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DISCRETIONARY POWERS IN THE LEGISLATION THAT REGULATE EMPLOYMENT IN THE AREA OF HEALTH

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Skopje, Republic of North Macedonia

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Report Cover Page

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1. INTRODUCTION

Discretionary powers like coins have two sides. One side is positive with discretion giving more possibilities to be flexible, solve problems in a fast and creative way and find options that are best suitable for the needs of the people. The other side is negative, since discretionary power also facilitates risks of corruption, arbitrariness and abuse of power. These risks cannot be eliminated totally, but they can be minimized by first setting clear borders to discretionary powers, and second by monitoring compliance with them on a day-to-day basis.

The EU-funded project “Support to State Reorganization” (EuropeAid/139876/DH/SER/MK) in the Republic of North Macedonia. The project has two components: (i) Optimization and rationalization of the state administrative bodies and inspection services; (ii) Improvement of the framework of the discretionary powers. The overall objective of the project is to optimize the overall institutional framework, enhance the public service delivery and strengthen ethics, integrity, transparency and accountability of public administration. Its purpose is to streamline and optimize institutional framework, eliminate overlapping competences and ensure effective lines of accountability.

This analysis is one of the outputs of the second component of the project. It foresees activities for revision of the system of the discretionary powers in employment in the sector of Health to allow their application in a legal and just manner. For this purpose, it is important to strengthen the routine for taking decisions and enforce the control over discretionary powers. This analysis provides for a review and analysis of the regulations establishing discretionary powers and enables the beneficiary and other responsible institutions like the Ministry of Health to discuss and find the best solutions to the identified problems and drawbacks. The recommendations part also provides for some suggestions of amendments that can be used as further basis for the discussion.

2. MAPPING OF THE LAWS

The mapping of the laws in the sector of Health was done by the national expert of the Project. According to the suggestions of the National expert, the following pieces of legislation and articles were analyzed. In the framework of the Project different bylaws and reports were also analyzed, still the main accent according to the needs of the beneficiaries is on analyzing relevant laws and practice according to the meetings held with experts and specialists from the Government of the Republic of North Macedonia, the State Commission for the Prevention of Corruption, Ministry of Information Society and Administration, Ministry of Health and other line ministries.

No.	Name of the Law	Relevant Articles
1.	Law on Health Protection. Official Gazette of the Republic of	Chapter VI; Articles 118-119; 144v;144n;147;147a;148- 150a,150v,150g;155zh;156- 164;165;167a;168;170;187- 200;219;223-224;239a-240;245;246- 249;Chapter XVI.
2.	Rulebook for internal organization in the Ministry of Health	
3.	Rulebook for systematization of workers in the Ministry of Health by amending and supplementing	
4.	Collective agreement, Health sector	Page no.87. Article 6-8; 20-22; 74;77;80,81;87-112

In the sector of Health also general laws regulating employment and discretion in employment are applied. The Law on Administrative Servants is applied for employing administrative servants in the Ministry of Health and throughout the sector. Law on Public sector employees is applied for positions that are not positions of administrative servants but are included in the sphere of applicability of the Law on Public Sector Employees. Labor law is applicable when technical staff needs to be employed. These laws have been analyzed separately in a separate document regarding general legislation of discretion in employment in the Republic of North Macedonia.

The level of the proposed analysis is very detailed in order to identify and point out the regulations where the discretionary rights might be either unintended or too wide and therefore misused. Therefore, only the main pieces of legislation were analyzed in such detailed manner. In the field of Health the Law on Health Protection was analyzed. The methodology of the analysis is explained further in this report, and it can be continued and applied also to other laws and bylaws either in the sector of Health or in other sectors of public administration of the Republic of North Macedonia.

Detailed analysis is reflected in the table where the existing discretionary powers in the employment in the field of Health are checked against several important benchmarks:

1. The provision of the Law under analysis.
2. The decision made according to the particular discretionary right.
3. The authorized person to make that decision.
4. The criteria defined for making the decision.
5. The deadlines either for making the decision or for its implementation or the term of the decision made.
6. The existence of a written justification of the decision in order to explain, prove and justify that the existing discretionary power was used appropriately.
7. The existence of an appeal procedure.
8. Existence of a regulation for public availability of the particular procedure, decision, its justification or any kind of information about the discretionary power used.
9. Analysis on whether and to what extent the decision that was made impacts the remuneration of a person involved.

The analysis offers a “traffic light principle” according to which the most problematic situations are highlighted red, less problematic are highlighted yellow, but situations where no significant drawbacks are identified are not highlighted. The highlighted



areas are meant to be subject to further discussions whether and what kind of changes are necessary to the laws analyzed.



3. VERIFICATION OF THE RESULTS

The methodology used by the Project during the analysis of the applicable laws and the main criteria for restricting the discretionary rights were discussed and verified during the workshop organized by the Project on October 18., 19. and 20, 2021.

Many problems, risks and vulnerabilities regarding excessive discretion of public administration and especially political influence on employment procedures were identified during the workshop.

The participants of the workshop agreed that discretionary power may be either positive or negative, and it depends on the person using it. But in order to prevent arbitrary and excessive use of discretionary power which may lead to favoritism and nepotism, certain limits must be imposed. The limits offered by the experts of the Project were discussed and accepted during the workshop.

Representatives from all involved ministries and other stakeholders were invited to the workshop.

During the third day of the workshop a piloting of the proposed employment procedure was carried out, including the process of framing discretionary powers and providing justification for each decision.

4. LAW ON HEALTH PROTECTION

NOTE: A Consolidated Unofficial version of the Law on Health protection was used for the needs of this Report.

Also, Google Translate tool was used for translating the law from Macedonian to English language, which may cause irregularities

According to the suggestion of SNKE of the project following articles of the Law on Health Protection were analysed: Chapter VI; Articles 118-119; 144v; 144n; 147; 147a; 148-150a; 150v; 150g; 155zh; 156-164; 165; 167a; 168; 170; 187-200; 219; 223-224; 239a-240; 245; 246-249; Chapter XVI.

Article 150a regulates a possibility for a public health institution to reimburse specialization costs to health workers and associates employed in particular institution. Apart from very general criteria set out in the law (correspondence to the activity of the particular institution, correspondence to the plan approved by the Government and correspondence to general criteria), no specific criteria and no specific procedure is regulated which opens the door to favoritism and makes it very difficult or even impossible to review the legality of the decision by a higher institution or court. Also, it makes it very difficult to observe the principle of equal treatment, because in order to observe this principle all persons who apply for reimbursement and correspond to the criteria must be reimbursed. Yet approval of all reimbursement requests is most probably not possible due to financial reasons.

Making the results of a competition procedure dependent among others on the criteria of ranking of the university may be a very good idea, since the quality of education is very important for the quality of work. At the same time this also links these decisions to the quality of the ranking procedure of the Higher Education Institutions which should also be understandable, transparent and justified.

Tests for knowledge of a world language for candidates of workers in the health institutions are organized separately (Article 160 (4)) and a certificate is not required. This regulation differs from the regulation regarding language requirements for other fields of public service. At the same time this regulation may be considered more

successful because it tests the real knowledge of language and ability to use it, not an existence of a formal document. After informal consultations during the workshops, it was established that the certificates confirming the knowledge of English language may either be bought without really knowing the language or be gained a long time ago, therefore they do not certify the real knowledge and ability to use the language. Also, during the meetings with public servants and officials it was learned that for example knowledge of English language is not a general competence of administrative officials.

The procedure of employment in health institutions also is the only procedure during which the execution of the decision to select a candidate is postponed in case of appeal (Article 161 (4)). This is not common for legislation regarding employment in other fields. On the one hand this delays the procedure of employment even more than necessary for carrying out the competition. But on the other hand, it makes the appeal procedure more meaningful since it is possible to change the result of the competition consequently to the appeal procedure. Since during the research and the field work it has been established that the appeal procedure for the field of employment is not considered to be very effective, this kind of practice can be evaluated positively and might be taken over also by other sectors of the public administration of the Republic of North Macedonia.

Article 155h (6) of the Law on Health Protection makes it possible to employ people temporarily in case it is not possible to organize a decent employment procedure and (or) for uninterrupted performance of an institution. There are no other criteria mentioned in the law. The period of 5 years is too long for the “impossibility to carry out a decent employment procedure”. If an employment procedure takes approximately half a year, this term might be the maximum term for temporary employment. In case the situation objectively arises that it is necessary to employ a person temporarily, a public announcement must be published, and an employment procedure must be carried out parallel to the temporary employment so that when the



term of six months ends, a permanent employee is already selected. The only possibility to prolong the situation of temporary employment could be in case the decision to employ a person is appealed. But also, in this case it is justifiable only while the court procedure is ongoing, but no longer than that.

Article 158 (6) gives a possibility to the health institution to set a special condition for the employment in the particular institution – a volunteering period for at least one year or more as an employment advantage. It is not specified in which case this advantage is taken into account – does it apply only to cases when the number of points gathered for other criteria is identical or it applies differently. This might make it possible for persons willing to circumvent the employment procedure to volunteer in an institution in order to be able to get a priority of being employed in the institution later.

Article 164c describes the selection procedure for professionals with higher education on tertiary level. Here even two commissions are formed – one for oral and the other for written examination. Moreover, these commissions are formed half an hour before the examination. Such regulation is also an exception in the public administration of the Republic of North Macedonia, and with an aim to unify the regulation it should be discussed whether it can be taken over also by other institutions. Forming the commission shortly before the examination might minimize the risk of corruption from the side of the candidates, but it still does not prevent favoritism from the side of the commission members or the head of the institution.

The overall selection procedure of the professionals with higher education on tertiary level described in Article 164 is well regulated, public and transparent as far as the examination procedure is concerned. Yet the law does not provide for any kind of regulation of the further procedure of selection – ranking of the candidates and choosing of the best candidate. Seemingly regardless of the competition procedure, the selection procedure itself is still left to the discretion of the responsible officials. In order to continue the best practice, it should also be regulated.



Article 170 (2) provides for the possibility to accept a donation or sponsorship from natural or legal persons for participation in additional training and development activities. This provision is very dangerous from the point of view of corruption because it can add up a lot of exclusive opportunities to the training activities like exclusive travels, trips, leisure activities etc. paid for by companies distributing medical equipment and products. Since it is probably sometimes objectively necessary to find out new information about new products, this possibility should be limited for example by allowing it only in the territory of North Macedonia, limiting it to one day, carrying it out in the premises of the institutions or similar. Part (4) of the Article provides that the donations and sponsorships referred to in paragraph (2) of this Article shall be entered in the register of sponsorships and donations ex officio by the Ministry of Health. This is important for the transparency and therefore this register should be made publicly available. At the same time the register as the only limitation is not enough because it can help to identify the problems post-factum when they have already occurred but it does not help to prevent occurrence of the problematic issues.



5. DETAILED ANALYSIS OF THE LAW ON HEALTH PROTECTION

This section contains a detailed analysis of the Law on Health protection. The analysis was carried out according to the milestones described in Section 2 of this report. These milestones were chosen out of many others as first steps to ensure that the discretion now available to public officials of the Republic of North Macedonia is limited and put into a more understandable framework.

Detailed analysis of the Law on Health Protection contains a total of 196 possible improvements throughout the law. 84 of them were marked red, but 112 – yellow.

In the field of transparency (public availability of information) a total of 39 possible improvements are suggested, 13 of them yellow but 26 – red.

Also, regarding possible and necessary justification of the decisions, 37 drawbacks are identified. 19 of them yellow for discussion but 18 – red, recommended for immediate improvement.



6. PLACES OF RISK IN THE LAW ON HEALTH PROTECTION

7. Detailed analysis of the Law on Health Protection									
No.	Provision	Decision	Authorized person	Criteria	Deadline	Written justification	Appeal	Public availability	Remuneration
1.	Establishment of the Management Board of the Public Health Institution – Article 100	To establish a Management Board of the Public Health Institution	Determined by the Statute of the Institution	Determined by the Statute of the Institution	Determined by the Statute of the Institution	Not regulated	Not regulated	Not regulated	Not regulated
2.	Appointment of the members of the Board of Directors – Article 101	To appoint a member of the Board of Directors	Not regulated	Higher education and five years experience	Not regulated	Not regulated	Not regulated	Not regulated	Not regulated
3.	Dismissal of the member of Management Board – Article 102	To dismiss a member of the Management Board	Not regulated	Set out in the article	Not regulated	Not regulated	Not regulated	Not regulated	Not regulated
4.	Appointment of the Director of the public health institution	To appoint a director of the public health institution	Not regulated	Set out in the article	Not regulated	Not regulated	Not regulated	Not regulated	Not regulated
5.	Conclusion of a managerial agreement between the director of the health institution and the Minister of Health – Article 104 (5)	To determine the content of the managerial contract	The Minister of Health	Not determined	Not regulated	Not regulated	Not regulated	Not regulated	Not relevant
6.	Contractual penalty – Article 104a	To impose a contractual penalty on a director of the health institution	The Minister of Health	On occasions specified by the law or contract	Not regulated	Not regulated	Not regulated	Not regulated	Not relevant

No.	Provision	Decision	Authorized person	Criteria	Deadline	Written justification	Appeal	Public availability	Remuneration
7.	Appointment of the medical director – Article 105 (2)	To appoint a medical director of the health institution	The Minister of Health	Specified in the law. Any kind of higher education (not only medical) is possible	Not regulated	Not regulated	Administrative dispute may be initiated within 5 days	Not regulated	Not regulated
8.	Appointment of the organizational director – Article 105 (5)	To appoint an organizational director of the health institution	The Minister of Health	Specified in the law	Not regulated	Not regulated	Administrative dispute may be initiated within 5 days	Not regulated	Not regulated
9.	Appointment of an acting director – Article 108 (5)	To appoint an acting director of the health institution	The Minister of Health	Not specified	No longer than 6 months. Prolonged in practice	Not regulated	Not regulated	Not regulated	Not regulated
10.	Evaluating the work of the Director of Health institution – Article 110	To decide on deficiencies and their elimination	The Minister of Health	No procedure specified	Not regulated	Not regulated	Not regulated	Not regulated	Not relevant
11.	Dismissal of the Director of institution due to the identified shortcomings – Article 110, 111	To dismiss a Director of health institution	The Minister of Health	No procedure specified	Not regulated	Not regulated	Not regulated	Not regulated	Not relevant
12.	Establishment of the Council of Specialization – Article 148 (3).	To establish the Council of Specialization.	Minister of Health	Members are representing the named institutions.	Not regulated	Not required	Not regulated	Not regulated	Not regulated
13.	The manner of calculating the points for vocational training – Article 149 (4).	To determine the manner of calculating the weight for the points.	Minister of Health	The percentage of each category is specified	Not regulated	Not required	Not relevant	Not regulated	Not relevant

No.	Provision	Decision	Authorized person	Criteria	Deadline	Written justification	Appeal	Public availability	Remuneration
14.	Specialization at the expense of public health institution – Article 150a	To reimburse the expenses of specialization	Public Health Institution	According to the plan adopted by the Government and the conditions set out in the Law on Health Protection. No specific criteria to determine the winner if there is more than one candidate.	Not regulated	Not required	Not regulated	Not regulated	Not regulated
15.	Adopting a co-financing program for specializations – Article 150	To adopt a co-financing program	The Government	Average success and examination. Yet the relationship between applying part 8 and part 4 of Article 150 is not clear (e.g. if two persons reach the same score, one according to part 4 and the other according to part 8).	A deadline of 30 days is set for applying after the announcement. There are no deadlines for publishing the announcement or making the decision.	Not required	Not regulated	The announcement is published by the Ministry of Health. No information about the program itself.	Not regulated

No.	Provision	Decision	Authorized person	Criteria	Deadline	Written justification	Appeal	Public availability	Remuneration
16.	Adoption of the annual plan for employment of administrative staff and support staff – Article 155h	To adopt annual plan for employment of administrative staff and support staff.	The Director of the Public Health Institution	Determined in a separate document. Sufficiency of financial resources (approval of the Ministry of Finance)	Annually	The form of the annual plan is regulated by other documents. Yet there is no cross-reference in the Law on Health Protection	Not relevant	Not regulated	Not relevant
17.	Temporary employment in the public health institutions – Article 155h (6)	To employ a person temporarily	Not regulated. Supposedly it is the Director	In case of impossibility to conduct a procedure for employment, for uninterrupted performance of the public service of the institution	No longer than five years. But in case a contract for specialization is concluded – for an indefinite period	Not required	Not regulated	Not regulated	Not regulated
18.	Transformation of temporary employment into permanent employment – Article 155h (8)	The regulation does not require a decision. Temporary employment is automatically transferred to permanent in case a contract for specialization is concluded.	Not regulated. Supposedly it is the Director	Conclusion of a contract for specialization	After expiration of five years	Not required	Not regulated	Not required	Not regulated

No.	Provision	Decision	Authorized person	Criteria	Deadline	Written justification	Appeal	Public availability	Remuneration
19.	To consent to the employment of a foreign national – Article 158 (4)	To give a consent to employ a foreign national in a health institution.	Not regulated. Ministry of Health. Supposedly it is the Director or the State Secretary.	Not regulated It should be regulated that the candidate must correspond to all general and special conditions except the condition of nationality.	Not relevant	Not required	Not regulated	Not regulated	Not regulated
20.	To set a volunteering period as a special condition – Article 158 (6)	To decide on an exceptional special condition	Not regulated. The Health Institution. Supposedly it is the Director	Not regulated	Not relevant	Not required	Not regulated	Not regulated	Not relevant
21.	Selection according to an internal announcement – Article 162	To employ a candidate according to an internal announcement	The managing body of the health institution	Not regulated	Not regulated	Not required	Not regulated	Not regulated	Not regulated
22.	Reassignment of a health worker – Article 163	To reassign a health worker in the same institution	Not regulated. Supposedly it is the Director	According to Article 158 (5)	Not relevant	Not required	Not regulated	Not regulated	Not regulated

No.	Provision	Decision	Authorized person	Criteria	Deadline	Written justification	Appeal	Public availability	Remuneration
23.	Rotation of health care workers – Article 164	To move a person from one institution to another, both in public and private sector	Consent of the Minister of Health, the person and both heads of the	Not regulated	Not relevant	Not required	Not regulated	Not regulated	Not regulated

			institutions. In particular cases also the Health Insurance Fund.						
24.	Special conditions for employment of health professionals with higher education at tertiary level – Article 164b	To decide to make an exception for a particular candidate – Article 164b (2)	Not regulated. Supposedly it is the Director	Not regulated	Not relevant	Not required	Not regulated	Not regulated	Not regulated
25.	Examination procedure of the selection for employment at tertiary level – Article 164	To employ a person at tertiary level	Not regulated. Supposedly it is the Director	Results of a thorough examination procedure	Not regulated	Not required	Not regulated	Not regulated	Not regulated
26.	Employment of advisors and consultants – Article 168	To employ an advisor or a consultant	Not regulated. Supposedly it is the Director	The necessity according to the goal to be achieved	Not relevant	Specified in the contract	Not relevant	Not regulated	Not regulated
27.	Possibility to receive a donation or sponsorship for training – Article 170 (2)	To accept a donation or sponsorship for training	Not regulated. Consent is necessary from the Minister of Health.	Not set	Not relevant	Not required	Not relevant	Donations and sponsorships are registered in a register held by the Ministry of Health but public availability of this information is not provided.	Not regulated. No remuneration should be provided for the participation in such events.

No.	Provision	Decision	Authorized person	Criteria	Deadline	Written justification	Appeal	Public availability	Remuneration
28.	Temporary removal of the health worker – Article 192	To temporarily remove a health worker from office	The executive body of the institution	Initiation of criminal procedures	Not regulated	Not required	Within 8 days to the Commission of the Second Instance	Not regulated	50% of the salary

29.	Procedure in case of liability – Article 193a	To decide on the liability of the health worker	The Director of the Health Institution	Existence of a complaint	15 days	Not regulated	Not regulated	Not regulated	Not regulated
30.	A decision on compensating the damage – Article 195	To decide on compensating the damages	Managing Body of the Institution	Damage to the institution. There are no more detailed criteria.	60 days	Not regulated	Within 8 days to the Commission of the Second Instance	Not regulated	Not relevant
31.	Contractual penalty for non-achievement of the performance indicators – Article 239v	To impose a contractual penalty	The Minister of Health	According to the performance agreement	Not specified	Not required	Within 8 days to the Commission of the Second Instance	Not regulated	Not relevant
32.	Establishment of Health Council – Article 246	To establish a Health Council and determine its members	The discretion of the Minister of Health	No criteria for choosing the members	Not specified	Not required	Not relevant	Not regulated	Not regulated
33.	Establishment of Health Ethics Committee – Article 247	To establish a Health Ethics Committee	The discretion of the Minister of Health	No criteria for choosing the members	Not specified	Not required	Not relevant	Not regulated	Determined according to the discretion of the Minister of Health
34.	Establishment of the National Commission for Diabetes – Article 2481 and 248B	To establish a National Commission for Diabetes	The discretion of the Minister of Health	No criteria for choosing the members	Not specified	Not required	Not regulated	Not regulated	Not regulated
35.	Establishment of the National Immunization Commission – Article 248v	To establish a National Immunization Commission	The discretion of the Minister of Health	No criteria for choosing the members	Not specified	Not required	Not regulated	Not regulated	70% of the minimum wage

No.	Provision	Decision	Authorized person	Criteria	Deadline	Written justification	Appeal	Public availability	Remuneration
36.	Approval of the National Health Coordinator – Article 248v	To approve a National Health Coordinator	The Government upon the proposal of the	General criteria are set out in part (6) of the Law	Not specified	Not required	Not regulated	Not regulated	In accordance with the Law on Salary

			Minister of Health						
37.	Establishment of other expert commissions – Article 249	To establish an expert commission	The discretion of the Minister of Health	Set out in part (2) of the Article	Not specified	Not required	Not regulated	Not regulated	Not regulated
38.	Supervision over the legality of the work of health institutions – Article 295	To perform a supervision of the legality of work	The Ministry of Health	According to the legislation in force	In accordance with the annual plan	Not regulated	Not regulated	Not regulated	Not relevant
39.	Supervision of professional work – Article 296	To perform a supervision of the professional work	The professional chambers and the Commission formed by the Minister of Health	According to professional standards	In accordance with the annual plan	Not regulated	Within three days to the Minister of health. No information regarding further possibilities	Not regulated	Not regulated

8. RECOMMENDATIONS

After a thorough analysis of the general legislation and legislation regarding employment in the field of health, the following main recommendations are offered:

1. To develop and adopt the Law on Senior Administrative Servants regulating the procedures of recruitment and employment of the heads of institutions, including public health institutions.
2. To include in legislation regulating decision making a legal necessity to justify all administrative decisions, giving reasons for making one decision or another. This should be applied as a general principle for all decisions, but according to this analysis the necessities are identified in the Column no.7 of the tables analysing the Law on Health Protection.
3. To consider unification of basic recruitment, promotion and dismissal procedures for employees throughout the public administration – either it is public service or civil service, leaving only technical staff to the procedure of general Labour law.
4. Most often the decisions regarding employment in public administration are not publicly available, which allows for speculations in this direction. Therefore, according to the “yellow light” and “red light” in the tables, the changes should be made in respective regulations to make the decisions publicly available to everybody on the websites of institutions.
5. To eliminate the possibility and practice of recruiting temporary workers and acting heads of the institutions by strictly observing the existing regulations. An audit regarding this topic should be carried out to fix the existing situation.



6. Specific regulations regarding formation of various boards, commissions and expert councils should be made more transparent by regulating their establishment, work and remuneration and by making all decisions regarding these institutions publicly available on the website of the Government or respective institution. A procedure should be established to ensure that the working bodies do not duplicate the competence of the ministries.

