



Legal Analysis of  
**THE COMPLIANCE OF LAWS  
IN THE AREA OF  
PUBLIC ADMINISTRATION  
AND PUBLIC SERVICES IN  
FEW KEY SECTORS**

- MONITORING REPORT



# Legal Analysis of the Compliance of Laws in the Area of Public Administration and Public Services in Few Key Sectors

MONITORING REPORT – Legal Framework Analysis

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# 1. Introduction

The success and character of a country is measured through many indicators, how much the country creates, how much it spends, what quality of services and products is present on the domestic and international market, the life span of the population, the protection of human rights and the guarantee of civil liberties etc. A basic prerequisite for the volume of production of products and services, and for their quality as well, are the minimum standards for each product and service. Achieving the quality and volume of quality products and services, in turn, depends on the employees i.e. the persons who produce the same.

In essence, the same logic applies to all sectors of economy, private, finance and public sectors. Unlike the private sector, the finance and public sectors face a circumstance that does not burden the private sector, and that is the “public activity” concept. Work of the public sector employees is of particular importance for the state, as well as for the citizens themselves, because it is subject to more stringent criteria for the manner of its performance, and hence more stringent criteria for who can perform it and under what conditions.

The conditions for entry, that is, recruitment in the public sector, the manner of compensation, i.e. the determination of the salary for public sector employees, as more specific than in the private sector, the way they are progressing in the career and, in fact, whether they have career at all or are temporary employees, their rights and duties, responsibility for their work, and the manner of termination of employment, represent constituent elements of the each employee’s working status. These issues in the public sector are regulated by law, mostly by one or several laws, and foresee rules that differ from the regular labour legislation.

The quality of a public sector developed in a country depends on the manner in which these issues are regulated. Whether it will be predictable, with professional and satisfied staffs, or it will create confusion, disharmony and uncertainty for the public sector employees, and thus a decline of the service quality and legal uncertainty for the citizens and the businesses in one country. In Republic of Macedonia, the question of whether the labour relation in group of activities included in the public sector will be regulated in a unique manner or by a wide range of special regulations, has matured for more than two decades, since the independence in 1991 to 2010, when for the first time an attempt was made to regulate the status of all employees in the public sector. Following the first failure in 2014, with a completely

new legal framework, a unique system of defining and determining the public sector employees was established. In addition of this report we will look at the details of the new legal framework and its impact on several specific public activities.

Until the adoption of the Law on Public Sector Employees, the aspects related to the elements of the working-related public employees were not systematically regulated in a single law, which, in practice, created a huge number of problems with regard to the status of these employees. For these reasons, although it is a heterogeneous group of employees, it created the need for all employees in the public sector to be covered by a general legal framework, which will also harmonize all special laws that regulate matters related to the working relation of the administration.

## 2. Description of the Current Situation

The Law on Public Sector Employees sets out minimum standards for human resources management, which must be respected and common to all employees in the public sector, that is, it regulates the status of the employees, the general principles, rights and duties, classification, recruitment, promotion, professional development, performance measurement, records and other issues related to the employment of the public sector employees.

The issues regarding the status of administrative servants, as type of employees in the public sector in Republic of Macedonia, are regulated by the Law on Administrative Servants (LAS), which comprehensively regulated the administrative issues of one of the four groups of public sector employees – administrative servants.

In the adoption of the Law on Administrative Servants, these relations were determined by two other laws: the Law on Civil Servants and the Law on Public Servants. However, the application of these two Laws in practice encountered several issues. Several sectors, through initiatives for assessment of constitutionality and legality, were slowly excluded from the competence of the Law on Public Servants, due to the inadequacy of this regulation for their activity. Starting from the public enterprises, the culture, healthcare etc., large number of civil servants performing administrative work was excluded from these Laws, enabling enormous diversity in regulating the status of servants, without considering the nature of their work.

Therefore, the Law on Administrative Servants was adopted, in order to establish a knowledge-based synchronized system of administration i.e. to introduce an entirely new approach to human resource management, in accordance with the best competence-based world management practices.

After the adoption of these two laws, within a short period of time<sup>1</sup>, amendments to approximately fifty separate laws in different areas were also performed in order to regulate the issues in connection to the labour relation and other categories of public sector employees.

<sup>1</sup> Pursuant to Article 49 of the transitional and final provisions of the Law on Public Sector Employees, the laws regulating issues subjected to regulation of this Law shall be compliant with the provisions of this Law, no later than nine months from the date of entry into force of this Law.

As part of the package of laws that underwent amendments/adjustments were also the laws that regulate issues of labour relations of public service providers in the area of healthcare, education and science, labour, social affairs and child protection, culture and public information, as well as in the area of utilities and other activities for which public enterprises have been established.

Considering that this category of employees includes employees who directly provide services of various types to citizens and from whose work, the perception of the citizens on the quality and efficiency of the public administration depends to a large extent, it is of particular importance that there should be solid legal framework for human resources management, based on the principle of merit. In other words, the legal framework should be based on the same principles on which the Law on Public Sector Employees and the Law on Administrative Servants are based; i.e. legal assumptions for conducting fair, transparent and objective procedures for selection, recruitment, promotion, rewarding and punishment of employees in public activities (public service providers) should be created.

As stated afore, shortly after the adoption of the Law on Public Sector Employees and the Law on Administrative Servants, alignment of and amendments to the separate laws regulating the public services was performed as well.

In order to answer this question and to determine if there is consistency of human resources management policies in the entire public sector, we have analysed the more significant specific laws regulating public services in the sections dealing with basic issues related to human resources (recruitment, promotion, disciplinary responsibility, assessment, legal protection) and we compared the manner in which these issues are regulated by the separate laws and the Law on Public Sector Employees and the Law on Administration Servants.

The determined inconsistencies are shown in the datasheet view of this analysis along with proposed solutions to overcome the inconsistencies.



## 3. Review of the Laws Subject to Analysis

Regarding the laws subject to this analysis, we begin with the two basic laws that regulate the area of public administration and public services. Their application in each of the areas of public interest such as social care, health-care services, child care, then the areas of education, culture, as well as the part of regulating the work of public enterprises are further analysed and presented as a problem. The compliance of the regulation of these two regulations with the Law on Labour Relations, as well as the Law on Working Time Records in some of the sectors related to public services is also additionally considered.

### 3.1. Law on Public Sector Employees

In order to create independent, professional and efficient public administration, which is fully based on the principle of competence and merit in recruitment, promotion and rewarding/punishing employees in the administration, the Assembly of Republic of Macedonia adopted the Law on Public Sector Employees<sup>2</sup> (LPSE) which entered into force on February 13<sup>th</sup>, 2014 and started to be implemented as of February 13<sup>th</sup>, 2015.

For the first time all employees in the public sector are covered and classified systematically, in a single law: **administrative servants; officials with special authorizations** who have established employment in institutions in the area of security, defence and intelligence; **public service providers** such as physicians, teachers, professors, social workers, cultural workers, as well as other persons employed in public institutions and enterprises for performing activities related to activities of public interest (activities that are not of an administrative nature), as well as the assistant technical staff, that is, the persons who have established employment in the institutions of the public sector for the purpose of maintenance, security, transportation and similar.

<sup>2</sup> Law on Public Sector Employees (Official Gazette of Republic of Macedonia, No. 27/2014, 199/2014 and 27/2016)

This law, actually, establishes only the general legal framework related to the human resources management in all public sector institutions as an umbrella above the other separate (sectoral) laws which should regulate the details and specifics of each public activity individually.

### **3.2. Law on Administrative Servants**

In parallel with the enactment of the Law on Public Sector Employees, the Law on Administrative Servants<sup>3</sup> (LAS) was adopted, which comprehensively regulated the official matters of one of the four groups of public sector employees - the administrative servants, that is, those who perform works of administrative nature, regardless of whether they are employed in a ministry, a unit of local self-government, an institution that provides public services or in the public enterprise. .

### **3.3. Other Laws in the Area of Public Services**

More significant laws in the area of public services, covered by this analysis, are the following: Law on Social Protection, Law on Child Protection, Law on Healthcare Protection, Law on Culture, Law on Primary Education, Law on Higher Education, Law on Teachers for Primary and Secondary Schools and Law on Public Enterprises.

The **Law on Social Protection**<sup>4</sup>, adopted in 2009, besides the matter that is the primary subject of regulation of this Law, being the social protection of the citizens of Republic of Macedonia, contains one chapter with approximately twenty provisions regulating the issues of labour relation for the employees in public social protection institutions (Chapter IV. Staff in the social protection institutions). The amendments for compliance of this Law with the Law on Public Sector Employees and the Law on Administrative Servants on 05.03.2014 were published in Official Gazette of Republic of Macedonia No. 44/2014 with delayed application from the commencement of application of LPSE and LAS i.e. February 13th, 2015. Unlike previously, when the employees at these institutions had the status

<sup>3</sup> Law on Administrative Servants (Official Gazette of Republic of Macedonia, No. 27/2014, 199/2014, 48/2015, 154/2015, 5/2016, 142/2016 and 11/2018)

<sup>4</sup> Law on Social Protection (Official Gazette of Republic of Macedonia No. 79/2009; 36/2011; 51/2011; 166/2012; 15/2013; 79/2013; 164/2013; 187/2013; 38/2014; 44/2014; 116/2014; 180/2014; 33/2015; 72/2015; 104/2015; 150/2015; 173/2015; 192/2015; 30/2016 and 163/2017).

of public servants, the legal amendments from March 2014 determined new classification of employees: administrative servants, public service providers and assistant technical persons. Subsequently, the categories and levels of employees with status of public service providers and assistant technical persons, including the conditions to be met at each of the levels, were regulated by the procedures for filling vacant job positions by means of public/internal announcement and envisaged provisions aimed at establishing a system for managing the effect of public service providers.

Following the amendments from March 2014, the Law on Social Protection has undergone another ten amendments, which mostly refer to the social protection system, except for the amendments related to the addition of another level in the category of public service providers and regulating the procedure for obtaining a license for work of an expert worker in a social protection institution. Other issues related to the human resources management were not subject to further regulation.

The **Law on Child Protection**<sup>5</sup>, adopted in 2013, regulates matter in connection to the labour relation of service providers employed at kindergartens (Chapter XI. Employees at public institutions for care and education of children at preschool age and public institutions for rest and recreation of children). The amendments that have been made to perform compliance with LPSE and LAS are simultaneously published with the amendments to the Law on Social Protection (Official Gazette of Republic of Macedonia No. 44/2014 dated 05.03.2014). These amendments, similarly to the Law on Social Protection, performed a classification of employees in three groups (administrative servants, public service providers and assistant technical persons), they determined the categories of employees with status of public service providers as well as the conditions that should be met for each of the levels. Likewise, the procedures for filling a job vacancy via public/internal announcement were regulated and the provisions on establishing a system for managing the effect of public service providers were foreseen.

Unlike the Law on Social Protection and the Law on Child Protection, the **Law on Healthcare Protection**<sup>6</sup>, adopted in 2012, contains large number of provisions related to the labour relation of healthcare workers/associates which are, mostly, distributed in several chapters: „5. Duties of the healthcare workers and “5-a. Public service providers in healthcare”, “6. Recruitment of healthcare workers i.e. healthcare associates”, “6-a. Recruitment of healthcare workers with tertiary-level

<sup>5</sup> Law on Social Protection (Official Gazette of Republic of Macedonia No. 23/2013, 12/2014, 44/2014, 144/2014, 10/2015, 25/2015, 150/2015, 192/2015, 27/2016 and 163/2017)

<sup>6</sup> Law on Healthcare Protection (Official gazette of Republic of Macedonia, No. 43/2012, 145/2012, 87/2013, 164/2013, 39/2014, 43/2014, 132/2014, 188/2014, 10/2015, 61/2015, 154/2015, 192/2015, 17/2016 and 37/2016)

el higher education”, “7. Rights and duties of healthcare workers and healthcare associates, “7-a. Special rights and duties of healthcare workers with higher education in the area of medicine employed at public healthcare institutions performing tertiary-level healthcare activity”, “8. Responsibility of healthcare workers i.e. healthcare associates”, “9. Termination of employment of healthcare workers i.e. healthcare associates”, and “10. Protection and decision-making on the rights and obligations of healthcare workers, i.e. healthcare associates.

The compliance of this Law with the Law on Public Sector Employees and the Law on Administrative Servants is performed by the amendments published in Official Gazette of Republic of Macedonia No. 43/2014 dated 04.03.2014 i.e. one day before the amendments performed to the Law on Social Protection and the Law on Child Protection, again with delayed application until the application of LPSE and LAS commenced. The compliance was made by supplementing the text of the Law with the chapter “5-a. Public service providers in healthcare”, which stipulated the categories and levels of healthcare workers/associates and assistant technical persons, as well as the conditions to be met at each level.

Specificities regarding the rights and obligation of the labour relation for the employees at the primary and secondary school are regulated by the **Law on Primary Education**<sup>7</sup> the **Law on Higher Education**<sup>8</sup> and the **Law on Teachers for Primary and Secondary Schools**<sup>9</sup>.

The **Law on Public Enterprises**<sup>10</sup> defines the public enterprises, the public interest, regulates the principles of operation of public enterprises, the acts of public enterprises, and as a result of the adoption of the Law on Public Sector Employees, articles were supplemented to it regulating the status of employees in public enterprises.

<sup>7</sup> Law on Primary Education (Official Gazette of Republic of Macedonia No.103/2008, 33/2010, 116/2010, 156/2010, 18/2011, 51/2011, 6/2012, 100/2012, 24/2013, 41/2014, 116/2014, 135/2014, 10/2015, 98/2015, 145/2015, 30/2016, 127/2016 and 67/2017)

<sup>8</sup> Law on Higher Education (Official Gazette of Republic of Macedonia No. 44/1995, 24/1996, 34/1996, 35/1997, 82/1999, 29/2002, 40/2003, 42/2003, 67/2004, 55/2005, 113/2005, 35/2006, 30/2007, 49/2007, 81/2008, 92/2008, 33/2010, 116/2010, 156/2010, 18/2011, 51/2011, 6/2012, 100/2010, 24/2013, 41/2014, 116/2014, 135/2014, 10/2015, 98/2015, 145/2015, 30/2016, 127/2016 and 67/2017).

<sup>9</sup> Law on Teachers for Primary and Secondary Schools (Official Gazette of Republic of Macedonia No. 10/2015, 145/2015, 30/2016, 127/2016 and 67/2017)

<sup>10</sup> Law on Public Enterprises (Official Gazette of Republic of Macedonia No. 38/1996, 6/2002, 40/2003, 49/2006, 22/2007, 83/2009, 97/2010, 6/2012, 119/2013, 41/2014, 138/2014, 25/2015, 61/2015 and 39/2016)

## Legal Analysis of the Compliance of Laws in the Area of Public Administration and Public Services in Few Key Sectors

In the Law on Culture a separate Chapter 3. “Employment rights in public institution in the area of culture” is systematized and the same regulates the recruitment, promotion, evaluation and other aspects in the area of human resources (recruitment plan, responsibility and other). Through a reference provision contained in this law, the national institutions in the area of culture are obliged to regulate i.e. establish with their acts the system and the basic principles deriving from the Law on Public Sector Employees.

# 4. Identified Critical Points/ Inconsistencies and Proposed Solutions

## 4.1. Area of Social Protection

<b>Identified inconsistency</b>	Recruitment policies and promotion in institutions performing an activity in the area of social protection do not fully follow the established principle of expertise and competency.
<b>Description</b>	<p>The Law on Public Sector Employees, as one of the general principles for the public sector employees, sets out the principle of competence and competence, according to which public sector recruitment/promotion is performed through the publication of a public/internal announcement, whereby, in a transparent, fair and competitive selection procedure, the most competent candidate for the job position is selected. The selection procedure is determined by the separate laws that regulate an appropriate area.</p> <p>Recruitment/promotion procedure for the public service providers in the area of social protection is regulated by the Law on Social Protection.</p> <ul style="list-style-type: none"><li>• <b>Recruitment (public announcement):</b></li></ul> <p>Pursuant to the Law on Social Protection, the selection procedure consists of two phases only: checking the fulfilment of the public announcement's conditions and interview, on the basis of which a ranking list is prepared, after which the director of the public institution has the discretion to make the selection of any candidate from the ranking list, or not to make a selection.</p> <ul style="list-style-type: none"><li>• <b>Promotion (internal announcement):</b></li></ul> <p>The Law on Social Protection does not contain provisions on the conditions/criteria on whose basis the selection is conducted via an internal announcement, nor on the procedure in which the selection is performed, although the Law on Public Sector Employees, Article 6, determines that the promotion in the public sector shall be performed by publishing an internal announcement, while the selection procedure is determined by separate law.</p> <p>This manner of regulating the recruitment/promotion procedures provides an opportunity to influence/bias the selection process and the candidate selection which is in contrary to the basic principle for expertise and competence determined by the Law on Public Sector Employees.</p>

**Reference to the specific legal points that are the source of the problem**

• **Recruitment:**

Pursuant to Article 110-g from the Law on Social Protection, in the public social protection institutions, for the implementation of a procedure for employing a public service provider, the director shall establish a selection commission that verifies whether the candidates meet the requirements of the public announcement and conducts an interview. Based on the performed check and the conducted interview, the selection commission shall prepare a ranking list that it submits to the director who makes the decision for selection or non-selection of a candidate, within 8 days from the receipt of the ranking list from the selection commission.

The Law on Social Protection does not provide for a legal basis for further regulation of the procedure by a bylaw.

As a comparison, the Law on Administrative Servants establishes an recruitment procedure which is fully based on the system of merit and includes three phases: administrative selection, administrative servant exam and interview, where in all selection phases the candidates should score at least 60% of the maximum number of scores. The best ranking candidate is selected from the final ranking list (with appropriate membership of the community) and the Selection Commission proposes them to the secretary, that is, the manager of the institution, who is obliged, within 5 days after the receipt of the proposal, to adopt decision of selection. It abolishes the previous legal decision of proposing the three best ranked candidates to the manager, after which the manager had the discretion to select between the three candidates.

The recruitment procedure is elaborated in detail by the Law itself, and further by the Ordinance on Implementation of the Recruitment Procedure of Administrative Servants, which, on the proposal of the Minister of Information Society, is adopted by the Government of Republic of Macedonia.

• **Promotion:**

The Law on Social Protection contains one single provision related to the internal announcements for promotion of the public service providers.

It is the provision under Article 110-g paragraph 8 of the Law which regulated where the internal announcement is published, its contents and the deadline for application of the candidates. The procedure is not regulated at all, i.e. it is unclear by who and how it is conducted, and the minimum requirements that should be met by the candidate in order to be able to apply to the internal announcement are neither determined.

	<p>For comparison, the Law on Administrative Servants contains explicit provisions on the requirements that the administrative servants need to fulfil in order to advance their careers: to be assessed with grade “A” or “B” during the last evaluation, to be at a job position at an immediate lower level or to be at a job position within the same category in which the job position for which the internal announcement was published is ranked, to have passed at least 2 years on the current job position for which the internal announcement was published and not to have received a disciplinary measure in the last year before the publication of the internal announcement (Article 48, paragraph 5 of the Law on Administrative Servants).</p> <p>Also, the Law on Administrative Servants contains comprehensive provisions connected to the selection procedure in promotions which will be further regulated and to a bylaw adopted by the Minister of Information Society and Administration.</p>
<b>Proposed solution</b>	<p>It is necessary to further regulate the Law on Social Protection (in Chapter IV, item 1. Staff in the social protection institutions) and to further elaborate in details the procedures for recruitment/promotion by the means of bylaws, adopted by the Minister of Labour and Social Policy or care to be taken when drafting a new Law on Social Protection.</p> <p>The merit recruitment/promotion system established by the Law on Administrative Servants can provide a solid basis for legal further regulation of the procedure for recruitment/promotion of the public service providers in the area of social protection. The specificity of the activity should not be justification for leaving legal gaps which are an ideal opportunity for various impacts in the recruitment/promotion of this category of public sector employees.</p>



<b>Identified inconsistency</b>	There are no legal obstacles for deployment of public service providers in the field of social protection at a job position at a lower level.
<b>Description</b>	<p>In deploying the public service providers in the social protection institutions, the employer shall be obliged to only examine whether the employee meets the requirements for the job position to which they are assigned, that is, the employer has no legal obligation to deploy the employee to a position at the same level with the job position from which they are being deployed.</p> <p>Such legal solution is in accordance with the minimum standards determined by the Law on Public Sector Employees, but does not protect the employees from degradation.</p>
<b>Reference to the specific legal points that are the source of the problem</b>	<p>Pursuant to Article 43 of the Law on Public Sector Employees, the public sector employee may, at their request or as needed by the institution, be permanently deployed to other job position at the same level i.e. at a job position that meets the general and special requirements provided for by the job classification act, for which the institution manager shall adopt a decision for their deployment in the institution.</p> <p>Pursuant to Article 110-g paragraph 6 of the Law on Social Protection, a public service provider with an adequate education, required working experience in the occupation, meeting the other requirements determined by the institution's job classification act may, as needed by the institution or at their request, be deployed at other job position, in accordance with the internal organization and job position job classification act.</p> <p>For comparison, Article 30 paragraph 4 of the Law on Administrative Servants stipulates that the deployment shall be carried out to a job position at the same level, thus excluding the possibility of degradation of the administrative servant (except after a pronounced disciplinary measure for deployment at a lower level).</p>
<b>Proposed solution</b>	Amending the Article 110-g paragraph 6 of the Law on Social Protection in order to foresee that the deployment shall be performed to a job position at the same level.

<b>Identified inconsistency</b>	Insufficient standardization of the disciplinary responsibility of public service providers in the field of social protection.
<b>Description</b>	<p>The Law on Public Sector Employees, as one of the general principles for public sector employees, also sets out the principle of responsibility, according to which the employees shall be personally responsible for the performance of the duties arising out of the job position, while for any shortcomings in their work they shall undergo a disciplinary procedure, in accordance with the separate laws regulating the respective area.</p> <p>The disciplinary responsibility for the public service providers in the area of social protection is regulated by the Law on Social Protection which sets out that for the violation of the official duty, the employee shall be held accountable for disciplinary irregularity and disciplinary offense. However, the Law contains provisions only regarding the manner of conducting the procedure for determining disciplinary accountability for irregularity and offence, but it does not contain any provisions on what actions of the employees shall be deemed a disciplinary irregularity/offense. In other words, the legislator has failed to determine the legal qualifications of the actions whose committing represents violation of the working discipline. The provision under Article 110-j of the Law stipulates that the proposal for initiating a disciplinary procedure, as a rule, contains a description of the action with which the violation has been committed, as well as the legal qualification of the action, but there are no provisions for the legal qualifications. Likewise, the Law does not contain provisions on the type of disciplinary measures that can be imposed to the employee, nor sets out any deadlines for obsolescence of the disciplinary procedure initiation, due to which the general regulations on labour relations are applied.</p> <p>Such lack of standardization of the disciplinary accountability provides an opportunity of large discretion in the decision-making of the managers in the public social protection institutions.</p>
<b>Reference to the specific legal points that are the source of the problem</b>	<p>The Law on Social Protection does not contain provisions on the legal qualifications of the actions whose committing entails disciplinary accountability, provisions on the type of disciplinary measures, nor the deadlines for obsolescence of the disciplinary procedure initiation.</p> <p>The Law on Social Protection also does not provide for a legal basis for further regulation of the disciplinary procedure by a bylaw.</p> <p>For comparison, the Law on Administrative Servants contains comprehensive provisions regarding the administrative servant's disciplinary accountability, and the procedure for disciplinary offence is further elaborated by bylaw adopted by the Minister of Information Society and Administration.</p>
<b>Proposed solution</b>	It is necessary to further regulate the Law on Social Protection (in Chapter IV, item 1. Staff in the social protection institutions) and to further elaborate in details the procedure for disciplinary offence by the means of bylaw, adopted by the Minister of Labour and Social Policy.

<b>Identified inconsistency</b>	'Dualism' and lack of clarity in terms of the legal protection for public service providers working in the field of social protection.
<b>Description</b>	<p>The right to protection in the process of exercising employment rights and obligations is also one of the general principles set in the Law on Public Sector Employees. The right to protection before a competent authority is exercised in accordance with the regulations set in the separate laws that regulate the relevant area.</p> <p>Pursuant to the Law on Social Protection, competent authorities for protection of employment rights are two second-instance authorities that decide on appeals from service providers from this area: State Commission for decision-making in administrative procedures and second-instance employment procedures and the Agency for Administration. The State Commission is competent to make decisions on appeals against assessments of effect, as well as make decisions for appeals against decisions regarding selection of a candidate via public announcement for recruitment. The Agency for Administration is authorized to make decisions for appeals against decisions made following a conducted procedure for establishing disciplinary and substantive accountability. In terms of other employment rights, the Law on Social Protection does not foresee anything regarding legal protection.</p> <p>Thus, 'dualism' has been established in the legal protection, without any logical and legal justification for it. The competencies of the second-instance authority should not come as a result of the type of legal matter that is decided; rather it should come from the status of the employee for whom rights protection is sought. In the specific case, the issue is with employees who have the status of public service providers, so the Agency for Administration should not be competent to decide on the protection of their rights.<sup>11</sup></p> <p>On the other hand, the Law on Social Protection does not foresee anything regarding the protection of other employment rights. In comparison, Article 19, paragraph 18 of the Law on Administrative Servants stipulates that for any and all matters regarding employment, for which there is no right to appeal set forth in any law, the administrative servant is entitled to submit a complaint before the Agency for Administration within 8 days, hence full protection of all employment rights of administrative servants is provided by a single authorized second-instance authority.</p>

<sup>11</sup> There is great probability that the dualism that has been identified in the process of legal protection is the result of an error of negligence on the part of the legislator. Prior to the amendments of the Law on Social Protection from March, 2014, the employees of public institutions for social protection had the status of public servants, and the competent authority for the protection of their employment rights at a second instance was the Agency for Administration. With the amendments made in March, 2014 and with the change of the status of employees of such institutions, it has been foreseen that the second-instance competent authority for protection of the rights of public service providers shall be the State Commission. At the same time, the legislator failed to implement the needed alignment in Article 110-m, and 110-p, which leads to the Agency for Administration to continue to be authorized for decision-making on disciplinary and substantive accountability of public service providers.

<p><b>Reference to the specific legal points that are the source of the problem</b></p>	<p>Pursuant to Article 14 of the Law on Administrative Servants, the Agency for Administration is competent to act on appeals and complaints of administrative servants in the second-instance.</p> <p>According to Article 1 of the Law on Establishment of the State Commission, the State Commission is also competent to decide on issues from the field of employment that are not under the jurisdiction of the Agency for Administration.</p> <p>Hence, the Agency for Administration is authorized to make decisions on appeals from administrative servants, and the State Commission is authorized to make decisions on appeals from public service providers.</p> <p>Article 110-m and 110-p of the Law on Social Protection, which defines the field of authorization of the Agency for Administration and of public service providers (disciplinary and substantive accountability) is a complete contradiction of Article 14 of the Law on Administrative Servants.</p>
<p><b>Proposed solution</b></p>	<p>Amendments/Supplements of the Law on Social Protection (in Chapter IV, item 1. Personnel in Social Protection Institutions), so that the Agency for Administration will no longer be the authorized second-instance authority (Article 110-m and 110-p), and for the Law to be supplemented with a general provision that will foresee authorization of the State Commission to make decisions on appeals for any and all matters regarding employment for this category of public sector employees.</p>

## 4.2. Area of Child Protection

<p><b>Identified inconsistency</b></p>	<p>The recruitment policies in institutions that perform activities in the field of child protection do not abide by the set principle for expertise and competency.</p>
<p><b>Description</b></p>	<p>The Law on Child Protection does not foresee any criteria and procedure for selection in the process of recruitment, and the Director has a discretionary right to select any candidate that meets the requirements set in the public announcement. The Director also has the right to not select any candidate.</p> <p>With this lack of regulation of the recruitment procedure, there is a possibility for influencing or introducing bias in the process of selecting and choosing a candidate, which is contrary to the basic principle of expertise and competency stipulated by the Law on Public Sector Employees.</p>

<p><b>Reference to the specific legal points that are the source of the problem</b></p>	<p>Pursuant to Article 143, paragraphs 5 and 10, of the Law on Child Protection, the need for recruitment of employees in public institutions for children is met by publishing a public announcement in at least two daily newspapers, with mandatory elements that are in accordance with the provisions of the Law. Paragraph 11 of that same law regulates the deadline for making a decision regarding the announcement, and paragraph 13 stipulates that the public announcement shall end with a selection, non-selection or with an expiry of the deadline for making a final decision.</p>
<p><b>Proposed solution</b></p>	<p>Further regulation of Article 143 of the Law on Child Protection, so that clear criteria and selection procedure shall be foreseen.</p>

### 4.3. Area of Health Protection

<p><b>Identified inconsistency</b></p>	<p>The policies for recruitment and advancement in the institutions that perform activities in the field of healthcare are not sufficient guarantee for a consistent adherence to the set principle of expertise and competency.</p>
<p><b>Description</b></p>	<p>Recruitment of providers of public healthcare services is done in accordance with a procedure regulated with the Law on Health Protection.</p> <p>The procedure consists of several phases of selection, which are a solid basis for establishing a recruitment system based on merit. However, the issue is the fact that the Law does not foresee elimination of candidates in the phase of eligibility testing, and the fact that the Director is left with the option to see a proposed ranking list drafted out of all candidates who meet the requirements and who took the tests (ranked in hierarchy, starting from the first to the last ranked candidate) and based on that list the Director conducts interviews and has the discretionary right to select any candidate from the ranking list.</p> <p>With the law regulated in this way, the question arises concerning the purpose of the entire recruitment procedure, having in mind that no one can be eliminated during the eligibility testing, and the Director can choose anyone from the candidates who meet the requirements for selection.</p> <p>Also, this allows for influencing or introducing bias in the process of selecting and choosing a candidate, which is contrary to the basic principle of expertise and competency stipulated by the Law on Public Sector Employees.</p>

<p><b>Reference to the specific legal points that are the source of the problem</b></p>	<p>Pursuant to Articles 159, 160 and 161 of the Law on Health Protection, recruitment in healthcare institutions is performed by publishing a public announcement, and the procedure for selection out of the candidates who have applied and who meet the requirements of the announcement, is performed based on the following criteria: Grade average, points won on the test of expertise, and for healthcare workers with university level education this also includes a test for assessing the knowledge of one of the world languages (English, German and French language).</p> <p>Based on the ranking list proposed by the Selection Commission, containing at least three candidates, if there are more than three candidates who meet the requirements, the managing body of the healthcare institution conducts interviews, following which it makes a decision for the selection of a candidate.</p>
<p><b>Proposed solution</b></p>	<p>Amendment of Article 160 and Article 161 of the Law on Health Protection.</p> <p>It should be stipulated that the candidates should win at least 60% of the points from the eligibility tests, as a requirement to continue over to the next phase of selection.</p> <p>The candidate ranking list for candidates that continue over to the interview phase with the managing body should be consisted of three candidates „at most“, instead of the current situation of „at least“ three candidates.</p>

<p><b>Identified inconsistency</b></p>	<p>There are no legal obstacles for deployment of healthcare workers / associates to lower level job positions.</p>
<p><b>Description</b></p>	<p>When deploying healthcare workers/associates in public healthcare institutions, the Employer is obligated only to make sure that the candidate meets the requirements of the job position to which he/she is assigned, i.e. the Employer is not legally obligated to assign the employee to a job position that is at the same level as the job position from which the employee is re-assigned.</p> <p>This legal solution is in accordance with the minimal standards set forth in the Law on Public Sector Employees; however it does not provide protection against demoting employees.</p>

<p><b>Reference to the specific legal points that are the source of the problem</b></p>	<p>Pursuant to Article 163 of the Law on Health Protection, a healthcare worker, i.e. associate, can be reassigned to another job position in the same healthcare institutions, when there is a need in the healthcare institution or at the request of the employee, in accordance with the Job Classification Act.</p> <p>Deployment has been also regulated, in the same manner, in Article 21 of the Collective Agreement of Healthcare Work in the Republic of Macedonia, where it is foreseen that the employee may be assigned to any job position that suits his/her level of professional background, in the course of his/her employment.</p> <p>In comparison, with Article 30, paragraph 4 of the Law on Administrative Servants, it is foreseen that reassignment shall be done to a job position that is on the same level, which rules out the possibility to demote the administrative servant (except in cases following a given disciplinary measure for deployment to a lower level).</p>
<p><b>Proposed solution</b></p>	<p>Amendment to Article 163 of the Law on Health Protection, so that it will be stipulated that reassignments shall be made to job positions that are on the same level.</p>

#### 4.4. Area of Education (Law on Primary Education and Law on Secondary Education)

<p><b>Identified inconsistency</b></p>	<ul style="list-style-type: none"> <li>• <b>The provisions that refer to recruitment and advancement do not follow the set principle of expertise and competency in the recruitment/advancement procedure</b></li> <li>• <b>The method and the procedure for assessment of the effect of employees is not regulated in accordance with the Law on Public Sector Employees.</b></li> </ul>
<p><b>Description</b></p>	<ul style="list-style-type: none"> <li>• <b>Recruitment</b></li> </ul> <p>If one of the basic principles of the Law on Public Sector Employees is the principle of expertise and competency, pursuant to which recruitment/advancement in the public sector is performed through publishing public/internal announcements, and in a 'transparent, fair and competitive selection procedure, the candidate with the most expertise and competency for the job position is selected', it is expected that the separate laws will regulate this procedure so that it allows for this principle to be implemented.</p>

In Article 82, the Law on Primary Education foresees that:

- “(1) Teachers, expert associates and preschool teachers shall be selected via a public announcement.
- (2) The persons listed in paragraph (1) of this Article may be employed without a public announcement, for a fixed period of time, lasting up to three months.
- (3) The public announcement mentioned in paragraph (1) herein shall be published in at least two daily newspapers, of which at least one of the newspapers is issued in Macedonian language and in the newspapers that are issued in languages that are spoken by at least 20% of the citizens who speak in an official language other than Macedonian.
- (4) When selecting expert associates, preschool teachers and other non-educational staff, the principle of adequate and fair representation of citizens who are members of all communities shall be applied and the criteria for expertise and competency shall be observed.
- (5) Before the primary school releases a public announcement, the need for an employee for a fixed period of time shall be met by transfer of an employee with the adequate educational background and with an incomplete class load from another public school in the municipality, and for the City of Skopje it shall be from another public school from municipalities in the City of Skopje.
- (6) Records regarding the employed staff from paragraph (5) of this Article are kept by the Ministry, based on the personal data set for school employees from Article 15-b, item 3 hereof”.

Article 60 of the Law on Secondary Education prescribes an identical method for selection in the process of recruitment in secondary schools.

The Law on Primary Education does not contain any provisions that regulate the selection procedure in the process of recruitment, i.e. based on which criteria the provision of the Law on Public Sector Employees that refers to selection of the candidate with the most expertise and competency can be implemented.

The Law on Primary Education operates exclusively with a provision that refers to the obligation to release a public announcement and the implementation of the principles for adequate and fair representation.

The Law on Primary Education foresees minimum years of working experience as a legal intern (paralegal) and taking a legal internship exam. After successfully taking a legal internship exam, the candidate shall be considered to have obtained the required competencies. The result is that the recruitment procedure disregards the element for selection and choice of the candidate with most expertise and competency.

The Collective Agreement for Employees in Primary Education also contains a provision according to which employment is available for all candidates that meet the requirements. This Act, unlike the Law on Primary Education, foresees that in the process of recruitment, candidates undergo a test of abilities, i.e. Article 10 stipulates that “The test of abilities for performing the tasks for a certain job position shall be done by the Employer, i.e. a body authorized by the Employer, who shall do so by way of: Testing, interview and the like, audition.



However, the manner of conducting the selection and scoring are not foreseen, which creates doubt concerning the way in which the selection of the best candidate is made.

- **Promotion**

The Law on Primary Education stipulates that employees in primary education (4. Professional improvement, training and advancement) “Professionally improve their skills, acquire training and they advance in their careers”. This segment regulates the way in which career improvement, training and advancement is conducted, a selection procedure has not been established, however it can be noted that the educational personnel has, in a way, guaranteed rights to vocational improvement, training and professional advancement. Promotion in primary education is regulated; however a procedure that will ensure that it is done in a fair and transparent way has been established. Professional advancement for employees in primary education is linked to ‘the results from the evaluation of the professional dossier of the teacher’, however this evaluation is not implemented in accordance with the provisions of the Law on Public Sector Employees.

- **Assessment**

The Law on Primary Education does not at all foresee an annual assessment, i.e. there is no management of the employee effect on an annual level.

In primary schools, it is only the employees who have the status of administrative servants that are assessed, i.e. they are monitored throughout the whole year and they propose measures for improvement, because The Law on Administrative Servants and the by-laws completely regulate the method and procedure for monitoring and assessment of the effect from performance for those employees.

Primary education employees who have the status of public service providers are not subjected to assessments from the aspect of the Law on Public Sector Employees. This Law does not refer to enacting / establishing procedures for monitoring the effect of employees as individuals. In accordance with the Law on Primary Education, the evaluation, which is the basis for acquiring certain rights such as career advancement, does not constitute an assessment of the effect of each employee as an individual.

Nevertheless, it should be mentioned, in a positive connotation, that the State Educational Inspectorate, in the process of conducting their jurisdictions for evaluation of the teaching processes, has created acts that further regulate the process of evaluation (Instructions for Evaluation of Teachers in Primary and Secondary Schools, which includes a Form for assessment of teachers and professional associates).

From the aspect of the Law on Public Sector Employees, the assessment of the effect is not implemented.

The current practice of assessment and the acts that have been adopted may serve as a solid basis for further development of the provisions for implementing assessment in this area.

<p><b>Reference to the specific legal points that are the source of the problem</b></p>	<p>Recruitment:                  Articles 79-b, 79-c, 79-d, 79-e and Article 85 of the Law on Primary Education                  Articles 60, 61 and 62 of the Law on Secondary Education                  Promotion:                  Article 92 of the Law on Primary Education                  Article 69 of the Law on Secondary Education                  Effect Assessment                  Article 92 of the Law on Primary Education                  Article 69 of the Law on Secondary Education                  Law on Educational Inspectorate                  Instructions for Teacher Evaluation</p>
<p><b>Proposed solution</b></p>	<p>Regardless of the specifics of education as an activity, it is necessary to establish a single system for recruitment and assessment of employees who provide public services in the field of education, which will serve as a guarantee of the implementation of the system based on competencies, as well as a system for annual evaluation of the results from the work of each individual. Namely, the principle of assessment established in this Law does not entail individual assessment for each employee; rather it is more an assessment of the implementation of the programmes of the institution.</p>

#### 4.5. Area of Education in Relation to the Law on Teachers for Primary and Secondary Schools

<p><b>Identified inconsistency</b></p>	<ul style="list-style-type: none"> <li>• <b>In the Law on Teachers for Primary and Secondary Schools, the procedure of recruitment of teachers is not fully regulated in accordance with the principles determined by the Law on Public Sector Employees</b></li> </ul> <p>Note: This Law shall enter into force starting from the academic year 2018/2019</p>
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## Description

In accordance with Article 1 of the Law on Teachers for Primary and Secondary Schools, the subject of regulation is as follows: the conditions for performing the occupation of teacher in primary and secondary schools in Republic of Macedonia, the establishment of the labour relation, the teacher's categories, the teacher's tasks, continuous professional improvement (professional development), promotion in titles (career development) and title revocation.

### • Recruitment

Article 9 of this Law stipulates that

(1) The teacher shall be selected by a public announcement.

(2) Persons referred to in paragraph (1) of this Article may establish a labour relation without a public announcement, for a fixed time period, up to three months.

(3) The public announcement referred to in paragraph (1) of this Article shall be published in at least two daily newspapers, at least one of which is issued in Macedonian language, and the other is issued in a language spoken by at least 20% of the citizens whose official language is different than the Macedonian language.

(4) Prior to announcing the public announcement referred to in paragraph (1) of this Article and before the selection of persons referred to in paragraph (2) of this Article, the school shall be obliged to contact the Teacher Academy and to receive a notification for teachers who have obtained a licence from the Teacher Academy, whose place of residence is in the same municipality as the school, and who are unemployed.

(5) Prior to announcing the public announcement, the school shall meet the need of a fixed-term employee by employing a worker with appropriate education and insufficient class load from another public school in the municipality, and from another public school in the municipalities of the City of Skopje for the City of Skopje.

(6) When more candidates apply for the public announcement, advantage shall be given to teachers with higher success during the undergraduate studies and higher success at the Teacher Academy.

The success itself does not always provide expertise and quality, but requires more specific competences needed at the job position, as well as appropriate criteria and precisely determined method of scoring and selection. It is evident that in this manner the regulated recruitment system does not comply with the basic principles stipulated in the Law on Public Sector Employees - the principle of expertise and competency, according to which the recruitment/promotion in the public sector is performed through announcing a public/internal announcement, whereby "the most professional and most competent candidate for the job position shall be selected in a transparent, fair and competing selection procedure".

The only "competing" requirement stipulated in this Article of the Law is "higher success during the undergraduate studies and the success in the Teacher Academy".

	<ul style="list-style-type: none"> <li>• <b>Promotion</b></li> </ul> <p>The Law on Teachers for Primary and Secondary Schools, Chapter V: Career development of teachers is being systematized, describing the manner of acquiring higher title for the teachers. Article 29 stipulates that “The manner of assessing the received applications and documentation of the teachers for acquiring teacher mentor and teacher advisor title, <b>the scoring of candidates</b>, the ranking list, as well as the commission’s manner of operation shall be defined by the Minister at the proposal of the Bureau for Development of Education. From this provision it can be concluded that slow processes of implementation of the Law on Public Sector Employees’ basic principles has been initiated in the education sector.</p> <p>However, these provisions are not yet in place, i.e. they shall enter into force in the academic year of 2018/2019 (in accordance with the final provisions), and the by-laws for implementing a system which shall provide expertise and competency shall be adopted 6 months before the Law enters into force.</p> <ul style="list-style-type: none"> <li>• <b>Evaluation</b></li> </ul> <p>The Law on Teachers for Primary and Secondary Schools does not provide for annual evaluation, i.e. management of effects to the employees.</p> <p>In primary and secondary schools, only employees with the status of administrative servants are evaluated, i.e. monitored throughout the year and measures for their improvement is proposed.</p> <p>Employees in primary and secondary education with a status of public service providers are not a subject of evaluation in terms of the Law on Public Sector Employees. This Law also does not refer to adopting/establishing procedures of monitoring the effects of the employees.</p>
<p><b>Reference to the specific legal points that are the source of the problem</b></p>	<ul style="list-style-type: none"> <li>• <b>Recruitment:</b></li> </ul> <p>Article 9 of the Law on Teachers for Primary and Secondary Schools</p>
<p><b>Proposed solution</b></p>	<p>Regardless of the education activity’s specificity, it is necessary to establish a unified system for recruitment and evaluation of the public service providers employed in the area of education which shall guarantee the enforcement of competency-based system, as well as a system for annual evaluation of the results of the work of each individual.</p> <p>Before this Law enters into force, an analysis of its compliance with the established system in the Law on Public Sector Employees should be carried out in order to implement and further develop the provisions that shall imply its full compliance.</p>

## 4.6. Area of Regulation of Public Enterprises' Work (Law on Public Enterprises)

### Identified inconsistency

One of the basic principles of the Law on Public Sector Employees is the principle of expertise and competency, according to which the recruitment/promotion in the public sector is performed through announcing a public/internal announcement, whereby “the most professional and most competent candidate for the job position shall be selected in a transparent, fair and competing selection procedure”. Hence, this procedure should be regulated by separate laws, thus enabling a real implementation of this principle.

The Law on Public Enterprises does not regulate the principles for recruitment and promotion of the employees in public enterprises, except for those employees with the status of administrative servants, since the manner and procedure of selection in recruitment of these employees are regulated by the Law on Administrative Servants. The Law on Public Enterprises does not regulate the procedure of recruitment and promotion which would represent and guarantee application of the general recruitment/promotion principles, i.e. transparent, fair and competitive selection procedure where the most professional and most competent candidate for the job position shall be selected”.

Also, the Law on Public Enterprises does not regulate in detail the manner and procedure of evaluating the effects of the employees, but a general provision is established instead, according to which the public service providers shall be evaluated once a year, and the manner and procedure, as well as more detailed criteria for conducting the evaluation are adopted by the management board of the public enterprise at the proposal of the Director.

## Description

### • Recruitment

The Law on Public Enterprises, or the amendments and supplements to the Law, more precisely, performed in order to achieve its compliance with the Law on Public Sector Employees, introduces a separate Chapter 8 - Position of employees in the public enterprise. It stipulates that the employees in public enterprises may have the status of administrative servants, public servants, public service providers and assistant technical persons. Pursuant to the Law on Public Servants, general and special requirements are stipulated for all categories and levels (working competences determined in the Job Classification Act) which the employees, as well as the candidates for the job vacancies should meet. Furthermore, this Law describes the procedure of recruitment:

- publishing of public announcement,
- establishing a selection commission for the recruitment procedure by the director of the public enterprise,
- selection consisting of checking the data entered in the application, checking the evidence submitted and interview
- after the implementation of all phases of the recruitment procedure, the selection commission shall prepare a ranking list, and propose the best-ranked candidate to the director of the public enterprise.

Since the manner of selection for the purpose of selecting the best candidate is not regulated, Article 37-r stipulates that “the form and content of the public and internal announcement, as well as the recruitment and promotion application, the manner of conducting the recruitment and promotion selection, as well as the manner of their scoring shall be determined by a general act of the public enterprise adopted by the management board at the proposal of the Director”.

It is obvious that the Law on Public Enterprises does not regulate the manner and procedure of carrying out the selection and respecting the principle of fair and transparent procedure that would lead to the selection of the best candidate for the vacant job position.

For that reasons, Article 37-r stipulates that “the form and content of the public and internal announcement, as well as the recruitment and promotion application, the manner of conducting the recruitment and promotion selection, as well as the manner of their scoring shall be determined by a general act of the public enterprise adopted by the management board at the proposal of the Director”.

From the inspection of the published documentation of several public enterprises, it has been determined that the management boards have not adopted acts that will determine the procedure, especially the selection manner and scoring of the registered candidates, in order to select the best candidate. Also, if as a stage in the procedure it is determined that an interview should be conducted after the selection, the question of how to conduct the same and what are the scoring criteria remains unanswered.

**Examples:**

PE "Communal Hygiene" (inspection of the published documentation and the acts of the enterprise)

The management board has not adopted acts regulating the manner and procedure of selection in recruitment and promotion.

The recruitment is regulated by a collective agreement for regulating the rights, obligations and responsibilities of recruitment for the employees at PE "Communal Hygiene" Skopje.

Public Enterprise for State Roads (inspection of the published documentation, the acts of the enterprise, and conversation with an employee in charge of human resources management)

Acts that regulate the manner and procedure of selection in recruitment and promotion have not been adopted.

Recruitment is conducted in accordance with the Law on Labour Relations.

Public transport company

There are no published acts adopted by the management board that regulate the manner and procedure of selecting and scoring of candidates.

All of this leaves a doubt as to how the recruitments in this sector are conducted.

• **Promotion**

In accordance with the Law on Public Enterprises, promotion of employees with the status of public service providers through an internal announcement is conducted in a transparent, fair and competing selection procedure where the best candidate for the job position is selected from among the employees based on the performance, expertise and competency by the selection commission for selecting the procedure of promoting the public service providers through an internal announcement.

Like the recruitment in public enterprises, this Law contains one general provision on promotion, according to which each promotion procedure should be conducted in accordance to the basic principles stipulated in the Law on Public Sector Employees. The promotion procedure based on expertise and competency through fair and transparent approach is not regulated by this Law and it refers to its regulation with a special general act that will be adopted by the management board of the public enterprise at the proposal of the director.

By inspecting the published documentation and the conversation with the employees in several public enterprises, it was concluded that such acts have not been adopted and that the promotion is conducted in accordance with the Law on Public Enterprises. That means that the promotion is conducted by the establishment of a selection commission that proposes the best candidate to the director after preparing a ranking list. The question remaining is how the commission determines the best candidate if there is no Act or procedure on the basis of which the selection should be conducted, scoring will be performed and the best candidate will be proposed to the director.

	<ul style="list-style-type: none"> <li>• <b>Principle of managing the effect of employees (Evaluation)</b></li> </ul> <p>The Law on Public Sector Employees regulates this principle by stipulating that „The institutions shall be obliged to establish procedures of managing the effect of the employees through its continuous monitoring and evaluation and proposing measures for its improvement“.</p> <p>The Law on Public Enterprises does not regulate the manner and procedure of conducting the evaluation, i.e. managing the effect of the employees.</p>
<p><b>Reference to the specific legal points that are the source of the problem</b></p>	<ul style="list-style-type: none"> <li>• <b>Recruitment:</b></li> </ul> <p>Law on Public Enterprises (Article 37-k, 37-l, 37-m, 37-n, 37-o, 37-p)</p> <ul style="list-style-type: none"> <li>• <b>Promotion</b></li> </ul> <p>Law on Public Enterprises (Article 37-q, 27-r)</p> <ul style="list-style-type: none"> <li>• <b>Evaluation</b></li> </ul> <p>Law on Public Enterprises (Article 37-t)</p>
<p><b>Proposed solution</b></p>	<p>Here arises the question of how the Law on Public Sector Employees is implemented in the public enterprises, who is in charge of the implementation of the basic principles stipulated in this Law?</p> <p>Or:</p> <p>How the selection without political or other influences in the public enterprises is avoided?</p> <p>How the promotion is conducted when evaluation is not implemented at all?</p> <p>The specifics of certain activities in the public sector should not be an obstacle to the establishment of the system and the determination of basic principles in the Law on Public Sector Employees. Legal gaps (failure to regulate the procedures in order to provide conditions for the application of the basic principles) create opportunities for unwanted impacts in recruitment and promotion procedures, and non-compliance with the evaluation does not provide them with legal certainty and motivation for a better effect of professional and competent employees.</p>



Proposed solutions:

-Supervision and penal provisions

- A reference provision in the Law on Public Sector Employees, by which the lawmaker will also adopt a by-law governing the recruitment, promotion and evaluation, and will be applied in all sectors

- Regulation of the manner and the obligation to establish (in an act) the manner of conducting procedures of importance for the human resources management. Namely, if Article 19 of the Law on Public Enterprises stipulates the acts adopted by the management board and Article 23 stipulates the competencies of the director of the public enterprise, for the purpose of applying the Law on Public Sector Employees, it is necessary to supplement the provision that will refer to obligatory adoption of an act that will enable the application of the provisions of the Law on Public Sector Employees in public enterprises in Republic of Macedonia, regardless of who is their founder.

## 4.7. Law on Culture (Recruitment, Promotion, Artists' Mobility)

The specifics of certain activities in the area of culture should not be an obstacle in establishing the system and establishing the basic principles in the Law on Public Sector Employees. Legal gaps (failure to regulate the procedures in order to provide conditions for the application of the basic principles) create opportunities for unwanted impacts in recruitment and promotion procedures, and non-compliance with the evaluation does not provide them with legal certainty and motivation for a better effect of professional and competent employees. The Law on Culture provides a legal basis for the specifics of the labour rights for the public service providers to be regulated by a general act of the institution, adopted by the management board at the proposal of director. In practice, many of the institutions have not yet adopted general acts for audition and re-audition. For the reasons given,

analyses which will show the effects or the shortcomings of the said legal solutions application cannot be conducted. Having into consideration that the compliance of the Law on Culture with the Law on Public Sector Employees was followed by opposition by the employees in the cultural institutions with a status of public service providers, it is necessary to make comparative analyses of foreign experiences in order to find an appropriate legal solution compatible with both the general labour regulations in Republic of Macedonia, and the work specifics in the area of culture. Collective agreements in this area are an important tool that can contribute to the improvement of the labour rights conditions in the area of culture. Also, the Ministry of Culture needs to undertake activities to encourage the institutions to regulate the issues on the manner and procedure of audition and re-audition by general acts.

### Identified inconsistency

**The principles of recruitment and promotion** in the national cultural institutions **do not fully comply with the principle of expertise and competency** in the recruitment/promotion procedure

**The manner and procedure of evaluating the effect of the employees are not regulated**

**Audition and re-audition of the artists:** the cultural institutions **do not fully apply the provisions of the Law on Culture in the procedure of recruitment and promotion of artists (public service providers).**

## Description

### • Recruitment

One of the basic principles of the Law on Public Sector Employees is the principle of expertise and competency, according to which the recruitment/promotion in the public sector is performed through announcing a public/internal announcement, whereby “the most professional and most competent candidate shall be selected in a transparent, fair and competitive procedure”. Hence, this procedure should be regulated by special laws, thus enabling a real implementation of this principle.

The Law on Public Sector Employees transfers the recruitment-related provisions to the Law on Culture, but they do not determine how the stated principle of recruitment /promotion is implemented.

For the employees in the public cultural institutions with the status of public cultural service providers, the provisions of the Law on Culture, the provisions of the Law on Public Sector Employees and the general regulations on labour relations shall apply.

As the most specific category in accordance with the Law on Culture is the Category A – artists.

Category A regulates the six levels of job positions of the public cultural service providers.

Namely, in order to transfer the obligation for establishing the abovementioned principle of the Law on Public Sector Employees, Article 77-j of the Law on Culture stipulates: “The form and content of the public announcement and the recruitment application, the manner of conducting the audition, the manner of scoring depending on the category and the level of the job position for which the public announcement has been published shall be determined by a general act of the public cultural institution adopted by the management board, at the proposal of the director”.

The institutions have not prepared and adopted the necessary acts yet.<sup>12</sup> Hence, the question arises as to how the selection in the recruitment procedure has been conducted in the past years. Also, the reference provision itself operates exclusively by adopting an act for establishing the manner of conducting an audition, and does not refer to the adoption of an act for regulating the selection provision for the other public sector providers who are not artists, nor subjected to audition.

<sup>12</sup> Legal analysis of the bylaw acts of several national institutions; Interviews with employees;

- **Promotion**

Regarding the promotion through an internal announcement, the Law on Culture stipulates that it is possible for the employees to be promoted through the application of the same principle, but the procedure and the criteria have not been developed, and that matter has been transferred to the national institutions for further regulation by a reference provision. Namely, Article 77 -k stipulates that „The form and content of the internal announcement, as well as the promotion application, the manner of conducting the promotion selection, the manner of conducting the re-audition, as well as the manner of their scoring shall be determined by a general act of the public cultural institution adopted by the management board, at the proposal of the director“. At least in this Article, there is a difference between the promotion and re-audition selection, however, the manner of following the principle of fair and transparent promotion procedure based on expertise and competency shall be redirected to the national institutions in the area. In the national institutions included in this analysis, no acts that regulate this procedure have been adopted.

Hence, the question arises as to who is in charge and in what manner they monitor the application of the principle for fair and transparent recruitment procedure based on the selection of the most suitable candidate (competent and professional), i.e. how do these institutions conduct the recruitment and promotion procedure even after many years following the entry into force of the Law on Public Sector Employees?

- **Principle of managing the effects of employees (Evaluation)**

The Law on Public Sector Employees regulates this principle by stipulating that „The institutions shall be obliged to establish procedures for managing the effect of the employees through its continuous monitoring and evaluation and proposing measures for its improvement“.

The Law on Culture does not regulate the manner and procedure of conducting the evaluation, i.e. managing the effect of the employees. Article 77-m provides specific guidelines on what the procedure represents, how and with what purpose it should be implemented, but stipulates the regulation to be performed by the national institutions.

By inspecting the documents of several national cultural institutions, as well as conversations with the employees, it was concluded that the evaluation has not been applied, i.e. the acts of its implementation in the system of functioning of the institutions have not been adopted.

<p><b>Reference to the specific legal points that are the source of the problem</b></p>	<ul style="list-style-type: none"> <li>• <b>Recruitment:</b> Law on Culture (Article 77-a, 77-b, 77-c, 77-d, 77-e, 77-f, 77-g, 77-h, 77-i, 77-j)</li> <li>• <b>Promotion</b> Law on Culture (Article 77-m) The promotion in the Law on Administrative Servants contains comprehensive provisions regarding the selection in promotion procedure that are further regulated by a by-law adopted by the Minister of Information Society and Administration which provides the criteria for the possibility of promoting the administrative servants. The Law on Culture does not provide the framework for the promotion criteria, but it simply refers to the promotion opportunity, and it simply redirects the further regulation to the national institutions.</li> <li>• <b>Evaluation</b> Law on Culture (Article 77-m)</li> </ul>
<p><b>Proposed solution</b></p>	<ul style="list-style-type: none"> <li>• <b>Proposed solutions:</b> - Reference provision in the Law on Culture which shall oblige the Minister of Culture and the cultural institution to adopt Rulebooks that shall regulate the recruitment, promotion and evaluation. -Activation of the regular and extraordinary supervision before the body responsible for supervising the application of the LAS and the LPSE, the State Administrative Inspectorate, and the activation of the misdemeanour provisions for the managers (directors and management board members) of institutions that have not adopted amendments and supplements, i.e. new acts, in compliance with the LAS and the LPSE.</li> </ul>

## 4.8. Special Review of the Law on Labour Relations, as well as the Rulebook on the Manner of Keeping Electronic Records of Working Hours and Overtime Work

<b>Identified inconsistency</b>	Compatibility of the obligation in Article 116, paragraph (6), (7) and (8) of the Law on Labour Relations to keep records of the working hours with certain specific services, especially artists and other employees in the area of culture.
<b>Description</b>	<p>Article 116 of the Law on Labour Relations stipulates the following paragraphs:</p> <p>(6) The employer shall be obliged to keep records on the <b>full working hours</b>. (7) An employer with more than 25 employees and whose work is conducted at or more locations shall be obliged to keep electronic records of all full-time and overtime work at each location.</p> <p>(8) An employer with up to 25 employees shall be obliged to keep an attendance sheet for the employees, indicating the data on the beginning and the end of the working hours.</p> <p>(9) The manner and keeping of electronic records of full working hours and overtime work referred to in paragraph (7) of this Article shall be established by the Minister competent for labour matters.</p> <p>Taking into account the specifics of the artists' work, i.e. the specific time when they perform their obligations, especially taking into account the actors and the musicians (time spent for rehearsals, make-up, and everything covered by a performance of a show), the appropriateness of the validity of this provision in the Law on Labour Relations and the Rulebook deriving from it for the group of employees covered by the Law on Public Sector Employees and the Law on Culture is brought into question.</p> <p>The application of this provision and the manner of working of this group are not compatible and cause problems in the everyday functioning of the institutions employing the artists.</p>
<b>Reference to the specific legal points that are the source of the problem</b>	<p>Article 116 of the Law on Labour Relations</p> <p>Rulebook on the manner of keeping electronic records of working hours and overtime work (Official Gazette of Republic of Macedonia no. 78/2015)</p>
<b>Proposed solution</b>	<p>Taking into account the best world practices, this issue is not regulated by Law and Rulebook, but by a collective agreement. The collective agreements should not regulate the number of hours the artists spend at work, but rather in what way, and under what conditions they shall perform the job, how much time should pass between two rehearsals or shows, as well as evaluating the performance of the finished product (performed show, opera etc.)</p> <p>It turns out that, in this way, the regulation of the artists' working hours can only be a quality obstacle.</p>

## 5. Findings and Conclusions

From the comparison between the Law on Administrative Servants and the Law on Public Sector Employees, we can conclude the following:

- The Law on Administrative Servants contains principles, it has regulated the procedure of conducting the recruitment and promotion, the procedure of conducting the evaluation and the expected results, which is further regulated in detail by a bylaw.
- The Law on Public Sector Employees covers the recruitment, promotion and evaluation (management of the effect of employees) only as a general direction/framework that need to be applied, while the obligation of regulating the manner and procedure is transferred to separate laws.
- LAS and LPSE have established the basic human resources management rules and principles in merit-based public administration.
- The general legal framework for professional and efficient public administration has been established, but consistency should be ensured in all areas of the public sector.
- The possibility of further regulation of the separate laws regulating the public services (education, health, social and child protection, culture, communal and other services) should be considered.
- The promotion of legal framework is mostly necessary in terms of recruitment, promotion and deployment procedures, in order to reduce the risks of administration politicization.
- The entire merit system introduced for the administrative servants should be the basis for further regulation of the recruitment and promotion procedures of the public service providers.

From the separate laws that were also a subject of this analysis, and which should comply with the general legal framework, it can be concluded that this obligation is not properly respected:

Recruitment and promotion policies in the institutions performing activities from the **social protection** area, do not fully comply with the established principle of expertise and competency. This practice is chronic, and it is also noted in the regulations that regulate the status of the employees in the institutions in the area of **child protection**, as well as the area of **healthcare workers** and **healthcare asso-**

**ciates.** Another chronic condition is the lack of legal restrictions on the deployment of employees in these institutions at a job position with a lower title.

Specific conditions noted for the activity:

**Education:** In the separate laws in the area of education (although the subject of this analysis is the Law on Primary Education and the Law on Teachers for Primary and Secondary Schools, and all others are regulated in the same or similar manner), the aspects and principles referred to in the Law on Public Sector Employees, are observed and applied to a very small extent or not at all.

**Public enterprises:** The Law on Public Enterprises, being the systematic law for this sector, only regulates reference provisions for the application of the basic principles systematized in the Law on Public Sector Employees. The obligation to regulate the procedures, the selection manner, the scoring, the manner of evaluating the employees by the management bodies of public enterprises have not been adopted at all, even after several years of entering into force of this Law.

**Culture:** Although the Law on Culture refers to the obligations for establishing a knowledge-based system, this system is not completely and fully implemented in the National Cultural Institutions. Namely, the institutions have prepared and adopted acts that still cannot provide full application of the principles defined in the Law on Public Sector Employees, that is, in the Law on Culture. The acts themselves are not specific enough in terms of established criteria for the published job positions, as well as appropriate skills and competences implied by the job position, the manner of scoring by the selection commission etc.

In other words, the full implementation of these principles (transparent, fair and competitive selection/audition and re-audition procedure) involves adoption and application of acts in which the selection principles and the manner of conducting audition/re-audition shall be determined in a specific manner. That means that the scoring, as well as other tools shall be precisely determined and implemented in the same way to all procedures. This, among other things, would also provide consolidation of these laws and separate acts with the aforementioned laws, and there would be no possibility of subjectivity in the selection and promotion procedures. Namely, if the Law on Administrative Servants and the by-laws arising from it can establish such unified system, there are no reasons for this not to be conducted in separate areas, regardless of the specifics of this activity.

**Other aspects of the public sector employees' status:** If there is a need of establishing a particular system, whether for the job classification and synchronization of all the aspects of the work in one sector in the public administration, or establishing the rules for mandatory keeping of records for the working hours,



the question is how the legislator determines the control (supervision) of the established system. More specifically, who is responsible for not implementing the specific provisions, the person who established them or the one who should apply them? Who controls/supervises the application of these laws or the individual provisions of the bylaws? What mechanisms have been established for the introduction and application of these provisions?

Generally speaking, despite the intention of the Law on Public Sector Employees, which consists in establishing a synchronized knowledge-based public administration system, i.e. introducing a new approach to human resources management, and in accordance with the world's best practices for managing competencies through the regulation of status, classification, recruitment, promotion, professional development and training, performance measurement and other employment issues, it is obvious that after a few years following the entry into force of this Law, the separate laws that regulate certain areas in the public sector do not reflect the basic principles stipulated in this Law.