

MERIT SYSTEM IN THE PUBLIC ADMINISTRATION: WILL THE PROPOSED LAW ON SENIOR MANAGEMENT SERVICE YIELD DESIRED RESULTS?



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BACKGROUND: NEW REGULATIONS THAT GOVERN PUBLIC ADMINISTRATION

The Draft Law on Senior Management Service^[1] was uploaded in the Single National Register of Regulations (ENER) of the Republic of North Macedonia (hereinafter: Macedonia) in the second half of 2021, i.e. on 17 September 2021. It is a matter of completely new piece of legislation that has not existed in the legal system in Macedonia and introduces serious changes in respect to the top-level positions in the public administration, ultimately affecting performance of the public administration – efficiency, accountability, quality, etc. In addition, other legal regulations relevant for the public administration were also published in ENER.^[2]

At the moment, a relatively major reform process is initiated in Macedonia and concerns public administration staff (all levels), aimed at professionalization and enforcement of the merit system. The primary focus of this policy document is the Draft Law on Senior Management Service. It aims to provide a critical overview of particular provisions under the law and to find alternatives thereto.

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MERIT SYSTEM IN THE PUBLIC ADMINISTRATION: IMPORTANCE AND ENFORCEMENT, WITH OVERVIEW OF TOP-LEVEL POSITIONS IN THE ADMINISTRATION HIERARCHY

Undoubtedly, the Draft Law on Senior Management Service is developed for the purpose of enhanced implementation of the merit system in the public administration of Macedonia. As indicated in the notice on commencing work for drafting the Law on Senior Management Service:^[3] “the new Law on Senior Management Service (SMS) will establish a unified procedure for appointment to senior management positions, **by professionalization of such management positions...**”.

2.1.

Importance of the merit system

Before engaging in analysis of individual provisions, we must first dissect the meaning of public administration professionalization, i.e. the merit system and its scope.

Actually, there are no dilemmas that public administration professionalization and enforcement of the merit system are topics frequently raised in the public. This principle is duly referenced in all three strategies on public administration reform in Macedonia (adopted in 1999, 2010 and 2018).

From the first half of the last century to present, numerous scholar papers, both in domestic and foreign literature, have been written on this topic (Cosgrove, 1940; and later Perry, 1986; Slack, 1988; Cortázar, Fuenzalida, Lafuente, 2016; Davitkovski & Pavlova-Daneva, 2018; Blazhevski & Rizaov, 2019, and others), including documents published by international organizations, for example, the Organization for Economic Cooperation and Development’s (OECD) Public Integrity Handbook.^[4]

Enforcement of the merit system receives increasing attention by the European Union in the context of its enlargement process. While enforcement of this system is not explicitly enlisted in the chapters that comprise the EU Membership Negotiations Framework, stability of institutions (including administration bodies), their efficiency and quality, form integral part of the so-called Copenhagen Criteria.^[5] Of course, stability, efficiency and quality of institutions would be most affected by the criterion applied in respect to staff recruitment (from lowest to highest level). Therefore, independently from the fact that there is no unified concept for the manner in which state administration should be organized, the European Union has developed the concept of “good governance” that has emerged from the EU Charter of Fundamental Rights.^[6] This concept includes several principles, one of which concerns a merit-based system for recruitment. These issues are elaborated in greater details in the publication titled “The Principles of Public Administration” issued by SIGMA (joint initiative of OECD and the European Union focused on public administration reform).^[7]

[1] See: https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=51541 [last retrieved on 25.10.2021]

[2] Two other legal regulations were posted in ENER on the same day, those being: Draft Law on Administrative Officers and Draft Law on Public Sector Employees. If these regulations are adopted, they will replace the current Law on Administrative Servants and Law on Public Sector Employees. Moreover, another legal regulation of interest was also posted in ENER in August 2021: Draft Law on Amending the Law on Public Enterprises. In particular, these amendments concerns management and supervisory boards.

[3] See: https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_ann_detail&itemid=R6x2TA4IiVCBOstULIubrg [last retrieved on 25.10.2021].

[4] See: <https://www.oecd-ilibrary.org/sites/270b68d2-en/index.html?itemId=/content/component/270b68d2-en> [last retrieved on 27.10.2021].

[5] See: http://publications.europa.eu/resource/cellar/0be1e0e2-9aa6-11e6-868c-01aa75ed71a1.0001.03/DOC_1 [last retrieved on 09.11.2021].

[6] See Art.41: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN> [last retrieved on 09.11.2021].

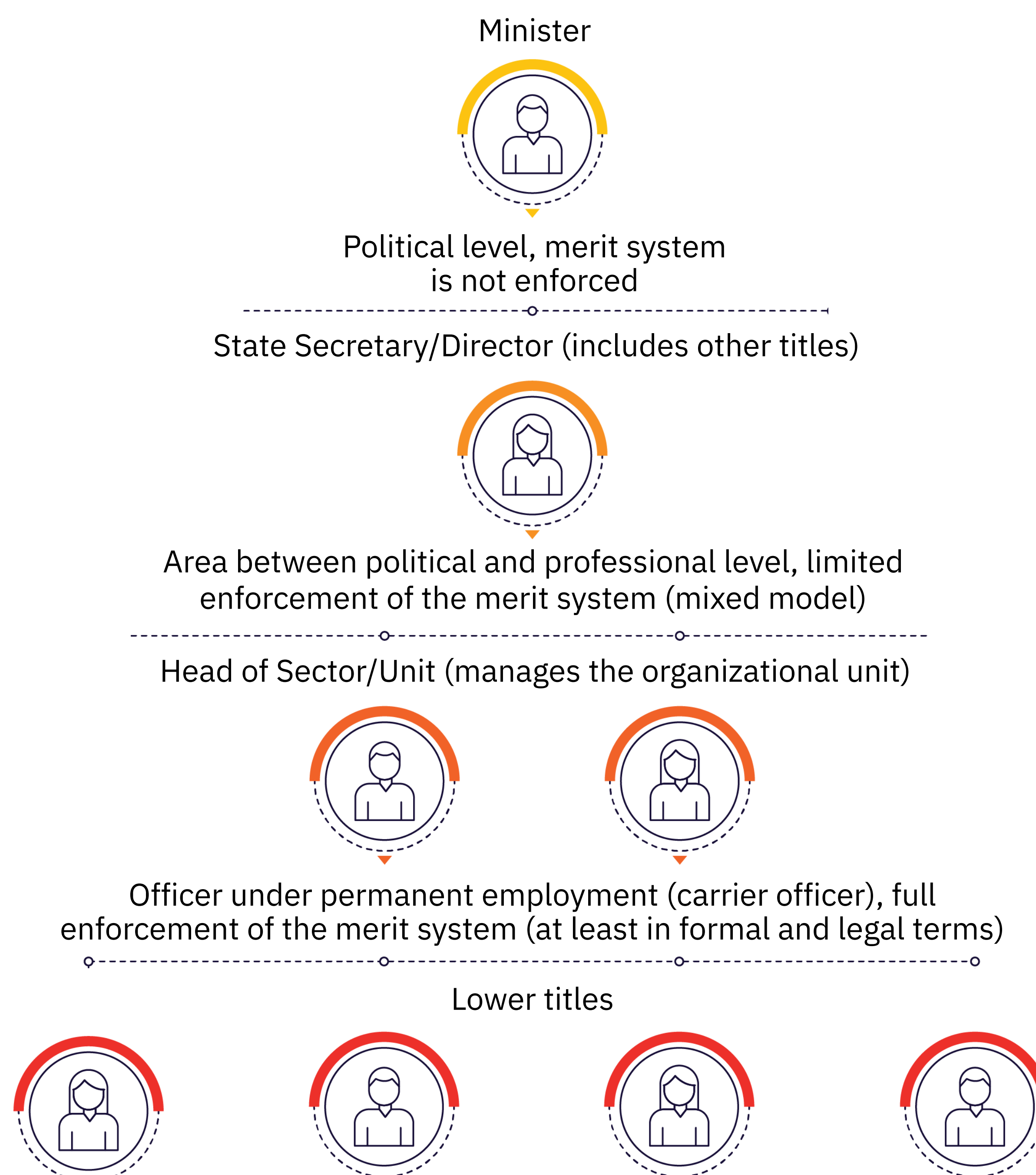
[7] Available at: <http://www.sigmaweb.org/publications/principles-public-administration-nov2014.pdf> [last retrieved on 09.11.2021].

Systematization of all written works (books, papers, policy briefs, national strategies, etc.) provides the conclusion that, in the case of the merit system for the public sector, reference is made to recruitment in the public administration (employment/promotion) **by means of open and competitive testing** (Pavlovska-Daneva & Davitkovska, 2012, pg. 97), resulting in selection of the most competent candidates. Moreover, in the case of job promotion, carrier advancement or job security, the merit system implies fair competition (for promotion to higher title) and elimination of persons that have failed to perform their jobs with quality and/or have not corrected their performance in line with the quality standard. Nevertheless, issues related to job promotion, salary and the like are not in the focus of this paper. Theoretically speaking, the system of spoils is on the opposite end of the merit system, which means that the holder of political power (party/coalition that has won the elections) is entitled to appoint administrative officers it prefers instead of those that are the most competent.

2.2. Enforcement of the merit system

Evident from the referenced literature available in Macedonia and abroad, there is a tendency of increasingly broad enforcement of the merit system. However, this system is not marked by absolute implementation (in formal and legal terms).

Hence, it is evident that the merit system is not applicable to persons in the public administration that hold top-level political offices (for example, ministers). Furthermore, the merit system has limited enforcement, depending on the country in question, in respect to top-level positions in the administration hierarchy (most often these are secretaries or directors). If we attempt to provide a more general illustration unrelated to specific country, it would like the one shown in the chart below:



A comprehensive study on enforcement of the merit system in respect to top-level positions in the administration hierarchy is available in the publication titled “Top Public Managers in Europe: Management and Employment in Central Public Administrations” (Kuperus & Rode, 2016).

At the level of individual countries, in Slovenia, for example, at the top of the administrative hierarchy and just below the minister we find state secretaries appointed by the Government, implying that the merit system is not applicable to this job position. This is regulated in the Law on State Administration (Zakon o državni upravi).[8] However, unlike state secretaries in Macedonia, those in Slovenia are considered public officials (in the meaning of deputy ministers within our system). Therefore, it is implied that their appointment is not based on the merit system.[9] Furthermore, ministries also have general directors that manage administrative and professional matters in the field covered by the concerned ministry. In the past, they could also represent the ministry (in the absence of their minister and state secretary) before the Parliament. Below them we find secretaries general that manage human resources, finances, information and other resources, and help their ministers coordinate with internal units at the ministry. For both positions (general manager and secretary general), the recruitment procedure provided in the Law on Civil Servants (Zakon o javnih uslužbenicah)[10] differs from the procedure applied in the case of lower-rank civil servants. The open call is published by the so-called Council of Public Officials (Uradniški svet). This Council, acting as separate state body, forms ad hoc (selection) committees that organize procedure for selection of adequate persons for this position, i.e. meet the conditions for performance of this office, followed by final decision taken by ministers/public officials who are authorized by law to appoint directors/secretaries general. Actually, this represents a combined model. Although the principle of merit is partially enforced (Council of Public Officials examines which candidates meet the conditions), ministers/public officials have discretionary right to decide which person will be appointed to this position, even if the person is not the best-ranked (but still meets the conditions stipulated for director/secretary general).[11]

In Serbia, according to the Law on Civil Servants (Zakon o državnim službenicima),[12] secretaries at the ministries are appointed by the Government. The situation in Croatia is similar, with ministers being allowed to have one or more state secretaries appointed by the Government, on proposal from the Prime Minister. The example in Poland does not differ much, as persons appointed to top-level positions in the administration hierarchy (general directors/directors of authorities, and similar titles) are appointed by public officials.[13] Nevertheless, they are still subject of certain minimum conditions that must be met (for example, to have a master degree, defined number of years in respect to relevant work experience, etc.).

An opposite example is seen in Denmark where recruitment of persons to top-level positions in the administration hierarchy (permanent secretary, general director of agency, director of department, etc.) is made under open procedure that allows competition among candidates from both public and private sector. More information about this model is available in the publication titled “Public Employment in the European Union Member States” (Yábar, Morgades & Duro (editors), 2010, pg. 59).

In other words, as desired as it might be, the merit principle has limited enforcement in individual states. In that regard, there is no dilemma whether the merit system should be used for appointment of ministers. In this case, the principle is not applied and should not be applied. Nevertheless, dilemmas arise about the extent to which the merit system should be applied within the administration hierarchy (titles and levels).

The Draft Law on Senior Management Service is reviewed in that context. Namely, this piece of legislation is intended to expand use of the merit system in Macedonia.

[8] Official Gazette no. 52/02 ...82/21.

[9] In other words, although they are identical in terms of terminology, state secretaries in Macedonia and state secretaries in Slovenia perform different function. As elaborated later in this document, state secretaries in Macedonia are still considered administrative officers at the ministry. In Slovenia, state secretaries are not employed at the ministry, but perform political function similar to the one held by the minister. Hence, parallels can be drawn between secretaries general in Slovenia and state secretaries in Macedonia.

[10] Official Gazette no. 63-07 ...158/20.

[11] Article 64 of the Law on Civil Servants (Zakon o javnih uslužbenicah).

[12] Official Gazette no. 79/2005...157/2020.

[13] See: <https://www.gov.pl/web/civilservice/the-civil-service-system-in-poland> [last retrieved on 10.11.2021].

3

DRAFT LAW ON SENIOR MANAGEMENT SERVICE (LAST VERSION PUBLISHED IN ENER ON 17.09.2021)

As indicated above, the Draft Law on Senior Management Service is complete novelty in the Macedonian legal system. Actually, unlike the Draft Law on Administrative Officers and Draft Law on Public Sector Employees, both intended to replace existing Law on Administrative Officers and Law on Public Sector Employees, the Law on Senior Management Service would be a completely new piece of legislation.

If we attempt to summarize novelties introduced by this law after its adoption, they would include:

- » introduction of new terms in the Macedonia legislation such as “senior manager”^[14] and “senior management service”,^[15] which actually concern:
 - » secretaries at ministries and municipalities;
 - » directors of autonomous state administration bodies and bodies within ministries;
 - » directors of public enterprises;
- » complete change of the procedure for appointment of secretaries at ministries and secretaries at municipalities;
- » complete change of the procedure for appointment of directors of autonomous state administration bodies, bodies within ministries and public enterprises (central and local);
- » introduction of minimum criteria that must be met by secretaries/directors;
- » introduction of disciplinary liability for above named categories of persons;
- » introduction of completely new rules on dismissal of above named categories of persons;
- » formation of new administration body tasked to implement above referred procedures for appointment of senior managers.

Given the limited space for discussion in this paper, among the array of novelties, we focus only on appointment (but not on accountability, dismissal and the like).

To provide an overview of novelties, we first present them one by one, including comparison between the current regime and newly anticipated provisions under the Draft Law on Senior Management Service. When certain dilemmas arise in respect to draft provisions, they will be elaborated separately.

3.1.

Appointment of secretaries at ministries and local self-government units, i.e. appointment of directors

3.1.1

Current regime for appointment and performance of secretaries at ministries and local self-government units

According to the Law on Administrative Officers that is effect, adopted in 2014 (“Official Gazette of the Republic of Macedonia” no. 27/2014, 199/2014, 48/2015, 154/2015, 5/2016, 142/2016 and 11/2018 and “Official Gazette of the Republic of North Macedonia” no. 275/2019, 14/2020 and 215/2021), there are four categories of administrative officers (each of which includes several levels and titles):

[14] The definition of “senior manager” cover persons “that are responsible for administrative and organizational work at the institution and manage resources disposed by the institution, in order to contribute to implementation of policies adopted by the Parliament, the Government of the Republic of North Macedonia, ministries and other public sector institutions”.

[15] The definition of “senior management service” reads: “senior management service shall cover top-level managing positions at public sector institutions that are directly accountable to public officials and other politically elected and appointed persons and represent the link between the political and administrative structure within the institution”.

Category (from highest to lowest)	Level and title
Category A secretaries	• State Secretary (at ministries)
	• Secretary General (Government, Constitutional Court, Judicial Council, Council of Public Prosecutors, etc.)
	• Secretary of the City of Skopje
	• Secretary of Urban Municipality
	▶▶▶ Secretaries at Local Self-Government Units
	• Secretary of Rural Municipality
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Category B managing administrative officers	• State Advisor
	• Head of Sector
	• Assistant Head of Sector
	• Head of Unit
<hr/>	
Category C professional administrative officers	• Advisor
	• Senior Associate
	• Associate
	• Junior Associate
<hr/>	
Category D assistant professional officers	• Independent Officer
	• Senior Officer
	• Officer
	• Junior Officer

Provisions from the Draft Law on Senior Management Service cover state secretaries at ministries and secretaries at local self-government units. In other words, this law does not cover secretaries general.

According to current provisions from the Law on Administrative Servants (Art.23), state secretaries are appointed by ministers from the ranks of managing administrative officers (category B) employed at the ministry. Secretaries of local self-government units are appointed by mayors, also from the ranks of managing administrative officers.

Actually, the legal solution in effect relies on two assumptions.

First, the ministers, i.e. mayors enjoy certain discretion in respect to appointment of secretaries, having in mind that this person, at the top of the administration hierarchy, should implement – to some extent - their political will, by giving instructions to managing administrative officers (category B). In other words, state secretaries at ministries and secretaries at local self-government units translate the public official’s political will (minister/mayor) into specific tasks delegated to lower levels of administrative officers. Also, they manage human resources at the concerned administration body.

Second, it is assumed that quality of secretaries is secured by the fact that they are appointed from the ranks of managing administrative officers employed at the ministry/municipality. Namely, most often a person becomes head of sector/unit at ministries/municipalities by promotion into higher title during his/her carrier. For reference purposes, a review of rulebooks on job systematization at several ministries and municipalities shows that persons with several years of work experience in their profession (starting from at least five years

and above) can be appointed as head of sector/unit.[16] Hence, secretary of any administration body is always a person qualified to hold senior title. In addition, the fact that the Law on Administrative Officers anticipates this person to be selected from the ranks of existing heads of sectors/units ensures that he/she has experience at the concerned body. The single anomaly under the current regime from the Law on Administrative Officers is that it does not anticipate a situation in which a person is first employed as head of sector/unit and immediately afterwards the same is appointed secretary (employment as head of sector/unit serves as step towards attainment of the final goal, i.e. being appointed as secretary). Such cases devalue essence of the Law on Administrative Officers, i.e. secretaries to be persons with long work experience at the body where they are appointed to this position.

3.1.2 Current regime for appointment of directors

In the case of directors, there are several distinctions, i.e. different regime is in place for appointment of directors at administration bodies (autonomous or bodies within ministries) and public enterprises. Differences are noted both in respect to procedure and criteria applied.

Directors of autonomous state administration bodies (for example, the Agency for Youth and Sport, the State Industrial Property Office, etc.) and bodies within ministries, are appointed pursuant to Art.47 of the Law on Organization and Operation of State Administration Bodies (“Official Gazette of the Republic of Macedonia” no. 58/2000, 44/2002, 82/2008, 167/2010 and 51/2011 and “Official Gazette of the Republic of North Macedonia” no. 96/2019 and 110/2019): “work of autonomous state administration bodies, administrative authorities and bodies within ministries, shall be managed by directors appointed and dismissed by the Government, unless otherwise stipulated by law”. In essence, these directors are appointed by the Government’s Commission for Appointments, which initiates a procedure for selection and presents the Government with proposals for appointment and dismissal pursuant to the Government’s Rules of Procedure”.[17] All directors are appointed on the basis of public call/open competition. Criteria for appointment of directors are stipulated under separate laws that govern operation of the concerned body. For example, criteria for appointing director of the Administration for Execution of Sanctions (body within the Ministry of Justice) are stipulated under the Law on Execution of Sanctions, while director of the Bureau for Representation of Macedonia before the European Court of Human Rights (another body within the Ministry of Justice) is subject to criteria defined under the Law on Representation of the Republic of Macedonia before the European Court of Human Rights, and criteria for director of the Public Revenue Office (body within the Ministry of Finance) are stipulated in the Law on the Public Revenue Office, etc. Most material laws anticipate criteria for appointment of relevant directors. However, there is certain non-unification in respect to required work experience (different number of years), but also in respect to the area in which the person has worked before being appointed as director.

On the other hand, directors of public enterprises are appointed pursuant to the Law on Public Enterprises (“Official Gazette of the Republic of Macedonia” no. 38/96, 9/97, 6/02, 40/03, 49/06, 22/07, 83/09, 97/10, 6/12, 119/13, 41/14, 138/14, 25/15, 61/15, 39/16, 64/18 and 35/19 and “Official Gazette of the Republic of North Macedonia” no. 275/19). Directors of national public enterprises (founded by the government) are appointed by management boards, on public call. Directors of local public enterprises (founded by local self-government units) are appointed by mayors, upon previously organized public call. Criteria for appointing directors of public enterprises by the Government require the candidates:

- » to hold valid citizenship;
- » to have acquired at least 240 credits under ECTS or to have completed VII/1 level of education;
- » to have at least five years of work experience;
- » not to have been issued prohibition for performance of activity, profession or duty;
- » to have certificate for English language skills.

[16] Rulebook on Job Systematization at the Ministry of Justice: [https://www.pravda.gov.mk/Upload/Documents/Pravilnik%20za%20sistemizacija-precisten%20tekst%202020%20\(1\).pdf](https://www.pravda.gov.mk/Upload/Documents/Pravilnik%20za%20sistemizacija-precisten%20tekst%202020%20(1).pdf) [last retrieved on 27.10.2021]; Rulebook on Job Systematization at the City of Skopje: [https://www.pravda.gov.mk/Upload/Documents/Pravilnik%20za%20sistemizacija-precisten%20tekst%202020%20\(1\).pdf](https://www.pravda.gov.mk/Upload/Documents/Pravilnik%20za%20sistemizacija-precisten%20tekst%202020%20(1).pdf) [last retrieved on 27.10.2021]; Rulebook on Job Systematization at the Ministry of Information Society and Administration: https://www.mioa.gov.mk/sites/default/files/pbl_files/documents/Pravilnik_za_sistemizacija_MIOA_2021_konsolidiran.pdf [last retrieved on 27.10.2021].
 [17] See: https://vlada.mk/sites/default/files/img/delovnik_za_rabota_na_vladata_na_rsm_neoficijalen_prechisten_tekst.pdf [last retrieved on 27.10.2021].

The Law on Public Enterprises does not stipulate any conditions for appointing directors of local enterprises. In the case of national enterprises, it should be noted that, in some cases, these generic conditions are derogated by special laws that govern operation of particular enterprises (in the sense of stipulating more rigid conditions).[18]

3.2.

Appointment of secretaries and directors pursuant to the Draft Law on Senior Management Service

As already indicated, the Draft Law on Senior Management Service subsumes all above enlisted categories (directors and secretaries of different institutions) under the term “senior managers”.

In that, it anticipates a separate regime for appointment of senior managers. First, it anticipates criteria to be met by senior managers, as follows:

- » to hold valid citizenship;
- » to have completed higher education with acquired 240 credits under ECTS or to have completed VII/1 level of education;
- » to have at least six years of work experience after graduation, of which at least two years on management position in public and/or private sector;
- » not to have been issued prohibition for performance of profession, activity or duty;
- » to have internationally recognized certificate for English language skills (several tests are eligible);
- » to demonstrate required general or special competences defined under the profile for the senior management position.

The last notion, job profile, is also regulated under the Law on Senior Management Service. Namely, prior to publishing an open call for senior management position, a profile should be defined including general and special work competencies. Public officials at the bodies where senior managers are selected should provide comments about the job profile.

As regards the procedure for appointment of these persons, the first thing that should be noted concerns existence of the Commission on Senior Management Service (hereinafter: CSMS) as separate administration body held accountable before the Government. CSMS is comprised of five members elected by the Government under procedure that is very similar to the procedure applied by the Parliament for election of members in the State Commission for Prevention of Corruption.[19] For the purpose of appointing senior managers, CSMS forms so-called hubs of human resource management practitioners and hubs of former or current managers in public or private sector. Then, for each individual appointment, SCPS selects a five-member selection committee from these hubs (president and member from CSMS, expert in the field of competences covered by the institution and proposed by the public official, member from the hub of former or current human resource management practitioners and member from the hub of former or current public sector managers).

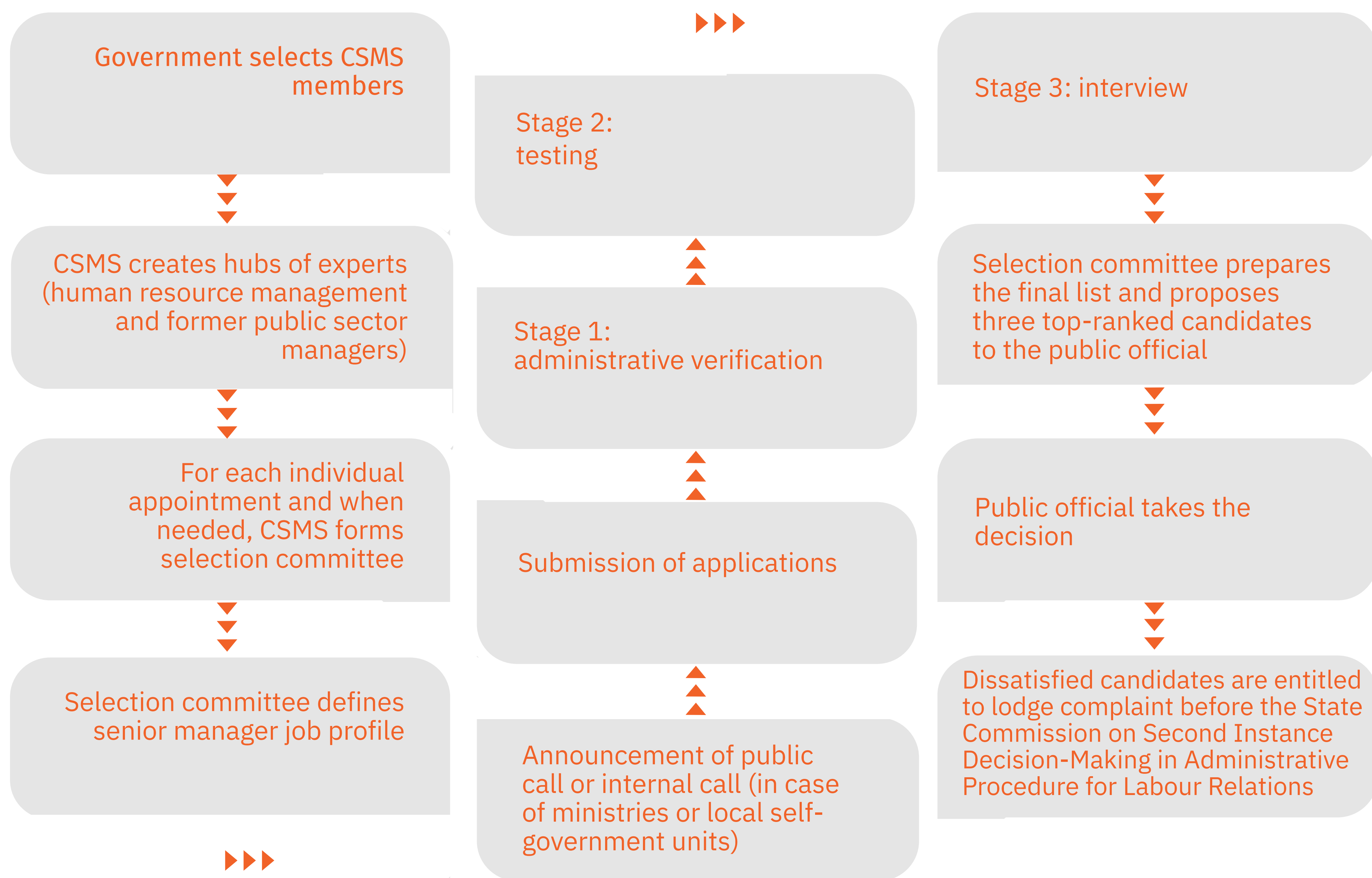
After the selection committee is formed and the job profile is defined, a public call is announced for appointment of senior manager. However, the relevant article under the Law on Senior Management Service titled “Public call for senior management position” (Art.31) stipulates an exemption under paragraph 4: “Recruitment of senior management positions at ministries and local self-government units shall be subject of internal call for public sector employees and when senior manager is not recruited in this manner, a public call shall be announced.”

Furthermore, there are three stages in the process for appointment of senior managers. They include administrative selection (verification of data enlisted in the application), testing and structured interview (oral or written, based on situational questions, essays, case studies, but could also include verification of language skills). After the three stages are completed, the selection committee sends and proposes a final list with up to three successful candidates to the public official, who takes the decision on appointment of senior manager.

[18] For example, such is the case of the Public Enterprise Macedonian Broadcasting, whose separate law (“Official Gazette of the Republic of Macedonia” no. 6/98, 98/00, 48/09 and “Official Gazette of the Republic of North Macedonia” no. 43/19 and 152/19) anticipate stricter conditions for appointment of the director (work experience in the specific vocation).

[19] See: Law on Prevention of Corruption and Conflict of Interests (“Official Gazette of the Republic of Macedonia” no. 12/19)

To facilitate better understanding, the entire process is presented as flow chart.



Finally, the draft law anticipates a possibility for taking decision on non-selection when there are no candidates or there are no candidates that meet the conditions in any stage of this process. In such instances, CSMS adopts a decision not to recruit the senior management position. Also, when the final list is presented to the public official and it features only one candidate, the public official may decide not to appoint the senior manager. These cases are subject to organization of new procedure.

4

DILEMMAS ABOUT LEGAL SOLUTIONS RELATED TO APPOINTMENT OF SECRETARIES AND DIRECTORS

Thus far, the paper elaborated stipulations under the Draft Law on Senior Management Service *vis-à-vis* current solutions in respect to the criteria and procedure for appointment of secretaries at ministries/local self-government units and directors. However, several dilemmas emerge:

? Should the Law on Senior Management Service cover secretaries at municipalities and the City of Skopje? Evident is the law’s intention to deprive mayors of powers related to appointment of secretaries (as top-level officers in the administration hierarchy). However, according to Art.115 of the Constitution: “municipalities shall be independent in performance of competences stipulated by the Constitution and by law, and oversight on lawfulness of their operation shall be performed by the Republic”. In that, Art.114, paragraph (4) stipulates that “local self-government shall be organized by means of a law adopted with two-third majority vote from the total number of MPs.” That is the Law on Local Self-Government which also regulates municipal administration and its management by respective mayors, including that employment of officers is subject to provisions from the Law on Administrative Officers (derogated under the current Law on Administrative Officers). In that respect, the question is raised whether it is constitutionally for selection of municipal secretaries to be performed by a central administration body? While the final decision is taken by mayors, they are limited in terms of candidates (maximum 3) proposed by CSMS (more specifically, the selection committee).

? Moreover, the question is raised about purposefulness for municipal secretaries to be appointed under procedure conducted by CSMS? The overall procedure implies serious resources and due consideration should be made of the fact that some municipalities in Macedonia are rather small. Fact is that the merit system necessitates a process like the one described above, but portion of all 80 municipalities have less than 20 employees (taking into account assistant and technical officers responsible for hygiene maintenance, transport and the like).[20] Hence, valid is the question whether implementation of the full appointment procedure is purposeful, instead of allowing mayors of small municipalities to appoint their secretary at own discretion from the ranks of existing heads of sectors/units, especially for secretaries that currently hold the title “secretary of rural municipality”.

? Actually, the question whether the merit system should be applied is valid for all secretaries. Although the current legal solution is not ideal, having in mind that there might be cases where a person is being employed as head of sector/unit solely for the purpose of later appointment as secretary, this solution – to certain extent – ensures that the person appointed is knowledgeable of work performed by the concerned ministry/local self-government and has long work experience at the body, and could be more adequate to implement the political will, i.e. translate it into specific tasks for employees. Namely, serious discussion is needed about the issue whether the merit system should have an all-encompassing enforcement, covering all levels in the hierarchy of administrative officers. Such discussion should take place at a series of public debates with participation of persons from the public sector, as well as the academia, non-governmental and private sectors.

? As indicated above, in the case of ministries and local self-government units, prior to publishing a public call, the selection committee first announces an **internal call** for public sector employees.

This provision raises several dilemmas:

- » Why does the provision refer to “internal call for public sector employees”, but not to internal call for employees at the concerned institution? According to this formulation, any person employed in the public sector could apply for appointment as secretary at certain ministry, independently from the fact whether he/she comes from local self-government, central government, public enterprise and the like, as long as he/she meets the criteria. Hence, this formulation needs to be revised.
- » The fact that this provision stipulates “for the purpose of recruiting senior management positions at ministries and local self-government units...” means that it specifically concerns secretaries, but not directors (they are not employed at ministries and local self-government units). Consequently, use of internal calls implies return to the current regime (appointment of secretary from the ranks of heads of sectors/units), with the difference that the new solution allows a slightly broader pool of possible candidates.
- » On the other hand, why are internal calls not used in the case of public enterprises which also have persons with long work experience that would be adequate to be appointed as directors? For illustration purposes, why did authors of the draft law assess that internal call at the level of the entire public sector is adequate for appointment of secretary at the Ministry of Justice, Ministry of Economy or any other ministry, but not in the case of local public enterprise that provides water supply services? It is more than certain that a public enterprise supplying drinking water to citizens employs persons with long work experience who could be impeccable in performing the office of directors (it could be argued that these persons are much better suited for this office compared to any person that worked at private enterprise in completely different field of activity).

[20] 2015 research on the number of employees per municipal administration. Although it is a matter of research with an older date, the image has not changed dramatically. The list available at: <https://scoop.mk/%D0%B7%D0%B0-%D0%B5%D0%B4%D0%BD%D0%B0-%D0%B4%D0%B5%D1%86%D0%B5%D0%BD%D0%B8%D1%98%D0%B0-%D0%B1%D1%80%D0%BE%D1%98%D0%BE%D1%82-%D0%BD%D0%B0-%D0%B2%D1%80%D0%B0%D0%B1%D0%BE%D1%82%D0%B5%D0%BD%D0%B8-%D0%B2/> [last retrieved on 27.10.2021].

» Also, why are internal calls not anticipated for appointment of directors of administration bodies (autonomous or bodies within ministries)? For illustration purposes, would it not be more adequate for director of the Administration for Execution of Sanctions (which, in simple terms, controls performance of prisons) to be selected from the ranks of employees at this administration or penitentiary facilities; or for director of the Public Revenue Office to be selected from the ranks of persons with long work experience as tax officers?

? Criteria defined for appointment of senior management include at least 6 years of work experience, two of which should be on management position in public or private sector. The question is raised about adequacy, for example, of private sector management experience for appointment as secretary at ministries? Especially having in mind that, in Macedonia, 99.8% of all private sector companies are small or medium-sized enterprises (Ministry of Economy, 2018, pg. 17)[21]. According to one study from 2017, as many as 8,057 from the total of 71,519 active companies in the country do not have any employees (only company manager).[22] Hence, persons from the private sector usually work in small enterprises and manage a handful of employees, and sometimes they are managers without employees. The legitimate question, without any intention of discrimination, is whether work experience as private sector manager is relevant for human resource management at ministries (which, by rule, cover a broad spectrum of competences and hundreds of employees) or at administration bodies? On the other hand, persons from the private sector that have managed big companies are rarely motivated to be part of the administration hierarchy in the public sector (primarily due to financial motives, i.e. low salaries for management positions in the public versus the private sector).

? Is formation of CSMS adequate for the current situation in the state, having in mind resources required by such body (especially financial resources)? In 2020, there were total of 1,322 public sector institutions in Macedonia.[23] Of these, the draft laws covers all 16 ministries, 81 local self-government units (Skopje and 80 municipalities), 144 public enterprises, 36 autonomous state administration bodies and 30 bodies within ministries (total of 307). Hence, CSMS would have to form separate selection committees for 307 senior managers and secure relevant reimbursement for committee members, i.e. CSMS would have to implement relatively long selection procedures for management staff (with possibility of repeated procedure in the case of lack of candidates). Evidently, this will create a serious financial burden for the state budget.

In addition to these, there are other issues from the draft law that could be subject of in-depth analysis and review. However, in order to avoid overburdening this policy document, such issues could be covered under future research and analysis. Several recommendations are inferred on the basis of above presented facts and questions raised.

[21] The strategy is available at: <https://economy.gov.mk/Upload/Documents/Strategija%20za%20MSP%20-%20finalna%20verzija%2003%2004%202018%20.pdf> [last retrieved on 27.10.2021].

[22] See: <https://www.pravdiko.mk/vrtoglav-porast-na-brojot-na-chovek-firmi/> [last retrieved on 10.11.2021].

[23] See: 2020 Report from the Registry of Public Sector Employees, available at: https://mioa.gov.mk/sites/default/files/pbl_files/documents/reports/izvestaj_registar_2020_rev.1.01.pdf [last retrieved on 10.11.2021].

5

RECOMMENDATIONS

In order to expand (or enhance) use of the merit system with senior management in the public sector, several recommendations are considered valid, as follows:

- 01** The Draft Law on Senior Management Service should be revised and reduced to the level of regulation that governs minimum criteria for appointment of so-called senior managers, including restrictions for appointment of acting managers/directors and salaries, without anticipating formation of CSMS, but leaving appointment to be performed, as was the case before, by the Government (on recommendation from its commission for appointments), mayors and ministers. In other words, the Law on Senior Management Service should be a **general law** that regulates **minimum conditions** to be met by persons to be appointed senior managers. Of course, directors at administration bodies or public enterprises would continue to be subject of **separate laws** that stipulate stricter, not looser, appointment criteria. For example, criteria for directors at administration bodies such as the Administration for Execution of Sanctions should be further regulated under the Law on Execution of Sanctions. Nevertheless, **definition of minimum conditions under the Law on Senior Management Service would prevent appointment of certain directors that do not meet the formal criteria, i.e. conditions are defined in such manner that fulfilment thereof does not imply particular challenge and is indicative of the candidate's qualifications** (as is the case now, due to the fact that separate laws define predispositions that could be easily met).
- 02** If political actors do insist on adoption of this law, the scope thereof should be revised in respect to coverage of local self-government units. Such revision should concern two issues: constitutionally and purposefulness?
- » First, is it permissible for an autonomous administration body (CSMS), held accountable before the Government, to select candidates for secretaries at local self-government units, having in mind above-referred provisions from the Constitution and the Law on Local Self-Government, which is adopted by two-third majority vote compared to the Law on Senior Management Service that would be adopted with simple majority vote at the Parliament? If experts are more inclined to the opinion that current solution under the Law on Senior Management Service is contrary to the Constitution and the Law on Local Self-Government, due consideration should be made of accepting the Slovenian model elaborated above. CSMS (counterpart of the Council of Public Officials in Slovenia) should perform self-evaluation of candidates and present mayors with complete ranking lists instead of limiting selection to only three candidates. If mayors appoint low-ranking persons as secretaries in their municipality, they should be held politically responsible by their constituents, i.e. citizens.
- » Second, is it purposeful to implement the overall, complex procedure anticipated under the Law on Senior Management Service, which also implies serious resources, for selection of secretaries at municipalities with one to two dozen employees? This necessitates a cost-benefit analysis prior to taking decision in respect to its purposefulness. At the moment, it seems there is no justification for implementation of such expensive and time-consuming procedure for appointment of secretaries at small municipalities.
- 03** Alternatively, competent authorities should denounce efforts for adoption of this law, and regulate the criteria for appointment of persons covered by the law and the principles underlying this appointment procedure under other laws. This would imply introduction of new/amended provisions in the Law on Administrative Officers (secretaries) and Law on Public Enterprises (directors of public enterprises), while amendments to the Law on Organization and Operation of State Administration Bodies should further regulate other issues concerning directors of autonomous administration bodies and bodies within ministries.

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