

## REFORM OF THE PUBLIC SERVICE LEGAL FRAMEWORK IN THE WESTERN BALKANS AT A TIME OF ECONOMIC CRISIS

### *Abstract*

*The objective of the paper is to examine the systemic legal changes in the area of public service introduced as a response to the economic crisis in the countries of the Western Balkans. Three different aspects of the reform are analysed: regulation of the legal status of a broad range of public sector employees, especially their salary levels; introduction of more flexible working arrangements in public administration and improving the efficiency in the recruitment and selection process. The author concludes that most of the countries have introduced modern legal frameworks in at least one of the analysed fields, which is an important step forward in the right direction. It, however, still remains to be seen how these new pieces of legislation will be implemented, especially bearing in mind a fairly large number of employees they cover. The paper especially raises attention to the case of blatant politicisation of the senior civil service in the Federation of BiH, which has been justified by the need to introduce more flexible working arrangements in the public administration. This example shows real difficulties in improving human resource management regulations and practices in the public administration at a time of economic crisis and strong external political pressures for partisan employment in the public sector. In this case, the crisis itself has proven to be an important reform obstacle, which should be taken into account as an important risk in the process of planning future reform efforts during the times of economic and fiscal constraints.*

**Key words:** *public service reform, legal framework, Western Balkans, economic crisis.*

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## **1. Introduction**

The economic crisis and deterioration in service delivery that confronted all Western Balkans countries in the end of 2000s have brought public service employment at the fore of the policy agenda. The crisis has underlined the need for all countries to fundamentally review and strengthen both their economic governance and institutional structures, including the public service. Although initial impetus for public service reform has emanated from severe fiscal deficits, the objective of the reform was also to create a structure that enables better establishment and wage bill control and recruitment and retention of needed skilled personnel for the public service to perform efficiently and effectively. In some countries, unfortunately, the economic crisis was used only as a pretext in order to blatantly politicise the civil service, as is the case with the level of Federation of BiH.

The objective of this paper is to analyse the systemic legal changes introduced as a response to the economic crisis in the area of public service. Three different aspects of the reform measures are analysed: regulation of the status of broader range of public sector employees; introduction of more flexible working arrangements in the public administration and improving efficiency in the recruitment and selection process.

## **2. Regulating the legal status of public sector employees**

Over the past couple of years, several Western Balkan countries have started considering the idea of stricter legal regulation of the status of a broad range of public sector employees. In 1990s and early 2000s, at the time when civil service legislation was introduced for the first time in most of the Western Balkan countries,<sup>2</sup> it was widely accepted that civil service scope should not be overly extended, but include administrative type of positions that support the work of the central Government (Government departments, central agencies, parliament and judiciary). Status of personnel of other parts of the public sector, such as health, education, social protection institutions etc., that was subject

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<sup>2</sup> The Republic of Montenegro adopted the first Law on Civil Servants back in 1991, which was rendered ineffective by the 2004 Law on Civil Servants and Employees. Only four years later, a new revised Law on Civil Servants was adopted, followed by the latest 2011 Law, which came into force in January 2013. Macedonia adopted the Law on Civil Servants back in 2000, which was subject of 17 amendments. The Bosnia and Herzegovina state-level Law on Civil Servants was adopted in 2002, and has seen 11 amendments to date. In Serbia, after the obsolete 1991 Law on Labour Relations in State Authorities (*Zakon o radnim odnosima u državnim organima*), which partially governed the civil servants relations, modern Civil Service Law was adopted in 2005.

to rather loose labour codes rules, was not subject of immediate policy makers attention. The global economic crisis, which strongly hit Western Balkan countries at the end of the first decade of the new millennium, has, however, triggered the need for tighter regulation of human resource management rules, especially with regard to planning and control of the number and salary levels of a large number of public sector employees.

Before starting the analysis of the recent legal changes, it is interesting to note that most of the Western Balkan countries, i.e. those which were part of ex-Yugoslavia, have a largely forgotten tradition of uniform HRM rules applicable to all public sector employees. Namely, the ex-Yugoslav Law on Public Servants adopted in 1957<sup>3</sup> governed the legal status of not only staff of state authorities, but also of public services (education, science, and culture institutions; health institutions; social insurance funds and social security institutions, and in other institutions established by law to provide public services). Due to this Law, during the period from 1957 until 1978, Yugoslavia did have a fairly well developed system of human resources management not only in the civil service, but also in the public sector. Such as system did recognise all modern institutes of human resources management that promote the merit principle, such as a competition procedure, performance appraisal, promotion based on merit, civil service stability and performance related pay. Unfortunately, the 1978 legislation, which to a high extent aligned the status of civil servants with private sector workers, did not keep the majority of the advanced human resource management instruments that existed beforehand. Due to the imminent passage of time, the regulations that existed at the end of 1980s (i.e. 1978 Law) have to some extent been kept in the memory of civil servants, while those from the earlier period have been largely forgotten, leaving an important part of the ex-Yugoslav tradition covered with a veil of oblivion.<sup>4</sup>

Macedonia is one of the first Western Balkan countries which got back to “traditional principles” and started to extend modern HRM rules to other parts of the public sector. In 2014, the Macedonian Parliament adopted the Law on Administrative Servants, which entered into force on 13 February 2015. The new Law has considerably expanded the scope of the civil service rules to a new category of personnel, so called “administrative civil servants” in the whole public sector. According to the Law, administrative civil servants are defined by the nature of activity they

<sup>3</sup> Law on Public Servants, *Official Gazette of FNRJ*, No. 53/1957.

<sup>4</sup> A. Rabrenović *et al*, „Historical Development of Corruption Prevention Mechanisms in Southeast European Countries”, in *Legal Mechanisms for Prevention of Corruption in Southeast Europe with Special Focus on Defence Sector* (ed. A. Rabrenović), Institute of Comparative Law, Belgrade 2013, 13-36.

carry out, i.e. as persons who have been hired to carry out administrative activities.<sup>5</sup> Administrative activities comprise the following types of activities: expert-administrative, legal drafting, implementing, statistical, administrative-supervisory, planning, IT, human resource management, financial, accounting and other work of administrative nature.<sup>6</sup> The Law covers administrative servants who work in the civil service institutions, other state bodies and local Government units. What is more, the Law covers personnel who carry out administrative activities in public sector institutions, such as education, health sector and scientific institutions etc.,<sup>7</sup> who were traditionally excluded from the human resource management rules applicable to civil servants. In this way the scope of the civil service rules has been significantly extended.

The Ministry of Finance has been given an important role of providing an approval for financial plans of all budget users (including public enterprises) who have administrative servants. It is also required to approve each administrative servant's working post which is financed from the Macedonian budget.<sup>8</sup> In this way establishment control of administrative posts throughout the public sector has been significantly strengthened.

Another important step in extension of regulation of the legal status of public sector employees was the adoption of the Law on Public Sector Employees (hereinafter LPSE), which governs different aspects of the status of all public sector employees. The LPSE, adopted also in 2014, is a framework law which includes four types of employees: 1) administrative servants 2) officials with special powers (defence and security) 3) public services employees (e.g. education, health, culture, science etc.) and 4) auxiliary and technical staff. It has been estimated that the number of administrative bodies covered by the new Law will increase from 376 to 1340, which constitutes an impressive extension of the scope of the public service.<sup>9</sup>

The transition to the new system, however, is not an easy process. The conversion is based on the Catalogue of Jobs in the Public Sector

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<sup>5</sup> Article 3, paragraph 1 of the Law on Administrative Servants, *Official Gazette of the Republic of Macedonia*, No. 27/2014; 199/2014; 48/2015 – Law on Administrative Servants.

<sup>6</sup> Article 2 of the Law on Administrative Servants.

<sup>7</sup> Article 3, paragraph 1, point 2 of the Law on Administrative Servants.

<sup>8</sup> Article 8, Law on Administrative Servants.

<sup>9</sup> SIGMA, *Baseline Measurement Report: The Principles of Public Administration, the Former Yugoslav Republic of Macedonia*, OECD publishing, 2015, <http://www.sigmaweb.org/publications/Baseline-Measurement-2015-fYRMacedonia.pdf>, last visited 12 October 2016.

regulated by a special Rulebook,<sup>10</sup> and acts on internal organisation and systematisation of each individual institution. One of the major concerns in this respect is that on the basis of job descriptions in the act of internal organisation and systematisation a large number of personnel will automatically become administrative civil servants, without the need to pass merit based recruitment tests required in civil service and local government institutions, which goes against merit system standards.<sup>11</sup>

Over the past couple of years, Serbia has also started working on introducing comprehensive human resource management regulations for all public sector employees. The key piece of legislation which for the first time governs the salary system of all public sector employees in Serbia is the Law on the Salary System in the Public Sector,<sup>12</sup> adopted in January 2016. It is a very comprehensive law covering a broad range of public sector employees (around 510,000).<sup>13</sup> The objective of the Law is to increase the transparency of the pay system and provide a uniform framework for pay systems of different parts of the public sector. The Law covers all public sector employees, including: civil servants, police officers, members of armed forces, employees of Autonomous province and local self-governments, employees of public agencies, employees of public services and organisations of social security services and public office holders (functioners).<sup>14</sup> It is stipulated that all public sector employees will be classified within 13 pay grades (which will be multiplied with a unique base determined by the budget law), on the basis of common job evaluation system, which is introduced in the public sector for the first time. Different parts of the public sector (civil service, police, local self-government, health, education etc.), are required to have their specific laws governing the legal status of their employees and their salaries, which are to be aligned with the Law on Salary System in the Public Sector. The deadline for aligning the legislative salary framework for most parts of the

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<sup>10</sup> Rulebook on the content, form and manner of keeping of the Catalogue of job positions in the public sector institutions, the method of preparation of the job position codes and how to insert and delete job positions from the Catalogue, *Official Gazette of the Republic of Macedonia*, No. 132/2014.

<sup>11</sup> SIGMA, *Baseline Measurement Report: The Principles of Public Administration, the Former Yugoslav Republic of Macedonia*, 45-46.

<sup>12</sup> The Law on the Salary System in the Public Sector, *Official Gazette of the RS*, No. 18/2016 – Law on the Salary System in the Public Sector.

<sup>13</sup> SIGMA, *Monitoring Report: The Principles of Public Administration, Serbia*, May 2016, OECD publishing, <http://www.sigmaxweb.org/publications/Monitoring-Report-2016-Serbia.pdf>, last visited 15 October 2016.

<sup>14</sup> The Law is not applicable only to employees in public enterprises public sector companies, employees of the National Bank and media services and bodies established by international treaties. See: Article 1 of the Law on Salary System in the Public Sector.

public sector is the end of 2017, except for police, military and security services, which need to align their salary legislative framework by the end of 2018.<sup>15</sup> Given that the Law on Salary System in the Public Sector is applicable to a large number of public sector employees and regulates a very important aspect of HRM – remuneration in a coherent and unified fashion, the adequacy, transparency and coherence of the current public service legal framework has been significantly increased. It, however, still remains to be seen how the provisions of this Law and the Law on Police will be implemented in practice.

Montenegro has also recently introduced a comprehensive legal framework on salaries of public sector employees. Just two months after Serbia adopted its Law on Salaries in the Public Sector; in March 2016 Montenegro also adopted a Law on Salaries of Employees in the Public Sector.<sup>16</sup> The objective of the Law is to establish better wage bill control, correct salary inequalities and enhance transparency and fiscal accountability.<sup>17</sup> Montenegrin salary Law also has quite a broad coverage, governing the salaries of the following categories of personnel: civil servants, local government officials, employees of independent or regulatory bodies, public institutions (such as health, education, social protection etc.), agencies or commercial bodies with a majority ownership of the state or local self-government, employees of armed forces and the police.<sup>18</sup> The Law determines coefficients for all employees of central government bodies (Government departments and agencies, regulatory bodies, office holders and judiciaries),<sup>19</sup> while the coefficients of other public sector institutions are to be determined in special legislation in a rather short time frame of 60 days after entering into effect of the Law (8 days since its publication in the Official Gazette).<sup>20</sup>

Special attention in the new Montenegrin public sector pay framework is placed on principles of fiscal accountability and better control of the payroll. Fiscal accountability is to be ensured by envisaging that the wage bill may be increased only when the budget is balanced or when there is a budget surplus and has to be reduced in case of budget deficit at the level of 2 per cent of GDP.<sup>21</sup> Local self-governments, independent and regulatory bodies and commercial entities which have deficits in their

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<sup>15</sup> Article 39 of the Law on Salary System in the Public Sector.

<sup>16</sup> Law on Salaries of Public Sector Employees, *Official Gazette of Montenegro*, No. 016/16, adopted on 8/3/2016 – Law on Salaries of Public Sector Employees.

<sup>17</sup> Article 5 of the Law on Salaries of Public Sector Employees.

<sup>18</sup> Article 2 of the Law on Salaries of Public Sector Employees.

<sup>19</sup> Article 22 of the Law on Salaries of Public Sector Employees.

<sup>20</sup> Article 45 and Article 50 of the Law on Salaries of Public Sector Employees.

<sup>21</sup> Article 9 of the Law on Salaries of Public Sector Employees.

own budgets are obliged to reduce the levels of their wage bills by 10 per cent.<sup>22</sup> The Law also limits the salary allowances, such as membership in commissions, advisory or working bodies. The only exception to this rule is selection commissions which are formed for the purposes of filling the vacancies or promotion (attaining a higher rank).<sup>23</sup> Finally, the Law provides the basis for better control of payroll by requesting all public bodies to submit the payroll data to the Ministry of Finance, which will be recorded in the special MoF Register.<sup>24</sup> Although this new legal framework represents an important step forward in controlling the public sector wage bill, transparency and enhancing equality its effects are yet to be seen during its implementation in the upcoming years.

### **3. Improving flexibility of working conditions in the civil service – an excuse for civil service politicisation?**

Financial crisis has prompted Western Balkan countries to take fiscal consolidation measures which include increasing the flexibility of working arrangements in labour legislation, including both private and public sector. Enhancing adaptability in working conditions is expected to bring about higher employment rates and reduce the level of grey economy. This trend has also been promoted in public administration and civil service, especially in Bosnia and Herzegovina.

In the mid-2015 all the levels of Government in Bosnia and Herzegovina adopted a Reform Agenda for 2015-2018 which outlines the main measures for socio-economic reforms to reduce the effects of the crisis, including flexibility of working arrangements in the civil service.<sup>25</sup> One of the key measures envisaged by the Agenda is that entity Governments will improve their labour codes by increasing flexibility in working conditions. Furthermore, it requires all levels of government to draft new laws on civil servants and employees, to facilitate public administration reform and introduce “greater flexibility in working arrangements”.<sup>26</sup> New civil service legislation should be adopted shortly following the adoption of the new Entity labour laws. The Agenda also emphasises the need for competitive recruitment and assessment of candidates for public service employment, which would be “assessed on the basis of pre-established eligibility criteria and the results of

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<sup>22</sup> Article 10 of the Law on Salaries of Public Sector Employees.

<sup>23</sup> Article 26 of the Law on Salaries of Public Sector Employees.

<sup>24</sup> Article 37 of the Law on Salaries of Public Sector Employees.

<sup>25</sup> Reform Agenda for Bosnia and Herzegovina, 2015-2018, <http://europa.ba/wp-content/uploads/2015/09/Reform-Agenda-BiH.pdf>, last visited 8 November 2016.

<sup>26</sup> *Ibid.*

competency tests and administrations will ensure the recruitment of those ranked highest”.<sup>27</sup>

Shortly after the Reform Agenda was adopted, the FBiH Parliament adopted the new Labour Code<sup>28</sup> and controversial amendments of the Civil Service Law,<sup>29</sup> which envisage full exclusion of senior civil servants from the scope of the civil service system. Although exclusion of the senior civil servants from the scope of the civil service system constitutes an obvious breach of human resource management standards and European Principles of Public Administration,<sup>30</sup> it was justified by the need to introduce more flexibility in working arrangements of the civil service and requirements of the Reform Agenda.

As soon as the amendments became publicly available, they immediately sparked a public and political debate. The amendments were prepared under the veil of secrecy, without a proper consultation process and were publicly released only shortly before their announced adoption in the Parliament. The amendments prompted strong reaction of civil society organisations which sent an open letter to the Delegation of the EU in BiH requesting it to urge the FBiH authorities to withdraw the amendments shortly before they were adopted.<sup>31</sup> The Delegation of the EU and the Office of High Representative for BiH also reacted, but they were not able to stop the process. After the adoption of the amendments in the FBiH Parliament in October 2015, representatives of the Serbian people’s club in the FBiH Parliament initiated a procedure for challenging the amendments before the FBiH Constitutional Court. The Court, however, dismissed the initiative and the amendments came into force at the end of December 2015.

In accordance with the Civil Service Law amendments, all positions that were previously defined as senior managerial positions of

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<sup>27</sup> *Ibid.*

<sup>28</sup> The Labour Law which entered into force on 20 August 2015 has been repealed and as of 16 March 2016 hasn’t longer had any legal effect. On 17 February 2016, the Constitutional Court of the Federation of Bosnia and Herzegovina (FBiH) issued a judgment stating that the Labour Law of FBiH (Labour Law) was adopted in a procedure contrary to the Rules on Procedures of the House of People of the Parliament. The Judgment was published on 16 March 2016 in the Official Gazette of FBiH and as of this date the Labour Law no longer had any legal effect.

<sup>29</sup> Law on the Amendments of the Civil Service Law, *Official Gazette of the Federation BiH*, No. 99/15 – Law on the Amendments of the Civil Service Law FBiH.

<sup>30</sup> SIGMA, *Principles of Public Administration*, 2014, OECD publishing.

<sup>31</sup> Cf. Transparency International, Center for Investigative Reporting, Centers for Civic Initiatives, CPI Foundation, Open Society Fund BiH, CA Why Not, “Civil Society Organisations’ Open Letter in the Occasion of the Draft Law on Amendments to the Law on Civil Service of the Federation of BiH”, <https://ti-bih.org/wp-content/uploads/2015/10/Open-Letter-to-EU-Delegation-in-BiH.pdf>, last visited 10 October 2016.

the FBiH Government (heads of Government services, assistant ministers, secretary generals etc.) have become a new, undefined category, which does not have a civil service status. The amendments of the Civil Service Law have introduced this new category of personnel under the Article 11a. Since the status of these positions is unclear, the legislation refers to them as either „officials from the Article 11a“ or “persons who are not civil servants”. The only provision which may be considered as “positive” under these circumstances is Article 11b, which envisages that officials from article 11a are recruited on the basis of a competition, in line with the criteria outlined by secondary legislation.<sup>32</sup> This provision was inserted in the Civil Service Law just before the amendments were adopted by the FBiH Parliament, and under the strong pressure of the EU.

In early 2016, the FBiH Government passed a Decree on Conditions, Criteria and Procedure of Recruitment and Selection of Persons Who Are Not Civil Servants,<sup>33</sup> to regulate appointment and dismissal of senior management posts, aiming to remedy the drawbacks of the amendments of the Civil Service Law. The Decree establishes clear criteria for recruiting persons to the senior managerial positions<sup>34</sup> and promotes principle of equal opportunities. It also provides the right to appeal against unfair recruitment decision and establishes clear criteria for dismissal of persons in senior managerial posts,<sup>35</sup> which is in line with best practices and SIGMA Principles of Public Administration. The Decree, however, does not fully ensure merit-based selection of senior managerial positions, since it envisages an interview as the only selection method,<sup>36</sup> without any written examination. This is a step back in comparison to previous FBiH legislation and practice where candidates for senior civil service posts had to pass two written exams followed by an interview in order to be placed on a list of successful candidates. The Decree also provides a high degree of discretion in the process of appointment as it gives the right to a head of an institution to select any candidate from an open list of successful candidates. This also raises concerns with respect to ensuring a merit-based selection. Finally, although the Decree did improve the legal framework for recruitment

<sup>32</sup> Article 11b of the Law on Amendments of the Civil Service Law of FBiH.

<sup>33</sup> Decree on Conditions, Criteria and Procedure of Recruitment and Selection of Persons Who Are Not Civil Servants, *Official Gazette of Federation BiH*, No. 9/16 - Decree on Conditions, Criteria and Procedure of Recruitment and Selection of Persons Who Are Not Civil Servants.

<sup>34</sup> Article 3 of the Decree on Conditions, Criteria and Procedure of Recruitment and Selection of Persons Who Are Not Civil Servants.

<sup>35</sup> Article 10 of the Decree on Conditions, Criteria and Procedure of Recruitment and Selection of Persons Who Are Not Civil Servants.

<sup>36</sup> Article 6 of the Decree on Conditions, Criteria and Procedure of Recruitment and Selection of Persons Who Are Not Civil Servants.

and selection of senior level staff, it does not change the fact that senior managerial posts have been excluded from the FBiH civil service system, which is an obvious example of blunt politicisation of senior civil service.

At the level of the Republic of Srpska, adoption of the new Labour Code was also followed by the amendments of the Civil Service Law,<sup>37</sup> in mid-2016. However, contrary to the FBiH level, these amendments are mainly technical nature and aim to align the provisions of the Civil Service Law with the new Labour Code, adopted in January 2016,<sup>38</sup> which is in line with the Reform Agenda objectives.<sup>39</sup>

#### **4. Improving efficiency and merit in recruitment regulations and practices**

The economic crisis has also triggered thinking about the ways on how the civil service systems can be made more efficient, without compromising the merit principle. This especially refers to the process of recruitment and selection, which can incur significant costs both in terms of financial and human resources and be subject to political and partisan pressures, especially in the times when the private sector employment opportunities are limited.

Albania may be considered as the front-runner of reforms with respect to improving the efficiency and merit based recruitment and selection process in the civil service. Albanian Parliament adopted the new Law on Civil Servants in 2013<sup>40</sup>, which entered into force in February 2014. The Law has introduced several new recruitment instruments: permanent recruitment commissions, pool recruitment process and new procedure for recruitment of senior civil servants.

In order to improve the capacities of the members of selection panels, the new Civil Service Law introduced permanent recruitment

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<sup>37</sup> Law on the Amendments of the Law on Civil Servants, *Official Gazette of Republic of Srpska*, No. 57/16.

<sup>38</sup> Labour Code, *Official Gazette of Republic of Srpska*, No. 1/2016.

<sup>39</sup> Thus, for example, articles 1, 2 and 3 of the CSL amendments deal with the annual leave of civil servants and are fully aligned with articles 84 and 88 of the Labour Code which regulate annual leave. Articles 4 and 5, which deal with paid and unpaid leave, are fully aligned with Article 89 (which regulates paid leave) and Article 92 (which regulates unpaid leave) of the Labour Code. Article 8, which regulates a probation period, is fully aligned with Article 37, paragraphs 1 and 2 of the Labour Code. Articles 9, 10 and 11, which deal with employment of trainees, are fully aligned with Articles 48 and 49 of the Labour Code. Finally, Articles 12 and 13 of the CSL amendments, which deal with professional training agreement concluded for the purposes of taking a professional examination (which is a mandatory exam in the selection process) is fully aligned with Article 206 (para 1, 4 and 5) of the Labour Code.

<sup>40</sup> Law on Civil Servants, *Official Gazette of Albania*, No. 152/2013. - Albanian Law on Civil Servants.

commissions with a term of office of one year. These commissions comprise of one employee of the Public Administration Unit, one civil servant from the authority that fills a vacancy and one external expert, normally a member of university staff.<sup>41</sup> The composition of recruitment commissions, where the majority of members is not from the authority that fills a vacancy, should improve impartiality and merit based selection.

Unlike the previous practice of carrying out a separate public competition procedure for each vacancy, the new legal framework has introduced so called “pool recruitment” in order to increase the efficiency of the recruitment process. Pool recruitment means that public competitions are announced periodically for several positions (usually entry level positions) at once. This is expected to significantly reduce the recruitment and selection costs. Selection of all candidates is based on the written test, oral test and other selection methods, along with the assessment of work experience.<sup>42</sup> Successful candidates must exceed the 70% threshold of the total number of points, in which case they are included in the list of successful candidates.<sup>43</sup> The results of interviews account for 25% of the total number of points scored.

Appointment to a vacant position is done on the basis of a list of successful candidates, where the best ranked candidate(s) can choose one of the vacant positions. If there are more successful candidates than vacant posts, these candidates can be recruited once a new position becomes vacant within the next two years, which is how long the list will be valid.<sup>44</sup> In this way, the recruitment process become cheaper and more efficient, as there is no need to carry out additional recruitment procedures for new vacancies. If, in the meantime, another recruitment procedure is organized for the same group of jobs, all successful and not appointed candidates will be re-ranked in accordance with the new competition requirements.<sup>45</sup>

Appointment to a top level-management position<sup>46</sup> is linked to completion of a comprehensive managers training, in order to ensure professionalism at the top of the civil service. The training course is

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<sup>41</sup> *Ibid.*

<sup>42</sup> Article 20, para 2 of the Albanian Law on Civil Servants.

<sup>43</sup> Article 22, para 5 of the Albanian Law on Civil Servants.

<sup>44</sup> Article 23, para 3 of the Albanian Law on Civil Servants.

<sup>45</sup> Article 23, para 3 of the Albanian Law on Civil Servants.

<sup>46</sup> The category of top-level management includes the following positions: secretaries general, directors of departments, directors of general directorates and other equivalent positions, Article 19, para 4 of the Albanian Law on Civil Servants.

provided by the Albanian School of Public Administration.<sup>47</sup> The Civil Service Law in principle allows only middle-level civil servants who meet specific requirements to apply for this training when the School announces a national competition, in order to ensure that civil servants have a priority in filling in senior positions and are able to develop their careers to the top levels of administration. There is, however, an exception to this rule, as the Government is allowed to identify those situations when other candidates, outside the state administration, are eligible for the training. The selection of candidates for top-level management positions is conducted by the National Selection Committee, comprising one representative of the Department of Public Administration, two representatives of the Albanian School of Public Administration, one representative of the top-level management staff and five independent experts.<sup>48</sup> The candidates who scored highest and exceeded the 70 percent threshold are appointed to top-level management positions and become members of this staff category. Persons who complete training for top-level management positions, subject to their consent, may also be appointed to positions of special coordinators and middle-level management.

Although Albania has undoubtedly modernised its civil service legislation, it is still early to assess its effect in practice. Nevertheless, the Albanian example may serve as a source of inspiration to other countries in the region, especially in the process of developing ideas to improve their recruitment and selection rules.

## 5. Conclusion

In all Western Balkan countries the economic crisis has triggered the need to undertake a number of measures to fight fiscal deficits, which include control of the rising wage bills. For this reason, most of the analysed countries (Macedonia, Montenegro and Serbia) have taken steps to regulate the status of a wide range of public sector employees, with special regard to control of establishments (number of positions to be financed by the budget) and the level of their salaries. Although adoption of new legislation is certainly a major step forward in the right direction, it still remains to be seen how these new pieces of legislation will be implemented, especially bearing in mind a fairly large number of employees they cover. In order to ensure effective implementation, it is very important to work on enhancing institutional capacities for

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<sup>47</sup> Article 27, para 4 of the Albanian Law on Civil Servants. The sole exception to this rule was made immediately after adoption of the Law – when the first class of students was still in school so the top-level management positions were filled through a competition.

<sup>48</sup> Article 31 of the Albanian Law on Civil Servants.

monitoring and evaluation of the new legal framework in the ministries of finance and those in charge of public administration affairs. If, as it usually happens in this region, insufficient attention is paid to the process of implementation, it is unlikely that the adoption of the comprehensive legislative package will be effective and sustainable.

This paper also shows how sometimes well intended anti-crisis measures can be misused by politicians in order to meet the appetites of their parties' members and supporters. The case of the Federation of Bosnia and Herzegovina which fully excluded its senior civil servants from the civil service, justifying it by reform measures, serves as an example which demonstrates difficulties to increase professionalization in the civil service at the time when the employment opportunities in both private and public sector are fairly limited and political pressures for partisan recruitment in the public administration are huge. This further raises the question of whether it is realistic to expect that human resource management regulations and practices in the civil service and public administration can be improved at the time of the economic crisis. Example of the FBiH shows that the crisis itself is an important reform obstacle, which should to be taken into account as an important risk in planning further reform efforts during the times of economic and financial constraints.

Finally, the Albanian example paints a much more brighter and optimistic picture and shows that it is possible to substantively improve the legal framework for human resource management, especially recruitment and selection, even at the time of the economic crisis. However, it still remains to be seen how this new legal framework will be implemented in practice. It seems that for this purpose it would be necessary to work on building awareness of all stakeholders, including politicians, that it is in their best interest to recruit the best candidates into the public service, as it would also enable them to carry out their their programs more effectively, win citizens' trust in the next elections and assist them in overcoming the economic crisis challenges.

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## **REFORMA PRAVNOG OKVIRA JAVNE UPRAVE U ZEMLJAMA ZAPADNOG BALKANA U VREME EKONOMSKE KRIZE**

### Rezime

Cilj rada je da istraži sistemske promene pravnog okvira u oblasti javne uprave, koje su uvedene kao odgovor na ekonomsku krizu u zemljama Zapadnog Balkana. Analiziraju se tri različita aspekta reforme: regulisanje pravnog statusa zaposlenih u javnom sektoru; uvođenje fleksibilnijih radnih aranžmana u javnoj upravi i poboljšanje efikasnosti procesa zapošljavanja. Autor zaključuje da je većina analiziranih zemalja uvela moderne pravne okvire u bar jednoj od analiziranih oblasti, što predstavlja korak napred u dobrom smeru. Ostaje, međutim, da se vidi kako će novo zakonodavstvo biti primenjeno u praksi, posebno imajući u vidu veliki broj zaposlenih na koje se primenjuje. Rad posebno skreće pažnju na slučaj očigledne politizacije rukovodeće strukture državne uprave u Federaciji BiH, koji je pravdan potrebom za uvođenjem fleksibilijih radnih odnosa u javnoj upravi. Ovaj primer pokazuje realne teškoće u unapređenju procesa upravljanja ljudskim resursima u javnoj upravi u vreme ekonomske krize i jakih političkih pritisaka za partijskim zapošljavanjem u javnom sektoru. U ovom slučaju ekonomska kriza se pokazala kao važna prepreka reformama, što treba uzeti u obzir kao važan rizik pri planiranju budućih reformskih napora u ovoj oblasti u vreme ekonomskih i fiskalnih ograničenja.

**Ključne reči:** reforma javne (službe) uprave, pravni okvir, Zapadni Balkan, ekonomska kriza.