

*Aleksandra RABRENOVIĆ\**  
Institute of Comparative Law, Belgrade  
*Miroslav HADŽIĆ\*\**  
Faculty of Political Sciences  
Belgrade Center for Security Policy  
*Jovana MISAILOVIĆ\*\*\**  
Institute of Comparative Law, Belgrade

## **SPECIFICITIES OF RECRUITMENT AND SELECTION IN THE DEFENCE SECTOR - THE CASE OF MONTENEGRO**

*The paper analyses key specificities of recruitment and selection in the defence sector, providing an example of Montenegro. Personnel in ministries of defence and armed forces are public servants and constitute a part of national administrations in a larger sense, which need genuine professionals. From the legal point of view, there are usually several categories of staff within the defence sector: civil servants, military officials and civilian personnel in the armed forces, which all have some specificities due to the nature of the work they carry out in the public service. The paper first analyses key international standards on recruitment and selection in the public service and those which are specific for the defence sector. The central part of the paper examines key contentious issues in the legal framework regarding recruitment and selection in the defence sector of Montenegro, especially exemptions from the open competition rule, ministerial discretion in appointing the candidate from an open list, and the lack of a possibility to challenge security clearance decisions of perspective candidates (for military personnel and civilian personnel in the army). The authors conclude that although it is relatively easy to pinpoint necessary legal changes to improve the current system, it is not very likely that the system will be changed without a strong and unwavering political support, which will be able to force the holders of excessive powers to release it and ensure the observance of the merit principle.*

*Keywords: legal framework, recruitment and selection, defence sector, Montenegro.*

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\* PhD, Research Associate, ORCID: 0000-0002-1159-9421, e-mail: [a.rabrenovic@iup.rs](mailto:a.rabrenovic@iup.rs).

\*\* PhD, Professor, ORCID: 0000-0003-2711-756X, e-mail: [miroslav.ambar@gmail.com](mailto:miroslav.ambar@gmail.com).

\*\*\* LLM, Research Assistant, ORCID: 0000-0003-0207-9640, e-mail: [j.misailovic@iup.rs](mailto:j.misailovic@iup.rs).

## 1. INTRODUCTION

Over the past decades a demand for effective human resource management (hereinafter: HRM) in the military and for highly capable commanders, officers and soldiers of various specialties has increased. The ongoing horrors of war between Russia and Ukraine have additionally shed the light on the importance of the effective defence sector and motivated armed forces staff. Notwithstanding the changes of the nature of the military organisations in the XXI century, which are often described as “postmodern military organisation” with multipurpose mission (Moscós *et al*, 2011, pp. 5-6), the combat readiness and effectiveness of the professional army still increasingly depend on the quality of its fighters and leaders (Keegan, 1988. Kuronen & Huhtinen, 2015, p. 177).

HRM system in the defence sector often represents an arena of conflicting interests and ambitions of key defence system actors, including the political leadership, military officials, representatives of military intelligence services and civil servants (Hadzic, 2021, p. 6). In order to limit possibilities of discretionary powers of various actors involved, it is important to establish a sound legal HRM system, which will be able to, at least to some extent, absorb these various pressures and enable the application of the merit principle. If this cannot be achieved, all elements of the HRM system, especially recruitment in the military service (and later promotion and appointment to key military duties), may be subject to corruption practices, which further increases the possibilities for intrusion of clientelist links and even the criminal practices in the military and the defence systems (Hadzic, 2021, p. 6).

While the contentious issues of recruitment and selection in the civil service in Europe have been discussed quite extensively in the academic literature over the past decades (Ongaro, 2009. Kopecky *et al*, 2012. Vukašinić Radojičić, 2013. Van der Mer, 2015. Meyer-Sahling *et al*, 2015. Meyer-Sahling *et al*, 2019. Meyer-Sahling *et al*, 2021), the comparative literature on HRM in the defence sector has been much scarcer and more modest (Sofat, 2016. Cardona, 2022). In the South East Europe, issues of HRM in the defence sector are usually discussed at the national level (Cvijan, Reljanović 2007. Ignjatijević, 2020. Đokić, Ignjatijević, 2020. Lembolovska, 2020. Barjamspahić, 2020) and more rarely from the comparative perspective (Rabrenović, 2013. Milošević, 2013).

The objective of this paper is to shed more light on the specificities of the recruitment and selection in the defence sector, especially in the process of recruitment and selection. This shall be done by providing an example of Montenegro, which is a member state of North Atlantic Treaty Organisation (hereinafter: NATO) and a candidate for the European Union membership.

In order to attain this objective, the paper is organised within three key parts. The first section of the paper examines the international legal standards regarding recruitment and selection of the public sector employees, with the special focus on the defence sector, which serves as a benchmark for assessing the respective Montenegrin legal framework and its implementation. In the second, central part of the paper, the relevant provisions of the Civil Service Law and the Law on Armed Forces of Montenegro will be assessed. The concluding section of the paper shall attempt to define an explanatory framework for the

lack of effectiveness of the recruitment and selection rules and provide guidance on what would be the best ways to improve the current situation.

The methodology of writing the paper included primarily the analysis of the primary and secondary legislation regarding the HRM in the Montenegrin defence sector - civil service and military personnel. Reports of international organisations and NGOs were also used to shed the light on the actual HRM practices.

## 2. INTERNATIONAL RECRUITMENT AND SELECTION STANDARDS IN THE PUBLIC SERVICE

At the beginning of this discussion, it is important to bear in mind that all categories of staff in the defence sector, including civil servants, military officials and civilian personnel in the military are public servants and hence their recruitment and selection should be based on a principle of equality and merit. Civil servants and military officials are part of national administrations in a larger sense, which need genuine professionals (Cardona, 2022, p. 1). The principle of equality in the recruitment and selection of staff in the defence sector stems out of the constitutional principles that every citizen has a right to public employment, provided that he/she meets the general requirements established by law as well as the specific requirements set up in the vacancy notice (Cardona, 2006, p. 2). In a broader sense, the merit principle can be defined as the setting up of a special public administration value system, based on professionalism, competence and integrity to pursue the public interest (Ingraham, 2006, p. 486). It represents a counterbalance to that of political loyalty, popularly known as the “patronage or the spoils system“, in which public administration posts are filled solely on the basis of political connections instead of professional merit (Pusić, 1973).

Although the area of HRM in the public sector is not, as such, subject to specific international standards, the observance of the merit principle in the recruitment and selection of civil servants is a cornerstone of the most international instruments. For example, the UN Convention against Corruption (2003) especially emphasizes the importance of merit and transparency in the recruitment process of public servants. In the similar vein, the Council of Europe’s Recommendation No. R (2000) 6 on the Status of Public Officials in Europe, stresses the need for the existence of legal framework concerning the status of public officials and recruitment and selection based on merit and fair and open competition.

### *2.1. SIGMA/OECD standards on recruitment and selection in the public service*

The European Commission’s approach to HRM in the public service was for a long time based on the application of the European principles of administration and European Administrative Space (Sahling, 2011, p. 236). The concept of the European Administrative Space was developed in the late 1990s by SIGMA/OECD<sup>1</sup> on behalf of the European

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<sup>1</sup> Having recognized the importance of well-regulated and organized state administration for compliance with membership requirements in all sector areas, in 1992, the European Union and Organisation for Economic Co-operation and Development (hereinafter: OECD) founded SIGMA - *Support for Improvement in Governance*

Commission, as a system of multi-level governance, which is based on principles of legal certainty and predictability, openness and transparency, legal accountability, efficiency and effectiveness (OECD, 1999, p. 14).

To provide a more detailed elaboration of the European Commission's HRM requirements, including recruitment and selection in the public service, SIGMA/OECD programme prepared a document entitled "Principles of Public Administration" (SIGMA/OECD, 2014) (hereinafter: Principles), which was produced in 2014 and revised and updated in 2017 (SIGMA/OECD, 2017). Recruitment and selection of public servants is one of the areas covered in the Principles, within the field of HRM. It is important to note that the Principles stress that they are applicable not only to the civil service positions, but also to other public service positions, which include those "ensuring the security and constitutional order of the state and permanent military defence of the state and related preparation" (SIGMA/OECD, 2017, p. 39).

The key SIGMA principles regarding recruitment and selection for public servants are presented in the table 1. below.

Table 1. SIGMA/OECD Principles of Public Administration - Public Service and HRM chapter – section on recruitment and selection

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Principle 3: The recruitment of public servants is based on merit and equal treatment in all its phases

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1. The recruitment and selection process in the public service, whether external or internal and regardless of the category/class of public servants, is clearly based on merit and equal opportunity.
2. The general eligibility criteria for applying for public service positions and general provisions ensuring the quality of the recruitment are established in the primary legislation. The detailed procedures, including specific requirements for entering each category/class, job descriptions, competency profiles, selection methods, scoring systems and composition of selection committees, are mainly covered by secondary legislation.
3. The recruitment and selection committees include persons with expertise and experience in assessing different sets of skills and competences of candidates for public service positions, and there is no political interference.
4. Candidates who are not appointed have the right to appeal against unfair recruitment decisions.<sup>2</sup>

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If we look at the best European practices, we can see that the merit principle is further operationalised in recruitment and selection process through several mechanisms: public

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*and Management.* This programme aims at supporting public administration reform activities of (potential) European Union candidate countries. SIGMA, largely financed through the European Union, represents one of the main European Commission's instruments for promoting the development of public administration capacity in Central and Eastern Europe, and providing technical assistance to (potential) candidate countries.

<sup>2</sup> SIGMA also underlies the need for eliminating any kind of discrimination in this process. We are not going to deal with issues of discrimination in the recruitment process and for those employed, in accordance with the principle of equal treatment, as it goes beyond the limits of this research.

announcement of vacancies, which should be a mandatory method of entrance in the civil service without an exception, and which should include the following elements: job description and the main components of the recruitment process including tests to be carried out, the areas to be tested, the weights to be assigned to each component and any threshold points which will be used in the examination (Cardona, 2022, p. 4). Good European practice also requires tests to include both written examinations and oral tests – interviews (Meyer-Sahling, 2015, p. 29). Furthermore, the general rule should be that the best candidate is appointed at the advertised position, but if the appointing authority chooses other than the top person on the list of scores, a legitimate justification should be offered (Cardona, 2022, p. 5). Giving reasons for administrative decisions forms part of the European good administration principles (Article 41 of the Charter of Fundamental Rights of the European Union). Courts and reviewing instances should have the right to review all documents, tests and examinations which grounded the recruitment decision in its all and every aspect, including a possible security clearance of the candidate (Cardona, 2022, p. 5).

## *2.2. International standards on recruitment and selection in the military – still a long way to go?*

It may be argued that a need for merit-based recruitment practices is even more pronounced in the military compared to the non-military organisations, such as the civil service. This is mostly because the military is recruiting mostly for entry level, and more rarely for middle career levels (Patrichi, 2015, p. 77). After the recruitment, the military staff is promoted within the armed forces only through different military ranks. Furthermore, advanced military technologies and new operational concepts require a different category of personnel in comparison to the needs of the previous centuries. For this reason, not only the quantity of the personnel matters, but the quality, i.e. specific competences of perspective candidates for the armed forces should have, such as integrating different platforms in an innovative and comprehensive way and being capable for innovation and assumption of calculated risks (Patrichi, 2015, p. 78).

In spite of the fact that SIGMA HRM principles are applicable to the public service, including the military officials, the specificities of HRM in the military do not appear to be adequately covered within this framework. There seems to be a lack of standardised rules and procedures for HRM in the military within the European continent. The only organisation which appears to attempt to deal with these issues is the NATO organisation, which has issued several reports and guidance on how to manage personnel in the military organisation for their member states.

One of the key NATO reports which deals with the issues of recruitment and selection was prepared in 2007 (NATO, 2007). The report pays special attention to good practices in recruiting and selecting professional military members, as well as in their retention, but does not deal with all the details of the recruitment and selection process. The report underlines that defence ministries have to be proactive in seeking candidates, while making sure that candidates are given detailed and realistic information about military service. Failure to meet initial expectations of employees leads to their dissatisfaction with the job

and higher rates of voluntary turnover. It is also recommended that in the recruitment process, managers and human resource specialists should cooperate closely with military leadership at all levels. The report stressed the importance of ensuring properly documented selection process, especially the oral interview, to provide evidence in case of appeals (NATO, 2017, pp. 3B-14).

In 2020, the NATO Defence Education Enhancement Programme has also developed the Non-Commissioned Officers Corps Professional Development Reference Guidance (NATO, 2020), presenting standards pertaining to non-commissioned officer resource management. This document serves as a reference for NATO member states, in their efforts to identify the areas that are critical for the development of professional non-commissioned officers. As concerns recruitment, emphasis is placed on focused campaigns to attract professional military personnel and to give tailored incentives for more demanding and challenging military positions. There is, however, again a lack of more detailed standards/instructions on how to manage the recruitment and selection and other aspects of HRM in the military.

### 3. RECRUITMENT AND SELECTION OF CIVIL SERVANTS IN THE MINISTRY OF DEFENCE IN MONTENEGRO

The majority of personnel in the Montenegrin MoD are civil servants, who fall under the legal regime of civil servants governed by the Civil Service Law.<sup>3</sup> Therefore, the MoD does not have much autonomy in the recruitment and selection process and is obliged to follow the procedures of the Civil Service Law and a Government Decree, which outlines recruitment and selection procedure in more detail.<sup>4</sup>

Recruitment and selection process is carried out by an *ad hoc* competition commission, which is established for each competition procedure. In case of lower and middle management civil service, a commission is comprised of a representative of the HRM Agency, a representative of the MoD and a professional evaluator for specific skills, i.e. an independent expert hired through an announcement.<sup>5</sup> In case of senior managerial positions, a commission is comprised of a head of an authority, senior manager and renowned independent expert.<sup>6</sup> In both cases, commission members include a smaller number of civil servants from the authority that is filling vacancies, and a bigger number of (at least formally) impartial persons, such as representatives of independent HRM bodies and independent experts. That should minimise the potential political influence of the authority to the applicant selection process.

A candidate selection is based on a written exam and an interview and is generally in line with the best international practices. For lower and middle management positions, the

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<sup>3</sup> Law on Civil Servants and Employees, *Official Gazette of Montenegro*, no. 2/2018, 34/2019, 8/2021.

<sup>4</sup> Decree on the Criteria and Carrying Out of the Testing of Knowledge, Abilities and Competences and Skills for the Work in the State Authorities, *Official Gazette of Montenegro*, no. 50/2018.

<sup>5</sup> Article 46, para 3 of the Law on Civil Servants and Employees, *Official Gazette of Montenegro*, no. 2/2018, 34/2019, 8/2021.

<sup>6</sup> Article 56, para. 3 of the Law on Civil Servants and Employees, *Official Gazette of Montenegro*, no. 2/2018, 34/2019, 8/2021.

written test comprises two parts: theoretical and practical, and it is done in an electronic form, under the code.<sup>7</sup> The objective of the theoretical part of the test is to check whether an applicant for a civil servant vacancy possesses an adequate level of knowledge in the field of public administration, necessary for the performance of civil servants' duties. The questions for the theoretical part are prepared by the HRM Administration. Minimum score for passing the test is 70 %, in which case a candidate goes to the second stage of the recruitment process.<sup>8</sup> In the second stage of the written test, applicants need to pass a more specific professional examination, which tests their competencies related to the specific post they are applying for. The questions for this test are prepared by the authority which initiated the announcement of the vacancy. Candidates who obtain more than 50% of the points of the written practical test, go to the next phase of the selection process, i.e. an interview.<sup>9</sup> The Commission prepares a report on the basis of which a list of shortlisted candidates is drawn up, which is then submitted to the manager of the public administration authority. The selection process for senior managerial positions also includes both the written test and the interview,<sup>10</sup> which is in line with the international standards, but there may be exceptions to this rule.

Although the legal regulation of the selection process is rather solid, there are still some weaknesses that undermine the application of the merit principle. The first one is a lack of well written job descriptions which are advertised in the vacancy announcements, which do not well specify work duties and responsibilities or the knowledge and other competencies required for carrying out of the job (SIGMA/OECD, 2021, p. 67). This makes it difficult for a commission to formulate relevant questions in the selection process. While the objectivity of the written tests appears to be secured by assigning a code to each candidate in order to preserve their anonymity, the interviews which follow the written test are not recorded and there are no standard guidelines on how to conduct them (SIGMA/OECD, 2021, p. 66), which is also not in line with the best international practices.

One of the key contentious issues in the selection process is a degree of discretion of the management of the MoD in the final state of the appointment process. In case of lower-level and mid-level civil servants, the competition commission comprises the list of the three best ranked candidates and can include more candidates if they have obtained the same mark during the selection process.<sup>11</sup> A head of the organizational unit in the MoD which initiated the recruitment process has a discretion to select one of the candidates from the list.<sup>12</sup> Before making a decision, he/she is obliged to conduct an interview with all candidates from the list. There is even a higher level of discretion in the process of appointments of

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<sup>7</sup> Art. 6, paras. 1 and 2, Decree on the Criteria and Carrying Out of the Testing of Knowledge, Abilities and Competences and Skills for the Work in the State Authorities, *Official Gazette of Montenegro*, no. 50/2018.

<sup>8</sup> Art. 9, para. 1, Decree on the Criteria and Carrying Out of the Testing of Knowledge, Abilities and Competences and Skills for the Work in the State Authorities, *Official Gazette of Montenegro*, no. 50/2018.

<sup>9</sup> Art. 13, Decree on the Criteria and Carrying Out of the Testing of Knowledge, Abilities and Competences and Skills for the Work in the State Authorities, *Official Gazette of Montenegro*, no. 50/2018.

<sup>10</sup> Art. 56, para. 2, Law on Civil Servants and Employees, *Official Gazette of Montenegro*, no. 2/2018, 34/2019, 8/2021.

<sup>11</sup> Art. 47, Law on Civil Servants and Employees, *Official Gazette of Montenegro*, no. 2/2018, 34/2019, 8/2021.

<sup>12</sup> Art. 48, Law on Civil Servants and Employees, *Official Gazette of Montenegro*, no. 2/2018, 34/2019, 8/2021.

the successful candidates for senior managerial positions. The commission proposes to the minister a list of three candidates, and the minister has the right to select any of the candidates from the list (after he/she conducts an interview with all of them),<sup>13</sup> without a need for written justification, which is also not in line with international standards.

Although there is a general rule that the civil service is entered on the basis of the competition, there is an important exception to this rule within the Directorate for Security Intelligence Affairs of the MoD, where no competition procedure is required to hire staff. This is usually explained by the nature of the work this directorate is carrying out, which is often covered by a veil of secrecy. This exception is regulated explicitly by the Law on Military Intelligence and Security Affairs (Article 37), which states that work posts in the Directorate for Security Intelligence Affairs are filled without a competition, with the requirement of a probation work in the period of one year. This, however, goes against the principle of merit and may lead to the practice of recruiting personnel based on personal and political connections instead of professional competence. Although there are no set international standards in this specific area of intelligence security affairs, such a practice is also not in line with the practices in other European countries in intelligence security agencies (Cardona, 2022, p. 10).

There is also an additional important exception to the competition rule in the MoD and other civil service institutions in Montenegro, which is an appointment of so called „acting senior civil servants“, in case when the previous appointment has been terminated, for the period of a maximum of six months.<sup>14</sup> The Civil Service Law envisages that appointments of acting managers are possible from any government institution and in cases in which no suitable candidate can be found. Under such circumstances, it is possible to appoint someone from outside of the civil service system for a limited period of time of up to six months.

Since the formation of the Krivokapić Government in 2020 and subsequently Abazović Government in 2022, all senior managerial staff in the MoD has had an acting status, which shows that there is still a lack of stability of the senior civil service level in the MoD. Although the category of acting manager may be a good option to use in exceptional circumstances, a category of “acting senior civil servant” has already been used overly in throughout the civil service (Muk, 2022) and is hence undermining the merit principle in the Montenegrin MoD and other civil service institutions in Montenegro.

Candidates who are not appointed have the right to appeal against unfair recruitment decisions (before an administrative instance and the court). The second instance body which decides on the appeals of candidates in the second instance procedure is the Appeals Commission,<sup>15</sup> and if not satisfied with the decision of the Appeals Commission candidates can bring an action to the Administrative Court.

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<sup>13</sup> Art. 59, Law on Civil Servants and Employees, *Official Gazette of Montenegro*, no. 2/2018, 34/2019, 8/2021.

<sup>14</sup> Article 61 paragraph 1, Law on Civil Servants and Employees, *Official Gazette of Montenegro*, no. 2/2018, 34/2019, 8/2021.

<sup>15</sup> Article 136 of the Law on Civil Servants and Employees, *Official Gazette of Montenegro*, no. 2/2018, 34/2019, 8/2021.

#### 4. KEY STICKING POINTS IN RECRUITMENT AND SELECTION IN THE ARMY SERVICE

All persons who are admitted to the Armed Forces of Montenegro have a status of “a person in the army service” (*lice u službi u Vojsci*). Persons in the army service may have a status of a professional military personnel and civilians in the army.<sup>16</sup> Military personnel include categories of professional military personnel (commissioned and non-commissioned officers and contractual commissioned and non-commissioned officers and soldiers), cadets, soldiers on training and personnel in reserve service of the army.<sup>17</sup>

An admission into the army service for all enlisted categories is done on the basis of a public announcement, which is in line with the international standards. There is also a possibility that a civil servant and an employee in the MoD may be recruited for service in the army and appointed to an appropriate formation position, on the basis of an internal announcement,<sup>18</sup> which is also not such an unusual practice in other countries.

Special attention is paid to the attraction of prospective cadets, who are also required to pass a competition procedure in order to be sent to study abroad at some international military academy, as Montenegro does not have an institution of a military academy. This is not surprising given a relatively small size of the country and the number of cadets needed each year. Each year military youth camps are organised in order to attract young population who would be interested in applying for cadets, which is in line with good international practices on proactive recruitment policies and NATO policy documents. Upon completion of their education abroad, cadets are admitted to service in the army without a public announcement if they meet the required conditions.<sup>19</sup>

Similar to the case of civil servants, the Law on Armed Forces of Montenegro requires a minister of defence to appoint an *ad hoc* selection committee to carry out a competition procedure for each category of personnel, but does not specify the details regarding the composition of the commission and the selection procedure. There is no requirement that the members of the commission need to be professional and competent to carry out the competition, which poses a risk for a political membership in such bodies and undue political influence in the procedure. Furthermore, the legislation does not outline any selection criteria and procedure which will be used in the competition. Instead of this, for each competition procedure an *ad hoc* membership of the commission develops special selection procedure (so-called “methodology”). This may undermine the principle of equality of candidates and may undergo different testing processes, depending on the composition of the individual commission. The procedure is also developed only after the announcement of a vacancy which does not allow the candidates to get familiarised with the process in advance, which is not in line with best international practices.

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<sup>16</sup> Article 5 of the Law on Armed Forces of Montenegro, *Official Gazette of Montenegro*, no. 51/2017, 34/2019.

<sup>17</sup> Article 6 of the Law on Armed Forces of Montenegro, *Official Gazette of Montenegro*, no. 51/2017, 34/2019.

<sup>18</sup> Article 49 of the the Law on Armed Forces of Montenegro, *Official Gazette of Montenegro*, no. 51/2017, 34/2019.

<sup>19</sup> Article 49, paragraph 6 of the Law on Armed Forces of Montenegro, *Official Gazette of Montenegro*, no. 51/2017, 34/2019.

The requirements for applying to post in the army service are rather explicitly established by the Law on Armed Forces of Montenegro. They are rather similar to those of civil servants and include, *inter alia*, the following elements: citizenship of Montenegro; minimum age (18 years old); health and psychological requirements; level of education; lack of criminal record for specific criminal offences related to constitutional system and security; humanity, rights of a man and citizen etc. and a security clearance.<sup>20</sup>

One of the key and perhaps the most controversial requirements during the selection process is a security clearance. It is interesting to note that security clearance is a pre-condition for all candidates applying for the army service and not for civil servants of the MoD and other civil service institutions. While the Law on Armed Forces of Montenegro just briefly mentions the security clearance as an application requirement, the security clearance procedure is governed by a separate set of legislation related to military intelligence and security affairs. It is regulated by the Law on Military Intelligence and Security Affairs<sup>21</sup> which was passed in 2020 and the Rulebook on Security Obstacles, adopted by the Minister of Defence in 2021.

In the past, the Agency of National Security was in charge of the security clearance, but this right has been taken away from its competence in 2020 and given to the Directorate for Security Intelligence Affairs of the MoD. The Directorate is authorised by the respective law to carry out security clearance for the perspective and existing staff in the army service<sup>22</sup> and to use special procedures and measures for this purpose.<sup>23</sup> Before the adoption of the new Law on Military Intelligence, security clearance for the military personnel and civilians in the military was in the hands of the Agency of National Security, which appears to be one of the key subjects of a (un)successful organisational and personnel reform, required by the NATO in order enable Montenegro to become a NATO member state (Petrović, 2020, p. 10).

In spite of detailed legal regulation, the security clearance in the selection procedure has been covered up by a veil of secrecy, as perspective candidates who wish to join Army service do not have the right to legally challenge it before any administrative instance or the court. This means that a candidate's application for a job in an Army service can simply be rejected on the grounds of negative security clearance decision, without obtaining any explanation for such a decision and a possibility to challenge it. This is against the constitutional provisions of Montenegro, which grant Montenegrin citizens the right to a legal remedy to any decision which concerns their right or their legally grounded interest.<sup>24</sup> What is more, all the provisions of the Rulebook on Security Obstacles have been classified, which means that the citizens and perspective candidates for the Army service are not able to understand the reasons for possible security vetting and how it is done.

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<sup>20</sup> Article 47, paragraph 1 of the Law on Armed Forces of Montenegro, *Official Gazette of Montenegro*, no. 51/2017, 34/2019.

<sup>21</sup> Law on Military Intelligence and Security Affairs, *Official Gazette of Montenegro*, no. 074/20.

<sup>22</sup> Article 5, para 2, point 8 of the Law on Military Intelligence and Security Affairs, *Official Gazette of Montenegro*, no. 074/20.

<sup>23</sup> Article 8 and Article 9 of the Law on Military Intelligence and Security Affairs, *Official Gazette of Montenegro*, no. 074/20.

<sup>24</sup> Article 20 of the Constitution of Montenegro, *Official Gazette of Montenegro*, no. 1/2007, 38/2013 - Amendments I-XVI.

It is also interesting to note that the the Directorate for Security Intelligence Affairs, which is in charge of the security clearance, is the only organisational unit of the MoD which is able to recruit its staff without a competition, which poses a significant risk for a professionalism of the staff in this unit. Such a special status and authorities of this directorate within the MoD and Armed Forces may pose a risk for a hidden and uncontrolled power of military security services over the other the personnel in the Montenegrin Army (Rabrenović, Hadžić, Ahmetović, 2021). Such strong powers of the military security services are, of course, not unknown in other developing countries and pose an additional threat for the already fragile democratic processes in the whole region (Hadžić, 2014).

Once the competition commission finalises the selection process, it compiles a ranking list of candidates who passed the procedure which is submitted to the Minister. Within 30 days from the day of the submission of the ranking list, the Minister makes a decision on the selection of candidates.<sup>25</sup> This is not in line with the international standards, which require that the best candidate from the list is selected. Although since 2020 the best ranked candidates were selected to the Army service, which is a positive practice, a minister's discretionary right to choose one of candidates from the list poses a serious risk for the observance of the merit principle.

There have also been serious allegations in the media that the regulations regarding recruitment and selection of military personnel were not observed in the period of 2016-2020, and that more than 30 cadets who were selected during the recruitment and selection process and sent to be educated at international military academies did not meet the required criteria of the competition. These allegations have been outlined in the Internal Investigation Report of the Ministry of Defence, prepared in December 2021, which was later submitted to the Agency for Prevention of Corruption, for the indications for corruption and other criminal offences which were done during the period of 2016-2020 (Vijesti, 2022). The Agency for Prevention of Corruption, however, did not respond to this report.

## 5. CONCLUSION

The recruitment and selection process in the defence sector of Montenegro faces important challenges. Even though the basic prerequisites for applying the merit principle have been relatively well established through the existing legislative framework, there are important exceptions to the general rules.

This is especially the case with exemption of the whole Directorate for Security Intelligence Affairs from the open competition requirement, which poses a serious risk for development of patronage and clientelist ties and corruption practices in this organizational unit of the MoD and in the defence sector in general. It appears to be quite a known fact in the civil service that an MoD can be entered through this directorate without any testing of knowledge and other competencies, which is fully against the principles of merit and citizens equality. Once they enter the system in this way, new recruits are able to move to other positions within the MoD and the armed forces,

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<sup>25</sup> Articles 9, 10 and 11 of the Rulebook on the Manner of Admission of Persons into the Service in the Army of Montenegro, *Official Gazette of Montenegro*, no. 18/18.

which poses additional risks for professionalism of the whole defence sector. In order to address this issue, it would be necessary to amend the Law on Military Intelligence and Security Affairs, especially its Article 37 which allows this practice. In order to secure the confidentiality of the positions in the said directorate, a mechanism of an internal transfer/competition of personnel having already the status of military, security, or civil servants should be introduced instead.

For other civil service positions in the MoD, there is still a level of discretion given to the minister of defence to select one of the three best ranked candidates, which is also not fully in line with the best international practices, which require that the best candidate is appointed to an advertised position. This issue would require the attention of the Ministry of Public Administration, which is in charge of policy making and legislative drafting in the area of HRM in the civil service (i.e. Civil Service Law).

Recruitment and selection in the army service is also subject to important vulnerabilities. They are exemplified primarily in the inability of the perspective candidates to challenge a decision on security clearance. The right to an appeal should be clearly provided by the law and the rejection of the clearance should be grounded on legal and factual reasons, while preserving confidential information contained in the clearance procedure file, as it is the case in other European countries, such as France, Spain and Norway (Cardona, 2022). Overt discretion which a minister has in the final selection of the candidates from the open list of successful candidates should also be limited and a minister required by the Law on the Army to select the best candidate from the list. There have also been serious allegations for the breach of recruitment and selection regulations, especially in the selection of cadets who were sent to international military academies abroad, without meeting the basic formal requirements for the competition.

Although discussion on how to improve the legal framework regarding recruitment and selection in the defence sector in Montenegro appears to be underway at this moment, for an outside observer it is quite obvious that these necessary systemic changes shall not be easily achieved. This is primarily due to the traditional excessive powers of informal (or sometimes formal) centres of powers and difficulties of the political elites to control them, especially in unstable political environment, such as the case in Montenegro at the moment. In depth, systemic organizational, legal and personnel changes in any state institution require strong and unwavering political support, which itself promotes and holds integrity values, and which will be able to overcome the resistance for change and force the holders of excessive powers to release it. Only when these broader political and societal conditions are in place, would it be possible to make important strides in establishing the HRM system in the defence sector based on the principle of merit.

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