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ALIGNMENT OF THE SERBIAN CIVIL SERVICE LEGISLATION WITH THE EU ACCESSION REQUIREMENTS

ABSTRACT

The objective of the paper is to assess the degree of alignment of key aspects of the Serbian civil service legislation with the EU accession requirements. As Serbia aspires to become the EU member state, it is important that its civil service legislation is aligned the EU accession requirements, which should ensure civil service effectiveness during the negotiation process and subsequently within the EU system. Special attention in the paper is paid to the assessment of civil service professional development rules and practices, which include civil servants training, performance appraisal and promotion.

The authors argue that the Serbian civil service legislation which governs professional development is still not fully aligned with the EU accession standards. In spite of the fact that the normative-legal framework mainly reflects the EU requirements, its level of implementation and effectiveness is not satisfactory. The authors conclude that additional legal and socio-political changes need to take place in order to achieve progress in this area.

Keywords: *alignment of legislation, civil service, professional development, EU accession requirements*

1. INTRODUCTION

The accession to the European Union has been one of the key objectives of the Government of Serbia since the early years of the XXI century. The accession process of EU accession began in 2003, when Serbia was identified as a potential candidate for EU membership during the Thessaloniki European Council summit. Setting the priorities in the legal and institutional reform was continued through the adoption of a European partnership in 2008. Serbia was granted EU candi-

date status in 2013. In June 2013, the Council made a decision to open accession negotiations with Serbia, which was followed by the adoption of the negotiating framework. On 21 January 2014, the 1st Intergovernmental Conference took place, signaling the formal start of Serbia's accession negotiations to the EU.

The process and the prospects of Serbia's accession to the European Union serve as an important anchor for comprehensive legal and institutional reforms, which includes the area of civil service. In spite of the fact that the field of civil service falls outside of the scope of "acquis communautaire", the Commission pays special attention to this area in its progress reports, as part of political criteria which need to be met during the accession process. The Commission realizes that Serbia, just like other candidate states, needs professional civil service which will be able not only to handle the complex negotiation process, but also to enable Serbia to effectively function as a member state, once it joins the EU.

The objective of this paper is to assess the degree of alignment of certain aspects of the Serbian civil service legislation with the EU accession requirements. The EU requirements in the field of human resources management in the civil service are established by the SIGMA programme¹ and their document "Principles of Public Administration" adopted in 2014.² Special attention in the paper shall be paid to the requirements regarding professional development of civil servants, which include civil servants training, performance appraisal and vertical and horizontal mobility of civil servants.

Methodology of the paper is based on combining normative and socio-legal method. Normative method shall be used to examine SIGMA standards and normative framework of professional development of civil servants in Serbia. Analysis of normative legal texts should provided a good basis for understanding of what are the current regulations regarding professional development of civil servants in Serbia and to which degree they are aligned with the European standards. However, as institutions and norms represent just a part of the broader social background,

¹ Having recognised the importance of a well regulated and organised public administration for the fulfillment of the membership requirements in all sectoral areas, in 1992 EU cooperated with the Organisation for Economic Cooperation and Development (OECD) to establish the SIGMA programme (SIGMA - *Support for Improvement in Governance and Management*). The Programme aims at providing support to public administration reform activities in (potential) candidate states. SIGMA programme is mainly funded by the EU and represents one of the main instruments of the European Commission in promoting capacity development in public administration in Central and Eastern Europe, as well as a technical assistance service to the candidate states

² SIGMA, *Principles of Public Administration*, OECD Publishing, Paris, 2014

they cannot be analyzed isolated from their social context.³ Therefore, in order to provide a better understanding of the existing legislation, considerable attention shall be devoted to analysis of implementation of civil service rules in practice and respective social environments through the employment of socio-legal method.⁴

The structure of the paper shall comprise three key parts: 1) the first part which will analyse EU requirements in the area of human resources management in the civil service, reflected within the SIGMA Public Administration principles, 2) the central part, which shall examine the level of alignment of the Serbian civil service legal framework and its implementation with the SIGMA standards, and 3) the third, concluding part, which will provide recommendations for improvements in this area.

2. EUROPEAN “SOFT ACQUIS” IN THE AREA OF CIVIL SERVICE – SIGMA PRINCIPLES OF PUBLIC ADMINISTRATION

The EU has recognized the importance of professional civil service systems with adequate capacity ever since the completion of the Internal Market. While administrative and civil service systems were the exclusive domain of the EU member states up to the early 1990s, this has changed fundamentally with the completion of the Internal Market and Monetary Union. The quality of administrations has become a point of discussion between member states. The prospect of accession of a large group of CEE states, with (perceived) weak public administration systems, added incentive to politicians in EU states for engaging in discussions about administrative quality at European level.⁵

In the process of EU accession candidate countries have become obliged to comply with general European principles of public administration of the so-called “European Administrative Space”, developed by SIGMA programme in the 1990s.⁶ The idea of “European Administrative Space” was that, in spite of the differences of institutional configurations, a degree of convergence existed among member states at least at the level of general principles. These common public administra-

³ Kokkini-Iatridou, D., *Some Methodological Aspects of Comparative Law*, Netherlands International Law Review, 1986, pp. 166–167

⁴ Cotterrell, R., *Why Must Legal Ideas Be Interpreted Sociologically?* Journal of Law and Society, Volume 25, Number 2, 1998, pp. 185–187

⁵ Verheijen, T.J.G., Rabrenovic A., *Civil Service Development in Central and Eastern Europe and the CIS: A Perfect Storm?*, van der Meer, F.M., Raadschelders, J.C.N., Toonen, Th.A.J. (eds.), Comparative Civil Service Systems in the 21st Century. Houndsmills: Palgrave Macmillan, pp. 15-37

⁶ SIGMA, *European Principles of Public Administration*, SIGMA papers No. 27, OECD publishing, 1999

tion principles included elements such as reliability, predictability, accountability and transparency, as well as technical and managerial competence, organisational capacity, financial sustainability and citizen participation.⁷

In 2014, SIGMA prepared a new document entitled “Principles of Public Administration”, which sets out qualitative and quantitative indicators in six areas of public administration.⁸ These areas include: strategic framework for public administration reform (PAR), policy development and co-ordination, public service and human resource management, accountability, service delivery and public financial management (PFM), including public procurement and external audit. The Principles succeeded the previous SIGMA “baseline assessment” system, which reviewed the quality of civil service and public management systems based on a set of qualitative indicators, related to six core functions that public management systems are expected to fulfill.⁹

It may be argued that the SIGMA Principles of Public Administration represent so-called “*soft acquis*“, which constitute common standards of the EU Member States, and which influence the development of the national law indirectly.¹⁰ Although they are not legally binding, these standards can have significant practical impacts on the countries seeking EU membership, as the European Commission uses them as benchmarks for assessing progress towards membership.

The Principles of Public Administration represent an example of a change of the EU approach to the accession requirements. Unlike in the early years of accession, when the Commission was insisting merely upon adoption of certain legislation and establishment of institutions (so-called “check-box” approach), there is a strong orientation towards assessing implementation of the legal framework and its effectiveness in practice. This appears to come from a wider understanding that an attempt to change the society and civil service in particular through laws has obvious limits in the 21st century.¹¹

⁷ *Ibid*, pp. 8-18

⁸ SIGMA, *Principles of Public Administration*, op. cit. note 2

⁹ First baseline assessment system included the following areas: policy management, civil service, internal financial control, public expenditure management, external financial control and procurement. SIGMA, *Structural Elements for Improving Horizontal Public Governance Systems in EU Candidate States: SIGMA Assessment Baselines*, 2009

¹⁰ Keune, M., *EU Enlargement and Social Standards – Exporting the European Social Model?*, JOrbie, J., Tortell L., (eds.), *The European Union and the Social Dimension of Globalisation, How the EU Influences the World*, Routledge, 2009, p. 52

¹¹ Nicolaidis, K, Kleinfeld, R, *Rethinking Europe’s ‘rule of law’ and Enlargement Agenda: The Fundamental Dilemma*, SIGMA paper No. 49, OECD publishing, 2012, p. 47

In order to be able to monitor the progress in achieving the benchmarks set in the Principles, SIGMA has also recently developed a document entitled “Methodological Framework”, which provides a comprehensive monitoring framework for assessing the state of a public administration against each Principle set out in the Principles of Public Administration.¹² The Framework includes a set of indicators, which attempt to define preconditions for a good public administration (good laws, policies, structures and procedures) with the special emphasis on actual implementation of legislation and its effects and outcomes in practice.¹³

Each year SIGMA makes an assessment of the progress the candidate countries have made in meeting its public administration requirements.¹⁴ These assessments are presented in the reports, which are forwarded to the Commission, which takes them as a basis for the preparation of its annual progress reports. The SIGMA and the Commission reports are published at the same time at the end of the calendar year. SIGMA made a baseline measurement report for all EU candidate states on the basis of the Principles of Public Administration in 2015 and subsequent monitoring reports for certain priority areas of public administration in 2016 and 2017.¹⁵

The key area of the Principles which sets out the requirements in the area of civil service development is the section on public service and human resource management. The section includes seven principles which cover the following areas: the scope of public service; institutional set up for HR management; recruitment and selection of senior and other civil service personnel; remuneration; professional development; measures for promoting integrity.¹⁶ Each of the mentioned areas contain key principles and several sub-principles and assigned indicators to measure each of them.

As assessment of the overall framework for the civil service would require substantive and comprehensive analysis which falls outside of this paper, we shall focus the analysis to the area of professional development of civil servants, as one of the key elements of human resources management in the civil service. Professional development of civil servants is outlined within Principle 6 of the Principles of Public Administration. It includes three inter-related elements – training of civil

¹² SIGMA, *Methodological Framework for the Principles of Public Administration*, OECD publishing, Paris, 2017

¹³ *Ibid.*, 102

¹⁴ SIGMA reports are available at:
[<http://www.sigmaxweb.org/publications/monitoring-reports.htm>] Accessed 15 March 2018

¹⁵ *Ibid.*

¹⁶ SIGMA, *Principles of Public Administration*, *op. cit.* note 2, pp. 42-54

servants, performance appraisal and promotion and mobility. SIGMA main requirement regarding professional development is insurance of regular training, fair performance appraisal, and mobility and promotion based on objective and transparent criteria and merit. The following section of this paper shall analyse the elements of principle 6 in more detail, together with the level of alignment of Serbian legislation and practices with this principle.

3. ASSESSMENT OF THE ALIGNMENT OF SERBIAN LEGISLATION AND PRACTICES WITH THE SIGMA PRINCIPLES

3.1. Training of civil servants

Education and training of civil servants constitute an essential part of legality and professionalism.¹⁷ Civil service training is a process of acquiring specific knowledge, abilities, skills, attitudes and/or behavior in order to improve results achieved by each civil servant at his workplace and hence the effectiveness of the whole civil service.¹⁸

SIGMA principles of Public Administration envisage four key requirements that need to be met in relation to civil servants training, which combine legal and practical requirements. The first one is that training is recognized as a right and duty of civil servants, established in law and applied in practice. The second is that there needs to exist a strategic training needs assessment and development of annual or bi-annual training plan(s), which should be conducted through transparent and inclusive processes, co-ordinated or supported by the central co-ordination unit for public service and/or public service training institution. The third one is a necessity of strategic annual or bi-annual training plans of civil servants (for different categories of civil servants, including senior managerial positions are adopted, implemented, monitored and evaluated. Finally, sufficient resources need to be allocated for training public servants.¹⁹ These measures are additionally assessed through four indicators: a) recognition of training as a right and a duty of civil servants b) co-ordination of the civil service training policy c) development, implementation and monitoring of training plans and d) evaluation of training

¹⁷ Visković, N., *Država i pravo*, Birotehnika, Zagreb, 1997, p. 72

¹⁸ Milovanović, D., Ničić, J., Davinić, M., „*Stručno usavršavanje državnih službenika u Republici Srbiji*“ [*Professional Development of Civil Servants in the Republic of Serbia*], Udruženje za javnu upravu, Službeni glasnik, Belgrade, 2012, p. 10

¹⁹ SIGMA, *Principles of Public Administration*, *op. cit.* note 2, p. 53

courses, e) training expenditures in proportion to the annual salary budget (%) and f) participation of civil servants in training (%).²⁰

With respect to legal requirements, Serbian civil service legislation appears to have a high degree of alignment with the PA principles requirements. Article 10, paragraph 2 of the Serbian Civil Service Law stipulates the right and duty of each civil servant to undergo professional development according to the needs of the civil service institution.²¹ Professional training is implemented through general and specific training programs based on training needs analysis. According to the Decree on Professional Development there are four general training programmes: the training programme for newly employed civil servants; the general programme of continuous training for civil servants; the training programmes for managers; and the personal development training programme.²²

The Human Resource Management Service, as a central Government service responsible for training delivery, also conducts an annual evaluation of outcomes through an online survey. The results of the evaluation show a high level of satisfaction among trainees. Results of the 2016 survey, for example, indicate that 77.5 % respondents consider they perform their job better thanks to the knowledge and skills acquired in training.²³ There is also a trend of the rise of the number of trainees since 2016.²⁴

SIGMA has, however, on several occasions criticized unclear institutional division of training responsibilities between different institutional actors.²⁵ Namely, the Law on Ministries²⁶ and Civil Service Law divide responsibilities for training policy and its implementation between the Ministry of Public Administration and the Human Resources Management Service. The Ministry of Public Administration and Local Self Government is responsible for the programme adoption, while the

²⁰ SIGMA, *Methodological framework for the Principles of Public Administration*, *op. cit.* note 12, pp. 102-103

²¹ Civil Service Law, Official Gazette RS, Nos. 79/2005, 81/2005, 64/2007, 67/2007, 116/2008, 104/2009, 99/2014 and 94/2017

²² Article 13, Decree on Professional Development of Civil Servants, Official Gazette of RS, No. 25/2015

²³ HRMS, *Evaluation of Training Programme for the period January-December 2016*, HRMS, January 2017 available at [<http://www.suk.gov.rs/dotAsset/21485.pdf>] Accessed on 16 March 2018

²⁴ *Ibid.* In 2016, around 3 350 civil servants attended training courses. Aside from general training programmes, almost 8300 civil servants participated in a variety of other training programmes

²⁵ SIGMA, *Monitoring report: The Principles of Public Administration, Serbia, 2017*, OECD publishing Paris, 2017, p. 83; SIGMA, *Baseline measurement report: The Principles of Public Administration, Serbia, 2015*, OECD publishing Paris, 2017, p. 54-55

²⁶ Law on Ministries, Official Gazette of RS, Nos. 44/2014, 14/2015, 54/2015, 62/2017

Human Resource Management Service is responsible for the training delivery. In addition, the responsibility for professional development in the area of European integration (EI) issues lies with the Ministry of European Integration. SIGMA has also pointed out a low annual number of civil servants who attend trainings (only around 15 per cent of the total number of civil servants).²⁷

These problems are expected to be overcome by the establishment of the National Academy for Professional Training in Public administration, which is currently in the process of institutionalisation. The Law on the National Academy for Professional Training in Public Administration²⁸ was adopted in October 2017 and its director was appointed in January 2018. The National Academy has been envisaged to be a central public institution entrusted with the training on horizontal issues for all public servants. In order to establish unique and harmonised system for professional development, it will be responsible for the development, preparation, implementation of general professional development programmes for public servants. The Academy should also become responsible for the processes of the preparation of specific professional development programmes, by providing professional assistance and coordination in the process of their development and implementation. It is expected that new institutional framework shall encourage professional and depoliticised operation of public administration and will have the capacity to train much higher number of civil servants.

3.2. Performance appraisal

Civil servants' performance appraisal is an essential element of human resources management system, aimed at continuous monitoring of work and professional development of civil servants.²⁹ The objective of performance appraisal is to develop a dialogue between a civil servant and his/her manager, encourage achievement of better results and provide conditions for fair decision on a civil servant's promotion and professional development.³⁰ Contemporary appraisal model are

²⁷ SIGMA, *Monitoring report: The Principles of Public Administration, Serbia, 2017, op. cit.* note 24, p. 83

²⁸ The Law on National Academy for Professional Training in Public administration, Official Gazette RS, No. 94/17

²⁹ Demmke, C., *Performance Assessment in the Public Services of the EU Member States, Procedure for performance appraisal for employee interviews and target agreements*, European Institute of Public Administration, 2007; Demmke, C., Hammerschmid, G., Meyer R., *Measuring Individual and Organisational Performance in the Public Services of EU Members States*, European Institute of Public Administration, 2008

³⁰ Stjepanović, N., *Upravno pravo FNRJ, opšti deo*, Savremena administracija, Belgrade, 1958, p. 397; Vukašinović, Z., *Pravna pitanja službeničkih odnosa*, Kriminalističko-policijska akademija, Belgrade, 2015, p. 59

based on agreeing and evaluating the work objectives, along with the evaluation of various, priority determined competences of civil servants.³¹

SIGMA principles of Public Administration envisage four key requirements that need to be met in relation to performance appraisal. These requirements are as follows: 1) the principles of performance appraisal are established in law to ensure the coherence of the whole public service; 2) the detailed provisions are established in secondary legislation; 3) the performance appraisal of public servants is carried out regularly; 4) the public servants have the right to appeal unfair performance appraisal decisions.³² These requirements are assessed individually and further reviewed based on three indicators: 1) professionalism of performance assessments, 2) linkage between performance appraisals and measures designed to enhance professional achievement and 3) right of civil servants to appeal against performance appraisal decisions.³³

The legislation must meet four basic criteria for a performance assessment system: performance is assessed against individual objectives aligned with the function and level of responsibility of position; civil servants have to be informed about the objectives on which they will be evaluated; the results should be accorded in the written form; and interviews between civil servants and their managers should be compulsory.³⁴

Serbian performance appraisal rules are thoroughly regulated by the existing civil service legislation, which is generally in line with the SIGMA Principles of Public Administration. The principles of performance appraisal are established in the Civil Service Law, while detailed provisions are established by the Decree on Appraisal of Civil Servants.³⁵ Performance appraisal is carried out regularly, on annual basis, by the end of February for the past calendar year.³⁶ Performance is assessed against individual objectives, which are determined at the beginning of the calendar year, during the conversation between a civil servant and his/her manager. Performance appraisal is also based on assessment of competencies, such as independence, creativity, quality of cooperation etc., which are the same for all

³¹ Rabrenović, A, Matijević, M., “Comparative analysis of basic elements of civil servants appraisal systems in European countries” in Topical issues of modern legislation – Compendium of papers presented at the meeting of law practitioners held on 12-16 June 2011 in Budva, Budva Days of Law Practitioners, Federation of Associations of Lawyers of Serbia and Republic of Srpska, Belgrade, 2011, pp. 515-528

³² SIGMA, *Principles of Public Administration*, op. cit. note 2, p. 53

³³ SIGMA, *Methodological framework for the Principles of Public Administration*, op. cit. note 12, pp. 103-105

³⁴ *Ibid*, p. 103

³⁵ Decree on Performance Appraisal, Official Gazette of RS, Nos. 11/2006 and 109/2009

³⁶ Article 3 of the Decree on Performance Appraisal

civil servants.³⁷ The results of performance appraisal have to be acknowledged in writing in a special performance appraisal form and interviews between civil servants and their managers are compulsory.³⁸

In spite of the solid legal framework, however, performance appraisal has proved to be ineffective in practice, due to a consistent problem with the inflation of the highest marks. Since the introduction of the system in 2006, about 85% of all civil servants have been constantly given the two highest marks - “stands out” and “exceptional”.³⁹ The appraisals conducted in 2016 for performance in 2015 resulted in almost 90% of civil servants obtaining the highest two grades.⁴⁰ For this reason, the indicator value on professionalism of performance assessment assigned by SIGMA during the 2017 appraisal has not been high.⁴¹ The established situation clearly indicates that the current appraisal method is not reliable and effective.

The reasons for ineffectiveness of performance appraisal rules are multiple. The appraisal is often considered as a merely bureaucratic procedure and unnecessary “burden” for managers.⁴² Another key issue is a difficulty with defining the work objectives, as one of the key appraisal criteria. At the beginning of the year a civil servant and his/her manager make an agreement on the work objectives for the following year, which is line with good European practice. The work objectives, however, are not easily defined, due to absence of performance management framework within the institution, to which they could be linked. The objectives, instead, are usually copied from the job descriptions, which outline general duties and responsibilities of civil servants.⁴³ An additionally complicating factor is that the job descriptions were initially poorly done, so often one cannot perceive what an employee is supposed to do. This leads to a generalised definition of objectives, which are not sufficiently measurable. In addition, the current grading does not appear suitable for civil service needs. Both managers and civil servants associate five-point scale with the school marks. This provides the inertia that the grade 3, “good” is not considered as the mark of a standard and expected performance, and therefore many managers avoid it. Employees who work standardly well, in ac-

³⁷ Articles 12-17 of the Decree on Performance Appraisal

³⁸ Articles 24-30 of the Decree on Performance Appraisal

³⁹ SIGMA, *Monitoring report: The Principles of Public Administration, Serbia, 2017, op. cit.* note 24, p. 82

⁴⁰ *Ibid.*

⁴¹ *Ibid.*, p. 83

⁴² Bajic, D., Jovetic, O., Panovski, A., Tadic, K., *Analiza upravljanja ljudskim resursima u državnoj upravi Republike Srbije* [Analysis of Human Resource Management in the Civil Service of Republic of Serbia], report prepared within the project of support to reforms in Serbia, UK GGF fund, April 2016, p. 44

⁴³ *Ibid.*

cordance with the expectations for that job, are appraised by managers by grade 4 - “stands out” instead by grade 3 - “good”. The further objection is that managers as appraisers, who have the main role in performance appraisal, do not have sufficient information on the civil servants’ work and are thus unable to objectively assess it, which often results in a bad working environment and adversely affects the morale of the entire organisation.⁴⁴ In order to remedy this situation, managers then resort to awarding high level grades to majority of their subordinates, which subsequently leads to inflation of grades.

From the aspect of the legal security of civil servants and the protection of their rights, the rules of the appraisal procedure are of particular importance. The civil servants have the right to appeal unfair performance appraisal decisions. In 2016, 201 appeals of performance ratings were submitted to the Government Appeals Board (1.3% of the total number appraised in that year).⁴⁵

Finally, one of the weaknesses of the current performance appraisal system is inefficient link between performance appraisals and other human resource management functions, such as promotion, mobility and training of civil servants. Performance appraisal is still not effectively linked to training of civil servants. Although the strategic policy documents⁴⁶ and Civil Service Law do provide a clear link between performance appraisal and remuneration and promotion, the connection between these systems still does not operate effectively, as will be discussed in more depth within the next section.

3.3. Promotion and mobility

Promotion and mobility are viewed as legal and social instruments which directly influence motivation and productiveness and quality of operation of the civil service.⁴⁷ For this reason, it is very important to determine objective and fair promotion criteria and encourage vertical and horizontal mobility.

Principles of Public Administration outline two key requirements with regard to mobility and promotion of civil servants: 1) the mobility of civil servants (second-

⁴⁴ *Ibid.*

⁴⁵ In the period from 2013 to 2014, The Government Appeals Board registered a total of 112 appeals (4%) of performance appraisal. SIGMA, *Monitoring report: The Principles of Public Administration, Serbia, 2017, op. cit.* note 24, p. 82

⁴⁶ Serbian Ministry of Public Administration and Local Self-Government, *The Public Administration Reform Strategy in the Republic of Serbia for 2014-2016*, Official Gazette of RS 020-656/2014, Belgrade, 2014; *The Strategy for Professional Development of Civil Servants in the Republic of Serbia*, Official Gazette of RS No. 56/2011, 51/2013

⁴⁷ Pusic, E., *Nauka o upravi*, XII edition, Školska knjiga, Zagreb, 2002, p. 223

ment, temporary or mandatory transfer) should be encouraged, established in legislation, based on objective and transparent criteria, and applied in practice; 2) the functional promotion of public servants (on-the-job, horizontal and vertical promotion) should be established in the legislation, based on the merit principle and objective and transparent criteria, and applied in practice.⁴⁸ The assessment of these requirements is coupled with the review of four indicators: a) clarity of criteria for and encouragement of mobility b) adequacy of legislative framework for merit-based vertical promotion c) absence of political interference in vertical promotions and 4) right of civil servants to appeal mobility decisions.⁴⁹

Mobility of civil servants is established in the Serbian civil service legislation, but without objective and transparent criteria. The mobility is allowed through the mechanism of takeover, which implies the agreement between the managers of the authorities that a civil servant will be relocated to another position in another administration body.⁵⁰ As internal competition is not mandatory, mobility is not really based on transparent criteria, and hence is not in line with the SIGMA standards. Civil servants, however, do have the right to appeal mobility decisions.⁵¹

In practice, mobility of civil servants is not very common. Remaining in the current position is considered the most desirable in the current organisational culture, as there is a “fear” of changing a job (unless it is promotion which implies higher salary) and change of the organisational unit, especially of changing the authority in which the civil servant works.⁵² Promotion and transfer often depend on other factors, such as: political and financial conditions, reorganization of the powers and jobs of the authorities, the current staffing solutions, etc.⁵³

The conditions for promotion of Serbian civil servants to a higher position are clearly stipulated by the Civil Service Law. Civil servants can be promoted to a higher rank or to a pay step within the same rank. The promotion to a higher rank is possible without an internal competition, based solely on performance appraisal results. Civil servant can be promoted to a higher rank if he/she has been appraised as “exceptional” at least two times in a row or “stands out” four times in a row.⁵⁴ In addition, it is necessary that the desired position is vacant according to the in-

⁴⁸ SIGMA, *Principles of Public Administration*, *op. cit.* note 2, p. 53

⁴⁹ SIGMA, *Methodological framework for the Principles of Public Administration*, *op. cit.* note 12, pp. 104-105

⁵⁰ Article 49a of the Civil Service Law

⁵¹ Article 142 of the Civil Service Law

⁵² Bajic *et al.*, *op. cit.* note 41, pp. 53-54

⁵³ *Ibid.*

⁵⁴ Article 88 of the Civil Service Law

ternal organisation and job classification and that a civil servant meets the criteria required for that position (degree and years of experience). The promotion within the same rank is also based on performance appraisal results and is carried out in accordance with the Law on Salaries of Civil Servants and State Employees.⁵⁵

The promotion system in practice is still, however, not based on merit. This is the consequence of a lack of a mandatory internal competition and dysfunctional operation of performance appraisal system. As mentioned in the previous section, most of civil servants are appraised with the highest performance appraisal marks, which leaves a lot of discretion to a manager to decide who to promote to a higher rank. This provides a wide leeway for political interference in the promotion system.

Furthermore, in a situation of fiscal consolidation, the system of vertical and horizontal promotion of civil servants is limited. Although some civil servants were promoted in 2016, promotions were generally not possible due to budget restrictions and the improper application of performance appraisal.⁵⁶ As most civil servants are entitled to horizontal advancement (salary steps) there is an unsustainable fiscal pressure on the pay roll.

4. CONCLUDING REMARKS

As discussed within the previous sections, Serbia has made an important progress in alignment of its civil service legislation with the EU requirements, outlined within the SIGMA Principles of Public Administration. Over the past years, a lot of efforts have been invested in order to establish civil service legislation and practice based on contemporary standards. Civil service law and supporting secondary legislation provide a solid framework for key elements of human resources management, such as training, performance appraisal and promotion and mobility of civil servants. One of the key drivers for reform was undoubtedly the objective to meet the European Union accession requirements.

In spite of all invested efforts, there are still significant challenges for the establishment of a merit based civil service system, in line with the SIGMA requirements. Key elements of professional development of civil servants, such as performance appraisal and promotion are still often based on arbitrary decisions. This may be attributed to a complex political environment, which does not provide a solid ground for the implementation and internalization of existing rules in practice.

⁵⁵ Article 16 of the Law on Salaries of Civil Servants and Employees, Official Gazette of RS, Nos. 62/2006, 63/2006, 115/2006, 101/2007, 99/2010, 108/2013 and 99/2014

⁵⁶ SIGMA, *Monitoring report: The Principles of Public Administration, Serbia, 2017, op. cit.* note 24, p. 82

When making recommendations to improve the current civil service legislation to reflect European standards, it is important to take into account broader societal environment within which the system operates. Otherwise, there is a risk that the existing achievements in building the civil service system in accordance with the EU standards could be compromised. In this regard, the experience of the new EU member states, such as Slovakia, Poland, Czech Republic and partly Estonia and Hungary, should be taken into account. Namely, shortly after joining the EU, under political pressure and in the absence of EU conditionality, these countries almost entirely abandoned the civil service legislation and abolished the central institutional civil service management structure.⁵⁷ In order to avoid this scenario, it is necessary to make a careful assessment of whether stricter legal rules would make a positive effect in practice and would be sustainable in the short or long run. The priority should be given, instead, to strengthening of the current system, which would also to some extent be able to absorb external pressures. Furthermore, it would be important to ensure that the central institutions responsible for the human resources management in the civil service get recognized as useful partners of civil servants and attempt to attract broader inside and outside support for their future development. The capacity of the newly established Training Academy and its ability to demonstrate its contribution to professional development of civil servants will be very important in this respect.

The future reform efforts need to be focused on strengthening the current elements of professional development and creation of strong linkages between them. In order to improve effectiveness of performance appraisal system, the system of quotas, which would limit the number of civil servants who can obtain the highest marks, should be considered. Furthermore, in order to strengthen the process of setting individual work objectives, it would be necessary to develop organizational performance management framework, which would set out clear organizational objectives. In this way, a civil servant would be able to recognize his/her influence and role in achieving of the institutional and overall Government's objectives. A stronger relationship should also be made between performance appraisal and training, by using performance appraisal results as a key source of training needs assessment. Finally, it is very important to invest efforts in strengthening the fairness and effectiveness of the promotion system. To the extent that the promotion process is perceived as too slow, too inflexible, or based on factors other than merit, the most-talented and ambitious civil servants will most likely find alternative employment. This, however, necessitates a change of political and

⁵⁷ World Bank, *EU-8 Administrative Capacity in the New Member States: the Limits of Innovation?*, The World Bank, Washington DC, 2006; Meyer-Sahling, J., *Sustainability of Civil Service Reforms in Central and Eastern Europe Five Years After EU Accession*, SIGMA Papers, No. 44, OECD Publishing, 2009

social culture and a recognition of a different societal actors (media, civil society and political parties) that a professional civil service is an important precondition for social and economic development of a country. Such changes, however, do take a lot of efforts and time. Therefore, one of the greatest challenges for Serbia in its path to the EU and in the future, is not only to fully align its civil service legislation with the EU requirements, but even more so to create an environment in which performance and talent are fully recognized and appreciated.

REFERENCES

BOOKS AND ARTICLES

1. Bajic, D., Jovetic, O., Panovski, A., Tadic, K., *Analiza upravljanja ljudskim resursima u državnoj upravi Republike Srbije* [Analysis of Human Resource Management in the Civil Service of Republic of Serbia], report prepared within the project of support to reforms in Serbia, UK GGF fund, April 2016
2. Bossaert, D., Demmke, C., *Civil Service in the Accession States: new Trends and the Impacts of Integration Process*, European Institute of Public Administration, Maastricht, 2003
3. Cotterrell, R., *Why Must Legal Ideas Be Interpreted Sociologically?* Journal of Law and Society, Volume 25, Number 2, 1998
4. Demmke, C., *Performance Assessment in the Public Services of the EU Member States, Procedure for performance appraisal for employee interviews and target agreements*, European Institute of Public Administration, 2007
5. Demmke, C., Hammerschmid, G., Meyer R., *Measuring Individual and Organisational Performance in the Public Services of EU Members States*, European Institute of Public Administration, 2008
6. Keune, M., „EU Enlargement and Social Standards – Exporting the European Social Model?“, *The European Union and the Social Dimension of Globalisation, How the EU Influences the World* (J. Orbie, L. Tortell), Routledge, 2009
7. Kokkini-Iatridou, D., *Some Methodological Aspects of Comparative Law*, Netherlands International Law Review, 1986
8. Meyer-Sahling, J.H, *Sustainability of Civil Service Reforms in Central and Eastern Europe Five Years after EU Accession*, Sigma Paper No. 44, OECD publishing, Paris 2009
9. Milovanović, D., Ničić, J., Davinić, M., *Stručno usavršavanje državnih službenika u Republici Srbiji*, [Professional development of civil servants in the Republic of Serbia], Udruženje za javnu upravu, Službeni glasnik, Belgrade, 2012
10. Nicolaidis, K, Kleinfield, R, *Rethinking Europe's 'rule of law' and Enlargement Agenda: The Fundamental Dilemma*, SIGMA paper No. 49, OECD publishing, 2012
11. Pusic, E., *Nauka o upravi*, XII edition, Školska knjiga, Zagreb, 2002
12. Rabrenović, A, Matijević, M., “Comparative analysis of basic elements of civil servants appraisal systems in European countries“ in: Topical issues of modern legislation – Compendium of papers presented at the meeting of law practitioners held on 12-16 June 2011 in Budva,

- Budva Days of Law Practitioners, Federation of Associations of Lawyers of Serbia and Republic of Srpska, Belgrade, 2011
13. SIGMA, *Structural Elements for Improving Horizontal Public Governance Systems in EU Candidate States: SIGMA Assessment Baselines*, 2009
 14. SIGMA, *European Principles of Public Administration*, SIGMA papers No. 27, OECD publishing, 1999
 15. SIGMA, *Principles of Public Administration*, OECD publishing, Paris, 2014
 16. SIGMA, *Baseline measurement Report The principles of Public administration*, Serbia, 2015, OECD publishing, Paris, 2015
 17. SIGMA, *Methodological framework for the Principles of Public Administration*, OECD publishing, Paris, 2017
 18. Stjepanović, N., *Upravno pravo FNRJ, opšti deo*, Savremena administracija, Beograd, 1958
 19. Verheijen, T.J.G., Rabrenovic A., *Civil Service Development in Central and Eastern Europe and the CIS: A Perfect Storm?*, van der Meer, F.M., Raadschelders, J.C.N., Toonen, Th.A.J., (eds.), *Comparative Civil Service Systems in the 21st Century*. Houndsmills: Palgrave Macmillan
 20. Visković, N., *Država i pravo*, Birotehnika, Zagreb, 1997
 21. Vukašinović Radojičić, Z., *Pravna pitanja službeničkih odnosa*, Kriminalističko-policijska akademija, Beograd, 2015
 22. World Bank, *EU-8 Administrative Capacity in the New Member States: the Limits of Innovation?*, The World Bank, Washington DC, 2006

NATIONAL REGULATIONS AND ACTS

1. Serbian Ministry of Public Administration and Local Self-Government, *The Public Administration Reform Strategy in the Republic of Serbia for 2014-2016*, Official Gazette of RS, No. 020-656/2014, Belgrade, 2014
2. *The Strategy for Professional Development of Civil Servants in the Republic of Serbia*, Official Gazette of RS, Nos. 56/2011 and 51/2013
3. Civil Service Law, Official Gazette of RS, Nos. 79/2005, 81/2005-amended, 84/2005, amended. 64/2007, 67/2007, - amended, 116/2008, 104/2009, 99/2014 and 94/17
4. Law on Salaries of Civil Servants and Employees, Official Gazette of RS, Nos. 62/2006, 63/2006, 115/2006, 101/2007, 99/2010, 108/2013 and 99/2014
5. Law on Ministries, Official Gazette of RS, Nos. 44/2014, 14/2015, 54/2015, 62/2017
6. Law on National Academy for Professional Training in Public administration, Official Gazette of RS, No. 94/17
7. Decree on Professional Development of Civil Servants, Official Gazette of RS, No. 25/2015
8. Decree on Performance Appraisal, Official Gazette of RS, Nos. 11/2006 and 109/2009

WEBSITE REFERENCES

1. The website of the Human Resource Management Service of Serbia, available at:
[<http://www.suk.gov.rs/dotasset/21458.pdf>] Accessed, 1 February, 2018
2. SIGMA reports are available at:
[<http://www.sigmaweb.org/publications/monitoring-reports.htm>] Accessed 15 March 2018