

ANALYSIS OF DISCRETIONARY POWERS IN PROCEDURES FOR APPOINTING MANAGERIAL STRUCTURES IN STATE INSTITUTIONS



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EXECUTIVE SUMMARY

This analysis was developed within the framework of the "Partnership against Corruption" project, financed by USAID whose main commitment is to strengthen the capacities, integrity, and accountability of the public sector and reduce the opportunities for corruption.

The discretionary powers and the manner in which they are regulated in the legislation of the Republic of North Macedonia have been identified as one of the biggest risks for corruption in the public sector. Namely, the laws provide for wide discretionary powers when making decisions in various procedures. Most often, these powers are regulated by unclear and incomplete legal norms that leave room for their different interpretation resulting into unevenness in their application, legal uncertainty, and opportunities for corrupt influences in decision-making processes, nepotism, and cronyism.

In this analysis, the main emphasis is placed on the discretionary powers in the procedures for appointing of the management structures of central institutions.

For the purposes of the research, an analysis was made of more than 74 legal acts (laws and by-laws) regulating the election and appointment procedures of the management structures of the central institutions, specific acts or decisions on appointing managers, program documents and reports of supervisory institutions such as SAO, SCPC and the Ombudsman.

The findings that emerged from the conducted analysis indicate that the procedures for appointing management structures are not expedient and give the Government significant freedom in appointing them. More specifically, the analysis explains in detail the shortcomings related to:

- Lack of specific conditions/criteria for the selection of managers, based on competence;
- Lack of a clear procedure for the selection of candidates that will allow access to management positions;
- The decisions appointing the managers do not contain a rationale for the personnel selection;
- Continuous abuse of the institute "acting duty";
- Lack of a unified system for regulating the management boards.

All these findings indicate the weaknesses of the system which are abused for corrupt purposes and appointing management structures through cronyism, nepotism, or patronage.

The recommendations at the end of the analysis together with the Action Plan refer to potential legal amendments, amendments in bylaws as well as the practice of the institutions, with the aim of reducing the (mis)use of system weaknesses for corrupt purposes.

1. INTRODUCTION

This analysis was conducted within the framework of the project "**Partnership against Corruption**" financially supported by the United States Agency for International Development - USAID, whose goal is to strengthen systems at the national level to reduce institutional vulnerability to corruption, by identifying priorities and together with the Government and other institutions in charge of fighting corruption deal with these phenomena that undermine the constitutional order of the country. The project takes the approach of engaging with institutions regarding accountability at the central level as well as with specific sectors. In the first year, the focus is on two sectors, one of which is the state and public administration sector, while the other is the health sector, which is addressed in a separate report entitled "Analysis of discretionary powers in the health sector".

This analysis focuses on the discretionary powers of the central institutions of the public sector as a special type of powers that give a certain freedom in their operation and that carry a high risk of their abuse for corrupt purposes at all levels in the public administration. More specifically, this analysis covers the discretionary powers in appointing and designating management structures (directors and members of the Management Board) in the bodies of the state administration.

The freedom that discretionary powers give to public sector institutions can very easily be (mis)used for corrupt and even criminal purposes if they are not effectively regulated. Through the arbitrary placement of the management structures of the institutions from among the ranks of politically eligible persons, it results into the usurpation of the public sector and the possibility of its abuse for corrupt actions. This is one of the reasons why RNM was characterized as a "captured state"¹ in 2015, and the political and institutional crisis (after the publication of "(...) illegally intercepted telephone communications") fully demonstrated the deviations in the functioning of the public administration under strong control of party structures.

Since then, a certain (minimal) improvement² has been noted, however, the state can easily return to that status again, unless the discretionary powers are better regulated.

National and international reports show that the political situation in the Republic of North Macedonia has not been stable and has not provided security for a long time, which is due to the low level of political and legal culture, the culture of impunity, as well as the violation of the principles of the rule of law. In such a constellation, it is very dangerous for the executive power or the public administration to have high discretionary powers that are poorly regulated and insufficiently controlled. The regulation of discretionary powers is primarily understood as (1) the manner in which they are prescribed in the laws, (2) the manner in which the control and supervision over their

¹ Freedom House; Analytical Brief- Freeing the Captured State in Macedonia: What Role for EU Accession?;

<https://freedomhouse.org/report/analytical-brief/2017/freeing-captured-state-macedonia-what-role-eu-accession>

² European Commission, North Macedonia 2023 Report, https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_693%20North%20Macedonia%20report.pdf

use is established by the public administration and (3) the sanctions that follow in case it is established that they have been misused for corrupt purposes.

Hence this analysis, the purpose of which is to contribute to the creation of a system that will comprehensively and efficiently regulate the discretionary powers of the executive government or the public administration, which will in some way be prevented from (mis)using them for corrupt purposes, both during employment and when appointing/designating managerial positions.

In the analysis, the focus is placed on the legal regulation of the appointment and designation of management positions of two types of institutions of the central government. That is, through a method of qualitative and normative analysis, the discretionary powers are mapped in the process of appointing and designating the heads of the respective institutions, in order to determine the vulnerability for their potential (mis)use for corrupt purposes. That is, the potential appointment and designation of party members and thus paralyze the public administration, which will not be qualified and professional to deliver policies and services to citizens, as well as protect their rights and interests in accordance with the principle of the rule of law.

2. METHODOLOGY

The methodological approach used for conducting the research and preparing the Report is combined and covers several aspects:

- Analysis of the situation through the analysis of the reports of the competent institutions in which abuse of discretionary powers is indicated in the appointment and designation of management structures in the administration bodies, such as the State Audit Office (SAO), the State Commission for the Prevention of Corruption (SCPC) and the Ombudsman, and other relevant stakeholders;
- Analysis of the general laws regulating the work of state administration bodies, including the procedures for appointing and dismissal of managerial positions and members of management bodies. Specifically, the Law on Organization and Work of State Administration Bodies³ and the Law on Government⁴;
- Analysis of more than 70 special laws regulating the work of a state administration body and the procedure for appointing and dismissal of managerial structures (directors and members of management boards);
- Responding to requests for access to public information.
- Findings from held focus groups with representatives of central institutions.

Within the scope of the research, the discretionary powers that the laws give to the institutions are mapped, followed by performing an assessment of their character, that is, whether they are explicit or implicit, and finally proposals are provided for their better regulation.

During the implementation of this analysis, the methodologies for anti-corruption analysis of legislation were consulted, that is, the methodology issued by the SCPC⁵, as well as the methodology issued by the Regional Anti-Corruption Initiative (RAI)⁶.

³ Law on Organization and Work of State Administration Bodies (Official Gazette No. 121, 10.06. 2024), https://drive.google.com/file/d/1bN4QEzeqr3_wxSqlqz_RZRMOKYlp9Nk1/view?usp=sharing

⁴ Law on Government https://vlada.mk/sites/default/files/dokumenti/zakoni/zakon_za_vladata_na_republika_makedonija.pdf

⁵ Methodology for anti-corruption review of legislation, SCPC, 2020, <https://shorturl.at/nruLN>

⁶ Corruption Proofing of Legislation (CPL) Monitoring and Evaluation Methodology, RAI, 2023 https://rai-see.org/php_sets/uploads/2024/03/Methodology-CPL-final.pdf

3. WHAT ARE DISCRETIONARY POWERS?

Discretionary powers, most simply defined, represent the right of institutions to freely decide in certain situations provided for by law, in order to strengthen their efficiency and effectiveness in delivering results for the citizens; however, even these powers are not immune from abuses and, in the absence of a clear regulation, can serve as an instrument of corruption⁷.

Discretionary powers in the Republic of North Macedonia are widespread, but their uneven application causes legal uncertainty, especially when deciding on the rights, obligations and legal interests of citizens. In Article 8 of the Law on the Prevention of Corruption and Conflict of Interests (LPCCI)⁸, the term "risk of corruption" among other things, includes discretionary powers. The Law on General Administrative Procedure (LGAP)⁹ and the Law on Administrative Disputes (LAD)¹⁰ also use the synonym "decision-making on own discretion". According to LGAP, and within the framework of the principle of legality:

"if the law authorises the public authority to exercise discretion, the administrative act shall remain within the limits of the law allowing the discretion, in accordance with the objective for which the discretion is allowed and shall be specifically explained". (Article 5, paragraph 3, LGAP)

In addition, the legality of actions of all public sector institutions is a constitutional principle, which is prescribed in Article 51 of the Constitution of the Republic of North Macedonia, which reads as follows:

"the laws shall be in accordance with the Constitution and all other regulations in accordance with the Constitution and law"¹¹.

Discretionary powers can be qualified as "explicit", when laws clearly define the rights of institutions to make free decisions. They can also be "implicit", when they derive from broad and vague legal provisions, which gives the institutions freedom to decide in filling those gaps.

In addition, discretionary powers can be divided into three types, namely (1) executive discretionary powers, which are essentially political discretionary powers of central institutions, then (2) administrative discretionary powers, which appear in administrative procedures and (3)

⁷ Discretionary powers as potential risk from corruption, Change Management Center, 2024, Skopje, <https://cup.org.mk/publication/discretionary-powers-as-a-potential-risk-of-corruption> стр. 8

⁸ Law on Prevention of Corruption and Conflict of Interest <https://shorturl.at/SGuFD>

⁹ Law on General Administrative Procedure https://aa.mk/content/zakon_za_opstata_upravna_postapka.pdf

LGAP is the main law which provides process guarantees for protection of the rights and interests of citizens in front of public sector institutions. More specifically, LGAP sets the basic/minimum guarantees from which one could not deviate in the special administrative procedures.

¹⁰ Law on Administrative Disputes

<https://healthrights.mk/pdf/Zakoni/2019/08.2019/Zakon%20za%20upravni%20sporovi%20SV%2096-219.pdf>

¹¹ Constitution of the Republic of North Macedonia <https://www.sobranie.mk/ustav-na-rm.nspix>

judicial discretionary powers of the judges in court disputes¹². This analysis does not cover judicial discretionary powers.

In both cases, the institutions must act in accordance with the principles prescribed in the LGAP. Although the implicit discretionary powers allow a wider range of freedom, the institutions shall be obliged to adhere to the rules and principles of the LGAP and to apply it subsidiarily. Because this law sets minimum limits for ensuring legality in the actions of the institutions and the protection of the rights of citizens, it thus has a unifying function and ensures uniqueness in the actions of the institutions. In the case of the existence of specific laws, they can regulate certain aspects of the work of the institutions in a different way than it is regulated in the LGAP, but only if they do not violate the basic purpose and principles of the Law and do not reduce the protection of the rights and legal interests of the parties involved as guaranteed by the LGAP (Article 2 paragraph 2).

Institutions from the public sector should use discretionary powers in the procedures for appointing and designating management structures in accordance with the rules and principles of the LGAP, both in the case of a prescribed procedure in a special law, and in the absence of a special procedure. Therefore, the assessment of the manner of using the discretionary powers can be done by assessing the compliance of the procedure with the rules and principles provided for in the LGAP. So, the application of discretionary powers can be divided into good application of discretionary powers, wrong application of discretionary powers, and abuse of discretionary powers.

The application of discretionary powers is good when a procedure is carried out in which the material truth (factual situation) is well/accurately determined, then the specific administrative act (decision, etc.) has an operative part which clearly and precisely states the legal basis and reasoning which describes in detail why the authority acted in the given way when using the discretionary power.

Wrong application of discretionary powers may occur due to administrative irregularities of the responsible person in the public authority who will incorrectly establish the material truth (factual situation), so the applicant must use legal remedies. In this situation, there is no intention on the part of the holder of the discretionary power to abuse the position to gain any personal material or non-material benefit.

Abuse of discretionary powers occurs when the objective circumstances clearly indicate that the specific administrative act adopted (decision, etc.) exceeded the goal for which the right of free decision-making was given, i.e. the discretionary power. More specifically, when the specific administrative act is not explained in particular or at all, so it is not possible to establish the reasons due to which it was decided in a certain way and there are well-founded doubts, or it is potentially established that the party in whose favor the decision was made (which violates the legal authorization) is in a direct or indirect (family, friends or political) relationship with the responsible person in the authority. In this case, there is abuse of authority and official position due to corrupt purposes or interests. This applies to both explicit and implicit discretionary powers.

¹² Discretionary powers as potential risk of corruption, Change Management Center, 2024, Skopje, <https://cup.org.mk/publication/discretionary-powers-as-a-potential-risk-of-corruption> page 9

The application of discretionary powers is often the subject of public debates, especially due to the inappropriate use by the management of institutions and possible political influences. The existence of mechanisms to control the application of discretionary powers is critical for the legal security of citizens and companies. Ways to limit and improve the regulation of discretionary powers are the subject of consideration and discussions in regional and European instances, such as the Council of Europe, which in their recommendation cm/rec(2007)7, emphasize that "bad administration" is the result of shortcomings in the administrative procedures, including unclear deadlines, criteria and steps. Regulation of discretionary powers is one of the key tasks for building strong and democratic institutions in the public sector. The right to good administration, included in the Charter¹³ of Fundamental Rights of the European Union (Article 41, point c), imposes an obligation on the administration to explain its decisions, which further emphasizes the importance of regulatory control and responsibility in the administration's actions.

Such powers are widely used in the appointment of management structures (directors and management board members) in the public sector. They are applied in various forms, and this analysis focuses on them as a serious source of risk for abuse and corruption. The current legal framework does not establish precise criteria for the appointment of directors or members of the management boards, which leaves a great deal of discretion and the possibility of irregularities and corrupt practices.

According to these amendments, the special (substantive) laws that regulate the establishment, operation, management and governance of separate administrative bodies, agencies, joint stock companies, public enterprises, do not contain criterion(criteria) for the type of education of the managers, nor basic standards, criteria and minimum competencies in the selection and appointment of members of the management and supervisory boards. The selection of members of supervisory and management boards is carried out by the founder (Government or Council of Local Self-Government Units (LSGUs)), which in turn select the director and/or deputy director. A frequent occurrence is the non-functionality of the supervisory and management boards due to the untimely appointment of the required number of members by their founder, or the execution of the position of director by an acting director several times in a row, which allows avoiding even the minimum set i.e. basic criteria.

¹³ Charter of Fundamental Rights of EU, 26.12.2012, (English language) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT>

3. ANALYSIS OF STRATEGIC DOCUMENTS AND REPORTS

The problem with the (mis)use of discretionary powers in the procedures for selecting and appointing directors and members of management boards in the state administration bodies has also been identified by the State Commission for the Prevention of Corruption (SCPC) and in that context, the Decision on amending and supplementing the National Strategy for the Prevention of Corruption and Conflict of Interest 2021-2025 defines as a strategic goal, among others, the following: "Professional and politically neutral public sector that acts in a legal, transparent, ethical, economical, accountable, and effective manner in function of public interest is the basis for preventing corruption and strengthening the public trust in the system."

The following measures are envisaged for the purposes of realization of this objective:

- To optimize the number of members in supervisory and management boards in governing bodies, PE and JSC and
- To introduce criteria for the type of education and competencies in the selection of directors and the appointment of members of the management and supervisory boards.

The implementation of these measures should contribute to the establishment of a merit-based procedure in the appointment of directors and members of management boards in the state administration bodies, reduction of discretionary power, and full transparency of selection and appointment procedures.

The SCPC, in the Annual Report on the Implementation of the 2023 National Strategy¹⁴ has concluded that

"The implementation of the planned activities from the National Strategy 2021-2025 foreseen for 2022, as well as the activities that were not implemented during 2021 or were commenced and transferred for implementation in 2022, is rather small and amounts to 10%. As a result, even in 2022, no significant changes were registered in the legislation and the abuse of legal solutions did not decrease due to imprecise or unclear provisions, so that the influences of party, family, friends' relations continued to remain dominant in the sphere of employment in the public sector."

The ombudsman (OM) has long expressed concern about the discretionary powers of the public administration in several of its segments, such as regulatory bodies, security institutions, employment procedures, etc.). From the published annual reports, in 2007, for the first time, it is noted that the OM ascertains the abuse of discretionary authority, specifically of the HIF¹⁵, and then

¹⁴ Annual report on the implementation of the national strategy for prevention of corruption and conflict of interest 2021-2025 <https://shorturl.at/nstAL>

¹⁵ Annual Report of the Ombudsman, 2007, page 76 <https://shorturl.at/fizX2>

in 2011 and 2012, it mentions the discretionary powers in the education sector¹⁶¹⁷. The Ombudsmen has warned in 2017 about the need to prevent the abuse of the discretionary right of the responsible persons¹⁸, and in 2019 the OM pointed out that no significant changes were observed in relation to the prevention of the abuse of the discretionary right of the responsible persons¹⁹. In 2021, the OM calls for greater transparency when making decisions that are the discretionary right of the concerned authorities in the educational process²⁰, but this recommendation is applicable to all sectors of the public administration, taking into account that they work according to the same rules and principles of the administrative procedure. In 2022, the OM also notes the abuse of discretionary powers in public sector employment procedures²¹.

Employment based on political parties instead of merit is possible if the management structures of the institutions are appointed/designated in such a way. It is a domino effect or a spillover effect. That is, the management structures (directors and members of management boards) should serve as a kind of "protective dam" for corrupt and criminal actions in the institution, such as employment through cronyism, clientelism, or patronage. But they cannot perform such a "protective" role if they themselves are elected through cronyism, clientelism, or patronage.

Discretionary powers are rather present in the appointment and dismissal of directors and members of the Management Board of public sector institutions. Such legal solutions lead to the continuous appointment of incompetent persons to managerial positions by corrupt means (cronyism, clientelism, and patronage). The extensive research of CMC from 2023 showed that out of 247 directors, 105 (42%) were appointed as acting directors (and not infrequently several times in a row) and that persons with secondary education were appointed as members of management and supervisory boards²². An analysis from 2018 shows a similar situation, that even 30% of the directors were acting directors²³. Some of them did not meet the basic criteria for appointment at all (for example, higher education). Therefore, the situation has not changed or improved significantly, and these findings do not represent isolated and naive cases, but the use of discretionary powers in the appointment of management structures, and an analysis of the laws that allow these loopholes in the system shall follow below.

¹⁶ Annual Report of the Ombudsman, 2011, page 104 <https://shorturl.at/biRSY>

¹⁷ Annual Report of the Ombudsman, 2012, page 105 <https://shorturl.at/iHMQ>

¹⁸ Annual Report of the Ombudsman, 2017, page 53 <https://shorturl.at/1E0Z2>

¹⁹ Annual Report of the Ombudsman, 2019, page 48 <https://rb.gv/2eyocf>

²⁰ Annual Report of the Ombudsman, 2021, page 91 <https://rb.gv/oeqdc6>

²¹ Annual Report of the Ombudsman, 2022, page 86 <https://rb.gv/kj2vpj>

²² Report from the monitoring of management structures in public sector institutions, Change Management Center (CMC), Skopje, 2023, <https://shorturl.at/bmLRU>

²³ Analysis of appointed and elected persons – Monitoring Report, Change Management Center (CMC), 2018, https://cup.org.mk/publication/lmenvani%20i%20izbrani_za%20web_02.pdf

The appointment and dismissal of public office holders or management positions (directors and members of management boards) of state administration bodies is regulated in the general (*lex generalis*) and special legislation (*lex specialis*). More specifically, the Law on General Administrative Procedures (LGAP), the Law on the Organization and Work of State Administration Bodies (LOWSAB) and the Law on Government (LG) are general laws, accompanied by the Rules of Procedure of the Government, whereas there are 65 special laws that regulate the functional and actual position and competence of individual bodies of state administration (listed in Annex 1).

General laws set the principle and general form of the procedure for appointing and dismissing directors and members of the Management Board by the Government, while special laws prescribe criteria for the selection of directors and members of the MB. These criteria can be general or specific. Some special laws give jurisdiction or possibility for institutions to envisage specific criteria for the selection of directors or members of the MB in their statutes.

It is important to mention the role of LGAP in establishing the principle of legality in the actions of institutions, which applies not only to administrative procedures, but also to all other administrative actions in which decisions of public interest are made - such as the appointment and the dismissal of directors and members of the MB. LGAP is also included in the group of general legislation.

4.1. GENERAL LEGISLATION

DISCRETIONARY POWERS WHEN APPOINTING MANAGERIAL STRUCTURES

The Law on the Organization and Work of State Administration Bodies (LOWSAB)²⁴ is a basic general law that establishes the structure of public administration. During the preparation of this analysis, the Assembly of the Republic of North Macedonia adopted the Law on Amending and Supplementing LOWSAB on June 10, 2024²⁵, and the new legal solutions were taken into account during the preparation of the analysis. According to this law, the executive government is composed of ministries, state bodies, independent bodies of state administration, and administrative organizations. According to the law (Article 47 paragraph 2), the work of the independent body of the state administration, the administrative organization and the body in its composition is managed by a director who is appointed and dismissed by the Government, unless otherwise prescribed by law. The government can also appoint deputies to the directors of independent bodies of state administration and administrative organizations (Article 51 paragraph 1).

According to LOWSAB, the director who manages the independent body of the state administration or the administrative organization, represents the body of the state administration, organizes and ensures the legal and efficient execution of the works and tasks; adopts regulations and other acts for which the one is authorized and undertakes other measures within the competence of the state administration body in accordance with the law; decides on the rights, duties and responsibilities of civil servants and other persons employed in the state administration body, who do not have the status of civil servants, unless otherwise prescribed by law (Article 49 paragraph 2).

According to the stated provision, it is clear that it is a very responsible function that carries with it significant competences and powers, for the correct and efficient execution of which a highly competent person is required. Such a person can be appointed only if the principle of merit is respected, and not the "spoils system"²⁶, which can produce a series of deviations in the administration, such as corruption.

LOWSAB further does not prescribe rules for the procedure in which the directors should be elected, but delegates it to other laws. More specifically, the Law on Government and the Rules of

²⁴ Law on Organization and Work of State Administration Bodies (Official Gazette No. 121, 10.06. 2024), https://drive.google.com/file/d/1bN4QEzeqr3_wxSqlqz_RZRMOKYlp9Nk1/view?usp=sharing

²⁵ Media information on the adoption of the LAS of LOWSAB – Voice of America (VOA) <https://mk.voanews.com/a/so-88-glasa-za-usvoen-zakonot-za-reorganizaci%D1%98a-na-ministerstvata-vo-vladata/7647926.html>

²⁶ System of distribution of positions in the public sector institutions according to the "division of prey" principle. This system is contrary to the merit system, where the loyalty or political affiliation plays the main role, and not the candidate's expertise.

Procedure of the Government regulate a general procedure for the election of directors and members of the Management Board, if a special procedure is not foreseen by a special law.

Pursuant to the Law on Government (Article 36 paragraph 6)²⁷, the Government appoints and designates or dismisses from duty, directors who manage state administration bodies, state or secretary general and other appointments and dismissals for which it is authorized, and decides on other issues and for administrative matters.

The Rules of Procedure of the Government²⁸, in Chapter VI entitled "Procedure for appointment and dismissal" (Articles 99-102) stipulate that the President of the Government submits a proposal for the appointment and dismissal of

- Secretary General and its deputy,
- Director or deputy director of the independent state administration body and
- Secretary of the Legislation Secretariat.

Whereas, the Minister submits a proposal for appointment and dismissal of the following:

- State Secretary in the relevant ministry;
- Director of the body within the ministry;
- Director of a public enterprise, public institution or public service where the relevant ministry supervises;
- Members of management boards of public enterprises where the relevant ministry supervises; and
- in other cases prescribed by law.

The proposals are submitted to the Appointments Commission, which, after reviewing the proposals, submits an appointment proposal to the Government. The Commission may, if it deems it necessary, consult with ministers or other authorities.

According to Article 38 of the Rules of Procedure of the Government, the Appointments Commission:

"considers issues in the field of personnel policy under the competence of the Government; submits proposals to the Government for the appointment, designation or dismissal from duty of the director of a state administration body and his/her deputies; the secretary general and his/her deputy, state secretaries of ministries, directors and deputy directors of public enterprises and institutions appointed by the Government, as well as other persons appointed in accordance with the Government determined by law; proposes members of management bodies and other bodies of public enterprises, establishments and other institutions appointed by the Government; ensures the implementation of the Government's conclusions regarding personnel policy; prepares a draft act on the salaries of officials appointed by the Government; prepares draft-decisions on salaries, other benefits, right to salaries based on termination of office of directors and their deputies of state administration bodies and officials of other bodies and services and gives opinions and proposals to the Government for solving issues within its competence ."

²⁷ Law on Government https://vlada.mk/sites/default/files/dokumenti/zakoni/zakon_za_vladata_na_republika_makedonija.pdf

²⁸ Rules of Procedure of the Government <https://shorturl.at/oswHN>

The composition of the Appointments Commission does not indicate its expertise and competence in general/generic areas of organizational sciences, economics or law, and even less in specific areas (for example, health, agriculture, culture, etc.). With such a composition, the Commission is not even independent of political influences. The appointment/dismissal proposal given by the Commission does not bind the Government or the Prime Minister to propose a candidate for voting who has not been proposed by the Commission²⁹.

In the mentioned procedure, significant elements from the rules of the general administrative procedure that guarantee legality and expediency are missing. More specifically, there are no specific terms that would represent a minimum, which can be prescribed as longer in a special law, in order to guarantee the legal security of the parties. Furthermore, there are no procedural stages prescribed, such as the delivery of the decision to all parties that are part of the procedure and the right to a legal remedy (appeal) for the candidates who will not be selected.

If the special law provides for the use of this procedure prescribed in the Government's Rules of Procedure and the general criteria provided for in the special laws (which will be discussed in the text below) are added, it cannot be concluded that the professionalism and independence of the managerial structures can be guaranteed. And at the end of the procedure, the selection can still be made discretionary, because the opinion of the appointments commission is not binding, but even if it were, the general criteria (prescribed in the special laws) allow for a wide interpretation and discretion in the work of the commission itself, which it is not politically independent.

The procedure for appointing a director can last for a certain period, during which the institution cannot be left without management. Therefore, our legislation provides for the **"acting duty" institute**, which implies the appointment of a person who temporarily manages the institution, until an official director is appointed. According to our legislation, this person does not have to fulfill the general criteria either, because it is not a full director, but a temporary solution, until a full director is appointed. This is also a discretionary right for the appointing authority of the director, as it is free to appoint a person whom it deems appropriate to the position, regardless of his/her qualifications. Therefore, this institute is easily abused, and through cronyism or patronage (as forms of corruption), persons who are insufficiently qualified are being appointed.

According to the report of the Change Management Center (CMC) in 2022, out of 274 public institutions, 105 had acting directors, and this institute was most represented in three sectors (not excluding the others), of which the most in the culture sector, followed by the health sector, and in public enterprises³⁰.

²⁹ Government Commissions can be basic and special, and are qualified as its working bodies. The Appointments Commission is a special commission that is included in the category of "permanent working bodies", which according to article 44 of the Rules of Procedure of the Government, on the proposal of the President of the Government, the president and the members of the working bodies are appointed from among the members of the Government. The permanent working bodies of the Government have a president and at least four members, for the period for which the Government is elected.

³⁰ Report from the monitoring of the management structures in public institutions, CMC, 2023, <https://cup.org.mk/publication/report-from-monitoring-the-managment-structures-in-public-institutions> , стр. 7

LOWSAB also provides a discretionary opportunity to appoint deputy directors (Article 51). Namely, according to the Law, the Government can appoint a deputy to the director of the independent body of the state administration or the administrative organization. This means that without any criteria regarding the budget, the scope of work, the number of employees, etc., new "political" positions can be opened which will be filled at discretion. And therefore, we have an Agency for Emigration, which does not have its own law with clear responsibilities, but has a director, a deputy director and only 12 employees³¹.

OTHER DISCRETIONARY POWERS

In addition to the discretionary powers regarding the appointment of management structures, the LOWSAB contains three additional discretionary powers that have unforeseeable consequences regarding the organization of the central executive government in the country.

Namely, according to this law (Article 5), state administration bodies **can** be established as ministries, other state administration bodies and administrative organizations. Other bodies of the state administration according to the type of organization and degree of independence **can** be established as independent bodies of the state administration or as bodies within the ministries. The bodies within the ministries **can** be established to perform certain administrative, professional and other tasks within the competence of the ministry. According to Article 7 of LOWSAB, the bodies of the state administration, except for the ministries, can be established, abolished and their competence can be determined by law. The mentioned possibility, together with the discretion contained in Article 5 of the same law, led to the establishment of a huge number of administrative bodies (more than 60) in the state with special laws, with different names, management structure and overlapping competences. According to the latest Report from the Register of Public Sector Employees³² of the Ministry of Information Society and Administration, there are 36 independent bodies of the state administration in the country that report directly to the Government and 30 bodies within the ministries. However, according to the new article 7-a paragraph 1, 2, 3 and 4, an independent body of state administration, a body within a ministry and an administrative organization can be established by a law that will obligatory contain a regulatory impact assessment (RIA) and if they are positively assessed by the Ministry of Public Administration and the Ministry of Finance. The form and content of the form for RIA will be established by a decision of the Government and at the proposal of the Ministry of Public Administration. What remains now is the decision that will prescribe the form and content of the RIA to be thorough enough to guarantee the expediency of the establishment of an independent body of state administration, a body within a ministry and an administrative organization.

In addition, the amendments of LOWSAB have cancelled the typology of the types of independent bodies of state administration (directorates, archive, council, agencies and

³¹ Organizational chart of the Agency for Emigration (website of the Agency for Emigration) <https://minisel.gov.mk/za-agencijata/>

³² <https://www.mioa.gov.mk/content/ФИНАЛЕН%20ИЗВЕШТАЈ%20за%202023%20година%2001.04.2024.pdf>

commissions), the types of bodies within the ministries (administration, bureau, service, inspectorate and captaincy) as well as the types of administrative organizations (institute and office).

LOWSAB (Article 8) also gives discretionary authority to certain bodies of the state administration, with the law by which they are established to be able to determine their status as a legal entity. And here, it depends only on the will of the proposer of the law whether an authority will have the status of a legal entity or not. Due to this discretionary provision, there are currently more than 60 first-line budget beneficiaries in the state, who are accountable to the Government, and not to the line ministry, which creates an ineffective system of accountability. That is, the Ministries cannot effectively monitor the implementation of the policies by the institutions operating in their department.

Finally, LOWSAB gives discretionary right to the minister and the director, to be able to authorize a civil servant to sign acts, to decide on certain issues and to perform other tasks within the competence of the authority (Article 52). Such discretion is in direct contradiction with the LGAP which is also a systemic law and which foresees the delegation as a principle and obligation. Due to the fact that the delegation is given as an opportunity, it is not used, while all the competences of the institution are concentrated on the ministers and directors who are mostly not experts in the area to decide on the rights of the citizens (construction, education, urban planning, transport, social protection, and similar). Such concentration of competences, on the one hand among the officials, creates micro managers who do not have time to dedicate themselves to their basic competence, which is managing the institution and creating public policies.

4.2. SPECIAL LEGISLATION

From the analyzed 74 legal acts (listed in Annex 1), a total of 77 public institutions were covered, of which 32 are state bodies and 45 are bodies within ministries. Out of a total of 77 state bodies, only 13 have management boards. The analysis of these special laws was only in the sections on appointing a director/deputy/acting director and members of management boards.

Of the analyzed 74 legal acts, 5 are general laws, 4 are bylaws, while the remaining 65 are special laws.

From the analysis of the legal framework, it emerged that there are bodies that are not regulated by a special law, but are only provided for in the LOWSAB without it regulating them in more detail. Such bodies are the Agency for Youth and Sports, the Agency for Emigration, the Administration for Property and Legal Affairs, the Phytosanitary Administration, the Administration for Water Management, the Spatial Information System Service, the Administration for the Affirmation and Promotion of the Culture of Community Members, the Administration for Combatants' Affairs and Military Invalids, Administration for the Development and Promotion of Education in the Languages of Community Members,

Regarding the **appointment of directors**, it can be concluded that the following are the general characteristics of the analyzed special laws:

- In most (almost all) special laws, a general provision for the education of director candidates is prescribed. The laws contain general provisions stipulating that the candidate should have acquired at least 240 ECTS credits or completed VII/1 degree. Such a broad provision does not specify what type of education the candidate for director/deputy director should have and gives the Government or the Management Board significant freedom to appoint as director a person who does not have an education corresponding to the scope of the relevant institution. Such provisions are present in special laws regulating institutions that have a specific scope of work, such as the Food and Veterinary Agency³³, Directorate for Radiation Safety³⁴, Spatial Planning Agency,³⁵ State Labor Inspectorate³⁶ and other institutions whose directors must be professional and competent in that specific area.
- Most (almost all) special laws prescribe a general provision for the work experience of the candidates for director. The laws contain general provisions stipulating that a candidate should have only five years of work experience. Such a broad provision does not specify in which field the work experience should be acquired and whether the candidate should have previous managerial experience. Just as in the case of the general criterion for education, this general criterion for work experience also occurs at institutions with a specific and responsible scope of work. For example, as the director of the State Labor Inspectorate and the State Inspectorate of Local Self-Government, a person can be appointed who does not have an adequate legal education (because the law contains a general provision for education), who has not worked in the inspectorate or in an inspection service (because the law contains a general provision for work experience).
- Most (almost all) special laws prescribe general criteria for the election of a director/ deputy director and provide competence for the institution to prescribe special conditions with the Statute of the institution. However, the institutions fail to do that and only copy the general conditions stipulated in the respective law in their own Statutes.
- The procedures for selection of a director or a member of a Management Board, which are regulated with special laws, do not explicitly envisage the right to an appeal of the candidates who have applied on the public call for the position. However, the Law on Administrative Disputes still envisages such a remedy and the non-satisfied candidates can, by analogy, use the legal remedy prescribed in this procedural law (Article 3 paragraph 1 item 5 of the LAS).
- In the special laws, when it is stated that the director is elected after a published public announcement, the provisions are undefined and do not prescribe the procedure after the publication of a public announcement, which means that the Rules of Procedure of the Government will continue to be applied regarding the elections and appointments. However,

³³ Article 18 of the Law on Food Safety

³⁴ Article 4 of the Law on Ionizing Radiation and Radiation Security

³⁵ Article 76 and 78 of the Law on Spatial and Urban Planning

³⁶ Article 3-a of the Law on Labor Inspection

the analysis of the publicly available solutions for the selection of directors shows that the procedure from the Rules of Procedure is not expedient either.

Regarding the **appointment of management board members**, it can be concluded that the general characteristics of the analyzed special laws is the fact that:

- There are no clear criteria for education and work experience of the members of the Management Board (MB). That is, in a large part of the special laws, quotas are envisaged for the ministries about the number of MB's members they can propose, without specifying at all what their educational and professional profile should be. Therefore, for example, according to Article 9 paragraph 2 of the Law on Real Estate Cadaster Agency, the Agency's MB is composed of five members, one member each on a proposal from the Ministry of Justice, the Ministry of Transport and Communications, the Ministry of Finance, the Ministry of Environment and Physical Planning, and the Ministry of Agriculture, Forestry, and Water Economy. This broad provision allows each designated ministry to propose members at its own discretion.
- The number of MB members is not unified, so each body has a different number of MB members.
- In some MB, the compensation for the members is defined by the MB itself, and for other MB, it is defined by the Government.

Such broad provisions for appointing members of the Management Board and directors can easily be misused for corrupt purposes. That is, through cronyism or patronage, persons who even have an obvious conflict of interest can be appointed; or they are in a family, friend-based or party-political relationship with the institution that appoints them.

There is also no systematic and uniform approach in regulating the provisions for appointing a director at certain/specific type of institutions. For example, out of a total of 11 state inspectorates, only three of them have a prescribed field of education, while all of them have a prescribed general criterion for work experience, i.e. only 5 years of work experience.

In addition, in a certain part of the institutions, the directors are appointed by the management boards, which are appointed by the Government, in the absence of a clear procedure and criteria. This situation leaves the possibility for the Government, in the absence of criteria, to appoint members of the MB and thus try to establish political control over the institution, including its director.

The system for appointing the leadership and management structures in the Republic of North Macedonia is so generally regulated that it makes it very vulnerable to corruption. That is to say, it is easy to deceive the system and for those positions to be corruptly placed by the structures (parties) that are in a position of power at the given moment. This situation can be overcome by uniform regulation of the system for appointing managerial and governing positions in the same manner in each individual law or by adopting a Law on Senior Management Structure that will have

the so-called codification character and will be applied as a single special law whenever directors or members of management boards are to be appointed/dismissed.

5. ANALYSIS OF DECISIONS ON APPOINTMENT

In 2017, the new Government was formed by a decision of the Assembly published in the "Official Gazette of the Republic of Macedonia" no. 65 on June 1, 2017³⁷. On June 9, the existing director of the Service for General and Common Affairs³⁸ was dismissed and a new one was appointed, and on June 21, 5 directors were dismissed and 4 directors were appointed, 2 of whom are acting³⁹. On June 23, 2017, the Government dismissed and appointed 5 new directors, all of whom are acting⁴⁰.

It can be observed from the above that only 12 days have passed from the moment of the establishment of the Government to the first election of directors, during which period it is practically impossible to carry out a procedure based on merit, with the announcement of a public competition and selection by the Appointments Commission within the Government.

The Rules of Procedure of the Government provide for a procedure for the appointment of the Secretary General of the Government, directors, members of management boards and other managerial persons, on the proposal of the President of the Government or a minister, whereas for these procedures there is no provision for a public announcement at which all interested candidates may apply nor does it provide for a merit-based selection procedure. According to the Rules of Procedure, the appointment and dismissal of these managerial persons is a purely discretionary political decision of the Government. This procedure is also analogously applied when, in accordance with the special laws for the election of a director, certain conditions are prescribed, as well as the mandatory publication of a public announcement. The analysis of a sample of appointment decisions that are publicly announced shows that this procedure prescribed by the Rules of Procedure is not expedient and merit-based at all, which can be seen from the following examples:

Example 1

Pursuant to Article 66 of the Law on Classified Information⁴¹, the Director of the Directorate for Security of Classified Information (DSCI) is selected by the Government, according to a previously published public announcement in three daily newspapers, if the one meets the prescribed general

³⁷ Official Gazette of RM, No. 38, 28 February 2018, page 9, <https://www.slvesnik.com.mk/Issues/4fdbf0b404c7490785c79cc5b98153c8.pdf>,

and the deputy ministers were appointed with a Decision of the Assembly of RM on 23 June 2017, Official Gazette of RM, No. 78, 23 June 2017, Decision on appointing deputy ministers, page 2,

<https://www.slvesnik.com.mk/Issues/077ecac35895420882c610e5d2cf4669.pdf>

³⁸ Official Gazette of RM, No. 71, 9 June 2017, <https://www.slvesnik.com.mk/Issues/f1202416827a4df996aafd11db1e2844.pdf>

³⁹ Official Gazette of RM, No. 76, 21 June 2017, <https://www.slvesnik.com.mk/Issues/c16b31d48d2b495297a98d47f5f07176.pdf>

⁴⁰ Official Gazette of RM, No. 80, 29 June 2017, <https://www.slvesnik.com.mk/Issues/ec9e2947427d4351920b1a1093178b37.pdf>

⁴¹ Law on Classified Information https://www.dbki.gov.mk/files/pdf/files/Zakon_za_klasificirani_informacii-konsolidiran_tekst.pdf

criteria. Furthermore, the law does not prescribe the course of the procedure, which means that where the law stops, the procedure prescribed in the Rules of Procedure of the Government continues to be applied. The decision to appoint a director of DSCI⁴² has no explanation for the personnel selection, there are no minutes for the procedure and selection carried out by the Government's Commission, nor is there an archive number of such minutes on the basis of which the decision was made.

Example 2

Pursuant to Article 9 of the Law on State Statistics⁴³, the director of the State Statistics Office (SSO) is selected by the Government, according to a previously published public announcement in three daily newspapers, if the one meets the prescribed general criteria. Furthermore, the law does not prescribe the course of the procedure, which means that where the law stops, the procedure prescribed in the Rules of Procedure of the Government continues to be applied. The decision to appoint a director of the SSO⁴⁴ has no explanation for the personnel selection, there are no minutes for the procedure and selection carried out by the Government's Commission, nor is there an archive number of such minutes on the basis of which the decision was made.

FORM OF APPOINTMENT ACTS

As already mentioned, according to the Law on Government⁴⁵, regarding the execution of the laws, the Government adopts decrees with legal force, decrees, decisions, instructions, programs, decisions and conclusions (Article 35 paragraph 1). Furthermore, it is added that the Government, by decision, appoints and designates or dismisses from duty, directors who manage bodies of the state administration, state or general secretary, as well as appoints, designates and dismisses other managers and members of management and supervisory boards when authorized by law. Decisions as individual acts are adopted by the Government when deciding on other issues and on administrative matters (Article 36 paragraph 6). The Law on Government further does not prescribe the form of the acts of the Government. However, in order to guarantee legality in the operation of the Government, it should apply the rules for the form of administrative acts referred to in Article 88 of the LGAP.

According to Article 88 paragraph 1 of the LGAP, a mandatory element of every administrative act is (1) introduction, (2) operative part, (3) explanation, (4) legal advice, (5) signature of the authorized official and (6) seal. Since the rationale of the act absolves the accountability of the institution, the Law stipulates that:

⁴² Official Gazette of RM No. 38, 28 February 2018, <https://www.slvesnik.com.mk/Issues/4fdbf0b404c7490785c79cc5b98153c8.pdf> crp. 6-7

⁴³ Law on State Statistics <https://www.stat.gov.mk/ZakonZaStatistika.aspx>

⁴⁴ Official Gazette of RM No. 38, 28 February 2018, <https://www.slvesnik.com.mk/Issues/4fdbf0b404c7490785c79cc5b98153c8.pdf> crp. 6-7

⁴⁵ Law on Government https://vlada.mk/sites/default/files/dokumenti/zakoni/zakon_za_vladata_na_republika_makedonija.pdf

*The explanation of grounds shall be understandable and shall contain: a brief outline of the party's request, the established facts upon which the administrative act was issued, the legal regulations and the reasons which, in view of the established facts, have been used for adoption of the decision, the reasons why any of the request, claims, or proposals of the parties have not been granted, and why any of the statements made during the procedure had not been taken into account. **In case of a discretionary decision, the main reasons** why discretionary power was exercised in the manner as done in the decision must be listed. (Article 88 paragraph 4 of the LGAP)*

*If the law authorises the public authority to exercise discretion, the **administrative act shall** remain within the limits of the law allowing the discretion, in accordance with the objective for which the discretion is allowed and **shall be specifically explained.** (Article 5 paragraph 3 of the LGAP)*

It can be concluded from the analysis of the decisions on the appointment of directors that they are very scarce and contain only an introduction in which the legal basis is stated, after which there is only a one-sentence statement indicating that the person XX is appointed as a director or acting director, which should represent the operative part of the act, after which it is noted when the decision enters into force, and it ends with the signature of the President of the Government. The decisions completely lack any type of explanation.

It is characteristic that all the decisions for appointing directors of the central institutions have the same format and in any such decision the following cannot be observed **(1)** any explanation, nor a particular/detailed explanation for the selection of the candidate in question, **(2)** minutes of the implemented selection procedure as an integral part of the decision, nor **(3)** an archive number of the minutes of the implemented selection procedure on the basis of which the relevant decision is made, and also there is no **(4)** legal advice or instructions for using a legal remedy against the decision (which is the result of the fact that there is no public announcement and procedure for selecting the best candidate, but it is debatable from a constitutional and legal point of view, because according to article 50 paragraph 2 of the Constitution of the Republic of North Macedonia, "judicial protection is guaranteed of the legality of the individual acts of the state administration and of other institutions exercising public powers.")

It is necessary for the Government to change this practice on its own initiative and to start implementing a thorough procedure for the selection and appointment of managerial structures and to explain the decisions in detail and to publish minutes of conducted selection procedures. The Government can do this by amending and supplementing the laws and the Rules of Procedure of the Government, but it can also do the same with an internal act, as an expression of will to suppress corrupt phenomena and introduce a practice that will be based on merit and competencies of the registered candidates.

6. TRANSPARENCY AND DISCRETIONARY POWERS

At first glance, transparency may not seem to have much to do with the discretionary powers of public sector institutions, but the bigger picture points to the possibility that transparency can influence the way discretionary powers are used. In the Rule of Law Report of June 8, 2015 of the expert team supported by the European Commission, it is noted that "*Transparency, in general, should prevail as an indispensable method for dealing with crisis situations like the current one, as well as a culture of legal responsibility and political responsibility*"⁴⁶. This chapter provides a concise explanation of the relationship between transparency, discretionary powers, and corruption.

Transparency and accountability go hand in hand, in order to guarantee the responsibility of the public administration. The quality of the reasoning of the specific administrative acts (decision, etc.) with which public sector institutions make decisions constitutes accountability, while the public publication of those acts constitutes transparency.

According to LGAP, as *lex generalis*, the institutions are obliged to publish in an official newspaper or a municipal newspaper an administrative act (1) that affects a large number of entities unknown to the public authority, (2) when notification by other means is impossible or inappropriate, and (3) in other cases determined by law (Article 86 paragraph 1 line 1 and 2, LGAP).

On the other hand, Article 10 of the Law on Free Access to Public Information (LFAPI)⁴⁷, as *lex specialis*, contains an extensive list of information of which public sector institutions are obliged to inform the public through their website, including data for the official or the responsible person with the holder of the information (biography, contact details and others) (Article 9 paragraph 1 line 3). According to LFAPI, public sector institutions shall be obliged to regularly maintain and update the list of information available to them and to publish it in a way accessible to the public (website, notice board, etc.) (Article 9).

Therefore, the existing legislation envisages the principles of accountability and transparency (publicity) in the operation of the institutions; however, the **institutions should proactively approach the revival of these principles**.

In this particular case (in the procedures for the selection of managerial structures), the Government publishes the decisions for the selection of managerial persons (directors and members of management boards) in the Official Gazette of the Republic of North Macedonia,⁴⁸ and thus they become public and enter into force. However, not every person has access to the Official Gazette in the current year, but only those who subscribe⁴⁹, and only official gazettes from past years are available for free. On the other hand, as already mentioned in the text above, the analysis of the

⁴⁶ The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015; https://neighbourhood-enlargement.ec.europa.eu/system/files/2016-12/20150619_recommendations_of_the_senior_experts_group.pdf, crp. 4

⁴⁷ Law on Free Access to Public Information, Official Gazette of RNM, No. 101 dated 22.5.2019, <https://shorturl.at/4ioK2>

⁴⁸ Website of the Official Gazette of the Republic of North Macedonia <https://www.slvesnik.com.mk/>

⁴⁹ Subscription pricelist for printed or electronic edition of the Official Gazette of the Republic of North Macedonia <https://www.slvesnik.com.mk/pretplata.nsp>

decisions published in the official gazette of the past years shows that the acts are not explained at all. Therefore, the specific administrative acts (decisions, etc.) by which the managerial structures (directors) are appointed are not explained at all (accountable) nor are they adequately publicized (transparent).

In order to improve this situation, the Government can change i.e. strengthen/improve its own practice or amend certain legal solutions, in order not to allow the Government or its professional service (General Secretariat) to decide at its discretion whether or not it will be accountable and transparent. Evidence of a proactive approach to overcoming problems in the area of accountability and transparency, as well as an expression of will to suppress corrupt phenomena in the public sector can be commencing the practice of publishing all decisions on the appointment and dismissal of managerial structures (directors and members of management boards), as well as all documents from the selection procedure (public announcements, selection minutes, etc.) on the website of the Government of the Republic of North Macedonia, as well as publication of these documents on the website of the respective institution in which these people are appointed.

In this way, anyone who is interested in the election of the directors or members of the management boards will be able to access them through two channels, and thus the Government and the institutions will be exposed to constructive public criticism (by the media, civil society, and the wider public) aimed at the need for explanations of the decisions (if they still do not contain explanations), at the quality of the personnel selection, as well as at the persons themselves who have been chosen for the respective positions. Such pressure can also be one of the factors that would influence the Government and the elected persons to adhere to the established rules but also to the unwritten ethical and moral norms, because social rebuke would be certain, and it could produce a series of forms of civil dissatisfaction, and ultimately with punishment at the next election.

An example for the analogy of such practice can be the acts for the selection of academic staff at state universities. More specifically, for each selection of academic staff, a review committee is formed, a public call is published and after the application submission of the candidates, the committee adopts a "selection report" which is composed of three parts (introduction, report/explanation containing biographical data and scientific, professional and pedagogical achievements, and finally conclusion and proposal) and two annexes/forms with which the scientific, professional and pedagogical achievements of the registered candidates are evaluated. This report is adopted by the University Senate, it is submitted to the Teaching and Research Council of the Faculty, which makes a decision based on the report, the report is published in the bulletin of the relevant University on the central website of the university, and then the decision of the Faculty and the report are published by the Faculty on its website⁵⁰.

This contributes to the strengthening of the political culture and changing the perception of the general public, for the holders of public functions, for the institutions and for the employees in the public sector. However, this requires the establishment of a consistent and long-term practice of proactive transparency and accountability of public sector institutions.

⁵⁰ For example, on the central website of the University "Ss. Cyril and Methodius" in Skopje (UKIM), there is a special section with the editions of the University bulletin which includes the reports for selections of academic personnel <https://www.ukim.edu.mk/bilten>, whereas on the website of the Faculty of Philosophy in Skopje (which operates within UKIM), there is a special section with samples from the acts for selection of the academic personnel <https://shorturl.at/TmUJb>

7. FINDINGS AND RECOMMENDATIONS

According to the above analysis of the discretionary powers in the general and special legislation, in the procedures for appointing managerial personnel, as well as the findings of the institutions that control the work of the public administration (SAO, SCPC and OM), the following findings and recommendations can be established:

- 1. LOWSAB gives broad authority to the Government to appoint a deputy director** of administrative organizations and bodies within a ministry, without precise criteria regarding in which cases a certain institution should have a deputy director. Therefore, this broad authority can be easily abused and deputy directors can be appointed without a real need for such a position (small institutions, without major competences and without a large staff and budget), all in order to have more loot for division after the elections. An example of such an institution is the Agency for Emigration⁵¹, which has 17 employees and two officials (director and deputy director).

Therefore, it is necessary to **establish clear criteria in LOWSAB** regarding when a certain institution can have a deputy director.

However, since the amendment of the law is a long and uncertain process, **the Government may**, as an expression of goodwill to reduce potential abuses, **adopt an internal act** that will establish criteria that must be met in order to appoint a deputy director to a certain institution.

- 2. LOWSAB envisages the delegation of responsibilities from the director to the professional associates as an opportunity, while LGAP envisages that delegation as an obligation for the director.** Although the LGAP as a general law for the procedures that are conducted before the administrative bodies, which further elaborates and specifies the issue of delegation raised in LOWSAB, can be legitimately applied against the discretionary authority prescribed in LOWSAB, in practice, however, differences in application may occur. That is, a certain director can refuse to apply the delegation of competences according to LGAP, and can apply the discretionary right prescribed in LOWSAB. In such circumstances, the directors retain the power to decide on matters in which they have no expertise (for example, to issue licences, permits, approvals). In conditions where the directors are appointed discretionarily on the basis of political provenance and without any selection procedure, the possibility of abuse of this discretionary possibility is particularly pronounced.

⁵¹ <https://minisel.gov.mk/wp-content/uploads/2024/04/pravilnik-za-sistematizacija.pdf>

Therefore, it is necessary to **envisage/establish an explicit legal obligation** for the ministers and directors to delegate the competence for solving professional matters to the professional administrative personnel and officials.

3. Most of the laws (almost all) contain general provisions pertaining to the education and work experience of directors. More specifically, these general/ broad provisions prescribe that:

- the director should only have 240 points or VIII/1 degree without indicating the higher education field. Such general provisions leave the discretionary right to the Government/MB to appoint director/members of the MB who may not have adequate education in accordance with the scope of work of the relevant institution.
- the director should only have 5 years of work experience, without specifying the area and managerial experience. Such general provisions leave the discretionary right to the Government/MB to appoint director/members of the MB who may not have adequate work experience in accordance with the scope of work of the relevant institution.

The Government can fill these two gaps by adopting a **Methodology/Guidance for establishing the criteria and regulating the merit procedure for the selection of directors and other managerial persons**. Such a Methodology may contain comprehensive criteria that the Government and the Appointments Commission will be able to use as guidelines and positive practice when appointing and designating managers. That is, if there is a general criterion for education, this Methodology will be able to prescribe which (scientific) areas and fields are related to the activity/work of the institution for which the director is selected. In addition, with the existing general criteria for work experience, this Methodology will be able to prescribe what type of work experience is desirable for the director to have, according to the activity and the work-related risk of that institution.

The Methodology/Guidance may also contain guidelines for the form of minutes for the selection procedure to be implemented by the Government's Appointments Commission, and the same minutes would be published as an attachment to the decision or the archive number of the minutes should be indicated in the introduction of the decision.

In addition, within the framework of the Methodology/Guidance, proactive transparency can be prescribed for the publication of appointment decisions and the minutes of the conducted procedures on the website of the Government and the websites of the institutions.

4. Most of the analyzed institutions do not have a special procedure for appointing a director, so they are appointed according to the general procedure prescribed in the Government's Rules of Procedure. In order to guarantee the selection of the best candidate,

it is necessary to regulate a more detailed procedure in the special laws, and to further regulate the general procedure in the Rules of Procedure of the Government.

Most of the directors (almost all) are appointed in accordance with the procedure prescribed in the Rules of Procedure of the Government, upon a proposal of the Government's Appointments Commission, which is composed of members of the Government. However, this procedure is not expedient and gives great freedom for discretionary appointment of managers, without the appointment decisions being explained at all.

In order to guarantee the selection of the best candidate, it is necessary to professionalize and depoliticize the Government's Appointment Commission. More specifically, the commission should be composed of independent experts who will be able to objectively and impartially select the best candidate.

Therefore, it is necessary to amend the **Rules of Procedure of the Government** in order to (1) Provide a basis for the adoption of Methodology/Guidelines for establishing the criteria and regulating the merit procedure for the selection of directors and other managerial persons and (2) Provide a basis for engaging experts in the Committee for Elections and Appointments of the Government of RNM who would implement the selection procedure (items 8 and 9).

- 5. In the procedures for appointing managers, institutions (directors or members of management boards) do not adopt specific administrative acts (decisions) in accordance with the form prescribed in the LGAP (Art. 87-90).** That is, the acts do not contain an adequate explanation why a certain person was chosen to be the director of a certain institution, and they also do not contain explicit instructions for using a legal remedy, i.e. an appeal against the same decision. This practice, on the one hand, violates the legal security of the persons who are part of the proceedings, and on the other hand, the institutions are not accountable and conceal the reasons for the selection made.

Therefore, it is necessary to **more intensively control the compliance with the form of the administrative acts** that appoint/dismiss persons in management positions. That is, it is necessary for the acts to have exhaustive operative parts and detailed explanations. In this part, the **State Administrative Inspectorate is first of all an institution called** to exert pressure and control the compliance with the form of the acts of the administration, and if necessary to cancel them due to formal/procedural deficiencies.

- 6.** The possibility of granting the status of a legal entity to the administration bodies with the special laws should be excluded.
- 7.** The management boards of the public sector institutions are regulated very dispersedly in special (substantive) laws, which leave room for unequal and different regulation of the

number of their members, the conditions and procedure for their election, the competence of the management boards and the amount of the fees they receive.

Therefore, it is necessary to systemically regulate and unify all MBs of the institutions from the public sector, through appropriate amendments of the substantive laws or with a Law on Senior Management Service. However, since the amendment of the laws is a long and a politically uncertain process, until that moment, it is best for the **Government, with its own act, such as a Methodology**, to regulate the mentioned disputed issues and submit it to the MB so that they could act upon it. This act may contain guidelines and it would be desirable for the Government to adhere to them when appointing and dismissing members of the MB, establishing their compensation, etc., and thus it will be able to fill the gaps in the laws.

8. All of the mentioned issues will be addressed in the best and most efficient way if a **Law on Senior Management Service** is adopted, which will have a unified function in relation to all procedures for selecting managerial positions in public sector institutions. In this way, uniformity of the procedures, professionalization of the personnel and legal security of the candidates will be guaranteed.

However, since the procedure of adopting a law is long and often politically uncertain, until the adoption of a systemic law that will address the mentioned issues, the Government can approach the adoption of the mentioned internal acts, as an expression of will to reduce/suppress potential abuse of discretionary powers and gaps in laws.

9. The amendments and supplementing of LOWSAB introduce a procedure for the establishment of new bodies within the ministries, independent bodies of state administration and administrative organizations; however, it remains for the **Government to make a decision that will prescribe the form and content of the RIA**, which will be thorough and will guarantee expedient adoption of a decision on the establishment of a new authority.

ANNEX 1 – ACTION PLAN

Discretionary powers when appointing and designating managerial structures in the state administration bodies

The attached action plan is only a proposal, which will be subject to consultation with the competent institutions, with the aim of joint consideration and development of appropriate activities to overcome the findings of the analysis given above.

In addition, it should be taken into account that wherever an activity for amending and supplementing or developing a new law is proposed, in addition to the listed competent institutions, the Assembly of the Republic of North Macedonia will also appear as a partner.

FINDING	RECOMMENDATIONS	ACTIVITIES	INDICATORS	COMPETENT INSTITUTIONS	IMPLEMENTATION TIMEFRAME
1. The acts (decisions) by which the managerial persons are appointed and designated are not prepared and adopted in accordance with the Law on General Administrative	To strengthen inspection supervision in relation to the observance of LGAP	<ul style="list-style-type: none"> Working meetings/workshops with SAI to strengthen inspections. 	<ul style="list-style-type: none"> Number of held meetings/workshops with SAI (minutes) 	<ul style="list-style-type: none"> State Administrative Inspectorate 	September 2024
		<ul style="list-style-type: none"> Strengthened control by the State Administrative Inspectorate (SAI), which will pressure the institutions to adopt not only acts that will comply 	<ul style="list-style-type: none"> Number of conducted regular and extraordinary inspections and imposed inspection measures (Decisions of the inspectors); 	<ul style="list-style-type: none"> State Administrative Inspectorate 	October – December 2024

<p>ve Procedure (there is no explanation of the reasons why a certain person was chosen as a manager, as well as instructions for legal protection)</p>	<p>when making decisions on the selection and appointment of managers.</p>	<p>with the form prescribed by the LGAP, but also to adopt detailed explained acts/decisions.</p>	<ul style="list-style-type: none"> • Number of misdemeanor proceedings initiated; • Number of decisions made in accordance with the LGAP, determined during control inspections. 		
	<p>Strengthening the capacities of the institutions through the drafting of by-laws (guidance) and the implementation of trainings</p>	<ul style="list-style-type: none"> • Drafting of by-laws (guidance) for the implementation of a transparent, competitive and merit-based procedure for the selection of managers in institutions 	<ul style="list-style-type: none"> • Prepared guidance 	<ul style="list-style-type: none"> • GS – Commission for Elections and Appointment of the Government of RNM 	

		<ul style="list-style-type: none"> • Training for the members of the professional service of the Commission for Elections and Appointments of the Government of RNM 	<ul style="list-style-type: none"> • Number of conducted trainings and trained persons; 	<ul style="list-style-type: none"> • GS – Commission for Elections and Appointment of the Government of RNM 	<p>October 2024</p>
<p>2. Lack of relevant criteria and procedure for the establishment, merger and abolition of institutions within the executive government, and through the adoption of special laws, the Law on Organization and Work of State Administration Bodies (LOWSAB) is circumvented as a two-third and organic law</p>	<p>To establish precise criteria for the establishment, abolition and merger of these authorities (competencies, employees, scope of work, etc.).</p>	<ul style="list-style-type: none"> • The amendments and supplementing of the Law on Organization and Work of the State Administration Bodies from June 10th, 2024 (Official Gazette of the Republic of North Macedonia No 121/24), Article 7-a envisages criteria and a procedure for the establishment, abolition and merger of administration bodies. Paragraph (4) of this Article envisages the prescribing of a bylaw for regulatory impact assessment for the establishment, 	<ul style="list-style-type: none"> • Preparation of the Decision on the format and content of the form for regulatory impact assessment on the establishment of a new body of the state administration or administrative organization. 	<ul style="list-style-type: none"> • Government of RNM and • Ministry of Public Administration 	<p>December 2024</p>

<p>which explicitly envisages the types of institutions within the executive government.</p>		<p>abolition and merger of administration bodies which can be developed within this project.</p>			
<p>3. Lack of legal criteria regarding the issue when a specific institution can have:</p> <ul style="list-style-type: none"> • A deputy director and • A capacity of a legal entity. 	<p>Establish precise criteria when the institution can have:</p> <ul style="list-style-type: none"> • A deputy director (competence s, employees, scope of work, etc.) and • A capacity of a legal entity (competence s, independence, etc.). 	<ul style="list-style-type: none"> • Amendments and supplementing of the LOWSAB. 	<ul style="list-style-type: none"> • Amended and supplemented LOWSAB with criteria when an institution should have a deputy director and a capacity of a legal entity. 	<ul style="list-style-type: none"> • Ministry of Public Administration and • Government of RNM 	<p>December 2025</p>

<p>4. Delegation of powers in the existing legislation is a “possibility” and not an obligation of the director/ minister, which is contrary to the principle for delegation of powers for the addressing of administrative affairs according to LGAP.</p>	<p>Establish the legal obligation for the ministers and directors to delegate the competence in the addressing of professional affairs of the professional administrative servants.</p>	<ul style="list-style-type: none"> • Amendments and supplementing of the LOWSAB. 	<ul style="list-style-type: none"> • Amended and supplemented LOWSAB with criteria when an institution should have a deputy director 	<ul style="list-style-type: none"> • Ministry of Public Administration and • Government of RNM 	<p>December 2025</p>
<p>5. Lack of systematic and consistent legislation in relation to administrative and supervisory bodies in public sector institutions in relation to:</p>	<p>To establish the criteria for the number of members, the conditions and procedure for selection and the competences of the members of the administrative and supervisory bodies. The most optimal solution is for these issues to be</p>	<ul style="list-style-type: none"> • Amendments and supplementing of the: <ul style="list-style-type: none"> • Law on Public Enterprises, • Law on Public Institutions, • Company Law and • Other special laws that establish institutions 	<ul style="list-style-type: none"> • Adopted amendments and supplementing of the: <ul style="list-style-type: none"> • Law on Public Enterprises, • Law on Public Institutions; • Company Law and • Other special laws that establish 	<ul style="list-style-type: none"> • Ministry of Public Administration; • Government of RNM, and • SCPC. 	<p>April 2025</p>

<ul style="list-style-type: none"> • Number of members, • Conditions and procedure for selection of these members, • Competence of these bodies, • Compensation and • Other systemic issues. 	<p>regulated by law, so that they can have a systemic and permanent character, but in the short term, the Government can adopt a methodology or guidelines that will address this issue.</p>	<p>with management and supervisory bodies.</p>	<p>institutions with management and supervisory bodies.</p>		
		<ul style="list-style-type: none"> • Until the adoption of the legal amendments that will systematically solve the problem, to adopt a Methodology on the number of members, the conditions for selection, the method of work and the amount of compensation of members of the management and supervisory bodies. Considering the fact that a new Government is expected after which these appointments will follow, this 	<ul style="list-style-type: none"> • Adopted according to the Methodology on the number of members, the conditions for selection, the method of work and the amount of compensation of members of the management and supervisory bodies. 	<ul style="list-style-type: none"> • Ministry of Public Administration; • Government of RNM, and • SCPC. 	<p>December 2024</p>

		activity should have priority.			
6. Lack of clear criteria for the selection of managers (directors) in the bodies of the state administration in terms of the type of education, work experience and necessary work	Establishing of clear criteria for the selection of managers (directors) in the bodies of the state administration in terms of the type of education, work experience and necessary work competencies for the management position, as well as regulating a merit	<ul style="list-style-type: none"> • Adoption of the Law on Senior Management Service. 	<ul style="list-style-type: none"> • Adopted Law on Senior Management Service 	<ul style="list-style-type: none"> • Ministry of Public Administration and • Government of RNM. 	May 2025
		<ul style="list-style-type: none"> • Amending and supplementing about 100 special laws that regulate the criteria for directors and other managers in institutions. 	<ul style="list-style-type: none"> • Amended and supplemented special laws regulating the directors and other managers. 	<ul style="list-style-type: none"> • Ministry of Public Administration and • Government of RNM. 	December 2025

<p>competencies for the management position, lack of a merit procedure for the selection of the best candidates as well as the lack of a basis for the selection of experts in the Commission for Elections and Appointment s of the Government who would implement these selection procedures.</p>	<p>procedure for the selection of directors and other managers.</p> <p>The most optimal solution is for these matters to be regulated by the Law on Senior Management Service, so that they can have a systemic and permanent character, but in the short term, the Government can, based on its Rules of Procedure, address this issue by providing a basis for adopting of a special Methodology for the selection and appointment of directors and other managers.</p>	<ul style="list-style-type: none"> • Amending and supplementing of the Rules of Procedure of the Government of RNM for the purposes of: • providing the basis for adoption of a Methodology / Guidance for establishing the criteria and regulating the merit-based procedure for selection of directors and other managers and • providing the basis for engagement of experts in the Commission for Elections and Appointment of the Government of RNM who would implement and selection procedure and • Drafting and adoption of a Methodology/ Guidance for establishing the 	<ul style="list-style-type: none"> • Amended and supplemented Rules of Procedure of the Government of RNM and • Drafted and adopted Methodology/ Guidance for establishing the criteria and regulating the 	<ul style="list-style-type: none"> • Ministry of Public Administration and • Government of RNM. 	<p>November 2024</p>
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		criteria and regulating the merit-based procedure for selection of directors and other managerial persons.	merit-based procedure for selection of directors and other managerial persons.		
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ANNEX 2 – REVIEW OF THE ANALYZED LEGAL FRAMEWORK

#	Title of normative act	Type of normative act
1	Constitution of the Republic of North Macedonia	Constitution
2	Law on Organization and Work of the State Administration Bodies	General law
3	Law on Government	General law
4	Rules of Procedure of the Government	Bylaw
5	Law on General Administrative Procedure	General procedural law
6	Law on Administrative Disputes	General procedural law
7	Law on Food Safety	Special law
8	Law on Classified Information	Special law
9	Law on Obligatory Oil Derivatives	Special law
10	Law on Protection and Rescue	Special law
11	Law on Technological Industrial Development Zones	Special law
12	Law on Ionizing Radiation and Radiation Safety	Special law
13	Law on Archive Material	Special law
14	Law on Industrial Property	Special law
15	Law on State Statistics	Special law
16	Law on Accreditation	Special law
17	Law on Standardization	Special law
18	Law on Organization and Work of the State Administration Bodies	Special law
19	Law on the Establishment of a National Agency for European Educational Programs	Special law
20	Law on IPA Audit	Special law
21	Law on Crisis Management	Special law
22	Energy Law	Special law
23	Law on Establishment of the Real Estate Cadaster Agency	Special law

24	Law on Medicines and Medical Devices	Special law
25	Law on the Rights of Communities that are less than 20% of the RNM's population	Special law
26	Law on Spatial and Urban Planning	Special law
27	Law on Establishment of an Agency for Supporting Entrepreneurship	Special law
28	Law on Establishment of an Agency for Promotion of Agriculture	Special law
29	Law on Establishment of an Agency for Support and Promotion of Tourism	Special law
30	Law on Commodity Reserve	Special law
31	Law on Establishment of an Agency for Foreign Investments and Export Promotion	Special law
32	Law on Management with Confiscated Property, Property Benefit and Seized items in Criminal and Misdemeanor Proceedings	Special law
33	Law on Film Activity	Special law
34	Law on Establishment of an Agency for Financial Support of Agriculture	Special law
35	Law on Healthcare	Special law
36	Law on Pedagogical Service	Special law
37	Law on Railway Transport Safety	Special law
38	Law on Environment	Special law
39	Law on Public Revenue Office	Special law
40	Law on Hydro-meteorological Affairs	Special law
41	Law on Cultural Heritage	Special law
42	Law on Execution of Sanctions	Special law
43	Law on Financial Police	Special law
44	Law on Inspection Supervision	Special law
45	Law on State Market Inspectorate	Special law
46	Law on Meteorology	Special law

47	Law on Prevention of Money Laundering and Terrorism Financing	Special law
48	Law on Vital Records	Special law
49	Law on Forensic Expertise	Special law
50	Law on Bureau for Development of Education	Special law
51	Law on Customs Administration	Special law
52	Law on Balanced Regional Development	Special law
53	Law on Road Transport	Special law
54	Utilities Law	Special law
55	Law on Public Procurement	Special law
56	Law on State Agriculture Inspectorate	Special law
57	Law on Administrative Inspection	Special law
58	Law on Technical Inspection	Special law
59	Law on Educational Inspection	Special law
60	Law on Sanitary and Health Inspection	Special law
61	Law on Forestry and Hunting Inspection	Special law
62	Law on Labor Inspection	Special law
63	Law on State Inspectorate for Local Self-Government	Special law
64	Law on Foreign Currency Inspection	Special law
65	Law on Construction	Special law
66	Law on Police	Special law
67	Law on Establishment of an Operational-Technical Agency	Special law
68	Law on representation of the Republic of Macedonia in front of the European Court for Human Rights	Special law
69	Law on Prevention of Money Laundering and Terrorism Financing	Special law
70	Law on Development, Production, and Trade in Military Goods	Special law
71	Law on Health of Plants	Special law
72	Statute of the Agency for Support of Entrepreneurship	Bylaw

73	Statute of the Agency for Support and Promotion of Tourism	Bylaw
74	Statute of the Film Agency	Bylaw