

Depoliticizing Montenegro's Senior Civil Service: Serving Party or People?

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SUMMARY

This paper argues that Montenegro still needs to efficiently tackle politicization of its senior civil service. At the time of its formation in 2011, almost half of the members of one of the main bodies of the ruling Democratic Party of Socialists held top posts in state administration. Almost one tenth of members of the Main Committee of the Social Democratic Party, the other ruling party, also came from senior civil service.

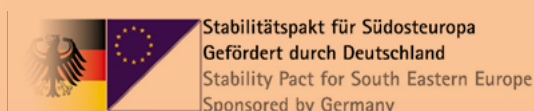
Implementation of the new Law on Civil Servants and State Employees has not managed thus far to decrease the magnitude of this politicization. On the contrary, it demonstrated many deficiencies, summarized as follows:

- Loose recruitment and dismissal criteria, which make senior civil service positions a subject of inter-party bargaining;
- Undated resignations formally filed to the prime minister-designate upon the personal request of senior civil servants;
- Low levels of professional credentials of prospective senior civil servants as outlined in the acts on internal organization and systematization of work positions;
- Non-implementation of performance appraisal in a large number of institutions;
- Weak institutional capacities for safeguarding the principle of the civil service's political neutrality;
- Reluctance of senior civil servants to protect their rights via official channels.

With an aim of addressing these shortcomings, capacities of key institutions need to be upgraded, legislation amended and oversight regarding implementation of the law strengthened.

Introduction

Implementation of the new Law on Civil Servants and State Employees (LCSSE) in Montenegro began in January 2013. This act prescribed more rigorous procedures for entering the civil service. As such it obliged heads of administration authorities to select the best candidates for lower civil service posts. Nonetheless, the concerns over politicization of public administration are still present.



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Throughout the year 2013, the so-called *audio recording affair* alleged that the ruling Democratic Party of Socialists (DPS) abused public resources for recruitment of its supporters for work in public administration bodies. In late 2012, just days before the LCSSE implementation, the then prime minister-designate asked for undated resignations from 148 people holding senior civil service posts. This move led the EU to warn against improper practice of recruitment and dismissal of public officials, which appeared to be further politicizing the civil service.¹ In its 2014 progress report on Montenegro, the EU also warned of the importance of monitoring appointments and dismissals in public administration, especially with regards to senior managers². Therefore, the effect the new LCSSE has had on depoliticization of the senior civil service is under question.

This paper, by taking a closer look at the treatment of senior civil servants under the old and new law, argues that there has been little progress in depoliticizing Montenegro's senior civil service. The current status of civil servants is namely analyzed against the implementation of the new legal provisions from January 2013 and by the extent to which the current legal framework and institutional set up allow for the proper enforcement of the principle of political neutrality of the civil service. Apart from the content analysis of the old and new LCSSE, the available data on the implementation of their specific provisions were also collected by freedom of information requests and desk research.

Who are Montenegro's senior civil servants?

Montenegro does not have a definition of senior civil service. Yet, senior managerial staff and heads of administration authorities are de facto senior civil servants, since they are subject to special conditions and are not political appointees as ministers or state secretaries.

For the purpose of this paper, the definition of senior civil servants is derived from the LCSSE. This act recognizes the term "senior managerial staff", which entails the following positions: secretary and director general in the ministry, deputy of the head of the administration authority and deputy of the head of the department (hereinafter: "senior managers"). In addition, due to the organization of Montenegrin state administration, which, apart from the ministries themselves, includes special administration authorities within the ministries, as well as independent administration authorities³, heads of these bodies (herein-

1 European Commission, *Montenegro 2013 Progress Report*, Brussels, 16.10.2013, p. 8 (Accessed 29.5.2014. at http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/mn_rapport_2013.pdf), European Parliament resolution on the 2013 Progress Report on Montenegro (Accessed 29.5.2014. at <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2014-0072&language=EN>)

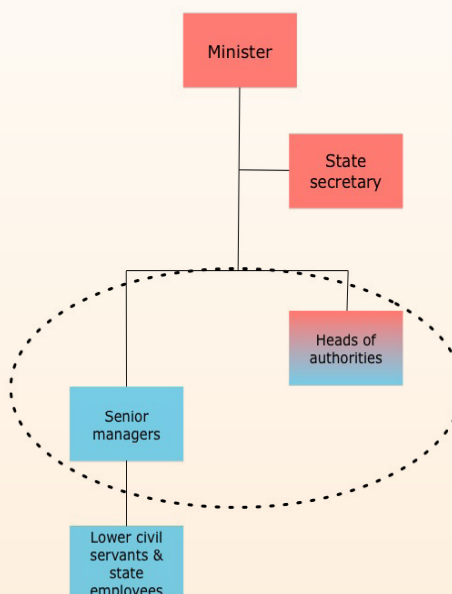
2 European Commission, *Montenegro 2014 Progress Report*, Brussels, 8.10.2014, p. 8 (Accessed 17.10.2014. at http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-montenegro-progress-report_en.pdf)

3 *Decree on Organization and Manner of Work of State Administration*, Official Gazette of Montenegro, 05/12, 25/12, 61/12, 20/13

after: “heads of authorities”), carrying the titles “director” or “secretary”, are also considered to be senior civil servants. These heads of authorities are not political appointees, and are also subject to special conditions prescribed by the LCSSE.

Montenegro’s state administration is also comprised of the lower-ranked civil servants. These individuals are subject to more rigorous procedures for entering the civil service. Nonetheless, as a rule, they are recruited for life, and their contracts are not subject to renewal such as that of senior managers or heads of authorities. Also, a number of state authorities can recruit state secretaries and special advisors, who are political appointees, because there are no criteria for their recruitment specified, and their mandate expires with the Government’s term. Finally, ministers play a double role, as members of the Government and thus political appointees and as heads of ministries as separate administration units.

Graph 1: Hierarchy of main posts in Montenegro’s state administration



The position of the ministers and state secretaries is largely regulated by the Law on State Administration. The position of the heads of authorities is regulated both by the Law on State Administration and the LCSEE, while the position of senior managers is regulated solely by the LCSSE. Hence, in the overall organization of the state administration, senior managers and heads of authorities are middle level managerial staff, being placed under the ministers and state secretaries but above all other civil servants and state employees (See Graph 1).

Recruitment and dismissal: Discretion or performance?

Recruitment and dismissal criteria of senior civil servants are rather loose and they place heads of authorities in a privileged position.

People in senior civil service posts need to be highly educated and possess at least three years of professional experience at job positions that include managerial skills and degree of autonomy. The senior civil servants are all appointed to fixed, five years terms, upon the previously announced public competition. In general, however, recruitment of senior civil servants is loosely regulated. As an example, assessment of candidates for the senior managerial position is done only by “structured interview”, which is conducted by the Commission for the qualification assessment of the prospective appointees. Qualification of prospective heads of authorities is determined only through a conversation with the relevant minister.

Clearly specified recruitment conditions for heads of authorities are one of the

novelties brought by the new LCSSE since under the old law they were political appointees. Nonetheless, prospective candidates for these posts are not evaluated by the special commission. Moreover, they are not officially recognized as a category of civil servants and are not susceptible to performance appraisal. As a consequence, unlike senior managers, they cannot be dismissed because of unsatisfactory performance.

This leads to unnecessary confusion and places heads of authorities in a privileged position without clear justification given the same conditions and similar levels of responsibility required by all these posts. The explanation provided by the Deputy Minister of Interior, Veselin Vukčević, that this differentiation is made due to the inability to regulate their legal status in the same manner as the status of senior managers, is not sustainable. Among other things, Vukčević noted that, if the heads of authorities were treated as senior managers, their position would be equal to their deputies⁴. Yet, this argument is not convincing since there could be a differentiation within this layer of state administration. For example, not all the senior managers share the same level of responsibilities. Contrary to that, deputy ministers are positioned above deputies of the heads of departments.

Leftovers impeding depoliticization

Many senior civil servants are at the same time members of main bodies of the ruling parties, suggesting that lines between state and politics are still blurred.

Montenegro is a semi-consolidated democracy and the previously described peculiarities of recruitment and dismissal of senior civil servants should be interpreted against this context. In other words, the politicization of society is so high that the election coalition agreements between the parties often include distribution of posts in public administration.

In 2012, the ruling DPS formed a special body - Council for Following the Implementation of the Electoral Programme, which is still active and counts more than 170 members. At the time of its formation, 78 members of this body held posts of deputy ministers, secretary ministers and heads of authorities. The complete data on the number of people who hold these posts at the time is not available. Nonetheless, for example, even six deputy ministers of finance were members of this body of the ruling party at the time of its formation, while currently this ministry has a total number of 8 people holding these positions. On the other hand, eight senior civil servants are members of the Main Committee of the Social Democratic Party (SDP), minor coalition partner of the DPS, comprising almost one tenth of this body's overall membership. One deputy minister is also a member of the party's presidency.

The DPS, as the main pillar of Montenegro's ruling coalitions over the last two decades, managed to take hold on the majority of top positions in state adminis-

4 Interview conducted on July 30, 2014, at the premises of the Ministry of Interior.

tration. However, it does not govern alone, but in the coalition with the SDP and ethnic minority parties. As shown, the SDP has its own share among the senior civil service positions, what suggests that there are informal party quotas for distribution of top posts in state administration. As a result of these practices, there is no awareness of the need for appointments of senior civil servants to be merit-driven.

(Im)Personal request

Undated resignations, submitted by the senior civil servants in late 2012, undermined job security of senior civil servants, illustrating the susceptibility of these posts to political interference.

The request for undated resignations, which almost coincided with the implementation of the Law, had a negative effect on the enforcement of the new rules as it gave the Government the ability to dismiss senior civil servants without specific reasoning. In other words, the resignations were officially filed upon the individual's personal request. As a result, although mandates of five people who submitted these resignations in December 2012 were not renewed⁵, they cannot appeal against such decision since they "personally requested" an end to their term.

The European Commission, in its 2013 progress report on Montenegro, stated that undated resignations breached employment rights and undermined public officials' professional independence from undue political influence⁶. In the information from January 2014, the government described the request as a temporary political act, aimed at enhancing the administration's performance⁷. The government argues that the move affected only the mandates of senior civil servants who were appointed by the legislation which is no longer valid.

This explanation is not convincing, because Article 162 of the LCSSE prescribes that senior civil servants, appointed in line with the previous acts, will continue the work in those job positions until the expiration of their mandate. Moreover, although the government officials stated in January 2014 that undated resignations were destroyed⁸, there is no official decision on abolishment of these resignations⁹.

5 Answer to the freedom of information request

6 European Commission, *Montenegro 2013 Progress Report*, Brussels, 16.10.2013, p. 8 (Accessed 29.5.2014. at http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/mn_rapport_2013.pdf)

7 Government of Montenegro, Information on the realization of the conclusions from the Government's session held on December 27, 2013 (Accessed 13.5.2014. at http://www.gov.me/sjednice_vlade/52)

8 Raško Konjević, minister of the interior, after the Government's session, held on January 27, 2013, told the media that the resignations were destroyed (See: <http://www.rtcg.me/vijesti/politika/39148/unistene-kovertirane-ostavke.html>)

9 Secretariat General of the Government, onto the official freedom of information requests of Institute Alternative for providing a copy of the decision, delivered the Government's Information from December 2013 which does not contain a word on the abolishment of the controversial practice.

Lack of professional credentials

Conditions for senior civil service posts do not allow for a higher level of expertise to be the defining feature of this layer of state administration.

With respect to senior civil servants, the acts on internal organizations and systematization of state authorities are usually mere repetition of the legal provisions and do not further elaborate on the special requirements which senior cadre working in a particular domain, e.g. agriculture, should meet. Furthermore, a knowledge of foreign languages is not required for most of the analyzed positions. This might hamper the country's exchange of know-how in policy making and implementation with other countries. Only holders of certain posts, usually tasked with international cooperation efforts, are sometimes required to be proficient users of English. The most striking examples are where senior civil servants are required to have the A1 (beginner's) level of English (e.g. in Ministry for Agriculture and Rural Development). Examples exist where heads of authorities are not obliged to know English while their deputies are. Furthermore, chiefs of some police departments are required to have ten years of work experience. This requirement is much higher than the requirement for people holding higher level posts (such as head of Police Directorate or deputy ministers in the relevant Ministry of Interior).

These inconsistencies pinpoint the superficial implementation of the Law. What's more, the definition of some of the key criteria, such as work experience at managerial job positions or tasks "requiring a degree of autonomy", is too loose. Vukčević explained that Montenegro, in the past, lacked the middle managerial staff in its administration. Consequently, if the criteria were set too high, there would be no base for recruitment of senior civil servants. Nonetheless, this argument points only to the fact that Montenegro's administration is a quite static and closed system, and that mobility between different sectors within the society, e.g. between public and private sectors, is not encouraged. All this, paired with the highly discretionary assessment of candidates, which is namely based on the oral conversation or interview, does not ensure that the best performing candidates enter the senior civil service.

No performance appraisal

Absence of adequate performance appraisal of senior civil servants leave them unscrutinized and their results are unchallenged by the relatively impartial criteria.

The new LCSSE has also tried to advance performance appraisal of senior civil servants by prescribing specific criteria for the assessment of senior managerial staff. However, the first year of performance appraisal along these criteria has not delivered good results. Half of the ministries have failed to conduct any performance appraisals. Where conducted, performance appraisals largely neglected special rules for senior managers.

Illustratively enough, all the employees of the Directorate for Prevention of Money Laundering and Financing of Terrorism, received excellent grades, even the senior managers whose performance should be graded only as satisfactory or unsatisfactory¹⁰. The situation is similar in the Ministry of Interior, the largest state administration unit. Even there, not all senior managers were assessed in line with the law. Of these managers, 17 of them received an excellent grade¹¹. As noted before, heads of authorities are not subject to any performance appraisal due to a lack of an external system of checks and balances that apply to this category of senior civil servants. Apart from their rather loosely regulated recruitment and dismissal conditions, there is no other mechanism which would monitor and ensure their efficient performance.

Political neutrality: professionals or apparatchiks?

The principle of political neutrality and impartiality of Montenegro's civil servants is not precise enough. As a result, key institutions lack criteria to assess the law violation, while the civil servants can easily find excuses for justifying their political activism.

In democratic countries, civil servants are exempt from the political interference experienced by political appointees. Thus, they are better equipped to ensure continuity of pursued reforms and public policies. This exemption is especially relevant to senior civil servants who are expected to promote the broad public interest and prevent any abuse of powers by politicians¹².

Both old and new LCSSE in Montenegro were aimed at preventing political partisanship of civil servants, by specifying that civil servants should perform their duties in “a politically neutral and impartial manner, in line with the public interest”. The new law went even further by prescribing that civil servants should refrain from public expression of political attitudes. The exposure of political affiliation during working hours is considered to be a serious breach of official duty, which might result in the termination of the work contract.

Almost one eighth of the electoral list of the ruling Democratic Party of Socialists in the 2014 local elections was comprised from civil servants, namely those holding senior posts.

The implementation of the LCSSE was followed with adoption of the Code of Ethics of Civil Servants and State Employees, and the formation of a special Ethical Committee. The Code, however, does not sufficiently prevent the partisanship of civil servants. It only specifies that a civil servant should not (even by the manner of their dress) expose a political affiliation. In addition, its implementation

10 Directorate for Prevention of Money Laundering and Financing of Terrorism, Answer to the freedom of information request

11 Ministry of Interior, Answer to the freedom of information request

12 Rabrenovic, A. and Verheijen, T., *Politicians and top civil servants in former Yugoslav states, back to discarded traditions?*, undated manuscript (Accessed on 17.10.2014 at: <http://unpan1.un.org/intradoc/groups/public/documents/nispacee/unpan021566.pdf>)

thus far has been hampered by the passivity of the Ethical Committee which is tasked with deciding on the reports of misconduct in state administration. This body, formed upon the decision of the government in March 2013, held only one session due to the failure of the government to pay its members' due allowances for their work¹³.

On the other hand, members of Montenegro's senior civil service continue to take an active part in the country's politics. The May 2014 local elections have demonstrated that in Montenegro's capital Podgorica alone, almost one eighth of the electoral list of the ruling Democratic Party of Socialists, was comprised from senior civil servants¹⁴. Institute Alternative (IA) has publically argued that by running in the elections, these senior civil servants publically expressed their political attitudes. The IA has thus submitted an initiative in front of the Ethical Committee and Administrative Inspection¹⁵ for providing an opinion about the legality of the electoral lists.

The two institutions interpreted prohibition of public exposure of servants' political attitudes as being limited only to their working hours, and justified the right of civil servants to run in the elections through universal suffrage as it is prescribed by the Constitution. Nonetheless, in its reply to the IA's initiative, the Ethical Committee itself recognized that the legal provision on political neutrality and impartiality is not precise enough. Furthermore, some media reports suggested that senior civil servants took an active part in pre-electoral political campaigning during their working hours. The two institutions have dealt neither with these media reports nor with the IA's request for further investigation of these alleged cases.

In EU member states, rights and duties of civil servants running in the elections are more clearly regulated. For example, employees in German state administration need to take an unpaid leave if participating in elections. Once their political term is completed, however, civil servants are allowed to continue their work in state administration¹⁶. The LCSSE has not tackled any of these issues.

Weak Institutions

On average, each Montenegrin administrative inspector in 2013 had to handle more than 2,600 initiatives, illustrating the weak institutional capacities for enforcement of rules aimed at professionalization of state administration.

Reluctance of institutions to efficiently perform their tasks coupled with their weak capacities result in the people's apathy towards them. People do not submit

13 Ministry of Interior (Government of Montenegro), Information on the Implementation of the Law on Civil Servants and State Employees, December 2013

14 Electoral Commission of Capital Podgorica, Collection of Electoral Lists for Election of Members of the Parliament of Capital Podgorica, May 2014 (Accessed 29.5.2014. at: <http://ikgg.me/>)

15 A special unit within the Ministry of Interior tasked with oversight of the LCSSE implementation

16 Information obtained by the interview with Tim Schröder, expert in the Federal Ministry of Interior of Germany, conducted on the June 10, 2014, at the premises of the Ministry

initiatives in front of the Ethical Committee. Only two civil society organizations – IA and Queer Montenegro, submitted initiatives in front of this body in 2013. It has received no other individual initiatives or complaints.

Moreover, senior civil servants do not appeal in front of the Appeals Commission. This body was formed in 2013 with an aim of handling appeals against recruitment, promotion and other procedures regulating the status of civil servants. None of the prospective senior managers or heads of authorities appealed against the manner in which these vacancies had been filled in the period between January 1, 2013 and July 1, 2014¹⁷. The Administrative Court has not handled any of these cases either. In the Montenegrin context, this can be interpreted as an indication of distrust that relevant institutions can efficiently and impartially tackle the eventual irregularities.

With respect to the oversight of the implementation of the new LCSSE, Administrative Inspection has the largest share of competences. Yet, the posts in this institution were only partially filled throughout 2013, with only four inspectors employed. On the other hand, the Inspection had to address more than 10,500 initiatives for performing inspection oversight. Most of these initiatives were also submitted by the civil society organizations and tackled the alleged irregularities of electoral roll ahead of the April 2013 presidential election. Thus there were more than 2,600 initiatives to be handled per inspector, suggesting the impossibility for this body to efficiently perform oversight of laws regulating state administration.

Conclusion

Treatment of senior civil servants under the new LCSSE is not a significant step forward. Despite the relatively ambitious aims of professionalizing appointments of senior managers and heads of authorities, deeper insight into the enforcement of new provisions reveals lack of their institutional underpinning, disobedience of state authorities and the continued existence of legal loopholes.

The level of expertise required for senior positions in the LCSSE and authorities' rulebooks is low and not well elaborated. In addition, although both senior managerial staff and heads of authorities are *de facto* senior civil servants, their treatment is not consistent. For example, recruitment of heads of administration authorities, is regulated by the LCSSE, while conditions for their dismissal are very vaguely regulated only by the Law on State Administration. People, whose mandates have not been renewed or have been terminated after the submission of the undated resignations, are left without any legal aid for re-questioning the government's move. This undermines the job security of senior civil servants as well as the overall depoliticization of public administration.

Montenegro is still not accustomed to measuring performance of its key policy makers and managers and there is no performance assessment of the heads of authorities. No conditions for the renewal of the senior civil servants' term are

¹⁷ Answer to the freedom of information request

specified. Although it is expected that senior civil servants will be exposed upon the termination of their mandate to the open competition with other candidates, this is only assumed, and the phrasing of the law in that respect is imprecise.

Political neutrality and impartiality of civil servants is under-regulated. The dilemma over civil servants' right to run in the elections also indicates legal loopholes and the need for amending the existing legislation.

Recommendations for legislators:

- The current distinction between the senior managerial staff and heads of authorities has no justification. Heads of authorities should thus be placed into the category of senior managerial staff, with an aim of full professionalization of these posts. Consequently, they should be subject to the same qualification assessment and performance appraisal procedures as senior managers.
- Proficient knowledge of at least one foreign language (English) should be envisaged for senior civil service posts, especially for those posts including international cooperation.
- Amendments to the LCSSE should clearly forbid civil servants from participating in political campaigns, unless they take unpaid leave.
- In cases where a senior civil servant is elected to represent a certain political party, the LCSSE should stipulate the termination of his or her civil service term.

Recommendations for the Government:

- In order to move from declarative prevention of political partisanship in Montenegro's senior civil service towards the full affirmation of political neutrality of state administration, the Government should ensure proper working conditions for the Ethical Committee by distributing due allowances to its members.
- Capacities of Administrative Inspection should also be enhanced, by creating more work positions for administrative inspectors.

Recommendations for state authorities falling under the scope of the Law:

- All state administration authorities should consistently implement the performance appraisal of senior managerial staff, as it is already envisaged by the LCSSE.
- While providing opinions to the rulebooks on internal organization and systematization of state administration authorities, the Ministry of Interior and the Human Resources Management Authority, should ensure that the

conditions for senior civil service posts are not mere repetition of the legal provisions, but that they are adjusted to the specific needs of each state administration authority.

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About us

Institute Alternative (IA) is a non-governmental organization, established in September 2007 by a group of citizens with experience in civil society, public administration and business sector.

Our mission is to contribute to strengthening of democracy and good governance through research and policy analysis as well as monitoring of public institutions performance.

Our objectives are to increase the quality of work, accountability and transparency, efficiency of public institutions and public officials; to encourage open, public, constructive and well-argument discussions on important policy issues; raising public awareness about important policy issues, strengthening the capacity of all sectors in the state and society for the development of public policies.

The values we follow in our work are dedication to our mission, independence, constant learning, networking, cooperation and teamwork.

We function as a think tank or a research centre, focusing on the overarching areas of good governance, transparency and accountability. Our research and advocacy activities are structured within five main programme strands: **i) public administration, ii) accountable public finance, iii) security and defense, iv) parliamentary programme and v) social policy.**

On the basis of our five programmes, we monitor the process of accession negotiations with the EU, actively participating in working groups for certain chapters. Our flagship project is the Public Policy School, which is organized since 2012.

Managing of the organization is divided between the Assembly and the Managing Board. President of the Managing Board is **Stevo Muk**. Research Coordinator is **Jovana Marović, PhD**.

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