other hand, the EU required the government of Macedonia to guarantee merit-based recruitment of civil servants and senior positions, transparent and apolitical principles of appointment through law changes and successful implementation of the laws (Progress Report 2011). The recruitment process remained to be tailor made to specific candidates and the overall process of recruitment remains prone to undue political influence.

On the same year, the Enlargement Communication Policy came out (2011-2012). The Commission through this Enlargement Communication reiterates that public administration, amongst others, remains a key priority under the political criteria in all enlargement countries.

Thus, it calls upon enlargement governments to address seriously and efficiently PAR related reforms, including the establishment of a professional civil service system. Over the years, although the government did commit its rhetoric to rhetoric of change, few real changes took place. In 2012, the Commission evaluated the PAR reforms with progress made only, similar to previous years. Problems with the eligibility criteria for recruitment remained inconsistent in most cases. The number of staff with temporary contracts remained elusive and official figures were not made public. In addition, the salary system was not unified, while ad-hoc payment allowances continued to be given to public servants without any transparent justification (Progress Report 2012). "The system of democracy is gradually deteriorating, confusion between politics and administration is rife, and the public administration is further becoming de-professionalized. This renders the public administration unreliable and unpredictable" (SIGMA Assessment Report 2012). The country was considered to be backsliding in administration, rule of law and democracy. Recruitment continued to be on the basis of patronage and party affiliation, while discrimination on the basis of religion and nationality continued to be cruelest criteria. Albanian community continued to be employed to fulfill the criteria deriving from SIOFA, but once in office they were sidelined (SIGMA Assessment Report 2012). Despite the fact that the Commission assessed that the administration is overstaffed, in 2012 the Government General Secretariat recruited 152 junior civil servants. The hiring process was conducted in contradiction with the law on civil servants and as such they were 'tailor-made' for the selected candidates (SIGMA Assessment Report 2012).

Since, the 2008 Council of the European Union decision on a set of principles, priorities and conditions to be followed by NM and the pressure put by the EU through the publication of progress reports and enlargement strategy, the process tracing analysis depicts a similar picture of the civil service throughout a five year period (2008-2012). A similar picture of the civil service refers to the consistent problems and challenges present in the NM civil service system. The key problems include 'tailor-made' job positions for politically affiliated people, non-merit based criteria for promotion and recruitment, high number of temporary contracts, translation of temporary contracts to permanent position without any objective based criteria, lack of data related to the number of public servants. The limited progress discussed during this period was related to the adoption of the law on public servants and on civil servants, as well as to the reform police through the adoption of the Law on Internal Affairs. This given, there was no real transformation that took place during this five year period, independent of the pressure and assistance that came from the Union. To sum up, it is more rational to interpret this period as an absorption stage. This indicates changes in relation to the adoption of legislation, but ineffective implementation remains and expected outcome such as merit-based selection is not reached.

The 2013-2018 Civil Service Reforms in North Macedonia

Despite several amendments made to the law on civil servants and the law on public servants, legislation continues to be fragmented and does not provide a framework of unity in the civil service. The 2010 laws on civil servants and public servants were amended in 2012 and in 2013; however, similar problems remained (SIGMA Assessment Country Report 2013).

One of the key remaining problems is that public employee recruitment is subject to different legislation and/ or general labor law, in addition to politicized recruitment and lack of information in regards to the total number of public employees (Progress Report, 2013). Training of civil servants is considered one key aspect of their professional development. The current law provided public servants with the right to professional development and training; however, the law did not provide any mandatory provision on training of civil servants (Davitkovski et al. 2017). In accordance with the Law the professional development of civil servants were planned to be financially supported by the state budget and prepared by the competent agency while approved by the Agency for Civil Servants. However, in practice the Agency did not keep any track record of trainings, and there was no professional development plan prepared by the competent institution leading to lack of law implementation.

Furthermore, the Constitutional Court in the Republic of North Macedonia declared unconstitutional the classification of staff in two sectors including the health and the education one, thus regulation of most of public employees was being based on labor law. In particular, 21% of the public employees were regulated by the Law on Civil Service and Public Service, while 79% were regulated by specific legislation or the labor law (SIGMA Assessment Country Report 2013). This was considered problematic because it led to various unstructured positions within the civil service; 13 positions were organized in three levels in civil service, while for other public servants hundreds or even thousands of different positions existed but were not classified by legislation. This was not in line with the unitary civil service system as required by the Commission. The problems with implementation were assessed to be present also with the PAR strategy (2010-2015). For instance, one key aspect of civil service system is the performance appraisal through which one could make a decision in regards to promotion, demotion or training needs. However, this aspect has proven to be meaningless and formal leading to 97% of employees being assessed as top performers (SIGMA Baseline Measurement Report 2015). A solution to all these problems was considered the establishment of a new legislative framework. Thus, during 2013 the government started to work on a new civil service legal framework by replacing the old framework. The establishment of such a framework was expected to increase the accountability and transparency and to promote principles of merit-based recruitment. As one might observe, it seemed that the failure to Europeanize the civil service led to a new legal framework, but not to specific attempts to tackle concrete problems with the old law implementation. This to an

extent can indicate a 'fake political will' to establish a professional civil service, since the adoption of a new legal framework does not guarantee successful implementation, but it rather delays the entire process. Since the reforms in civil service have high political costs, it is in the interest of the governments who fake the reforms to prolong them in any possible manner. A simple analysis depicts that the NM public employment legislation has been under intense debate and subject to numerous amendments since its parliamentary adoption in 2000. More precisely, during a 14-year period, the civil service law has been subject to 26 amendments while undermining the stability of the legal environment (SIGMA Baseline Measurement Report 2015). As explained above, the solution to the problems with the civil service was considered the establishment of a new legal framework; thus, the main development in 2014 include the approval of the Law on Public Service Employees (LPSE) and the Law on Administrative Servants (LAS) (Official Gazette no.27). Both laws entered into force one year after, in 2015, as other by-law necessary for the implementation were adopted in the meantime during this one-year period. The LPSE includes four groups of public employees as follows

1. Administrative servants;
2. Officials with special powers;
3. Public service providers;
4. Auxiliary and technical staff.

The LAS, includes administrative servants, made up of civil servants (previously covered by the CSL) and public servants. These laws were assessed by the Commission as a step forward in building "a unified, transparent and accountable public administration, by introducing common principles to be respected by all state employees and by creating a common regulatory framework" (Progress Report 2014). The new legal framework aimed at increasing transparency also required the publication of data related to the number of public employees at all levels of the administration.

Furthermore, the rampant method of changing and amending civil service legislation was followed even after the enforcement of the new legislation. The new LAS was amended twice in the year of enforcement, 2015, and another two times during 2016, and once in the beginning of 2018 (Law Amending LAS 2015, 2016, and 2018) .The new LPSE was amended once in the year of its approval, twice during 2016, and once at the end of 2018 (Law Amending LPSE, 2014, 2016, and 2018). The Law on Transformation of Temporary Positions into Permanent Contracts was also adopted during 2015; however, the Commission recommended that this law is reviewed and suspended to meet the principle of merit (Progress Report 2015). This is also one of the priorities listed in the Urgent Reform Priorities (URP) by the Commission. During 2015 the Commission drafted a list of URP to address systematic weaknesses in the field of rule of law, public administration, freedom of expression and electoral reform. These reform priorities were in line with the Recommendations of the

Senior Experts' Group on systemic Rule of Law issues and do not exclude any of the recommendations made public in the Commission and SIGMA reports (URP 2015 and Recommendation of the Senior Expert Group 2015). The URP on urgent basis required the government to implement rigorously the new legal framework on public employees, to fully respect the principle of merit in the recruitment process, and to provide reliable data in regards to the total number of public employees broken down by sectors. Although, the new legal framework accompanied with its bylaws was adopted, limited progress was achieved toward establishing an independent, impartial and professional civil service. The Commission evaluated that there was lack of commitment to implement last year's recommendations related to the human resources which included the employment of the merit criterion in transforming temporary contracts to permanent contracts, de-politicization of the administration in the context of recruitment, amongst others. Temporary contracts continued to be transformed into permanent contracts without open competition in contrary to what was required by the EU in its yearly report and in the URP. No data was still made available in relation to the number of temporary contracts, though a first report was published in regards to the total number of employees in the public sector (Progress Report 2016). This indicates that the government was only able to absorb the legislative framework, but not to transform the system by successfully implementing the framework it adopted. In addition, there continues to be lack of a unitary system of payment across the administration, leading to inconsistent levels of payment.


Overall, these delays in implementation of the new legal framework and lack of implementation of the last year's report compromise the declarations of commitment to reform by the political elite. In December 2016, NM holds early parliamentary elections; however, it took the country few months until the coalition was formed to vote on the new government (IFES 2016). An anticipated change of regime took place in May 2017, and it was considered that a new reform-oriented government took place. Among other major political issues in the waiting line to be solved like the 27 year old name dispute with Greece, de-politicization of the administration was also one of the policy reforms that needed urgent intervention by the new government.

One of the key and first decisions taken by the government related to the administration was the dismissal of all public board members and top managers in 85 public institutions on the basis of power misuse and mismanagement of public finance (Country Report 2018). It was also assessed that the LAS led to some changes in merit-based recruitment and promotion procedures. These changes could have accounted for the best assessment made in the last 10-year period by the Commission (as shown in Figure 1). However, the overall picture in the civil service remains blurred and accompanied with many problems. After a 10-year period (2008-2018), according to the EU assessment conducted, major problems within the civil service remain as follows:

- Professional development of public servants is limited to classroom type of training.
- A centralized database of the training offered by various institutions is not yet established.
- The amended legislation on appraisals does not impose any requirements on the minimal percentages of staff that will be awarded for excellent appraisals or penalized for poor appraisals.
- Integrity in the public service is sufficiently regulated, but there is no data available on how integrity mechanisms are implemented in practice.
- The remuneration system across the public sector remained non-uniform, leading to inconsistent levels of pay and reduced mobility.
- The criteria for appointment of senior management positions are not clearly regulated.
- There is a long-standing situation where a large number of state employees is paid without showing up for work (Country Report 2018).

To an endnote, the above-mentioned substantial problems do not depict any sign of transformation in the civil service. On the contrary, challenges identified reflect systematic problems with civil service core values like impartiality, integrity, transparency, and impartiality.

CONCLUSION

The analysis reveals that the real reforms were postponed due to high political costs for the ruling elites and they were delayed due to the high adaptation costs for the government. The civil service in NM remained in the absorption phase while adopting various legislative frameworks that were both arduous and onerous. Thus, these reform processes did only fake the real reform by doing the talk of the reform, while the real transformation, which in practice equals successful implementation of the reform and tangible results lacks. Tangible results refer to a system of civil service with high values of integrity and independency and where the principle of merit is the basis of the system. Thus, in conclusion, there seems to be enough evidence to accept *the higher the political costs of adopting good governance principles and regulations the lower the possibility of adopting these regulations and the lower the adaptation costs the higher the possibility of adopting EU policies on good governance*. Some of the challenges identified, reflect systematic problems with civil service core values like impartiality, integrity, transparency, and impartiality. During this 10-year period, these problems were accompanied with an insecure legal environment due to the rampant practice of law amendment and change. These frequent legislative fluctuations have undermined the importance of changes in the system. Although, the adoption of the legal framework and its bylaws, indicates that the civil service system has not remained in a status-quo stage. 

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