

Completed Legal Structure Basis for Responsible Working of the State Administration (Paper of a Case Republic of Macedonia)

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Abstract—Currently rights, obligations and responsibilities of each administrative body are regulated within particular law. In the frames of these laws there are provisions which address on certain authorizations and responsibilities of the public servants i.e. in most of them the administrative body is authorized to assign and determine the functioning, roles and responsibilities of the employees in the administration part which directs to the conclusion of much diversity in the system. The establishment of unique rules for each participant into the public administration with clear roles and responsibilities as well as normative positioning of the obligation the public administration and authority stakeholders to introduce working procedures with clear indicators which are going to imply the public administration effectiveness the efficient, effective and responsible public administration is going to be produced. The new ground for effective and efficient working may be created if the system of the public administration is normatively governed with control mechanisms and penalty provisions. In direction of closing the circle of responsibility there is necessity of precise analysis, legal regulation that will determine the role, the authorization and the responsibility of the administration in one country.

INTRODUCTION

The ground of this research is to observe the role and the *stratification* of the public administration¹ in Republic of Macedonia as a significant pillar of effective and efficient functioning of the state department. It means that through the acknowledgement of *the legal completion of the institution “responsibility” of the state administration*, we will receive the closure of the circle of responsibility. In that direction it is imposed the necessity of precise determination of the appearance in the frames on which the problem and more concrete the subject itself is identified. It is evident by the title itself the *appearance* that initially attracts attention is the work of the bodies of the public administration, their effectiveness and efficiency, that is in other words the overall approach of the public administration in the achievement of its mission².

It is certain that the circle of responsibility primarily means existence of special organizational culture³ of accountability, if it can be formulated like, that when in the general perception it is started from the necessity and the regularity in the presentation of report for the done in a transparent way⁴, leaning on clear rules as directions for real acting. But, only the aspect of the organizational culture is not sufficient, although it is presumption for all the rest. It is necessary explicit and undoubted articulated

¹There is no general and generally accepted definition for the domain of the terms public and state administration. The domain of the public and state administration is different depending on the history of the state. There are two concepts for definition of the state service: wide concept, all that is, the largest number of public officials covered in the frames of the state service. In the countries which accepted the limited concept for definition of the state service only part of the employees in the state administration have status of public officials while those who are not public officials are considered to perform certain professions in public section, that is in the frames of the public services which are financed by the budget of the state (UNDP project “Support of the training system of the administration of the local self government “ (page 28)

²Mission of the public administration is more frequently identified with the functional mechanism of the national authority and the professional service of the state government .

³The organizational culture we most frequently meet as a synonym for the behavior in the organization based on perception, thinking and common feeling for the common problems. See more M.Petkovik(2003) Organizaciono ponashanje, Faculty of Economics, Belgrade page 53-76

⁴Transparency as a political concept directs to openness and publicity of the procedures for reaching political decision and the procedures through which they are conducted. The law for organization and work of the organ of the state department(Off. Gazette of RM 58/00 and 44/02) secures the transparency as one of the principles of working of the state administration. In the law of self government (Off. Gazette of RM number 5/02 there are also regulations by which it is regulated the information of public.

political will⁵ in the execution of the functions of the public administration to achieve pursuant to the directions of the model of closed circle of responsibility.

The basis for reform of the public administration are set in the Strategy for reform of the public administration adopted 1999. According to the pointed document by the state administration it is expected to show:

- Political neutrality⁶
- Responsibility⁷
- Conscious correct and unbribable management with the public resources⁸
- Fair relation at the execution of their work
- Openness for critics and challenges⁹
- Efficiency in the use of the resources when offering public services¹⁰
- High quality of the services with corresponding size of the real necessities of the citizens¹¹
- Permanency of the benefits and contributions of the society as a whole¹²

With the Constitution from 1991 the parliamentary system has been introduced with the clear determination of rights, the duties and the responsibility of all who participate in the process of formulation of politics and the tasks of the public administration. In that sense huge efforts are necessary to be made in order to achieve the basic aims for creation of the professional¹³ depoliticized¹⁴ effective

⁵Political will is exclusively fluid political category which represents relation for achievement of a political aim where it overrates, uses and misuses the power and the influence in the conduction of the decision, leads to ineffectiveness and inefficiency and vice versa.

⁶Political neutrality is exclusively delicate question which in the literature but also in practice induces range of controversies. The employed should work according to the policy of the organs ,politically neutral and to avoid political conflict not to emphasize the membership to a political party and that do not influence to their prosperity and progress in the service

⁷Ecioni makes difference between symbolic use of the accountability when uses it as a gesture political use of the accountability, when the administrators react on special interested groups formal appliance of the accountability, when the institutional system of checking balance and the appliance of the accountability is analyzed, the frames of the directed period which integrates the above-mentioned factors plus the moral basis with interactive perspective (Ecioni 1995).

⁸The qualitative marks as fair relations conscious or correct remain common manipulative focuses if they are not operationized and quantify.

⁹Although in literature such direction is met, it is still not simple to be defined what concretely means especially if the confirmed parameters are not precise on basis on which it would be decided and counted that that attribute in the discipline of the public administration (taken as a whole or regarding some of its segments) exists.

¹⁰The efficiency directs to correlation of the engaged resources opposite to the achieved effect in a context of the persistence to be used the confirmed aims (see more at Adzes I 1998 Governance of the changes) The principle of the efficiency directs to the necessity for existence of undoubted criteria and indicators and clear procedures in the frame where utility can be measured with the taken steps opposite the expenditure made for their achievement. Without this there is no base for transparency and the principle of effectiveness is only a declarative effort without real coverage which leaves space for doubt, for existence of manipulative intentions by the holders of public authorizations.

¹¹This is one more example for manipulative escape to qualitative attributes because without their transformation in measurable (quantitative attributes) high quality of service, then corresponding size of the real necessities are nothing without their attempt for manipulation.

¹²And the persistency of the benefits and gains if it not quantified without real importance. Namely, it is more than clear that it is imposed to the necessity of précising firstly the benefits, that is the gains and then the determination of the interval which can be coincide with the attribute persistency, because it is understandable not each benefit or gain has the same period of validity.

¹³Professionalism understands respect of norms, fulfillment of obligations and tasks with large degree of responsibility. Exactly, those are the imperatives and the requests of the moral system of the profession named as deontology. Sotir Kostov (2005) New public management, Center of quality, Skopje page 43

¹⁴Depoliticized is that administration which works according to the established legal norms which enable protection of political and other influences and pressures. This is in direct connection to the professionalism of the public administration. S .Kostov (2005) New public management Center of quality Skopje page 19-21

efficient¹⁵ and civic oriented¹⁷ public administration in accordance to the principle of the parliamentary democracy and responsibility concept explained previously.

METHODOLOGY

This research of this paper is based on the setting of the general hypothesis which states that: The existence of effectiveness in the public administration operating is a utility of the responsibility scope closure level.

Under the assumption and even in case of unambiguous definition of the goals and tasks of the public authority stakeholders if the concrete roles, liabilities, procedures, criteria and indicators of successfulness are not précised the effectiveness is an utility of the personal characteristics of the authorized stakeholders, but not a utility of the domain system solutions.

In other words if the scope of responsibility is (real and legally enclosed) under the assumption that the tasks and goals due to which the administrative body exists are clear the planned level of measurable effectiveness may be secured.

In the realization of this paper I approached to empirical research with using of qualitative methodology. With the qualitative methodology I realized deep interview and analyses of content of legal documents relevant for this appearance.

The deep interviews I realized on basis of target sample where the holders of management public authorization (state secretaries, section managers and department managers in the organs of the state management) and civil servants and of the state department and the state power.¹⁸

RESEARCH RESULTS

The result from the interviews are described in that part and the same come out as a result of the answers of the asked question and the same prove the general hypothesis that *the public administration has its important role in the system which is achieved in unclear conceptual frame and consequently in unfinished setting of aims and tasks (differently stated, the state administration functions in conditions of the open circle of liability).*

From the overall number of respondents all answered that the unique legal document in the state department by which the authorization and the responsibility are regulated is the Rules for the systematization of working posts¹⁹ and the Rules for work organization with emphasizing that it does not contain concrete description through which the

¹⁵That administration which correctly implements the reached decision and by that achieves the aim of the existing of the organization and the final result is that the actions that are taken are functional decisions which makes them shortly effective. The long-term effectiveness means that the organizations achieve the aim it exists for and the short-term effectiveness means taking of activities that are not approaching to the aim for the organization exist for. The effective organization is functional organization. Adzes I.(1998) Governing with the changes-The power of common trust and respect in personal life, family business society. Center of staff and information services, Detra page 33-48 Skopje

¹⁶Efficient is that public administration which real things makes in a real way. In other words it is efficient that the public administration which has the capability to optimize the use of the resources for achievement of the aims. S.Kostov (2005) New public management, Center of quality, Skopje page 176

¹⁷Civic oriented administration is a characteristic of the new public management and that means new way of working of the administration which through effective efficient and public working will secure qualitative services of the citizens. The citizens will search the public department to be righteous when it secures services, when accuses them for violation of the laws, even to be remarkably righteous. S. Kostov (2005) New public management, Center of quality, Skopje page 33-36.

¹⁸The interviews I have conducted over twenty respondents including four state secretaries, six section managers, five state counselors, three department managers and one counselor and one state auditor. The interviews are realized with the following department of the state government Agency of Public Officials, Ministry of Education and Science, Ministry of Defense, Ministry of Internal Affairs, Ministry of Labor and Social policy, Ministry of Living Environment and Social planning, Ministry of Finances, Ministry of Justice, Ministry of Local self government, State Institution of Revision ,State attorney, Ombudsman, State Institution of Statistics, Direction of protection of personal data, Department of hydro metrological affairs and the Center of risks management

¹⁹Basic legal document and by each public department and confirmed by the Agency of administration the same contains data for the organizational structure the working posts and the description of the working posts.

effectiveness and the efficiency of the public officials²⁰ can be followed. Referring to the fact whether in the acts of their department, the authorization and the responsibility are precisely divided 18 respondents answered that they consider that the Rules of organization and systematization are not precise and the same have not concretely defined authorization and responsibility of the employed.

When performing other working assignments, under the presumption that the one has made a violation of the working discipline and the one is in situation to be under procedure for discipline responsibility and a question is set whether the formal legal aspect is satisfied by that, when there is a violation of the working post which the one factually and not formally performs²¹.

Regarding the transfer of the signature authorization in one part of the institution, certain workers who are on management working posts gain authorization by a decision of the authorized official. Regarding the authorization all respondents consider that the authorization for documents signing is gained by those who directly work on subject, their motivation towards the work will be increased and also the responsibility. Such way of delegation of the authorization is practical, especially in large state institution with large number of organizational units and employed.

Regarding the clarification of the process of preparation of Rules of systematization in a state department by the Agency of administration is prepared document titled *Directions for preparation of Rules of systematization of working posts*. The aim of this document is to approach the description of legal regulation to the public official as much as possible and to convince them especially the creators of the working posts to keep precise clear and correct working assignments.

The necessity to prepare Rules for organizational systematization with detailed description turned out from the fact that people who run the discipline procedures, because if you don't have complete analyses of the working posts you can not be in a position to confirm the liability. A registered problem by the respondents is that Rules for systematization are prepared by people who are not sufficiently professional and that leads to the preparation of an act which reflects the organizational structure which does not correspond to the department necessities.

As a remark of the respondents is the in functionality of the horizontal structural setting of the sections as it directs to bad decision at the setting of the structural setting of the department and that all reflects to the responsible and functional working of the public official in the department.

In the state department there are no legal and sub legal acts which contain regulations that define the authorization and responsibilities. Such unique document is the Rules for systemizing the working post. From the respondents statement there can be separated two institutions which have worked on certain documents as working procedures for certain working processes of the department.

Regarding the Rules for the procedure for evaluation of the public official the content of the report and the evaluation form, the interviewed consider that it is a document which directs to the effectiveness of the working of the public official, from the aspect of the quantity and the aspect of the quality and at the same time it is indictor for the responsible or irresponsible working of the public administration.

Larger number of the respondents are on the opinion that we can precisely determine the authorization and the responsibility of the employed in the department, it is obligatory the setting of procedures for all processes of working. It is common attitude that with clear procedure of working the authorities can be easily confirmed the right the obligations and by that responsibility of the public officials.

²⁰Referring to this the statement of one respondent who says we can not talk for effectiveness and even less for efficiency if we do not know what a concrete description of each working post is.

²¹Regarding to this one respondent would say "Because I am on the post manager of public supplies and I will make the violation as a manager of the department of international cooperation because in absence of such person it will be entrusted working assignment of another type of working post and I have made the violation there and I have to liable actually as public official". We still have no procedures, we have methods, that we can use as a guide for the performance of those procedures. That is why I consider that it should be first and priority task of our department such procedures to be reached."

*The existence of procedures will enable good inter human relations in the public department to be created*²²

Regarding the setting of the procedures some respondents are on the opinion that procedures can be established for all processes, *firstly there should be more precise laws and sub law data which will give the base.*

Regarding the issues for the strategy of the state department, all respondents answered that they are introduced more or less to what is a strategy in a department, especially regarding the last change of the Decree for the principles of the internal organization of the state government which is set as an obligatory obligation foundation of the department for strategic planning. Such departments or sections are set almost in all departments, but only in seven institutions, such organizational units are made with trained people who completely achieve their function.

Regarding the preparation of the strategic plans, the respondents largely are introduced to the role of the strategic plan in the institution, but the implementation of the same is more understood as an obligation rather than as useful and necessary instrument for successful functioning of the institutions. Such approach is due to the common deviations from the reached strategic plans on the account of the activities which are not planned in the strategic plan at all.²³ There is no written procedure or some sub legal act through which the reasons will be followed why the strategic plan has been realized.²⁴ In that context there are no procedures when, why and under which conditions the means of the state organs are reduced. Another indicator which directs to non existence of procedures when following the realization of the strategic plans is the statement that the following of the strategic plans is not continued and that is at the end of the year as well as the incident changing of the strategic plans without previous analyses and procedure.²⁵

As a whole the evaluation is that the state organs face lack of professional form in the domain of strategic management. Also, in the state departments there is lack of material technical means which is immediate tool for effective and efficient realization of the strategic plans and at the same time the lack of clear procedures enables to close the circle of responsible in the domain of strategic planning of organs.

*Regarding the legal decision the only approach is that the unique documents which regulate the issues for the responsibility of public officials are the Law of Public Officials and the Rules for Leading Discipline Procedures.*²⁶

All of the respondents have an opinion that the national authorities need to establish working process in order for clear and precise defining of the responsibility and the level of effectiveness in public administration of the loop of responsibility—if it is closed or not.²⁷

In direction of whether the loop of responsibility is closed in the public administration, 10 of the respondents stated that the government authority is involved with the working process in the public administration. *As a result it is difficult for setting up boundary for the responsibility of each of the government authority*

²²There are cases when two officials are in a quarrel, and in such cases the work suffers the damage. The state secretary although is responsible for the overall organization in the department it is not always like that, because he should receive the subjects, the authorization and the working tasks by the ministry and if that is not the case he can not realize the activity.

²³In that direction is the opinion of one of the respondents: "Very frequently the government reaches conclusion which are not planned and gives priority for the account of the activities already planned in the strategic plans of the department."

²⁴Strategy Focused organization "How balances scorecard companies thrive in the new business environment" Robert. S. Kaplan, David P. Norton 2001 Harvard Business School Publish Cooperation Boston, Massachusetts

²⁵"So, it is not only the change of the Ministry, the reason for the change of the strategic plan but frequently it comes to a change of the strategic plan by the same ministry in a period of a year."

²⁶The rules for the way of leading of discipline procedure for confirmation of discipline violation number 01-6846/1 form 31.05.2006 reached by the manager of the Agency of Administration

²⁷As a way of confirmation the respondents stated: Work needs to be done in the internal procedures. At this time, it is difficult for the responsibility to be placed at one person. With the establishment of internal procedure method will be created that will follow the performance of the employees in terms of whether they are performing in the right or the wrong way. With the establishment of clear procedures, it is apparent that any legal and disciplinary practices will be implemented without any difficulty.

and the public administration. With the lack of completion in the law, there is greater chance of involvement by the politic in the working process of the public administration and it creates difficulty to close the loop of responsibility.²⁸

There is a role for improvements of the laws but there needs to be strong will and determination. *This could be noticed in the process of creation of the laws where the politics are involved in greater extent than the employees with specialty and capability in the public administration.* The responsibility could be explored in the state department and with the lack of the existence of clear procedure it is difficult for the responsibility to be confirmed.²⁹

In anticipation of controlled independent mechanisms, that will work not discriminating regardless of the political structure that is on power, it cannot be said that there is closed loop of responsibility.

*According to all of the respondents, the responsibility starts with the beginning of the employment of the civil servant. If one of the civil servant have the knowledge about the illegal way of it's employment it is difficult for any further expectations of the employee in terms of being effective and efficient in the future. The respondents believe that the politic need to be less involved in order for more capable, responsible and effective workers.*³⁰

In relation to the text of the laws, the respondents believe that it is essential for the laws to begin with the needs of the country Republic of Macedonia and not according to the European standards that are not put into practice yet. In general, when there is preparation of the laws in Republic of Macedonia the real necessities and their implementation into practice are not taken into account. The laws need to find solution adjusted to the country Republic of Macedonia so that the nepotism and the relative relations among the many things can be avoided. The lack of existence of laws and under laws regulations that can confirm the responsibility, was stated by the respondents throughout their replies about the number and the kind of disciplinary actions directed towards any disciplinary violations of the employers while working. All of the respondents stated that in average in their departments 2 out of 4 disciplinary violations are as result of abuse of the authority position and not completing of the working duties and the disciplinary disorder are as result of the lack of the respect for the working time. The punishment for the disciplinary violation at work is normally by giving money, only in five cases the employers were presented with lower title at the work place.

With the disciplinary measure, the civil servant were presented with lower title in the period of six months and afterwards they were back at their work place with their previous title so that they can understand the privilege and satisfaction of their previous working place and at the same time learn a lesson not to replicate the same mistakes. There are times when the civil servant faces the same disciplinary measure, but in most cases they learn a lesson not to replicate the same mistakes. In relation to the unspoken things about the disciplinary responsibility, few of the respondents noted problems that they face in managing with the disciplinary performance, as well as demonstrating prove for the responsibility of the civil servants.

²⁸It is required for certain methods to be determined in order for the confirmation of the responsibility, ways of behavior and precise directions. Often, the political authorities are over the state employees and there is no strict boundary between political authority and the state department.

²⁹In this context one of the respondents stated: When there is criticism in the administration, it does not comes out of the unprofessional behavior but when the politic engages in what the administration gives as the final result.

³⁰In this context one of the respondents states: The biggest responsibility is in the signature. The system is composed in a way that does not hold anyone responsible, the moment when there will be establishment of criteria for the responsibility there will be clear criteria for the quality of the working of the employers. As a result there will be an objective criteria and each of the employed will be accountable for their actions.

The law for the public servants does not contain sufficient number of articles that refer to disciplinary act. The under law regulations are not corresponding to the real needs for the accomplishment of disciplinary action and disciplinary offence as it in the regulation of leading disciplinary treatment, and confirmation of the disciplinary violation.³¹

The direction of the procedure where the disciplinary responsibility is confirmed includes: the lowest degree of responsibility, violation of the authority duty (lower degree of offence), moreover the procedure needs to be simple, rapid and efficient in order for the real effect to be accomplished which is confirmation of whether there is or there is not violation of the authority duty and the determination of the corresponding disciplinary measure. The regulation contains instructions that complicate, disable and make the whole procedure difficult to be implemented.³²

According to the respondents, in the process of the direction of the disciplinary procedure, the personal post is difficult to be applied, the regulation is contradicted, in the rules that refer to the continuation of the procedure.³³

CONCLUSION

The current placement of the law and under law regulations are lacking clear direction in order for precise formation of law regulations where each of the responsibilities and authorities will be stated.

The regulation is very unclear since it makes space for everyone to work whatever it has been assigned and no one is responsible for the performance of the given task at the working place. This comes as a result of the unclear direction by the law; it is up to every authority to perform the significant procedures according to its own views and vision.

The directions by the Agency for administration throughout the regulation by the Direction for the formation of regulation for systematization it is not committing towards setting up boundaries of this type.

The conclusion is that the laws need to be adjusted in direction of determination of precise authority and responsibility in dependence of the specification of the activity and the difficulty at the work place, throughout clear and logical procedures determination of the authority and the responsibility.

In relation with the preparation of strategic plans and it's implementation of the strategic goals as well as the measurement of the improvement in one institution, the conclusion is that the national authorities are faced with the lack of expertise in order to accomplish their effective and efficient realization and there is lack of clear procedure that prevent the loop of responsibility to be closed in the strategic planning by the authorities.

The non existence of procedure for the strategic planning makes space for inconsistent approach in the direction of this activity and the employers have an understanding of the same as unclear defined commitment and not as something useful for functioning of the institution.

With clear directions and procedures in the national authority and formation of strategic plans completed by the standards of strategic planning, there will exist clear realization of the strategic aims.

³¹Regulation for the method of the direction of the disciplinary procedure for the confirmation of the disciplinary violation number 01-6846/1 starting from 31.05.2006, approved by the head of the Agency for civil servants and directed by the commission for the confirmation of the responsibility of the civil servants, for the violation of the authority duty which represents disciplinary violation.

³²For the same act - continuation of the procedure, the regulation confirms two different law regulations. "Conclusion and Decision." It is a matter of question which regulation to be approved by the commission: the conclusion, the decision or both of the regulations, in what time-limit and other unclear questions where in most cases the commission runs out of time (60 days from the approval of the decision for the formation of commission or 90 days for the committed violation)

³³At this moment, there is not a Law with regulations that can confirm the responsibility of the civil servant.

The responsibility of the public administration as part of the regulation in the laws and under laws acts is not clearly and precisely defined. The law for the civil servants and the regulation for the direction of the disciplinary procedure is lacking clear rules that can close the loop of responsibility.

The current rules present measures for the pre-socialization of the civil servants. The disciplinary measure as a punishment in the current laws is not actually decided. On the other hand, the formal procedure for the beginning and the end of the procedure and searching for proof of the responsibility is complicated element.

With the clear division of the responsibility in the national authorities between the political representatives and the administrative capable civil servants there will exist precise confirmation of the responsibility.

It is imperative for precise delegation of the authorities starting from the official, then to the high level of civil servants, as a very important segment for the responsible and effective working and finally setting up boundaries between the specialty of the politic and the administration.

The system of evaluation and monitoring of the implementation of the politic by the government requires development in direction of establishing the loop of responsibility. The process could be noted by setting up of the politic, it's realization and the reasons for not following the politic. Taking it into account the fact that the politic of the government is build on separate politic of the authorities of the state department, it is necessary for the same to be supported with the corresponding analysis. To further explain this means that there is a need of confirmation for the strategic aim of the national authority, knowing exactly which expertise are involved in the realization of the politic in case if they are unrealistically selected as well as appropriate analysis that corresponds in the realization of the politic. Following the government as the highest rank in the hierarchy, as we go lower in the hierarchy there is a need of indicators and clear rules as an assumption for the individual, collective and institutional responsibility with the set up of clear boundaries between the state and the public administration.

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