



ISSN: 0975-833X

RESEARCH ARTICLE

ORGANIZATIONAL AND LEGAL ASSUMPTION FOR CREATING RELIABLE PUBLIC
ADMINISTRATION

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ARTICLE INFO

Article History:

Received 24th December, 2014
Received in revised form
18th January, 2015
Accepted 27th February, 2015
Published online 31st March, 2015

Key words:

State and Public Administration,
Responsibility,
Efficiency.

ABSTRACT

Main direction in the process of reforms in the public administration is creation of professional, depoliticized, effective and efficient and citizen oriented public administration in accordance with parliamentary democracy and responsibility. The purpose of this paper is to perceive the organizational structure and legal and sub legal act which are concerning to the responsible working of public administration. The ascent of these analyses refers to the responsibility of the administration from all aspects: prevention, confirmation and the proof of the responsibility. Precise and clear legal and sub legal acts are bases for responsible working and that represents disciplined public administration responsible and civil oriented, that will efficiently answer to citizen's necessities and the other subjects and that overall will reflect towards all spheres of the social living. That means that even the non production activity of the administration, if it executes its services in a transparent effective and efficient way, it will reflect the economic progress of the country. The purpose of this paper is to cover the most essential laws of the state management and the state power, the rule books, codex and other policies which directly or indirectly are connected to the work of the state and the public administration in Republic of Macedonia. The results in the paper are based on the empiric research with using of the methodology of analyses of the content of documents (legal and sub legal acts). Over 50 legal and sub legal acts have been analyzed where the regulations that refer to the set organization, the management control, corruption, discipline and material responsibility as well as the strategic documents by which the working of the state and public administration in the department of the have been checked. The results from the analyses are based on equal references that direct to same conclusions and recommendations. In the laws there should be clear directions how to control and evaluate the working of the state and the public administration and by that the irresponsible working of the administration can be proved. The conclusion of this paper is that in Republic of Macedonia the legal and the sub legal acts should be changed in the direction of clear completion of the responsibility of the state and the public administration.

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INTRODUCTION

The department of the state management as holders of the executive authority have key role in the policy conduction in the execution of the regulations by the Assembly and the Government of Republic of Macedonia. For that aim it is necessary to create good organizational basis and staff potential, followed by plans and action measures for implementation to reach professional and other directions for conduction of those measures. The department of the state authority should establish rules and proceduresto be able to sanction the liability, and at the same time it will be created a base for effective working.

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The execution activity of the departments of state management is consisted of direct function of the laws and the other regulations by reaching decision in the management procedure. It meansthey decided for the rules, obligation and interest of the citizens and other legal entities passing separate acts outside of the management procedure, making management surveillance, passing of sub legal regulations for successful execution of laws and the other regulations and performing management actions and taking management measurements especially in the achievement of the surveillance authorizations. ¹ As news in the work of the government is the methodology for analyses of the policies and coordination with the ministries and the other department² as initial document

¹ Article 13 and 55 of the Law for organization of the state managements organs (Official Gazette of RM number 58/00,44/02 and 55/05)

² The decision for the methodology for the strategic planning and preparation of the annual program for work of the Government passed on 50th Assembly of the Government of Republic of Macedonia held on 22.09.2003 Methodology

which represents a good base for the following of the department of the state management. These policies contain more principles which could be applied and should be worked out and made to be more detailed. In the laws there should be clear directions on how to control and evaluate the working of the public administration and by that, the irresponsible working of the administration can be proved. General hypothesis is imposed that if the laws and sub legal acts and other documents are not clearly and precisely set there could not be produced responsible state and public administration. If in the laws there are regulations which have legal reasons, a possibility is created for irresponsible working of the administration from one side or there is no possibility to reward and motivate the responsible working. The results in the paper are based on the empiric research with using of the methodology of analyses of the content of documents (legal and sub legal acts). Over 50 legal and sub legal documents have been analyzed where the regulations that refer to the set organization, the management control, corruption, discipline and material responsibility. The results from the analyses are based on equal references that direct to same conclusions and recommendations.

Analyzis of legal documents and work process related to responsibility

The Law for corruption prevention is based on principles of legality, equality, publicity and responsibility. It regulates the issues for prevention of conflicts of interest the reporting of criminal acts and performance of discrete authorizations. The Law plans active cooperation between the departments and the bodies that have important role in the fighting against the corruption and the organized crime.³ Pursuant to the Law for corruption prevention, the commission passes annual program and plans for operation of that program⁴ This program transparently is reprinted and the same contains recommendations for the necessary measurements and the activities that should be taken in order effective system for prevention and repression of the corruption to be established. In Macedonia there is still no complementary system of measurements for prevention and repression of the corruption. The most important normative setting of the subject of this research we can see through the analyses of the Law of State Administration which sets the legal from of the state service the status, the rights, obligations and the responsibilities of the state administration. According to this research the current system for employment of state administration is only acceptable for the trainees.

The progress in this service is made with application on public add for the free management and professional working posts which enables people to apply who really from the beginning

do not fulfill conditions as they do not have experience in the departments where such necessity for that working post has been planned. The procedure for employment and selection of the state administration as well as the procedure for evaluation of the state administration are confirmed by sub legal acts. It all effects the motivation and the responsible working of the public administration. The Law for General Management Procedure and its consistent use in combination with the application of the Law of Management Inspection represents basis for increasing of the effectiveness and the efficiency of the administration its transparency and responsibility as well as the basis of increased protection of the citizens' rights and the citizens' interest and the legal entities. The Application of this law in practice is far from responsible administration can make. There is still no mechanism and procedure for supervision of the realized the quality of the done, the promptness and the respect of the terms.

In the direction of the establishment of the efficient control of working of the state administration in the part of the expenditures of the public means in 1998 the State Institution for audit as independent entity has been formed which irresponsible for its acts in front of the Parliament. With the changes of the Law of State Audit the existing control mechanism for the performance of the audit are strengthened. The state audit has legal obligation to identify the irresponsible working regarding the finance management but the further acts for confirmation of the responsibility are not worked out.⁵ Expect the fact that the reports by the state auditor which aren't sent to the authorized institutions which point to irresponsible working, the other legal norm does not exist which will precise the steps for this procedure and will direct to the audit of the report. Also, it is of huge importance to precise the regulations which will give regulations and possibilities, the actions for confirmation of responsibility, directly to be taken by the step auditors in front of the public prosecutors. The introduction of the internal review as obligatory working support indicates good basis for establishment of responsible and effective state administration. This category of post should be worked out in the legal and sub legal regulative from reason that there are no clearly analyzing steps of the responsibility. The internal auditor is liable in front of the management in front of the liable person and the same should be as a controller of the working of the management.⁶ These categories of posts are not acting in practice and if there are employees at this function they just execute tasks of formal character. Picture 1 The methodology for analyses of the policies and coordination with the ministries and the other departments⁷ as starting document represents good basis for supervision of the state management departments and by that a possibility the responsibility to be

for the analyses of the policies and coordination 9Official Gazette of RM number 52/06)

³ Article 60 by the Law for prevention of the corruption (" Official Gazette of RM" 28/02, 46/04, 83/04, 26/06, 10/08, 161/08) states: " In the execution of the works of its authority, defined by this law, the State commission can request to make direct inspection in the documentation of the organs and the legal entitles that are on disposal with the state capital."

⁴Article 55, paragraph 1, lines 1 and 2 by the law for prevention of the corruption (" Official Gazette of RM" 28/02, 46/04, 83/04, 26/06, 10/08, 161/08)

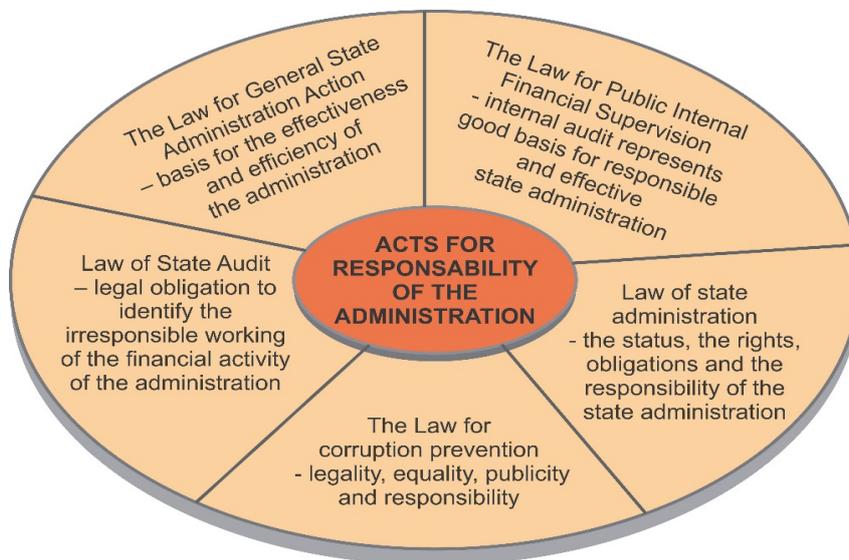
⁵ Article 11, 12, 13 By The Law for State Institution of Audit clear text ("Official Gazette of Republic of Macedonia" number 73/04).

⁶Law for public internal control ("Official Gazette of RM" number 90/09).

⁷Decision for the Methodology for strategic planning and preparation of the Annual program for work of the Government passed at the 50th Assembly of the Government of Republic of Macedonia held on 22.09.2003, Methodology for the analyses of the policies and coordination, (" Official Gazette of RM" number 52/06).

located. Such methodology has many principles which individually are worked out in details with concrete direction to its supplement in the direction of the function applicability from the aspect of the liability and liable working. Picture 2. Principles will be achieved with clearly set rules and procedures for the holders of public functions which direct to responsible execution of the working obligations and it could be clearly concluded responsibility if there is certain deviation from the procedures that is irresponsible execution of the working obligations.

Macedonia pursuant to the Law of State Administration the responsibility is set hierarchically. Regarding the responsibility of the state administration, the relation has misbalanced the state administration with the same status. So, the state secretary is appointed by the Government of Republic of Macedonia and although he is in the group of the management state administration, he is not under the regulation of disciplined responsibility pursuant to the Law of state administration⁹ and the same function is purely under political responsibility.



Picture 1. Acts for responsibility of the administration

Principles	Position	Consequences
First	Coordination of the policies strategic priorities	No concrete surveillance for the indicators
Second	Ministries should make evaluation of the fiscal implications	No indicators for preventing of the fiscal implications by the Ministry of Finance
Third	Base of the policies of the previously made analyses	Lack setting of the steps for realization of this principle in each organ and direction from concrete act
Fourth	The transparency in the preparation of the policies	The applicability of this principle is left to free judgment of the state organs and a necessity of clear procedure
Fifth	The principle of plan conduction of the policies	Clear procedure with measurable indicators for successfulness

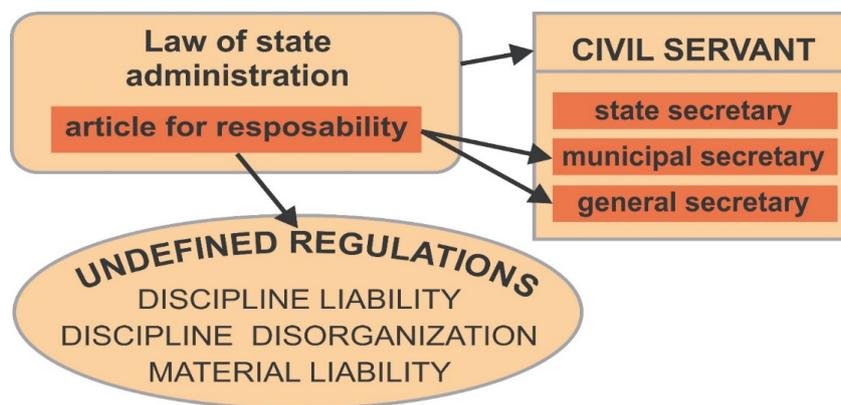
REUSLTS AND DISCUSSION

Important European regulation in the setting and confirmation of the responsibility of the state administration for the countries members of the European Union is the Recommendation⁸ which refers to the public responsibility of the employees in the state departments. In Republic of

From the other side the municipal secretaries and the other general secretaries are appointed by person in charge of the state management and the same are under the regulations of responsibility contained in the Law of State Administration Picture 3.

⁸P(84)15 passed by the Committee of Ministries on 18th September 1984.

⁹ Article11-a by the Law of state clerks (Off. Gazette of RM number 114/09)



Picture 3. Responsibility of the state administration by the law

The Law of State Administration plans two types of discipline responsibility, discipline disorganization and discipline violation.¹⁰ Under discipline disorganization is included the smaller violation of the reputation of the service and the reputation of the state administration.¹¹ As a discipline violation pursuant to the Law of State Administration heavier violations of the working tasks are considered which are planned by the Law of State Administration. The Legislator described the discipline procedure but he did not defined regulations which will refer to the confirmation of the responsibility. The Conduction of the discipline procedures in practice refers to a range of ambiguities. The legislator does not clearly point to what way certain behavior of the employees will be improved to be a base for discipline fine. In the context of the public responsibility the Law of State Administration introduced the category material responsibility in case when a state administrator is responsible for a deliberate damage which is at work or in the reference with the work or with gross negligence caused by the departments where he is employed. The category material responsibility is news in this law and practical use of the same almost does not exist. The executive activity of the state management department is consisted from the direct use of the laws and the other regulations.¹² The following of the conditions in the state department is made by professional analytical activity which is made by the state administration and by the same certain opinions are given in order to prevent the irregularities.¹³ In the frames of its activity the departments of the state management also have great responsibility in the role as initiator for taking over certain measures or in the confirmation of certain policy for decision of the issues of its activity, on bases of professional analyses from the following of the conditions

from those areas.¹⁴ The departments of state management do not have clear procedure which will give clear direction how to prepare a proposal of a text of a law.

With the Law of the Government of Republic of Macedonia¹⁵ the organization is managed, the way of working and the authorization of the Government of Republic of Macedonia. In the part of setting of the responsibility of the president of the Government and the other responsible persons that are named by the same, except the regulations that president of the Government is responsible for its work and the responsibility of the ministries to conduct the legal regulations, we do not find concrete regulation how to confirm their liability.¹⁶ Also, except numbering of the authorizations of the Government and the ministries from these legal acts, we can not concretely complete their authority with correct and precise authorization and responsibilities. If we start with the role of the Government to analyze all proposed legal and sub legal acts.

Conclusion

- As a common conclusion from this research is the necessity for changing that is supplement of the legal and sub legal acts in RM in direction of establishment of clear rules for proving of the responsibility of the public administration as well as weakening of the feeling for responsible working by which the fine will be prevented.
- Individual regulations for the responsibility of the state administration are contained in special laws by which it is regulated the work of the state departments. Largely it has been left a discretionary right to the first people in the departments of the power to pass sub legal acts for processing of the system of responsibility of the state administration which largely does not exist and if there are

¹⁰ Article 65 a by the Law of state administration (Off. Gazette of Republic of Macedonia number 59/2000,112/2000,34/2001,103/2001,43/2002,98/2002,17/2003,40/2003,85/2003,17/2004,69/2004,81/2005,61/2006,36/2007,161/2008,06/2009 and 114/2009).

¹¹ Article 68 by the Law of State administration (Off. Gazette of republic of Macedonia number 59/2000,112/2000, 34/2001, 103/2001, 43/2002, 98/2002, 17/2003, 40/2003, 85/2003, 17/2004, 69/2004, 81/2005, 61/2006, 36/2007, 161/2008, 06/2009 and 114/2009).

¹² Article 13 and 55 by the Law for organization of the organs of the state management ("Official Gazette of RM" number 58/00, 44/02 and 55/05).

¹³ Article 13, paragraph 4 by the Law for organization of the organs of the state management ("Official Gazette of RM" number 58/00, 44/02, and 55/05).

¹⁴ Article 13, paragraph 1 and 2 by the Law for organization of the organs of the state management (" Official Gazette of RM" number 58/00, 44/02, and 55/05).

¹⁵ Article 1 and 2 and 3 By the Law for the Government of RM ("Official Gazette of RM number 59/2000, 12/2003,11/2005).

¹⁶ Article 11 paragraph 1 By the Law for the Government of Republic of Macedonia (" Official Gazette of RM " number 59/2000, 12/2003,11/2005) which states: " The president of the Government manages with the work of the Government he is liable for its work and makes cooperation with other organs public companies and institutions and article 13 by the same law states "Ministry independently manages with the ministry he has been appointed for follows and he is liable for the condition of the laws and the other regulations. "

such documents the same are different, they are not identical in the methodological and the legal setting.

- In the part of the strategic setting of the Government policies there should be still worked on the completion of the circle of responsibility and by that it has to be finished the legal regulative by which clear procedures of control, clear working assignments, measurement of the worked out and clear division of the state from the public administration will be established. All this means that it should be confirmed who is responsible for the policy choice, the strategic aim of the state departments on what scientific analyses it is based.
- All regulations in the Law for state administration that refer to the organizations, authorization, employment, motivation, evaluation the rewarding are not detailed and the same should be worked out by sub legal acts which will give direction for responsible effective and efficient working.
- The surveillance function of the state should be especially strengthened through promotion of the capacities of the inspection organs and their coordinated acting and, a mechanism on central level by the Government, coordination body managed by the ministry without resources.
- The openness and the transparency represent bases for functioning of the overall public section and the same should be promoted and strengthened. The transparent behavior of the authority protects the public interests and at the same time the possibilities for misuse of the authorization and the appearance of corruption are reduced.
- The independent internal revision will direct to preventive and efficient working and at the same time will locate the disadvantages and the irresponsible working in the departments. The internal revision to gain the part of the independence should be legally set and it means to think of legal decision of independent where the control will be made by qualified people for work by an independent institution. In such way the same unbiased independently and liable can achieve the role of internal control of the overall working in the state departments. Such way will enable to create disciplined and responsible institutions with responsible structure of state and public administration.

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