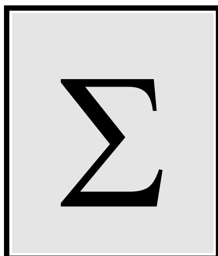

SIGMA

Support for Improvement in Governance and Management in Central and Eastern European Countries

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CZECH REPUBLIC
PUBLIC SERVICE AND THE ADMINISTRATIVE FRAMEWORK
ASSESSMENT 2002

Introduction

The successive Governments of the Czech Republic have since 1989, and while still within the Czechoslovak Federate Republic, given priority to territorial reform. The internal modernisation of the civil service, in particular improving the professionalism of public servants and adapting administrative laws and procedures to common EU standards, was not particularly high on the Government agenda.

Czechoslovakia, after its establishment in 1918, adopted practically without change the civil service system of the Austrian Empire. The rules relating to the permanent civil service were amended over the years, but in substance valid until 1950. After 1950 the civil service was regulated by general laws and the civil servants provisions, constituted special regulations relating only to very specific issues. With the adoption of the Labour Code in 1965 (Act No. 65/1965 CoL) special provisions for the civil service were included in the Code. Since the enactment of the Labour Code, on 1 January 1966, the employment relations of staff in ministries and other administrative authorities have been governed by Labour Law. Since then until 2001, the individual administrative body was the staff employer, not the State.

Starting in 1991, special Acts for some specific groups of the civil service were adopted. These include the police (No. 186/1992 CoL), the penitentiary services and the judiciary guard (No. 555/1992 CoL), and customs (13/1993 CoL). The Statute of Judges was regulated by the Courts and Judges Law in 1991 (No. 335/1991). In 1992 the Labour Code was significantly amended to include specific duties for civil servants, but also for some other employees, such as those staff working in the President's Office, the Parliament Office, the Government Office, the Supreme Audit Office and the employees of courts and the offices of state attorneys.

The centre-right coalition (1993 to 1996) had the preparation of a Civil Service Law in its government programme, though it was not given a high priority. A first draft was elaborated, but failed to be approved by the Government, most likely because a permanent career civil service did not fit well with the market and deregulation-oriented policies of the coalition. In 1996, the second coalition Government renewed attempts to propose a Civil Service Law. The draft was very long and detailed, and endeavoured to maintain and enhance the benefits (tenure, higher salaries, higher pensions, etc.) of civil servants without postulating the necessary obligations and accountability mechanisms. This draft was also not approved by the Government, mainly for budgetary reasons. The 1998 transition Government again committed itself to adopting a Civil Service Law, but, due to its short mandate, did not have the time to either review the existing draft or to develop a new draft.

Since 1998, legislative work on a Civil Service Law has been reactivated by the present Government, which declared as a priority measure “the de-politicisation of the state administration by the adoption of a Civil Service Act to stabilise the state apparatus, improve its efficiency and eliminate its dependence on short term political pressures”. Political complexities, including an “opposition agreement” have delayed the process. Initially, the Law should have been adopted end of 2000, and enforced in January 2002. The Civil Service Act was finally adopted in May 2002 (Act No. 218/2002), to be enforced starting 2004, and fully implemented by the end of 2007. Certain provisions, namely the organisational aspects of the Civil

Service Law, e.g. the creation of the General Directorate of Civil Service which was established within the Government Office on 15 June 2002. The Act will cover some 75 000 civil servants.

The starting point of the Public Administration Reform (PAR) was the recreation of local self-government with the Municipal Law in 1990. The adoption of the Concept to create a second layer of self-government was delayed until after the planned elections in June 1992, and then never adopted.

Subsequently, in 1997 a new territorial reform was initiated. Since then the first part of this reform has basically been implemented. However, it was more concerned with de-concentration, rather than decentralisation. Legislation for the second stage of territorial reform, directed at full decentralisation of tasks and further changes in the territorial structures (e.g. the creation of municipalities with enlarged responsibilities), should be finally adopted by the lower chamber in the last session before the June elections. If these laws are adopted, they should come into force on 1 January 2003. The opposition party has voiced strong concerns against the adoption of the reform package, as it was submitted to Parliament just before the elections. Parliament was not given enough time to review it. It was also stated that the envisaged transfer of budgetary funds will not be sufficient to cover the execution of transferred responsibilities. The Senate (upper house) has proposed significant changes to the laws. It remains to be seen if the lower house will accept the changes.

Implementation of the first part of the territorial reform has led to the transfer of some 29 functions, involving 9 ministries, to local self-governing bodies. In parallel with the transfer of functions, a reorganisation of de-concentrated state administration and regional and local self-government is underway.

To improve the insufficient accountability mechanisms, a new Public Audit Act is has been drafted. However, an amendment to the Constitution is necessary before the Act can be adopted. The Administrative Procedures Law has yet to be aligned with the requirements of the Constitution. The planned enactment of new legislation on administrative procedures and courts should help address this deficit. The National Anti-corruption Programme continues to progress, but there remains a need to enforce a coherent anti-corruption legal system.

The overall management of the reform programme is fragmented, with responsibility shared among three central ministries. A central entity, with the authority to lead and direct the programme, needs to be put in place. Neither is it evident that the risks associated with such an ambitious modernisation programme, as that being pursued, have been identified and steps taken to manage them.

It must be emphasised that this assessment coincided with the adoption of the Civil Service Law. The implementation of the Law is envisaged to commence in 2004, with full implementation in 2007. Some provisions, however, are to be enacted immediately, namely the organisational aspects, e.g. the creation of the General Directorate for Civil Service. Some concern arises from the deferred implementation of the Act. Several elections will take place before its envisaged implementation; this may be a critical factor as the opposition is not supportive of the new law. In addition, the envisaged transition period will coincide with the possible entry in the EU.

The assessment report will state the changes envisaged by the new law in italics after the description of the current situation. It will only occasionally point out flaws in the new law, as it is the current situation, and not the new law that forms the basis of the assessment. Nota bene, the comments on the new law are based on the last translated version of the draft law (01.03.01), as a translation of the adopted version was not available at the time of the assessment.

1. Legal Status of the Public Service

1.1 Does an appropriate legal basis exist defining the status of public servants responsible for advising on and implementing government policy, carrying out administrative actions and ensuring service delivery?

Constitution

The Constitution[1] requires that the legal status of government employees in ministries and other administrative agencies shall be defined by law. The Constitution offers no guiding principles for this legislation, nor for the way in which public administration should act.

Ordinary Legislation

Public employment is governed by the Labour Code as substantially amended in 1992 (last amendments in 2000). Some sectors of the public service are subject to special statutes (police, prison service, customs officers, judges, State attorneys). The Labour Code states in Article 73-2 some special duties for civil servants (see below).

A Civil Service Act has been adopted in June. Implementation of the substantive parts of the Act will start in 2004 and full implementation should be achieved in 2007. It was stated that the long delay before starting the substantive implementation of the act is needed to prepare secondary legislation and develop the systematisation (see below). The long transition period between 2004 and 2007 was considered necessary by the authorities, to allow adequate time for the screening process. A separate Act, based on Labour Law principles, covering self-government officials has been submitted to Parliament, and should be adopted in the last extraordinary meeting of Parliament before the general elections. If adopted, the Law should enter into force on 1 January 2003. The Law envisages more rights, but also more obligations for self-government officials.

At present the legal framework is unsatisfactory. The lengthy transition period for the implementation of the Civil Service Act, extending up to 2007, is a matter for concern.

The Civil Service Act, when fully enforced, will provide for an improved legal framework for the civil service. However, the law seems still not fully aligned with principles prevailing in EU Member States.

The Civil Service Act will guarantee the status and independence of civil servants by providing for open, merit-based competitions. The new Act will regulate the status, conditions of service, educational requirements, obligations, rights and remuneration of civil servants and certain other state employees in administrative authorities (ministries and other bodies exercising functions of central government).

2. Legality and Accountability

2.1 Does the general legal administrative framework and administrative practices guarantee the principle of legality in administrative decision-making and is it sufficient and appropriate to guide civil servants and make them accountable for their performance?

The Constitution states that administrative actions and decisions must be based on law (Article 79). Existing laws provide for the obligation of public authorities to observe the rule of law. However, there are different administrative procedures for different public authorities. In addition, the substantive law is rather fragmented, which may hamper the implementation of the rule.

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1. The Constitution is composed of the Constitutional Act No 23 of 9 January 1991 adopting the Charter of Fundamental Rights and Freedoms, and the Constitutional Act of the Czech National Council of 16 December 1992.

The legal tradition of the Czech republic results in very lengthy and detailed legislation. There are elaborate rules on law drafting, which call for an explanatory note and a substantiation (i.e. justification) report, which provides the rationale for the law and detailed motivation for each article. Impact assessment, up to now, is basically limited to direct budget impact. It seems, going by the substantiation report of the Civil Service Act, that it is not yet necessary to provide a forecast of the longer term budgetary implications. A complete impact assessment, including also impact on the economy and the society at large, is not carried out, though the drafting regulation could be interpreted in that way.

Agencies exist with very different accountability mechanisms. Some are directly subordinated and therefore, at least in theory, adequate accountability mechanisms exist. Others are independent, and accountability, as well as political responsibility for their activities, is sometimes unclear. A common legal framework for defining agencies and their accountability mechanisms is missing.

At present, the legal framework, within which administrative actions and decisions should be taken, is not sufficiently developed. The Administrative Procedures Act 1967 has not yet been aligned with the Constitution, and the jurisprudence of the European Court of Justice. Providing factual and legal grounds for administrative decisions taken (giving reasons) is a general legal obligation, but there are important exceptions in substantive legislation. The right of the interested party to a hearing is legally recognised, but depends to some degree on an arbitrary decision of the administration. The Act makes public authorities liable for their decisions and actions, however, this is not the case in respect of unrealised profits. The current legal guarantees for the parties in an administrative procedure are not sufficient.

Redress of administrative acts through administrative courts is possible, though not in all cases. However, its effectiveness as an accountability mechanism is limited as there are certain drawbacks. There seems to be little trust in the judiciary. In general, judicial decisions are said to be of low quality. In addition, the courts only have a mandate to decide on the legality of the process, and whether decisions are consistent in the light of previous similar decisions. Finally, the courts can review administrative decisions only upon the request of the interested parties, and do not have a legal mandate to oversee the administration in a general way.

There is legislation on freedom of information as well as a Data Protection Act. The Freedom of Information Act was enacted in 1999 and has been in force since February 2000. However, its implementation is to some extent hampered by the fact that the data collected is not readily available. Also, the secrecy provisions and the Data Protection Act are often interpreted to the detriment of freedom of information for the citizen. This attitude of the public administration is reinforced by the special duties stated in the Labour Code. It is their duty to keep silent about facts, learnt in the course of the performance of their employment, and which cannot be communicated to other parties in the interest of the employer. The Ombudsman institution is in its second year of existence. The Ombudsman (who was not appointed until December 2000) has primarily focused to date on defining his mandate.

The National Audit Office undertakes financial audits, and there is also parliamentary control and overview of public expenditure. Improving public audit is a major element of the Public Administration Reform Programme, and a new Financial Audit Act came into force on 1 January 2002. This Act provides for new controlling mechanisms, including the establishment of internal audit units in all ministries and other major spending centres.

The existing accountability mechanisms are weak and the principal means of ensuring individual accountability is hierarchical subordination. The Constitution requires that administrative actions and decisions are based on law, but the current legal administrative framework is not yet adequately developed. The office of the Ombudsman is not yet fully operational. Impact assessment will need further attention..

The new Civil Service Act should improve the accountability of civil servants. It includes clearly defined obligations, and disciplinary punishments if these obligations are neglected.

A new Administrative Courts Act was recently passed as an urgent measure and will become law on 1 January 2003.

A new Law on Administrative Procedures, has been drafted, which, if adopted is said to align the administrative procedures to general EU standards

3. Professionalism of the Civil Service

3.1. Are civil servants' recruitment, rights and obligations defined, regulated and enforced in such a way as to ensure their commitment to constitutional and public law values such as legality, impartiality, political neutrality and integrity?

Recruitment and Promotion

Individual ministries and other bodies have wide discretionary powers concerning selection and recruitment. There are no particular rules except those provided for by the Labour Code (basically an obligation to non-discrimination). Selection criteria are based on job descriptions. Open competition is not mandatory and is not used on a regular basis. Experience outside public administration can be taken into account, when recruiting new employees, if relevant to the job description. The qualifications required for a position have to be supported by the relevant certificates. The probation period can last for a maximum of three months, but it is at the discretion of the head of the appointing institution, at the end of which a form of "service appraisal" is carried out. There is no prospect of appeal against the outcome of the recruitment procedure, with the exception of alleged discrimination when, since 1 January 2001, the labour administration and ordinary courts can intervene. The process does not guarantee that recruitment is based on merit and open competition.

As in the case of recruitment, there are likewise no fixed rules for promotion, which is at the discretion of managers, with a risk of arbitrariness and patronage. While appointment on political grounds is only permitted for senior positions, the discretion allowed in recruitment and promotion encourages political allegiance. This, together with the lack of restriction on involvement in party politics by public employees, puts professional independence at risk.

The new Civil Service Act will require that vacancies at practically all levels be advertised and filled by means of open competition. This should remove the wide discretion allowed at present, and should ensure a more transparent and merit-based promotion system. New employees will be recruited through open, merit-based competition for admission to "preparation for service", and will be required to undergo training and a service examination prior to being appointed to a designated civil service position. A system of competition, which may involve three rounds, will apply, to ensure at least limited career promotion in line service positions. The first round will involve only those serving in the organisation where the vacancy exists. In the event that the vacancy is not filled in round one, the second round competition will involve those serving in other organisations, who are performing in a similar sphere of service, as well as eligible persons who have completed their preparation for service. If this fails to find a suitable candidate, a third round competition will be held, which will be open to civil servants in other organisations whether or not they are serving in the same sphere of service.

During the transition, between 2004 and 2007, current staff occupying designated civil service positions will have to apply for admission to the preparatory civil service in order to be able to keep their position. To be admitted they will have to fulfil the mandatory conditions and successfully undergo a competitive selection. During the transition, exceptionally, currently serving staff who have proven competence in the performance of their duties and responsibilities, but who do not meet the educational requirements, may be appointed. However, they will not be able to participate in competitions for promotion to a higher grade. The "preparation for service" will embrace completing the education and training required for the position, and passing a service examination prior to being appointed to the designated civil service position.

Classification of the Civil Service

At present, there is not a common set of job descriptions. The jobs are classified on the basis of a uniform analytical method, based on criteria assessing their complexity, responsibility and difficulty. The jobs are divided into 12 grades, based on general characteristics of activities. The Government issues the catalogues of jobs for the individual branches of public administration and services.

The duty to provide the descriptions of individual jobs is not codified. The individual state administration authorities do so on the basis of their working rules, which are not centrally approved or co-ordinated.

Job descriptions must be based on the type of the work agreed in employment contracts. Only the main activity, determining the grade, needs to be specified. As the system is fully decentralised, there is considerable leeway for the head of an institution, when it comes to the classification of individual jobs.

The new Civil Service Act will include 16 grades, instead of the 12 grades under current law. It provides for the designation of all official positions as either appropriate to being filled by civil servants or certain other State employees according to their functions, responsibilities and educational requirements. For civil servants, the system will be one of functional positions rather than that of a career system, though the new procedures for promotions will, in practice, introduce an element of a career system. Two broad categories of civil servants will be distinguished under the Act: "principals" and "subordinates", with the former authorised to direct the latter. The general service positions intended for Principals will include, in descending order of rank, state secretaries and deputy state secretaries; heads and deputy heads of departments; directors and deputy directors of divisions; and directors and deputy directors of sections. In addition, they will include the Director General and Deputy Director General for Public Service and personnel directors, new positions to be created under the Act. Remaining positions will be designated to subordinate civil servants.

Obligations, Rights and Duties, with Special Reference to Impartiality

The Labour Code (Sec. 73, paras. 2 through 5) specifies some obligations of public employees. These include: to act and decide impartially and refrain from anything that could threaten the confidence in the impartiality of decisions; to keep silent about facts learnt in the course of the performance of their employment and which cannot be communicated to other parties in the interest of the employer; this does not apply if they have been relieved of this duty by a statutory body or by the managing employee authorised thereto, in connection with the performance of their employment; not to accept gifts except for gifts or advantages granted by their employer or on the basis of legal regulations in collective agreements; to refrain from conduct which could result in a conflict of public interest with personal interests, in particular not to abuse information acquired in connection with the performance of employment to the benefit of themselves or other parties. Special groups in public administration, e.g. customs officers and police, have specific obligations and also specific disciplinary rules.

A Code of Ethics was adopted in 2001, which legally binds central government personnel by means of a Government Resolution; in contrast, the code is optional for local government employees.

Though there are certain basic rules on obligations for public employees, their implementation in practice has proven difficult. This may be partly due to the fact that contracts are generally awarded without competition. Loyalty of staff to superiors tends therefore to be personal and political, and thus not necessarily professional. Politics and personal allegiance play an important role in hierarchical relationships. The Labour Code obliges all civil servants to act only within their lawful sphere of service, and employees should refuse to comply with unlawful instructions. However, there are no legal mechanisms in place whereby public employees can refuse to comply with what they may perceive to be unlawful orders issued by their superiors. Safeguards for civil servants willing to object to the legality of a superior's instruction are dispersed among various working rules of individual ministries and other administrative authorities, and are not regulated in a uniform and general way. Given the lack of safeguards and the discretionary powers of superiors (for example in determining bonuses), the incentives operate strongly against employees disputing illegal orders. Consequently, the principle of legality of public

actions and decisions is compromised, and is a matter which needs to be addressed by formally adopting a uniform set of legally based rules and procedures.

Corruption is still considered a major problem. In the Corruption Perception Index the Czech Republic still ranks rather high. Fighting corruption was declared a political priority, and a National Programme to Combat Corruption was adopted in 1999, and progress was subsequently evaluated by the Government in February 2001 and March 2002. TI's chapter of the Czech Republic reports that, during 2000 and 2001, long awaited charges were brought against officials and businessmen for corrupt actions in the 1990s. Several had close political ties, including contributing funds to some of the country's largest parties. TI-Czech Republic reports further that the "Clean Hands" campaign, sponsored by the Social Democrat Government, produced some results. However, it is alarming that less than two or three cases have been prosecuted, while about 1,000 or more criminal complaints were issued by the Government's anti-corruption investigative offices.

The Penal Code, which punishes corrupt activities generally, does not include specific articles referring to public employees in any direct or specific manner (for example, aggravating circumstances for corruption and fraud). Amendments to the Penal Code and to the Criminal Procedures Act, as well as to specific sectoral legislation, are being prepared to address the problem of corruption. Even if these amendments are adopted and implemented quickly, there is still a need to have in place a coherent anti-corruption system. This will include the creation and improvement of the institutional framework and the adoption of legal measures proposed in the National Programme, as well as the other needed development noted above (i.e. a uniform set of legally based rules and procedures to safeguard civil servants willing to dispute unlawful orders).

Practices in recruitment and promotion are not based on open, merit-based competition, with the result that they encourage political allegiance and patronage and put the professionalism and impartiality of the civil service at risk. Continuing deficiencies are the lack of a coherent anti-corruption system and adequate legal safeguards for civil servants disputing unlawful orders.

The Civil Service Act, if implemented would reinforce the requirements of the Code Of Ethics and detail the basic obligations, rights and duties of civil servants, however, the new Act makes no mention of an obligation or a right to refuse illegal orders. Obligations will include, among other things, impartiality in the discharge of duties and responsibilities; obedience; compliance with service discipline; performance of service in a proper and timely manner; refraining from activities that could lead to a conflict of interest; and non-acceptance of gifts. There is a specific requirement in the Act, that the political orientation of a civil servant must not prejudice his/her proper and impartial performance of service. There is no stated obligation not to engage in political activities. Stated rights include education; basic salary; salary promotion and bonuses; holidays and holiday pay; sick leave, including full pay for a fixed period of 30 days; to refuse to perform tasks that do not fall within their sphere of service; to submit requests or complaints in respect of the performance of service; and, to assert their rights. They will have the right to belong to trade unions, but principal civil servants will not have the right to strike. Severance pay will be paid when a service position ceases to exist because of reorganisation or retrenchment. The Act does not provide for permanent tenure, though the basic type of service will be one of temporally unlimited service, unless it is limited by contract or for other reasons. The Act will provide for procedures for taking and processing disciplinary actions against civil servants, in the event of a breach of service obligations or discipline.

3.2 Does the law fix the salary scale and is the determination of individual pay transparent and predictable?

There exists a uniform pay scheme regulated by law (Law 143/1992 and Decree 253/1992), whereby basic pay is disclosed. However, take-home pay also comprises a variable "non-claimable personal premium". The bonuses can amount for the grades 9 to 12 to up to 100 per cent, and for the grades 1 to 8 to up to 40 per cent. It was said that on the average the bonuses count for about 25 per cent of the take-home pay, however the concrete percentage depends very much on the institution in question. No legal obligation

exists to disclose the criteria by which these increases are allotted, and they are granted at the discretion of the head of the institution. Although in early 2001, a court decided, on the basis of the Free Access to Information Act 1999, that bonuses, personal premiums and the criteria for their allotment have to be disclosed upon request of a citizen, this is not sufficient to guarantee transparency of take-home pay. The Government Order 48/1995 established some quantitative limits for using savings from unfilled vacancies as a monetary incentive for existing staff. In 1997, these limitations were removed and such savings are now quite freely used, both to stimulate downsizing of public organisations and to offer better remuneration to staff. The savings from vacant positions may, in fact, also be used for purposes other than salary increases and bonuses, if the Ministry of Finance agrees. Funds available from unfilled vacancies vary widely between institutions. As for the amount paid to individuals as bonuses and other unclaimable payments, they are basically at the discretion of the head of the individual institution. The supplementary pay system lacks clarity and transparency, and appears to give rise to significant differences in take-home pay between organisations. Official information on this is not available, and there appears to be a reluctance to disclose such matters.

Current salary and supplementary pay arrangements lack clarity and transparency. Unclaimable elements, such as performance related bonuses, are largely at the discretion of managers. As a result, there are considerable variations in practices and in the levels of take-home pay between individual organisations. Information on such variations is not readily available or disclosed.

The new Civil Service Law, if implemented, will include a new salary system for civil servants based on 12 salary grades and 12 salary classes (seniority steps). The system includes basic salary and a range of supplementary payments. The twelve pay grades will correspond to the fourth to fifteenth pay grades of the current sixteen-grade system. The salary in the twelfth grade will be three times that of the first pay grade, and the salary in the twelfth class will be one and a half times that of the first class. There will be a fixed percentage difference, ranging from 9 to 12 per cent, between a higher pay grade and the next lower one. In addition, pay in the ninth pay class of the eighth pay grade will be fixed annually at one and a half times the nominal wage of the non-business sector, on the basis of data published by the Czech Statistical Office for the previous year. The pay grade will be laid down for each position within each organisation's personnel plan, in line with the assessment and the designation of positions to be carried out under the Act. It will be determined in relation to the most demanding activity required of the service position. Advances within the pay classes will be conditional on a satisfactory appraisal of performance. The new salary system will come into effect at the end of the transition period, and will involve an increase of some 40 per cent on current salary levels; an increase of 53 per cent will arise, if two additional months' salary is paid (the 13th and 14th months). The increase is to compensate for the obligations and limitations (e.g. in respect of engaging in other gainful activities) being placed on civil servants under the Civil Service Act, and to enhance their security. Candidates in preparation for service will generally have similar rights to salary and, with some exceptions, to supplementary pay. Those designated as employees will enjoy similar pay rights as civil servants. Civil servants will be entitled to extra payments, for example for service (40 per cent of basic salary to compensate for the strict conditions for performance of service and loyalty to the State), management duties undertaken by principal civil servants, deputising for a principal, overtime, holidays, training a candidate in preparation for service, as a reward (e.g. for fulfilling especially important or urgent tasks; on reaching 50 years of age), and on a personal basis (up to 20 per cent of basic salary, e.g. in recognition of extraordinary performance). An additional lump sum will be payable half yearly for performance of service for at least 65 days in each half year. All-in-all, the new salary and supplementary pay system, while clearly specified in the Civil Service Act, appears to be rather complex and fragmented, and may give rise to some interpretational and operational difficulties Also forecasting budgetary expenditure may produce difficulties.

3.3. Do sufficient and reasonable mechanisms (basically mobility, training and motivation) exist for good performance and career development within the civil service so as to make it attractive?

Mobility is not commonplace. Even within the same institution, mobility is not used as a means to increase the skills and knowledge, i.e. professionalism, of the public employees. Transfers are not possible without the consent of the employee (Article 38-3 of the Labour Code), and secondments are rarely used, though

redeployment is possible with the consent of the employee (Article 38-4 Labour Code). The Law (219/2000) considers the State as the sole employer, but a transfer or secondment still requires a modification of the labour contract. This has not encouraged horizontal mobility as a means of professional development and enhancement. Managers may, at their own discretion, award an employee a higher salary step, or promotion to a higher position.

There is no rule or regulation governing performance appraisal. Consequently, a uniform appraisal system is not in operation, but several organisations have established their own job descriptions, which are used to assess the performance of the jobholders. In these organisations, the assessments are said to be used as a basis for granting extra payment for performance. However, in general, the granting of extra payments for performance is largely at the discretion of the head of the institution, and neither criteria nor amounts are disclosed.

Training is provided and funded by individual ministries, usually to train staff of the subordinated offices, and to date it is not well developed for staff in the ministries. Training budgets are a matter for individual organisations and there is a government recommendation that 2.7 per cent of payroll be devoted to training. About one-half of ministries meet this recommendation with the remainder spending considerably less, though there are some which spend considerably more, e.g. the Ministry of Labour and Social Affairs, which has a large number of staff in the subordinated offices. In contrast, training in local government is better established, and a training strategy has been in place since 1999.

In the past, training at ministerial level was mainly centred around two specific domains: foreign languages and European affairs. With regard to EU training, a programme has been in place since 1997, and is co-ordinated by the Ministry of Foreign Affairs. During 1998 and 1999 numerous training events were held on EU affairs. Further training in EU matters for senior officials, comprising at least 12 or 34 hours, was completed during 2000 and 2001. There are also training initiatives undertaken as part of bilateral agreements with a number of EU Member States and under TAIEX. In all, some 4 500 officials have received training in EU affairs in 2001, seven times the number trained in the 1997-99 period. The State budget allocated to training in EU affairs in 2001 was CZK 16 million.

In September 2001, the Section on Organisation, Personnel Management and Training in State Administration was created within the Government Office. Subsequently, the Institute of State Administration was established in that Section to set strategies and methodologies and to co-ordinate education and training in the central administration. In October 2001, the Government approved the *"The Rules of Training in State Administration"* which provide for the systematic training of civil servants and other employees in the central administration, with the basic aim of ensuring uniformity in training in all organisations. Three priorities have been set: initial or induction training; ongoing or continuous training to maintain and enhance competencies; and, management training for both middle and senior managers. Management training at present is directed at middle managers. The Institute has a staff complement of six, but it is planned to expand this to fifteen in the autumn. The Institute will rely principally on third parties for the delivery of training programmes. Until now, the Institute has mainly concentrated on developing strategy, training plans and curricula, and only very few training courses have been carried out.

Overall, motivation has not been seen as good, and public attitudes to public administration are generally rather unfavourable.

However, staff losses to the private sector were relatively high up until two years ago, prior to employment levels reaching saturation point. Since then losses have been less severe, and there have been instances of former staff returning to work in the civil service.

Human resource management practices are not progressive, and mechanisms for ensuring good performance are inadequate. The new Institute of State Administration, once fully functioning, should help to increase professionalism.

The new Civil Service Act is intended to address these deficiencies by introducing open competition for promotion, providing for transfers in limited cases without the individuals' consent, requiring civil

servants to possess educational qualifications appropriate to their positions, and specifying the right to proper training for all personnel. The new promotion procedures are intended to encourage both intra- and inter-organisational promotion through the three-round system of competition. However, since the first round will be restricted to those serving in the organisation in which the higher-grade vacancy exists, the second round, involving candidates performing in the same sphere of service in other organisations, will not operate if a suitable candidate is found in round one. Similarly, round three, which will be open to candidates from across the civil service, irrespective of their sphere of service, will not be necessary if round two yields a suitable person for the vacant position.

The new Law includes the right and obligation of civil servants to train throughout their career, with a view to building and maintaining professional standards. This should help to promote a more training aware environment. If implemented, this, together with the aim of making the civil service more professional and secure, should make it more attractive both to serving personnel and potential new recruits.

A PHARE twinning project, recently begun, includes assistance with the development of a uniform performance management system. This will be used to make decisions in respect performance related payments, when the new salary system regime comes into operation. The system will be an integral part of a strategic management framework, involving the development of business plans to provide a basis for setting work objectives at organisational and individual level, and monitoring their achievement. It is expected that this should lead to greater clarity and transparency in the award of performance related payments. The performance management system will be used also to identify organisational and individual training and development needs.

4. Management of the Civil Service

4.1 Is a cross-government structure, and are systems for personnel management, established as to ensure the application of homogeneous standards across the administration?

Personnel management is decentralised and, although since January 2001 the State is formally the single employer of public employees in the national administration (Act 219/2000), there is still no functioning central management capacity. Each ministry and other state body acts *de facto* as an independent employer, with power to recruit, promote and dismiss its employees, based on the internal working rules issued independently by each administrative authority. The Ministry of Labour and Social Affairs is responsible for promoting legislation on all employment related issues, including the civil service, although the Ministry of the Interior is responsible for co-ordinating the state administration and for public administration reform. The Civil Service Department in the Government Office has responsibility, since January 2001, for co-ordinating human resource management in the state administration, however, for the time being there is no adequate legal framework to enforce homogeneous standards across the administration. A cross-government structure with overall responsibility for the civil service is still lacking, consequently, the fragmentation in personnel policy and management continues to pose a problem.

In line with the organisational provisions of the new Civil Service Act, the General Directorate of Civil Service was created within the Office of the Government on 15 June 2002. It replaces the Section on Organisation, Personnel Management and Training in State Administration. The new Directorate, to be headed by a Director General with the assistance of a Deputy Director General, will have an overall management, executive and co-ordination role, in relation to the civil service and the implementation and monitoring of the service aspects of the Act. However, until the substantive transition period of the Law will start in 2004, the main tasks will consist of drafting secondary legislation and developing the new systematisation.

The arrangements and mechanisms in place for the horizontal management of the central administration are ineffective, with the result that homogeneous standards and practices are lacking.

The new Act, if implemented, should ensure uniformity and consistency in the application of personnel management provisions, including: recruitment and promotion procedures; educational requirements; the preparation of personnel plans, and the designation and organisation of positions under these plans; the preparation of draft service regulations; and, the administration of the information system for personnel and salaries. The Directorate would then also have the authority to carry out inspections, in relation to organisational aspects and the employment conditions of civil servants. The information system, or register of civil servants and other employees, would include details of each person, e.g. age, qualifications, service designation, sphere of service, etc. According to the Act a Personnel Department should be established in each organisation, other than those with less than 25 staff, headed by a Personnel Director. The latter should be responsible for drawing up the organisations' personnel plans in accordance with the guidelines laid down by the Directorate General for Civil Service. These plans should cover the number and designation of service positions and related pay grades and the amount allocated for salaries. Personnel plans would have to be prepared annually in advance of the year of application and should be approved by the Government.

4.2 Are staff numbers and personnel costs controlled and published?

Ceilings of staff numbers in the individual parts of state administrations are based on the Government Order No. 48/1995 CoL "on the control of funds expended on salaries and standby service remuneration in budget-finance and some other organisations and institutions". This order authorises the Government to fix the limits of staff, including funds available for salaries for them. The state budget specifies only the maximum total amount of funds available for salaries and other payments for work executed, but not the maximum number of employees. Until 1997, the Government implemented this government order, limiting the amount of salary funds used for incentives from reduced staffing to 3 per cent of the organisations' envelope. Since 1997, the Government has abandoned the mandatory observance of salary savings, if staff were less than 97 per cent of the upper limit. Every state administration authority still provides its own computerised payroll system, which makes the assessment of the actual staff numbers quite difficult.

The National Audit Office audits personnel expenditure. The Ministry of Labour, via legislation on wages and salary funds, and the Ministry of Finance via the state budget, ensures that spending is within the limits. The internal control system, however, still has flaws, that the new Financial Audit Act is intended to remedy.

Controls over the real numbers of staff are not carried out. Statistics may only reflect staff ceilings. Personnel costs are controlled as far as upper limits are concerned.

The new Civil Service Law includes arrangements, which, if implemented, should ensure better and more transparent control of both staff numbers and costs, namely, the preparation of annual personnel plans containing details on numbers, grades allocated to positions, related salaries, a central information system and register of personnel.

4.3 Do staff representatives participate in decision-making and control concerning personnel management matters?

Staff have the right to join trade unions and to strike, in accordance with the Charter of Basic Rights and Freedoms. Trade unions have to be registered with the Ministry of the Interior. In the trade union of State Authorities and Organisations about 40 to 50 per cent of employees in the general administration are organised. There are special trade unions for fireman and police, sectors which are also highly organised. Trade unions have been consulted on the new Civil Service Law. Their involvement in decision-making and control is generally regulated by the Labour Code. They have a right to joint decision-making on the allocation of funds for cultural and social needs, and they have to be consulted when drafting new legislation or regulations on working conditions. The scope for collective bargaining is limited as salaries are determined by legal regulations.

In summary, trade union membership and staff representation are accepted rights, and consultations with staff on a range of issues concerning conditions and performance of service are standard practice.

The Civil Service Act, if implemented, will not affect these rights, except that principal civil servants will not have the right to strike. As far as trade unions are concerned, the new Act provides for discussions on a range of issues at the level of the individual service organisations. These include: the basic documents drawing up organisational structures; draft decisions concerning changes in conditions of service; draft service regulations; and proposals for the improvement of conditions. In addition, they are to receive notification of accepted candidates and appointments of civil servants, and be involved in examination bodies set up under the Act, as well as advisory bodies established by the Directorate General for Public Service. In the case of higher trade unions (i.e. a central trade union body), they will have a right to discuss and state an opinion on the personnel plans of the service organisations. Where there is no trade union, staff may elect a council comprised of not less than 3 and not more than 15 persons. The council will have the same consultation rights as a trade union, but shall be dissolved in the event of a trade union being set up in the organisation.

5. Capacity to Reform and Sustainability of Reforms

5.1 Does the politico-administrative system reasonably enable the Government to carry out reforms?

There was political support from the outgoing Government for reform, as evidenced by the preparation of several pieces of legislation, necessary to enable public administration reform. Regarding the Civil Service Law, some doubts must arise regarding the political consensus within the present coalition, given the lengthy transition period allowed for implementing the law.

At the administrative level, the responsibilities for reform are shared among the Ministry of Labour and Social Affairs, the Ministry of the Interior, and the Section on Organisation, Personnel Management and training in State Administration (before September 2001 the Civil Service Department) in the Office of the Government. Their respective jurisdictions seem to partly overlap, an arrangement which will call for close co-operation and may hamper the capacity to reform.

The Directorate General for Public Service in the Government Office has been established on 15 June. It will, if the Civil Service Act is fully implemented, exercise an overall management, executive, co-ordination and overview role in relation to the civil service and the implementation of the Act. The Directorate General for Public Service has to draw up guidelines and rules for a reclassification of all positions in administrative authorities, in accordance with the service designations and education requirements laid down in the Act. Under the Act, each administrative authority will have to undertake, in the context of drawing up a personnel plan, an assessment of each position in terms of its functions, complexity, level of responsibility, educational requirements, remuneration, etc., and designate it for discharge by a civil servant or other employee. Designations are to be completed by end 2003.

In principle, the Prime Minister and the Government have a sufficiently strong position. The administration is still politicised and lacks sufficient qualified staff to serve as change agents, so the implementation of reforms basically depends on the political backing of the Government.

5.2 Are the main reform incentives identified and is their sustainability foreseeable in the medium term?

The need for reform is understood and has been articulated. The lack of a central agency or overseeing entity, with the authority and the political backing to exercise an overall leadership, executive, co-ordination and monitoring role, in relation to the reform programme and its implementation, is a matter that should be addressed. In addition, there would appear to be a need to have local leaders, and change agents or champions in each ministry and other major state bodies, who can promote and develop “buy-in” to and support for reform initiatives locally.

A reform programme, mainly geared to EU accession, is being pursued; however, its implementation is rather slow. Its main components are: reform of territorial administration; modernisation of central administration; and, strengthening international co-operation, particularly with the EU in relation to preparation for accession.

The territorial reform has started and involves the transfer of a range of powers and functions (and associated staff where relevant – some 1,500 staff have transferred to date) from central administration to local state administration and to local self-governing bodies. However, the draft law, regulating the second stage of territorial reform, led to disagreements between the two chambers of Parliament and criticism from the opposition. If not adopted at the last extraordinary session of the lower chamber, prior to general elections in mid June, there is a risk of discontinuation or at least a delay in the reform programme. This will depend on the reform priorities of the incoming Government. The draft law foresees devolution of tasks to the self-government levels. This is coupled with the abolition of the district offices, and increases in the number of regional state government and self-government authorities and municipalities with "extended" powers. Fiscal decentralisation is still under discussion, therefore, for the time being the decentralisation will be carried out in tandem with higher budget transfers.

Regulatory reform is also advancing, though the Global Corruption Report 2001 of Transparency International still rates the opacity (weighted on: corruption, legal system, economic policies, accounting standards and practices) rather high. Despite the progress being made, it is not evident that there is sufficient awareness on the political and on the senior management level, concerning the leadership and management capacities required for implementing administrative reform. The capacity to sustain reform over the medium term will depend on a number of factors.

The Civil Service Act, when finally implemented, should enable internal reform of the public administration. A critical factor is the development of an effective training capability, both at the centre, in relation to setting strategy and co-ordinating activities, and in individual organisations, and on the self-government level, to support local administrative changes and the reform programme generally.

Continuation of the reforms, now underway, depends to a large degree on the outcome of the general elections in the Czech Republic on 14/15 June, and the composition of the future government. The results of the election have confirmed one of the coalition partners of the outgoing government, the Social Democratic Party. Overall, the election results seem to allow predicting that the ongoing reforms in the Czech republic will continue and that public administration reform will at least be one of the priorities of the incoming Government.

A serious risk, for the development of a professional civil service in line with EU standards, is the fact that the implementation period for the new Civil Service Act will coincide with possible accession to the EU. In fact, EU membership, and all that it will entail by way of additional responsibilities and demands on the public administration, may well constitute a risk also to the full implementation of other reforms under way.

The capacity to continue and sustain reform over the medium term will depend on the reform commitment of the incoming government, as several laws necessary for the full implementation of the ongoing reforms are not yet adopted or are lacking necessary secondary legislation. In addition, there are a number of factors, which will need to receive immediate government attention. These include: the creation of a strong central capacity to lead and monitor the implementation of reforms under way; the development of an effective training capacity, both for ministerial staff and local authority staff at regional and local level; and finally, the implementation of the Civil Service Law. In fact the implementation of the Civil Service Law should start earlier than envisaged by law, to ensure sufficient administrative capacity for assuming the responsibilities linked to EU membership.

Recommendations and Next Steps

Priority should be given to the following actions:

1. To direct and manage the reform programme a central capacity, with the authority to exercise an overall leadership, co-ordination and monitoring role, should be put in place as a matter of priority.
2. The new Civil Service Act, and related secondary legislation, should be implemented as quickly as possible; in this regard, the enforcement and the transition period should be shortened. The Director General for Public Service, to be nominated by the incoming Government, should be fully supported by Government and adequately resourced to ensure that the Directorate can prepare the enforcement of the Civil Service Act quickly and in an adequate manner.
3. Adequate and uniform legal safeguards for civil servants, and others employed in state and local administration, disputing unlawful orders and dubious practices, should be put in place as a matter of urgency.
4. Preparations for the introduction of the new salary system for the civil service should be initiated at an early date, with a focus on the rules and procedures, particularly those applying to supplementary payments. Care and attention should be paid to ensure transparency, to minimise the potential for interpretational and operational ambiguities, and to eliminate the problems associated with the current system.
5. A high priority should continue to be attached to the National Programme to Combat Corruption, and a coherent anti-corruption legal system should be put in place and enforced as soon as possible.
6. The legal framework governing administrative actions and decisions should be brought into line with the Constitution, and adapted to EU standards through the early enforcement of the needed legislation, especially in relation to administrative procedures and courts.
7. The legislation governing budgetary and other resource transfers, required to enable effective territorial self-government, should be enacted without delay. Adequate accountability mechanisms will have to be developed in parallel, There is a need to ensure that resources are allocated in a manner that takes cognisance of regional economic and social disparities.