

Public Sector Employment According to Political Party Affiliation: One of the Key Mechanisms of Political Clientelism in Contemporary Serbia¹

Executive Summary

In efforts to restrict the mechanism of party-affiliated employment, the Republic of Serbia had — in the previous period — adopted a sequence of anti-corruption policy measures with the aim of improving the legal framework and strengthening the control mechanisms. Although the adopted legal framework would just be the first step in an effort to limit the long-lasting mechanism of party distribution of the "bounty" in the public sector, reality has shown that this first step has not yet been sufficiently conclusive. Both intra- and cross-parties struggles to seize the managerial-level positions in public companies, alongside party-affiliated employment of the loyal party members for lower, non-managerial positions, is continued due to, among other things, lack of readiness for precise and effective departization of the public sector with the adopted Law on Public Companies and the Bill on the maximum number of employees allowed within the public sector. Conventional limitations, regarding party affiliations for the selection of managers of public companies, disparity of conditions for the selection of managers of public companies on various authority levels, lack of transparency and discretion in the election of directors and supervisory board members of public companies, as well as selectiveness in setting the maximum number of employees in the public sector are all just some of the disputed issues with the existing laws.

The recommendations that are offered in this policy brief serve to provide a more effective "normative shield" against party-affiliated employment in the public sector — which functions as one of the key mechanisms of political clientelism in contemporary Serbia. This will be achieved through changes of the several articles of the Law on Public Companies and the Bill on the maximum number of employees allowed within the public sector

"How are party members employed? Sometimes easier and sometimes harder — in essence they get employment, don't they?..." (an excerpt from an interview with a central-level politician)

The Mechanisms of Political Party Employment

Political clientelism is a mechanism through which members of the political and economic elite, as well as members of political parties — and for the purposes of their political parties or for their own purposes — misuse public resources. The study on political clientelism and political party patronage, entitled: "Informal Practices of Capturing Economic Resources by Political Elites: Exploring Party Patronage in Kosovo* and Serbia" and conducted by SeConS Development Initiative Group, through the Regional Research Promotion Program (RRPP), has shown that members of clientelistic networks exchange various resources and use different mechanisms within that exchange. Apart from financial resources, these exchanges include employment, contracts, information, acquaintances on

important positions as well as other benefits. The principal mechanisms that have been discovered in the exchange between the political and economic sub-system are: political party "conquering" of the managerial structures within public companies, the financing of political parties by public companies, the employing of party affiliates, lobbying for legislative and administrative "favours", public tenders and (mis)using of control mechanisms (inspections and other similar ones).

For years, political parties have established political-financial benefits by using party-affiliated employment — a mechanism that has typically worked against the public interest and sometimes even contrary to the law. On account of this fact, the dismantling of this mechanism represents one of the biggest challenges set before the Republic of Serbia in its endeavour to become a "responsible" European state.

The research results have, amongst other things, shown that political party employment in the public sector is carried out by the two following mechanisms:

¹ The policy brief is based on research completed from December 2014 until June 2015, by SeConS Development Initiative Group. A total of 98 in-depth interviews were conducted with the representatives of the political and economic elite as well as interlockers and experts on central and local levels in the Republic of Serbia. The Research was realized within the project 'Informal Practices of Capturing Economic Resources by Political Elites: Exploring Party Patronage in Kosovo and Serbia', which was organized through the Regional Research Promotion Program (RRPP) managed by the Interfaculty Institute for Central and Eastern Europe (IICEE) at the University of Fribourg (Switzerland) and was entirely financed by the Swiss Agency for Development and Cooperation (SDC), of the Ministry of Foreign Affairs. A full Study will be available in PDF on www.secons.net by the end of January 2016

* This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence

1. Intra- and cross-party "struggle" to seize managerial positions (managers and members of supervisory boards (SB)) in public companies (PC):

"The essential channel of employment in general, and this especially stands for supervisory boards or managers of public companies, is through political parties or families. I will mention here only one example. The position of Chairman of the Commission for selecting members of supervisory boards has been delegated to a person who has just graduated on the Faculty of Physical Education, and this was his first employment in his career. What else is there to talk about? The person named to the position has no qualifications for that work place and no experience either. It is clear that his part is one of etiquette, and that the decision on supervisory board members is made by someone else. If someone with qualifications and experience had been nominated to that position, and above all, one with authority, the supervisory boards would not have various acquaintances and relatives sitting in them..." (an excerpt from the interview with a politician from a local level)

2. Political Party Employment for Lower, Non-Managerial Positions

"I came to see the manager and told him: I am aware that you will experience pressure as I did. We can make an agreement; one of each three new employees will be mine. He told me in return: Agreed, I understand. He was really great. So I managed to employ three people in one year. One of them was from the political party, since I also had to employ my relative. There was no pressure from the political party to employ more people because people in the party are reasonable - they know exactly how much you can achieve, considering the positions you are holding..." (an excerpt from the interview with a female politician from a local level)

Although the previous two mechanisms are essentially connected, the benefits that political parties — and (or) individuals — can achieve with implementing them, are somewhat different.

In the first case, the political party seizing or "takeover" of the public companies is done with the intention of gaining a financial benefit — either for the party or individual — by way of allocating budget means (tenders agreed upon in

advance, subventions to "friendly" companies, various types of sponsorships) or taking a certain percentage of personal income that the nominated managers and members of supervisory boards are "obligated" to return to the party via a "voluntary" contribution.

In the second case, the basic goal is awarding a loyal, hierarchically lower party staff, with the intent of sustaining and further spreading support or favor for the potential electorate. A loyal, hierarchically lower party staff member in the public sector can only be employed after the party has taken control over the managerial positions.

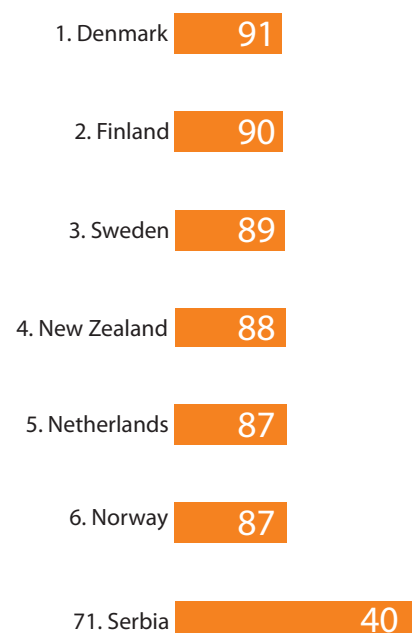
After years of political party affiliation employment in the public sector, the political parties have gained the title of an informal "employment agency" — given that they make their selection by the criteria of party and (or) personal loyalty, rather than based on professionalism and level of expertise.

"Unfortunately all the positions in the supervisory boards or in the public companies are used as a reward for individuals from the coalition in power, or they are distributed according to the need to new board members or members of their families. The cases where a member of a supervisory board or a public company manager are elected according to their expertise are very rare. After all, the financial situation of those companies speaks for itself. The accounts are blocked, the workers are not receiving any income for months... When we were in power and if salaries were late for one month everybody were throwing sticks and stones, protests appeared... And today, there is no salary for months and nothing happens. Reign of terror, threats of losing a job..." (an excerpt from a member of the political elite from a local level)

At the end, it is important to recognize that the departization of the public sector does not necessarily lead to its professionalization. It does however lead to a restriction of possibilities or opportunities for further misuse of public resources by political parties, and a later analyses of the existing legal framework — and the proposed recommendations for its improvement — should be considered with the aim of departization in mind.

With score **40** the Republic of Serbia stands at number **71** out of **168** countries ranked on the corruption perception index (CPI) of 2015 in the Transparency International Report.

CPI scores of the six cleanest countries and Serbia for 2015



Source: Transparency Internacional



The Existing Normative Framework: Obstacle or Opportunity in the Struggles Against Political Party Affiliation Employment?

The Law on Public Companies

The adoption of the Law on Public Companies in December 2012 was the first step towards ceasing and preventing the practice and spread of the „bounty“ during which discussions — regarding the distribution of managerial positions in public companies — was a standard part of the coalition negotiations. Prescribed conditions according to which a manager of a public company founded by the Republic or an autonomous province, must not be a member of a political party body or must place his functions in the political party body on hold, alongside with the condition that an independent member

of a supervisory board of a public company, founded by the Republic of Serbia, must not be a member of a political party, are some of the examples testifying on the intent of Law on public companies to limit a long standing practice of political party mistreatment of public resources. However, we consider the legal limitations — regarding political party affiliation — to be a kind of formality, and also see that some solutions from the Law leave possibilities for a non-transparent and arbitrary conduct, and should thus be improved upon or changed accordingly.

It Can Be Done, But It Is Not Obligatory

Articles 12 and 13 of the Law on Public Companies stipulate that the supervisory board of a public company, which has been founded by the Republic of Serbia, must be comprised of 5 members, with one of those being an independent member and the other selected from the employees of the public company (supervisory board of a PC founded by an autonomous province or a unit of local government which has 3 members, with one of those members being from the employees of the PC). According to Article 16, all members of a supervisory board of a PC need to refrain from a set of proscribed conditions, while an independent member of the supervisory board, according to Article 14, needs to adhere to additional conditions, one of which states that they must not be a member of any political party.

The legislator identified a stipulation oversight in unique criteria for selecting supervisory board members from the employees of the public company in the Law and thus prevented any possible abuse.

We **recommend** that the Law on Public Companies stipulates that an **independent member of a supervisory board is a mandatory member of a supervisory board of a public company**, which has been founded by **the Republic, an autonomous province or a local government**, and which would prevent at least one supervisory board member from having any political party affiliations.



Uniformity Limits "Creativity"

Article 15 of the Law on Public Companies stipulates that a member of a supervisory board who is taken from the employees of the public company delegated by the method stipulated by the PC statute.

The legislator identified a stipulation oversight in unique criteria for selecting supervisory board members from the employees of the public company in the Law and thus prevented any possible abuse.

We **recommend** that the stipulated method of selecting supervisory board members from the employees of the public company be changed in the Law on Public Companies, so as to **define a unique procedure for proposing and selecting supervisory board members from the public company employees.**



Non-Transparent Transparency

Article 62 of the Law on Public Companies stipulates that information on the composition of a supervisory board be made available, as a way of facilitating transparency.

A solution that lacks precision leaves the possibility of exposing (or making public) only the names and acquired titles of the supervisory board members — from which one cannot conclude whether the supervisory board members fulfill the conditions, that are stipulated by law, for nomination.

We **recommend** that the part of the Law that describes the public availability of the composition of supervisory board members, be specified by **making all the professional *resumés* (of the supervisory board members) public on the website of the public company**, which would then make it easier to control or identify any potential misuses of the conditions that the supervisory board members have to satisfy according to the Law.



Attempt of Departization

Article 22 of the Law on Public Companies stipulates a series of conditions that a manager of a public company of the Republic or an autonomous province must fulfill, among which is the one stipulating that they must not be a member of any political party body — that is to say that they have to “freeze” their functions in the political party body.

The stipulated limitation regarding political party affiliation is kind of formality and as such does not essentially prevent party control over the public companies.

We **recommend** that the condition for appointing public company managers — which stipulates that they must not be a member of a political party body and must in result “freeze” their functions in the political party body — be replaced with the condition **that they must not be a political party member for no less than a four-year period of time** which would thus bring the departization criteria a step closer to its essence.



On the Local Level - Local Rules

Article 22 of the Law on Public Companies stipulates a series of conditions for a public company manager, but only for a public company manager of the PCs which has been founded by the Republic or an autonomous province, while nominating public company managers of PCs that have been founded specifically by the bodies of local governments, is done according to the regulations of the Labor Law of the Republic of Serbia.

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We **recommend** that the conditions for selecting a public company manager — stipulated in the Law on Public Companies and which have been founded by the Republic or an autonomous province — **also be issued for the selections of public company managers of PCs, which have been founded by the local government**, with the aim of conducting departization of the managerial staff on the local level.



We Always Know Best

Article 26 of the Law on Public Companies stipulates that a public competition for the selection of a public company manager is conducted by a Commission for appointing PC manager. Article 27 stipulates that the Commission is comprised of a chairman and four members — from which the chairman and two of the members are appointed by the Government for a period of three years, another member is appointed by the Council of the National Assembly, in charge of economy issues, for a period of three years (by way of a two-thirds majority), while the latest member is appointed by the Government for each individual appointment of the manager (from the public company's supervisory board).

Apart from certain limitations present in Article 27, the legislator did not foresee the criteria for appointing the Commission members. This leaves the possibility for arbitrary conduct of the Government in the process of appointing the Commission members and is contrary to the principles of departization. That especially relates to the Commission member appointed by the Government, for each individual case of selection of a public company manager, who — according to the law — can be a political party member (apart from an independent member of a supervisory board).

We **recommend** that the Law on Public Companies — or the bylaw — stipulates **clear conditions and criteria (above all, expert/professional)** for the selection of the members of the Commission for appointing public company managers on republic, autonomous provincial and local levels, as well as to stipulate that the supervisory board member appointed by the Government, for each individual case of public company manager selection, **must be an independent supervisory board member**; such conditions and criteria are what thus prevents at least one Commission member from having any political party affiliations.



Disparity of Criteria – Uniformity of Consequences

Article 30 of the Law on Public Companies foresees certain norms by which the Commission ranks the candidates. Concrete norms are not defined by Law, but the Government has additionally adopted a Regulation on the norms of appointing public company managers in PCs that have been founded by the Republic of Serbia.

The question remains, however, why this Regulation does not cover the steps of appointing public company managers of the PCs, which have been founded by the bodies in charge from autonomous provinces and local governments? That leaves the possibility to consider the norms on these levels of authorities ad hoc, and without any uniformity, which in turn, leaves open the possibility for misuse with subsequent consequences that may strongly influence the level of expertise of the prospective manager.

We **recommend** that this Regulation on the norms of appointing public company managers in PCs that have been founded by the Republic of Serbia, **also be applied to the ranking of the candidates for those public company managers of PCs that have been founded by an autonomous province or local government.**



According to the Old Formula – Discretion Guaranteed

Article 31 of the Law on Public Companies stipulates that after the selection procedures are conducted, the body in charge of the appointment of managers considers the proposal of the act on appointment (according to the records on the selection process) and brings forth the final decision on appointment of the proposed (first ranked) candidate or another candidate from the list.

The discretionary rule of the supervising body for appointing a public company manager gives way to an entirely legal appointment of a candidate who is not the first ranked in the selection process, yet with a rather arbitrary and unclearly defined set of criteria.

We **recommend** that the Law on Public Companies **clearly regulates and limits the discretion rights of the body in charge for appointing a public company manager**, based on which they cannot arbitrarily select a candidate who is not first ranked (or cannot select any candidate at all) after the selection process has been completed.



The Bill on the Maximum Number of Employees in the Public Sector

The last in the sequence of laws that have been adopted with the aim of rationalization of the public sector, is the Bill on the Maximum Number of Employees in the Public Sector. It was devised to enable the reduction of costs to sustainable limits with an optimal number of employees

in the public sector, which would in turn improve the efficiency of public management. The enactment of the Law is one of the consequences of the signed arrangement with the MMF which foresees the reduction of employees in the public sector per rate of 5% annually by 2018.

According to the Old Formula – Discretion Guaranteed

Article 1 of the Bill on the Maximum Number of Employees in the Public Sector stipulates that the Law is not to be enacted on public companies that have been founded by the Republic of Serbia, neither on legal entities that were founded by those companies.

The legislator has thus stipulated a potential rationalization of the work places (read layoffs) of health workers and teachers, but not a rationalization of the biggest “losers” or the kind of symbols and indicators of political party employment. Furthermore, there is a question regarding which principle was used by the legislator to stipulate that the Bill would be applied to autonomous provinces and local public companies, but not to their Republic counterparts?

We **recommend** that the Bill on the Maximum Number of Employees in the Public Sector **stipulates its concerns for, and attention to public companies founded by the Republic of Serbia, as well as legal entities founded by those public companies**, which would thus make the primary need for rationalization, non-selective and departization, substantially initiated.



Closing remarks

Research results of political clientelism and party patronage in Serbia showed that in spite of the present legal framework, political parties continue to privatise public resources using the mechanism of employment in the public sector through party affiliation, thus deriving personal and/or party benefits, to the detriment of the public interest. We believe that a big step toward the departisation of the public sector and the restriction of the abuse and control of public resources would be made by implementing the following recommendations:

- ▶ **Stipulation that supervisory member of public company must not be affiliated with any political party**, should be valid not only for the Republic as a founder, but also for Autonomous province or local self-government as founders.
- ▶ **Harmonisation and general applicability of the defined conditions, criteria and procedures for the selection of directors and members of public companies supervisory boards**, irrespective of the public company founder (whether it be the Republic, the autonomous province or a local self-government unit)
- ▶ **A transparent and non-discretionary decision making in the process of selecting directors and members of public companies supervisory boards**, irrespective of the public company founder (whether it be the Republic, the autonomous province or a local self-government unit)
- ▶ **Defining not a formal, but a substantial criterion to appoint a potential public company director as a person without any political party affiliation**, irrespective of the public company founder (whether it be the Republic, the autonomous province or a local self-government unit)
- ▶ **Non-selective application** of the The Bill on the Maximum Number of Employees in the Public Sector

SeConS

development Initiative group

SeConS was founded by a group of sociologists and social researchers, who for many years worked on issues of social development at the university and in other civil society organizations in the country and abroad. In 2005, this group of experts decided to become more socially engaged and use their knowledge and experience in order to contribute to long-term socio-economic development and improvement of living conditions of individuals and social groups in Serbia and the region.

SeConS is an independent think-tank organization with experts who conduct empirical research, analyze policies and processes, specific social and economic challenges, educate, and train and empower different actors. Data collection and analysis conducted by SeConS are a reliable basis for development of methodologies, recommendations and policies. This is an important contribution to the development and implementation of national, regional and local policies.

SeConS mission is to contribute to adequate and effective socio-economic development policies and programs and to contribute to effective work of various stakeholder from the public, private and civil sector for development on the national, regional and local level. Main fields of activity where SeConS has yielded expertise and high quality results are: social inclusion, gender equality, rural development, regional and local sustainable development, migration, institutionalization, organizational reform, development of the public sector, management and development of human resources.

Tel: +381 11 412 12 57
 Fax: +381 11 344 73 86
office@secons.net
www.secons.net

Sources:

- ▶ Primary data from the Research on political clientelism and party patronage, conducted by SeConS Development Initiative Group and realized within RRPP project 'Informal Practices of Capturing Economic Resources by Political Elites: Exploring Party Patronage in Kosovo and Serbia'. Full Study is expected to be available online in PDF on www.secons.net by the end of January 2016
- ▶ The Law on Public Companies ("Official Gazette of the Republic of Serbia," number 119/2012, 116/2013- authentic interpretation and 44/2014-other law)
- ▶ The Bill on the Maximum Number of Employees in the Public Sector ("Official Gazette of the Republic of Serbia", No. 68/2015)
- ▶ Regulation on the norms of appointing public company managers in PCs that have been founded by the Republic of Serbia ("Official Gazette of the Republic of Serbia", No. 102/2013)



The RRPP promotes social science research in the Western Balkans (Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro and Serbia). Social science research aids in the understanding of the specific reform needs of countries in the region and in identifying the long-term implications of policy choices. Researchers receive support through research grants, methodological and thematic trainings as well as opportunities for regional and international networking and mentoring. The RRPP is coordinated and operated by the Interfaculty Institute for Central and Eastern Europe (IICEE) at the University of Fribourg (Switzerland). The programme is fully funded by the Swiss Agency for Development and Cooperation (SDC), Federal Department of Foreign Affairs. The views expressed in this policy brief are those of the authors and do not necessarily represent opinions of the SDC and the University of Fribourg.