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THE PROFESIONALISING OF THE CIVIL SERVICE ACCORDING TO PUBLIC ADMINISTRATION REFORM (Romanian case)

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Abstract

The Public administration reform is a high priority for Romania in the perspective to the accession to the European Union. Considering the recommendations made by the European Commission in the 2002 in order to ensure the coherency of the actions conducted so far in the line of public administration reform, the Romanian authorities will concentrate mainly on civil service reform and on the continuing the decentralisation and de-concentration process.

The national public administration institutions of EU Member States implement and enforce the acquis communautaire. To be able to effectively do the same, the public administration of a candidate country must adhere to the general principles of good governance and meet the administrative standards defined within the EU.

The lack of general EC legislation applicable in the domains of public administration and administrative law poses a problem for candidate countries. Candidate countries are required to have administrative systems and public administration institutions capable of transposing, implementing and enforcing the acquis according to the principle of "obligatory results. Candidate countries have to meet the criteria required for EU Membership as adopted by the European Council Central and eastern European countries applying for membership in the European Union need to reform their public administrations to meet the EU criteria for accession.

Shared principles of public administration among EU Member States constitute the conditions of a "European Administrative Space" (EAS). The EAS includes a set of common standards for action within public administration which are defined by law and enforced in practice through procedures and accountability mechanisms. Countries applying for EU membership should take these standards into account when developing their public administrations.

The professionalizing of the civil service in Romania is focused on:

- *Designing and implementing the secondary legislation to the Law No.188/1999 regarding the civil servants statute*
- *Designing and implementing the mechanisms in order to ensure the accountability of civil servants and their independence from undue influences trough amending the Law No.188/1999 regarding the civil servants statute*
- *Improve provisions for both initial and in-service training*
- *Develop a career structure based on transparent promotion and assessment*
- *Creating a corps of senior civil servants*
- *Promoting the law for the approval the civil Service Ethic Code of the civil Servants in Romania)*

The Professionalisation of the civil service (the legislative and institutional measures) - direction in the Public Administration Reform

The law making process regarding central and local public administration reform continued within 2003. The most important regulations adopted in the field of civil service reform is Law No 161/19.04.2003 (OJ No 279/21.04.2003) on measures ensuring transparency in exercising public dignities, civil service and in the business environment, as well as preventing and sanctioning corruption.

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European context

In Romania's process of accession to European Union the adoption of the acquis communitaire, as well as its implementation, represents an important step.

The accession states, as well as the member states, must be sure that the public administration has the capacity to transpose, implement and strengthen the aquis in accordance with the "binding result" and upon the general principles of good governance.

On the other hand, as an inherent cause of the interdependencies within the "European structure", the administrative performance of each member state has direct influence on the other states; therefore, the process of adjusting the Romanian administrative institutions to the European administrative space standards represents a dynamic and continuous process, which will not be finalized once the accession date accomplished.

In order to meet the criteria comprised in the European Association Agreement and in the Accession Treaty, Romania needs an efficient administration, and for this reason improving the public administration's standards represents an important task for the negotiations.

For this purpose, Romania permanently adjusted its legislation regarding the civil service to the so-called "European administrative space" standards.

Legal framework of Civil service in Romania. Ordinary Legislation

Law 188/1999 of 8 December 1999 on the Civil Servant Statute, published in the Official Gazette on 28 June 2000 and brought into force 30 days later, is the main regulation on the civil service. This law applies to "those working in public organisms of authority" (article 2). Specific statutes, some with amendments, apply to other public employees: the military (Law 80/1995); public education employees (Law 128/1997); financial police (Law 30/1991); and customs employees (Law 16/1998). Law 115/1996 regulates the declaration and control of assets of "dignitaries" (basically elected politicians), magistrates, public servants and persons in "leadership positions".

Law 188/1999 has been extensively amended by Law 161/2003, which was passed on 31 March 2003 and published in the Official Gazette on 21 April 2003.

Law 161/2003 is a collection of different pieces of legislation grouped under the title of "Law on Certain Steps for Assuring Transparency in Performing High Official Positions, Public and Business Positions, for Preventing and Sanctioning Corruption". Title III of Book II of this Law 161/2003, "Regulations regarding Public Positions and Public Servants - Modification and Completion of Law 188/1999 on the Status of Public Servants", together with Title IV of Book I on "Conflict of Interest and Status of Incompatibilities in Performing High Official and Public Positions", now shape the primary civil service legislation in Romania.

The adoption of Law 161/2003 on certain measures for ensuring the transparency in performing high official positions, public and business positions, for preventing and sanctioning the corruption represented a legislative priority and a necessary step in increasing the administrative capacity to meet the needs of a complex and dynamic environment.

Law 161/2003 has modified and completed the Statute of the civil servants; this modification represents a considerable improvement of the legal basis for the civil service and we do consider that it creates an optimum relation between the Romanian administrative system tradition and the standards in the field within the EU member states.

The aim of Civil Servant Statute

The aim of the Romanian civil service is defined by articles 1 and 2 of Law 188/1999, as amended by Law 161/2003. The aim of the civil service, as regulated by Law 161/2003, has clarified the **notion of civil servant** in a considerable way, in spite of the peculiar legislative technique used (the use of an annex to the law and notes is not common in most EU Member States). The criteria for determining the scope of the civil service are now better defined by the legal text than previously.

There is no common definition of the civil service for all the EU member states. The European recommendations establish the necessity of clearly delimiting the public positions from the contractual positions as well as from high official positions.

Law 188/1999 in its actual form redefines the notions of civil servant and civil service, restrictively enumerates the activities that involve the exercise of public power prerogatives, also provides the staff categories which are not applied with the provisions of the Statute of the civil servants; also, it establishes the categories of civil servants that beneficiate of special statutes.

This modality of regulation eliminates the confusions, establishes the distinct legal regime applicable to the civil servants, distinctive category of the public employees, and ensures a unitary and efficient management of the civil servants' body in Romania.

There is a clear delimitation between the public positions and the high official positions within the Romanian administrative system.

The distinction has as starting point the legitimacy of occupying the public position, respectively the high official position and continues with legal regimes applicable to different persons belonging to these categories.

Law 188/1999 provides, as other legislations in the EU member states, the right of the civil servants, except for the civil servants in the ministries regarding the national defence, the public order and the national security, to be elected or appointed on a high official position and regulates also the legal mechanism through which they can exercise this right: the suspension of the work relations during the mandate period.

In most EU Member States the **notion of Civil service** represents distinctive employment status for some public servants, generally defined by law and usually with four characteristics:

- Civil servants are "appointed" by decision of an authorized public institution in accordance with the civil service law. A decision by a representative of the State to "appoint" a civil servant must conform to established rules that structure the hiring process.
- Once appointed, there are many constraints on dismissal. This is because civil servants are not simply employees of the state; they also have a constitutional role. The intent of civil service legislation is to balance the requirement these employees be responsive to the government of the day, with the parallel requirement that they respect and maintain state institutions over time. In other words, additional job security is provided in order to prevent short-term political pressures from leading to inappropriate personnel changes.
- There are more constraints on the actions of civil servants than on other groups. Again, this is because of the strategic and constitutional role of civil servants.
- Civil servants are part of the employment categories of civilian central government or subnational government. These two categories generally exceed the number of staff defined as civil servants.

According to law 188/ 1999 the **civil servants** *are those employed, according to the procedures established in this law, in central state and municipal administrations to perform activities involving the exercise of public powers.* These activities, as defined by law, consist of: drafting and implementing laws and other normative acts; drafting policies, strategies, programmes, analyses, and statistics necessary for public authorities to discharge their responsibilities; providing advice; carrying out activities of public control and auditing; management of public human and financial resources; collection of taxes and public fees; activities related to the introduction of information technologies in the administration; representation and defence of the interests of the public authority in a court of law or before other authorities according to the law.

A list of civil service positions is included as an annex to Law 161/2003. *The totality of civil service positions form the* **civil service**. The Civil Service Statute does not apply (article 6) to auxiliary positions in institutions, such as assistant secretaries, maintenance employees and other positions not connected with the exercise of public powers. Nor does it apply to political appointees employed in the cabinets of "dignitaries" on the basis of personal trust. The Statute does not apply to judges, public education employees, or persons elected or appointed to positions of public dignity.

There are a number of civil servants to whom special statutes apply. These special statutes must be brought into line with the general provisions and principles stated in Law 161/2003 within 90 days from the publication of the law (article XV). Civil servants under special statutes include those ascribed to the Presidency of the Republic, Parliament, Legislative Council, diplomatic and consular services, customs administration, police, and other public services as established by law. To what extent legal regulations and personnel management practices in these areas are being brought into line with general provisions of the civil service is a matter for concern.

While a civil service policy exists, the question of whether a coherent approach to state employees under labour contract is less evident. According to trade unions, ordinary labour legislation may provide employment protection that is at least as comprehensive as the protection provided under the Civil Service Law, especially as the latter is difficult to invoke before administrative tribunals, whereas ordinary labour law is dealt with by labour courts. However, some restrictions applying to civil servants, for example on incompatibilities, do not apply to labour contractees.

A positive development consists of including the prefects, who are the representatives of state authority in the *judets* (counties), within the civil service. According to Law 161/2003 they will no longer be political appointees, but professional civil servants subject to merit system regulations. The full effects will be seen only in January 2007, when article XXI will enter into force. In the meantime the appointment of prefects will continue to be governed by Law 215/2001 on Local Public Administration, whereby prefects are considered to be politicians. Secretary-generals are also included within the civil service by the new legislation. This represents a positive step in the de-politicisation of the administration in ministries.

Management of the civil servants

In order to achieve the management of the civil service and the civil servants, the National Agency of Civil Servants was set up through Law 188/1999, as a specialty body of the central public administration with legal entity.

The **National Agency of Civil Servants** has an important role in strengthening the administrative capacity of the public authorities and institutions which are in charge with the implementation of the European judicial institutions within the Romanian public administration system, its activity field supposing a dynamic and strategic approach which is able to deal with the changes and the accelerate rhythm of the reform.

Agency's mission consists in developing a professional civil servants' body in order to improve the public administration and the relations between administration and citizens.

That's the reason for which in the context of the recent modifications of the Statute of the civil servants the role and the place of the Agency within the Romanian institutional system were redefined, the Agency being endowed with the legal instruments necessary for developing the public service.

The National Agency of Civil Servants (NACS) does not have any competence with regard to labour contractees. This unbalanced situation may lead to unwelcome developments in the short run, given the fact that becoming a civil servant is not particularly advantageous. Personnel policy at all levels of government administration should strive to integrate responsibilities for the two categories of public personnel. Personnel policy, if limited to only civil servants, risks becoming distorted and inconsistent.

By the end of June 2003, having scrutinised some 97% of all institutions, the NACS confirmed 110,505 posts as civil service positions, in keeping with the criteria set down by Law 161/2003. These posts are distributed as follows: 68,111 in central state administration (7,710 classified as management positions and 60,401 as non-management positions) and 42,394 in local administration (5,225 managerial and 37,169 non-managerial). The number of managerial positions is limited by Law 161/2003 to a maximum of 12% of all civil service positions.

Implementation of the Civil Service Statute

Law 188/1999 was barely implemented. In spite of the fact that it came formally into force in July 2000, its provisions were largely ignored, because of elections (December 2000) and the low managerial capacity at that time of the National Agency of Civil Servants (NACS). Some of the law's provisions concerning dismissal and recruitment were loosely applied to dismiss and recruit people after the current government took office. The provisions for the creation of a national civil service agency were applied, and the NACS was established in 2000. However, the NACS remained non-operational for a long time, mainly because it was regarded as a foreign imposition, and there was virtually no political will to make it operational. Moreover, subsequent to the 2000 elections, the NACS' management and a significant part of the staff was dismissed and its reporting links were shifted from the government to the newly established Ministry of Public Administration. As part of this strategy, the government prepared a new Civil Service Law, which was promulgated on 23 April 2003 (Law 161/2003).

The implementation of Law 161/2003 began on 21 May 2003, in keeping with the transitional and final provisions contained in the law and with the implementation programme set up in Government Decision 504/2003 and in Emergency Government Ordinance 27/2003. The NACS has adopted an operational action plan, which includes information/training meetings with all those concerned with the implementation of the law in ministries and institutions. The action plan also includes the identification of all civil service positions in institutions falling within the scope of the civil service and under the responsibility of the NACS. The new set of rules for the organisation and functioning of the NACS was adopted by Government Decision 624/2003 of 29 May 2003 and published in the Official Gazette of 11 June 2003. Efforts have been successful in making the NACS more central, not just for the formulation of civil service policy, but also for its implementation (see below under the heading on civil service management).

The NACS issued Order 218/2003 containing instructions for screening incumbents in posts classified as civil service positions in accordance with the new conditions to be met in order to become civil servants, as foreseen in articles XVI and XVII of Law 161/2003. This screening is to be completed by 15 July 2003. The updating of the Civil Service Register or database is being carried out in parallel with the screening. Secondary legislation issued to implement Law 188/1999 (see above) is being revised and adjusted to the new legislation provided for by Law 161/2003, in particular the regulations concerning disciplinary committees and those dealing with civil servants' career development.

A new **Civil Service Code of Ethics** has been adopted by Law no.4/ 2004.

Professionalism of the Civil Service

Even if the public administration concept is different in all the systems, the European Judicial Court defined a great number of principles for the public administration, considered key principles in the civil service also, and which are grouped as follows: "trust and predictability", "openness and transparency", "responsibility", efficiency and effectiveness".

The Statute of the civil servants, in its actual form, provides that the civil service must be exercised by respecting the following principles: "legality, impartiality and objectiveness", "transparency", "efficiency and effectiveness", "responsibility, in accordance with the law", "citizen-oriented", "stability in performing the public position", "hierarchic subordination".

The special regulation of these principles, as well as the exact definition of law's purpose (ensuring, in accordance with the law, a stable, professional, transparent, efficient and impartial, citizen oriented, and serving the public authorities and institutions from the central and local public administration) establish the values of the civil service, the guiding marks to whom shall be related all the judicial institutions provided in the Statute of the civil servants.

Protection of Legality by Civil Servants

Article 43-2 of the Civil Service Statute of 1999 was weak in protecting the principle of legality, which must preside over the actions and decisions of the public administration. Oversight of the civil service was largely based on

hierarchical subordination. The freedom of civil servants to stand up against unlawful instructions from their superiors was limited, and non-existent when the superior gave an order in writing. This regulation was insufficient to ensure that the administration would act under the rule of law, as is required by the Romanian Constitution and European administrative law principles. This article has been amended by Law 161/2003, which gives reinforced, but still insufficient, guarantees to civil servants who dare to refuse compliance with unlawful instructions. In practice, it continues to be practically impossible for civil servants to refuse compliance with unlawful orders. This situation undermines the attainment of the goal of a civil service to act impartially on the merits of each case, and free from undue political pressure. Without the adequate protection of the law, it is not possible for civil servants to fulfil the obligations imposed on them by article 43-1, and the principles of legality and professionalism of the civil service are therefore in jeopardy.

Recruitment and Promotion of Civil servants

The Civil Service Statute of 1999 (articles 6 and 49) imposed competition as the way to enter the civil service and stated that an examination was necessary. New recruits were due to enter as civil servants on probation (called *"debutante"* in the Statute). At the end of the probationary period, which lasted from 6 to 12 months depending on the category of the civil servant, a *"debutante"* acquired the status of permanent civil servant. A Government Decision of October 2001 set out specific regulations for conducting recruitment procedures. These regulations were not used in the majority of appointments. Another Government Decision, also of October 2001, regulated the probationary period and the manner of evaluating those under probation. Each institution recruited its own staff. The NACS was unable to impose common recruitment standards or to guarantee the transparency and competitiveness of the recruitment processes, in spite of the dispositions set down in the above-mentioned Government Decisions. The NACS was systematically neglected in recruitment processes.

New civil service legislation, as amended by Law 161/2003, provides in articles 49-52 a more systematic and better regulation for recruitment to the civil service. Articles 18 and ff. set up the conditions for recruitment to management positions. According to the new legislation, all civil service positions are to be occupied through competitive mechanisms based on merit and assessed by a recruitment commission. The new legislation also sets down the principles upon which recruitment is to be based: open competition; transparency; professional merits and competence; and equal access to public office of all Romanian citizens meeting the legally established requirements. Certain procedural conditions are also set in primary legislation, such as the way of publicising vacancies (Official Gazette), leaving for secondary legislation a more detailed regulation of the procedure in keeping with the general principles of the law. The NACS is to approve the terms of reference for recruitment of general administration civil service positions and to give its opinion concerning positions for specialised administration. In both cases the NACS is to monitor the recruitment process. All recruitment must be carried out in accordance with the annual staffing plan (article 22), prepared by the NACS and approved by the government, which indicates the vacant positions to be filled by means of recruitment and promotion.

Although based on the same recruitment principles, Law 161/2003 provides different modalities of recruitment depending on the category of the civil service position to be filled (high-ranking civil servants, middle managers or ordinary civil servants). The appointing authority also differs depending on the category of the position and whether the position is within the general or special administration (see below under "Classification of the Civil Service").

Promotion and the performance appraisal scheme seem to be founded on better legal grounds with the enactment of Law 161/2003 than was the case under the 1999 Civil Service Law. The basic principles established in primary legislation need to be developed through secondary legislation, which is currently being prepared by the NACS. Regulations on mobility and transfers provided under the new legislation also represent an improvement, introducing transfers at the request of interested civil servants as a means to enrich their professional careers.

In order to promote renewal within the civil service, a new modality of entry into the civil service has been established by Law 161/2003 through specific training programmes, in particular for middle management positions. Such programmes are determined jointly by the NACS and the National Institute of Administration (INA). Secondary legislation has also been issued in this regard, and INA and NACS have already identified, in collaboration with the relevant ministries and institutions, some 100 positions to be filled in 2003 through this special procedure. This recruitment process should be completed by September of this year. The specific training programmes referred to above will consist of two years training, one year in an EU Member State and the other year in Romania. The European Commission will finance the year of training outside Romania through a Phare project.

A new regulation concerning the probationary period (now referred to as "internship") is provided by the new legislation (articles 50 and 51), establishing clearer objectives and conditions for an internship period that will have both skill testing and training dimensions. The maximum duration of the internship is set at 12 months for civil servants of first class, eight months for those in second class, and six months for those classified in third class. Time spent as a participant in a specifically designed training programme is considered to be part of the internship period. At the end of the internship, the incumbent is either appointed as a permanent civil servant or dismissed from the civil service if negatively assessed.

Article 51-1 of the 1999 Civil Service Statute allowed those appointed to a political post ("positions of public dignity") to participate in competition for entry into the civil service by taking into account the experience gained while in political office. This privilege was not justified and contradicted the constitutional principle of equality before the

law as well as the principles in article 4 b) and c) of the very same Civil Service Statute. This privilege has been abrogated by Law 161/2003.

Article 63 of the 1999 Law recognised the civil servant's right to promotion to a higher level, class and category if he/she had the required academic credentials and a given length of service, and provided that there was a vacant position. In all cases, in order to be placed on a promotion list, civil servants had to obtain "good" or "exceptional" ratings in a performance appraisal exercise. Managers had wide discretion in these exercises, despite the fact that a Government Decision of October 2001 set out complicated and impractical procedures for the performance appraisal exercise. Competition was not required for promotion, except for the so-called leadership positions (article 68). Promotion to leadership positions (e.g. Secretary-General of the Government, director-generals, department managers, office managers) had to be achieved through competition. However, in practice competition was scarcely used. The same was true for performance appraisal. The regulations for performance appraisal did not take into account the fact that quite developed managerial capacities are necessary to properly carry out performance appraisal. These capacities were scarce in the Romanian public administration and still are for the time being. Consequently, promotion was almost completely dependent on the manager's discretion. These circumstances prevented the implementation of these provisions of the 1999 Law.

The new legislation defines more clearly the rules on promotion (articles 53-58) and reduces the manager's discretion. It establishes that promotion to higher positions shall be carried out through competition or examination. Civil servants who meet certain conditions of seniority or length of service (two years in the rank of beginner or four years accumulated in any civil service position or positions) can participate in these promotion procedures, and they are positively appraised in the annual performance appraisal exercise. To promote to high managerial positions, stricter requirements are demanded by legislation concerning the length of service (five years in a middle management position). The fact that civil servants may compete in promotion procedures to positions requiring higher education if they have obtained these academic credentials while in the civil service serves as an incentive for civil servants to improve their education. Government secondary legislation will regulate in more detail the promotion procedures in accordance with the conditions laid down in primary legislation.

The European principle of the free movement of the services can't be provided within the civil service system in Romania at this moment.

Concerning the express regulation of the legal provisions that could ensure the principle of free movement of the services between the EU member states within the civil service, we must make the following explanations:

The civil service within the Romanian administrative system represents the attributions and responsibilities established upon the law, in order to fulfill the public power prerogatives by the central and local public administration.

Given the limited area of the activities that involve the exercise of the public power in Romania, as well as the necessity of an special fidelity relation towards the state and the reciprocity of the rights and duties that represents the basis of the nationality connection, Law 188/1999 establishes the nationality condition for occupying a public position in Romania: a person can hold a public position only if he has Romanian citizenship and lives in Romania.

However the public position represents traditionally a national prerogative, the state exercising its sovereignty in this field, depending on the traditions, culture and history.

According to provision of the Constitution of Romania (*amended and completed by the Law No. 429/2003 on the revision of the Constitution of Romania, published in the Official Gazette of Romania, Part I, No. 758 of 29 October 2003, republished by the Legislative Council*) – art.16 (3) "**Access to public, civil, or military positions or dignities may be granted, according to the law, to persons whose citizenship is Romanian and whose domicile is in Romania. The Romanian State shall guarantee equal opportunities for men and women to occupy such positions and dignities."**

The same article 16 (4) give more details: "**After Romania's accession to the European Union, the Union's citizens who comply with the requirements of the organic law have the right to elect and be elected to the local public administration bodies."**

The provisions of this constitutional article do not represent a discriminatory condition and an indirect obstacle for the free movement of the services, and it will renounce to the exclusivity of the Romanian citizenship for the Union's citizens who comply with the requirements of the organic law have the right to elect and be elected to the local public administration bodies.

The legal provisions regarding the removal of the discriminations based on nationality, in which concern the employment, the remuneration and other work conditions, are not applicable to the public administration's employees, in accordance with the provisions of article 48, paragraph (4) from the European Community Treaty.

Also, in accordance with article 55 from the international act mentioned above, the activities that involve the exercise of the public power are excluded from the rule of free movement of the services.

This regulation is in accordance with the Communicate 88/C72/02 regarding the free movement of the workers and the access to employment within the public administration of the member states, elaborated by the European Court of Justice, as a result of the fact that within certain member states a big number of positions considered as belonging to the public administration are not related to the public power.

In accordance with this Communicate, the communitarian residents are allowed access to the positions of the bodies responsible with the transportation in common, with the electricity and gas, airways companies, mail, telecommunications, state education, etc.

The European Court of Justice considered that the army forces, the police, the judiciary apparatus, the financial authorities, and the positions within the ministries, local authorities and other public bodies whose job attributions involve the exercise of the state authority, are applied with the exception regarding the public administration, provided by article 48, paragraph (4), from the Treaty.

Classification of the Civil Service

Law 161/2003 has made civil service classification in Romania more consistent and clearer compared to the classification set out in the 1999 law, which was rather ambiguous. This clearer classification also contributes to making the civil service scope better defined. The new law also clarifies the difference between individual civil servants and civil service positions. The management of the civil service will be based more on the management of positions and less on the management of individuals, a difference that was very unclear under the preceding legislation.

Law 161/2003 establishes a new classification of civil service positions. It creates two general groups of positions within the civil service (article 7) in accordance with the nature of the functions attributed to them, namely positions of general administration and of special administration. The titles of both categories of positions are indicatively listed in an annex to the law. This list can be extended if the NACS gives positive advice to this effect. The main practical effect of this division is that the terms of reference for recruitment and promotion for positions of general administration are decided centrally by the NACS, whereas for special administrative positions the NACS has only a monitoring role over the recruitment procedure.

Positions of general administration are those holding responsibilities and functions of a general character common to all ministries and institutions. Examples of this category include the Secretary-General of the Government, state counsellors, secretary-generals in ministries, prefects, secretary-generals in municipalities, general managers or executive directors of public agencies, chiefs of service, chiefs of office, experts, advisors, auditors, inspectors, specialist reviewers and reviewers.

Positions of special administration are those holding responsibilities and functions that are specific to an institution or ministry. Examples include chief architect, competition inspector, customs inspector, labour inspector, comptroller delegate, and commissioner.

A second classification of civil service positions according to the level of attributions divides the civil service into three categories, namely high-ranking positions (higher managers), leading positions (middle managers) and ordinary civil servants ("civil servants of execution"). The last category is divided into four grades (senior, chief, assistant and intern). Lists of titles in each category are set up in the law for high-ranking civil servants (article 11), leading civil servants (article 12) and executive civil servants (article 13).

A third classification, in accordance with the academic credentials required to occupy a position, divides civil service positions into classes I, II and III (article 8).

A fourth classification, based on the criterion of tenure, divides civil servants into probationary and permanent civil servants, as regulated in article 10.

Obligations, Rights and Duties, with special reference to Impartiality

Law 161/2003 establishes (article 4) the basic principles to be followed by civil servants in performing their duties. These principles are legality, impartiality, objectiveness, transparency, efficiency, effectiveness, accountability in accordance with the law, citizen service orientation, stability in the exercise of civil service functions, and hierarchical subordination. The establishment of these principles in the legal text represents progress towards a more professional and autonomous civil service, assuming that these principles will be honoured in practice. The regulation of civil servants' obligations and rights in Law 188/1999 had focused more on discipline at work rather than the respect of constitutional and public law values.

The new legislation (article 27) concedes to civil servants the right to unionise. This right is not recognised, however, for higher civil servants, a restriction that is not justified, as higher civil servants should also have the possibility to defend their collective professional interests through trade unions or professional associations. These associations could provide support in defending the merit system in situations where it might be under attack as a result of political decisions or otherwise. Paradoxically, the right to strike is recognised for every civil servant, including higher civil servants. Every civil servant can go on strike as long as there is no detriment to the continuity and responsiveness of the public service. It would have made sense to restrict the right to strike of higher civil servants, but not the right to freely associate in defence of their professional rights.

Article 41 of the new legislation obliges civil servants to fulfil their duties with professionalism, impartiality and in keeping with the law. They are to refrain from committing any deed that may prejudice (unlawfully, it is assumed, although this cannot be inferred from the literal wording of the law) natural persons, legal entities, or the prestige of the civil service corps. They must also respect the Code of Conduct and Personal Behaviour as laid down in law.

Article 42 obliges civil servants to refrain from expressing their personal political preferences or convictions as well as from favouring any political party or attending political events during working hours. Likewise, civil servants are forbidden to hold positions within leading boards of political parties. This provision, although somewhat imprecise,

nevertheless represents progress towards the de-politicisation of the civil service. It would contribute more to that goal if it were more precisely regulated.

As indicated above, article 44 obliges civil servants to maintain secrecy and confidentiality in a way that does not favour the development of transparency and openness, crucial values in democratic public administrations. It may take still a long time to overcome the predominant culture of secrecy in the Romanian public administration.

Training and professional development is clearly established in the new legislation as a right and an obligation of civil servants. Civil servants are to attend training activities organised by INA or any other relevant institution for a minimum of seven days per year.

Disciplinary regulations in Law 161/2003 are not sufficiently clear and are inadequate to promote accountability, mainly due to inconsistencies in the wording of the law and confusion concerning certain legal notions[18].

With regard to conflict of interest, the new legislation (article 48bis) stipulates that civil servants are obliged to duly observe the legal regime of conflict of interest and incompatibilities set down by law. The civil service legislation does not contain any other reference to activities incompatible with the civil service status. To complete the picture, it is necessary to look at Book I, Title IV of Law 161/2003. This title deals with "Conflict of Interest and Incompatibilities in Performing High Official and Public Positions". It can be inferred from this title that the legislation affects politicians and civil servants alike at both central state and municipal levels. Article 79 of this title regulates the issue of conflict of interest specifically for civil servants, and articles 94-98 does the same concerning incompatibilities. From a systematic point of view, these six articles would be better placed as articles in the Civil Service Law. This would make the new civil service legislation more self-contained and comprehensive. A similar stance was expressed by the main civil service trade union (USFPR), which would prefer the integration of deontological rules into specific civil service legislation.

Regulations on conflict of interest and incompatibilities in Title IV of Book I of Law 161/2003 are rather unsystematic and do not match the classification of civil service positions established in Title III of Book II (Law on Civil Service). For example, the position of prefect is foreseen as a civil service position as from 2007 according to the Civil Service Law, whereas incompatibilities for prefects are regulated in Book I, Title IV (Chapter III, Section 3, article 85) under the heading, "Incompatibilities regarding the position of a member of the government and other public authority positions in central and local public administration".

As to the substance of these regulations, article 79 refers only to the obligation of civil servants to withdraw from decision-making processes in which they or their close relatives might have patrimonial or financial interests, and sets down the procedure for such withdrawal. Articles 94-98 state that a civil service position is incompatible with any public position other than the one to which the civil servant was appointed. A civil service position is also incompatible with high official positions, as well as with political positions. In that event the civil servant shall obtain a leave of absence and will be reinstated upon expiry of the relevant political mandate. A civil servant may be a candidate for a political election, but the civil service relationship is suspended during the campaign and during the mandate as an elected dignitary. The same applies if a civil servant is appointed to a political position (minister, state secretary and similar). A civil servant may be a member of a political party, but not of a party's management board or in a leading position. Higher civil servants cannot be members of political parties under sanction of dismissal "from the public position" (article 98-3), although it is unclear whether such dismissal also means dismissal from the civil service. Also incompatible are positions in private and public enterprises, with certain exceptions. Civil servants cannot be employed, for three years after leaving the civil service corps, by private companies that they have been monitoring or controlling while in office. On the other hand, teaching, scientific research, and literary and artistic creation are activities compatible with the civil service status. Hierarchical relations within the civil service are forbidden between close relatives.

These regulations provided by Law 161/2003 were very much criticised by representatives of civil society in Romania. In an open letter to Parliament, three leading NGOs attacked this legislation as they considered that the package of laws did not serve the objectives set forth in the National Plan for Fighting Corruption. In their view, the legislation "does not prevent corruption, but merely centralises it by targeting the low-level civil servant or clerk facing the public behind a desk, while taking away any personal responsibility of senior civil servants for their deeds...The Law also concentrates the control and decision-making procedures at the level of central administration and does away with transparency regarding the personal wealth amassed by high-ranking officials and civil servants". Similar criticism was expressed by other civil society representatives, who pointed out that this anticorruption legislation package "contains provisions that suggest corruption will now proliferate under a 'legal' guise".

These criticisms may prove to be right, at least partially. Effectively, the definition of conflict of interest seems to be stricter for civil servants than for politicians. For the latter the definition of conflict of interest is narrow and too limited and does not seem to meet the standards set down by the Council of Europe in its Recommendation (2000)10 of the Committee of Ministers. In addition, although article 69 of Law 161/2003 includes deputies and senators within its scope, there are no legal provisions concerning the regulation of conflict of interest concerning parliamentarians, despite the fact that in the public perception most parliamentarians are considered to be corrupt[22]. All those included in the scope of this law must submit a "statement of interest", which is vaguely regulated and does not appear to include immovable property. The regulation of the contents of such a statement has many loopholes. For example, everyone is obliged to declare whether or not he holds a bank account, but not how much money is in the account. In general, the system introduced by this legislation precludes any attempts to determine if an official has accumulated significant or disproportionate assets during his term in office. In addition, an Emergency Ordinance of the Government adopted at

the end of May 2003 amended Law 161/2003, allowing dignitaries appointed or proposed by the President, such as ambassadors, judges and presidential counsellors, to maintain their public positions even if they were involved in private or state enterprises. This runs completely counter to the principle of incompatibility. Up to now not a single case of incompatibility has come to light in the Ministry of Labour, for example.

Training of Civil servants

Training has been developing well since the creation in August 2002 of the National Institute of Administration (INA). INA delivers training for central state, municipal and regional employees in eight training centres operating throughout the country. Training for the time being is provided mainly through short courses and continuous training. The training offered in 2003 is comprised of general thematic programmes (for managers), professional training programmes (for all categories of personnel) and basic training programmes (for specific categories of civil servants). In the period from August 2002 and to June 2003, civil servants participating in training programmes organised by INA were 3,371 in number. This figure includes elected officials of local governments. INA has devoted a major effort to training civil servants for the European Computer Driving Licence (ECDL) certificate, attesting the ability to manage information systems through electronic technologies. Training on EU funds management has also been delivered. INA will be responsible for organising the special training programme foreseen in Government Decision 710/2002 for young professionals undertaking a fast track to enter the civil service (see above), which is due to start in the autumn of 2003. The announcement to participate in this programme and subsequently join the civil service was published in the Official Gazette on 13 June 2003 (Ordinance 615/2003 of 29 May 2003).

Funding for the INA is directly allocated from the state budget (60%); the remainder of its financing is provided through fees charged to institutions sending trainees to the INA (40%). The Institute now has a staff of 42, but it has a staff forecast of 70 maximum. The permanent staff deal mainly with training management. Visiting trainers are mainly practitioner civil servants (70%), and university professors (30%). The establishment of the INA as a functioning central capacity for training civil servants represents a major step towards the professionalisation of the civil service, a required step which was delayed for far too long. The integration of INA in international European networks of civil service training institutions (LASIA, NISPAcee, etc.) is taking place progressively. This integration is a positive step towards overcoming the isolation that has affected the Romanian civil service. It can contribute decisively to disseminating throughout the country the training concepts, practices and approaches that are now contributing significantly to civil service development in other European countries.

Although certain key elements of the civil service are now better regulated, the civil service as a professional option still remains unattractive because politicisation is still high and salaries are too low. If the new regulations are consistently and steadily implemented, the Romanian civil service may become an attractive professional option for young professionals, but the government needs to adopt a more positive stance towards increasing salaries. Salaries in general are low, but especially in municipalities.

Participation of the representatives in decision-making and control concerning personnel management matters

The Civil Service Statute provides civil servants with the right to form or join trade unions. Normative acts oblige the government to consult civil servants trade unions in decision-making, and the participation of these organisations in examining boards, disciplinary committees and parity committees is also ensured by law. Dialogue between the government and the civil servants trade unions is becoming an institutionalised practice. The current government has initiated policies to foster the involvement of civil service representatives in some management decisions by developing secondary legislation to implement articles 18 and 19 of the Civil Service Statute. A Government Decision of October 2001 set up joint committees *(^commissions paritaires")* with an advisory role concerning working conditions, health and safety in the work place, and good functioning of public authorities and institutions. Civil servants are also allowed to go on strike. Although no regulation exists, the government and the NACS consult on draft legislation with representatives of trade unions on a rather informal basis. Law 161/2003 enhances the role of trade unions through a new regulation on collective negotiations (articles 59-61 of the new law). The unionisation of civil servants is low, however.

USFPR, one important civil service trade union, provides legal support to its members in their dealings with the administration. USFPR has a legal department of 52 staff. In practice, however, it is difficult for civil servants to lodge complaints in court against their employing authority without being ostracised in the work place.

Transparency in the Administration

The Romanian administration is still largely based on the inherited system of secrecy and confidentiality. Civil servants are obliged to maintain confidentiality, as stipulated by law (article 44 of the Civil Service Law 161/2003), and incur disciplinary liability if they do not observe this obligation (articles 44 and 70). This obligation of secrecy still remains highly valued in the new civil service legislation of 2003, although it has been limited by the new article 44 to maintaining secrecy in all matters that are not of public interest. This particular provision would have deserved a better regulation formulated in a positive way, i.e. by establishing openness and transparency as the general obligatory rule while keeping the obligation of confidentiality as the exception.

Law 544/2001 on Free Access to Information of Public Interest (Official Gazette of 23 -October 2001) establishes some regulations on the above issue, but it is very restrictive. A government regulation supplements this law with a number of methodological norms. According to this legislation, public information is any information produced or managed by public institutions or authorities. It is freely accessible except when it refers to classified information listed in article 12-1 of this law. Classified information relates to national defence, security and public order, personal data, authorities' debates, economic and political interests of Romania, etc. However, article 12-2 states that decisions to apply measures to keep classified information secret depend on the authority holding the information. Against this rather wide discretion in the hands of the authorities, individuals have only recourse to the court through a lengthy and uncertain procedure. In addition, this legislation is inconsistent with other pieces of legislation, such as the Law on State Secrets or the Civil Service Law, thus making its implementation problematic. Civil servants are very hesitant about whether or not to provide information, and generally opt for the negative solution in view of the possibility of facing disciplinary penalties. The most probable single outcome of this legislation might be the creation of information offices and public relations departments in ministries and institutions. In any case, although limited, this law represents a step forward towards more transparency in the Romanian administration. In 2002 the Ombudsman (People's Advocate) received 397 complaints related to access to public information. A considerable number of claimants complained about the denial of information concerning environmental issues.

Law 52/2003 on Decisional Transparency in Public Administration entered into force on 4 April 2003. This law obliges public authorities to publish draft regulations at least 30 days before their adoption, as well as other measures concerning openness in administrative decision-making and citizens participation in the legislative and decision-making processes. Courts can redress breaches of this law in accordance with Law 29/1990 on Administrative Disputes, and civil servants responsible for such breaches can be punished disciplinarily. However, after 4 April 2003 the government and municipalities continued issuing regulations, without respecting the procedural constraints established in Law 52/2003.

Law 161/2003 also contains two titles in Book I of the package of laws for combating corruption, in which the Civil Service Law is included: "Transparency of Information with respect to Budgetary Obligations Arrears" (Title I) and "Transparency in the Management of Information and Public Services through Electronic Devices". Law 161/2003 is an example of the inconsistent legislative practices that are common in Romania.

Conclusions

The new civil service legislation, although still with defects, represents a considerable improvement of the legal basis for the civil service and a clear approximation to civil service standards that are common to EU Member States. If the implementation of this legal framework is resolutely pursued, the professionalism of the Romanian civil service should improve considerably in the years to come. A more integrated regulation and management of public personnel, which includes labour contractees, would be advisable.

The mechanisms ensuring respect for the legality of administrative decisions and actions are weak. A general law on administrative procedures would help to clarify the administrative decision-making process and to establish reinforced accountability mechanisms. The independence of the judiciary needs to be reinforced, and a system of administrative justice should be better defined in order to enhance the judicial review of administrative acts and the protection of legality. Better mechanisms for law-making and impact assessment should be put into practice. The role of the People's Advocate should be further clarified and the institution strengthened. The protection of personal data should be better ensured. Current legislation impedes transparency and openness in public decision-making and needs a complete overhaul so as to be adapted to the democratic values propounded by the Romanian Constitution. Actions should be taken urgently to change administrative practices and to inculcate democratic values.

Recruitment, promotion, civil service classification, and provisions promoting political neutrality in the Romanian civil service are better regulated and clearer now than they were before the enactment of Law 161/2003. If implemented, this may contribute to improving civil service professionalism in a considerable way. However, regulations on promoting integrity continue to be weak, and they will probably not have any significant impact on reducing corruption in public administration.

Better elements for motivation and good performance now exist in legislation. Training is developing well The civil service may become more attractive in the medium term if adopted reforms are consistently implemented. However, salaries still remain too low.

The civil service management set-up, as defined by the new legislation, is sufficient to ensure that homogeneous management standards are applied to the civil service across all public administration settings. Nevertheless, the management capacity of the NACS needs to be strengthened and upgraded in order to meet its new responsibilities. The public employment system as a whole lacks consistency, as public employees under labour law fall within the general competencies of the Ministry of Labour, not within those of the NACS.

Next steps

One of the main priority of the Romanian Government in order to meet the requirements of the EU accession process as part of the Administrative reform is to **develop the Corps of Professionals Public Managers.**

Creation of accelerated mechanisms for recruitment and career development is meant to lead to the establishment of a competent, non-political corps of **Professionals Public Managers** within the Romanian civil service, with specific training enabling them to deal with EU accession related matters and the adoption and implementation of the acquis communautaire.

Technical assistance is focused on designing and organizing:

- selection of candidates based on merit through transparent competitive procedures and identification of management posts within the relevant Government ministries and public institutions in areas of high priority for the accession process and the implementation of the acquis, to which the new recruited professionals will be assigned after the training scheme
- appropriate training scheme preparation and delivery for recruits
- professional development internships with EU Member States Public Administration
- scholarship scheme organized through transparent, competitive grant award procedures based on open public competitions for postgraduate studies with EU Universities in areas relevant to EU integration and adoption and implementation of the acquis.

It is anticipated that several years will be required to fully develop and implement the Professional Public Managers scheme. The Government of Romania is committed to ensuring that recruitment to the Professional Public Managers scheme takes place in a transparent, non-political manner on the basis of merit, and to offering to those selected permanent salaried positions in the public administration. The Ministry of Public Administration through the National Agency of Civil Servants will establish adequately attractive conditions of service, including appropriate salary levels, under the scheme, and will take steps to ensure that good career development prospects provide incentives to recruits to pursue a long-term career in the civil service in support of Romania's EU accession and membership.

National Agency of Civil Servants proposed that the main objective within this strategy, which represents a part of the strategy of the public administration's reform, is to assure a professional, responsible, impartial, merit-based civil service that will be created by the next specific objectives:

- Introducing the management by performance and developing a citizen-orientated civil service
- Developing the institutional capacity of the Agency in order to elaborate, implement, monitor and coordinate the applicability of the policies of human resources within the civil service system
- Developing the human resources planning capacity in order to create an integrated informational system
- Creating and implementing a job evaluation system and a simple and transparent salary system in order to motivate the civil servants and to reflect the importance of the activity and to attract competent civil servants and in order to be financial sustained
- Creating and implementing a merit-based recruitment and promotion system
- Establishing performance and conduct standards for the civil servants

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