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COMPARATIVE ANALYSIS OF THE LEGAL STATUS OF MINISTRIES OF DEFENCE STAFF IN SELECTED EUROPEAN COUNTRIES****

The objective of the paper is to examine key aspects of human resources management of different categories of personnel in ministries of defence, i.e. civil servants, military officials and other staff categories in Serbia, Croatia and Slovenia. The paper analyses the legal rights and responsibilities of all categories of staff, with a special focus on the recruitment and selection process and remuneration and assesses whether they are in line with international standards. The findings of the analysis demonstrate important exceptions to the principle of merit and public competition rules in the defence sector in all three countries, which poses a serious risk for the application of the merit principle. In all analysed countries there are also separate remuneration legal regimes, which enables the employees in the defence sector to have higher levels of salaries in comparison to their colleagues in the civil service. Although the desire to increase the level of salaries may be understandable in order to increase the motivation of MoD's staff, this comes with the risk of undermining the unity of the civil service. In order to overcome these issues, it is important to ensure the observance of the merit principle with regard to recruitment and selection of the MoD's staff based on an open competition. Furthermore, it is recommended that a careful job benchmarking exercise be carried out which

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would compare the complexity and responsibility of jobs in the civil service and armed forces and align their salary levels in a fair and acceptable manner.

Keywords: legal status, human resources management, Ministry of Defence, Serbia, Croatia, Slovenia.

1. INTRODUCTION

Professionalism in the Ministry of Defence (hereinafter: MoD) is crucial for the capability of any country to prepare and implement its defence policy. Therefore, an arrangement of the legal status of staff in any state institution, including the MoD, should always be based on the need to achieve professionalism. One of the key pillars to achieving professionalism is to establish an effective human resources management (hereinafter: HRM) system which is based on merit (CIDS, 2015). 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).

HRM in the ministries of defence is more complex in comparison to the general civil service, as it includes both civil servants and military personnel. While the issues with regard to the legal status of civil servants in Europe have been discussed quite extensively in the academic literature over the past decades (Ongaro, 2009; Kopecky *et al.*, 2012; Vukašinović Radojičić, 2013; Van der Mer, 2015; Meyer-Sahling *et al.*, 2015; Vranješ & Đurić, 2018; Meyer-Sahling *et al.*, 2019; Meyer-Sahling *et al.*, 2021), the comparative literature on the legal aspect of HRM in the defence sector has been much scarcer and more modest (Sofat, 2016; Cardona, 2022). In South East Europe, issues of HRM in the defence sector are usually discussed at the national level (Šegvić, 2004; Kunić, 2008; Cvijan & Reljanović 2007; Ignjatijević, 2020; Đokić & Ignjatijević, 2020; Lembovska, 2020; Barjamspahić, 2020) and more rarely from the comparative perspective (Milošević, 2013; Rabrenović, Hadžić & Misailović, 2022).

At the beginning of this discussion, it is also important to emphasize that international standards regarding HRM in the civil service are also applicable to military personnel. The most detailed international standards in the area of HRM are certainly those developed by SIGMA/OECD, who 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). The Principles are applicable not only to the civil service positions but also to other public service positions, which include those of the security and defence sector (SIGMA/OECD, 2017, p. 39). Key SIGMA/OECD principles in the area of HRM are the requirement that recruitment and selection of public servants is based on merit and equal treatment (including the public competition process) and the existence of a fair and transparent remuneration system.

The objective of the paper is to analyse key aspects of HRM of different categories of personnel in ministries of defence, such as general principles, rights and responsibilities, with a special emphasis on recruitment and selection and the right to remuneration in Serbia, Croatia and Slovenia. The analysis includes Serbia and two European Union

(hereinafter: EU) and the North Atlantic Treaty Organization (hereinafter: NATO) member states: Croatia and Slovenia. Croatia and Slovenia were chosen as they are both members of the EU and NATO, and because they, similarly to Serbia, constituted parts of former Yugoslavia and hence share similar traditions of state organisation and HRM.

The areas of recruitment, selection and remuneration were selected due to their importance for achieving a merit-based HRM system and the existence of potential exceptions to the general rules in these areas in the defence sector. Namely, recent research undertaken in some countries in the region has shown that there are exceptions to the general recruitment and selection rules in the defence sector (Rabrenović, Hadžić & Misailović, 2022). In addition, the remuneration aspect has been analysed due to a common complaint in ministries of defence in the Balkan region that civil servants and military officials have different levels of pay although they are doing the same type of job in ministries of defence. For this reason, there appears to be a tendency to assign special benefits to all employees in the ministries of defence, which, however, comes with the risk of undermining the unity of the public administration system as a whole. In order to overcome this issue, at the end of the analysis, some concluding remarks will be provided on how to improve the legal status of staff of ministries of defence and equality of officials with different status while securing the principle of merit and professionalism.

2. LEGAL STATUS OF MINISTRY OF DEFENCE STAFF IN SERBIA

2.1. Introduction

Key legal competencies and legal status of the staff of the Serbian MoD are regulated by several pieces of legislation. The competencies of the MoD are prescribed by the Law on Ministries¹, Law on Defence² and the Defence Strategy of the Republic of Serbia.³ The legal status of the MoD staff is regulated by two key pieces of legislation - Civil Service Law⁴ and the Law on the Serbian Armed Forces.⁵

The internal organisation of the MoD and the Serbian Armed Forces is governed by the Rulebook on Internal Organisation and Systematisation, which has been classified as “confidential”. This, perhaps, should not be surprising as military organisation constitutes an integral part of this document. Nevertheless, it is not clear why the internal organisation and systematisation of the Serbian MoD have not been arranged as a separate, public document, as it is a practice in other neighbouring countries, such as for example, Slovenia, Croatia and Montenegro.

¹ *Official Gazette of the Republic of Serbia* nos. 128/2020, 116/2022.

² *Official Gazette of the Republic of Serbia* nos. 116/2007, 88/2009, 88/2009, 104/2009, 10/2015, 36/2018.

³ *Official Gazette of the Republic of Serbia* nos. 94/2019.

⁴ *Official Gazette of the Republic of Serbia*, nos. 79/2005, 81/2005, 83/2005, 64/2007, 67/2007, 116/2008, 104/2009, 99/2014, 94/2017, 95/2018, 157/2020 and 142/2022.

⁵ *Official Gazette of the Republic of Serbia*, nos. 116/2007, 88/2009, 101/2010, 10/2015, 88/2015, 36/2018, 94/2019, 74/2021.

The key source of information on the legal status of staff in the MoD is an Information Booklet with information of public importance, which is published on the website of the MoD and regularly updated.⁶ The Booklet contains details about different categories of staff in the MoD together with the average level of their salaries. In accordance with the information in the Booklet, we can classify the Serbian MoD staff into the following categories:

- 1) Civil servants;
- 2) Professional military personnel;
- 3) Military servants, as civilian staff of the Army of Serbia;⁷ and
- 4) Military employees, as civilian staff of the Army of Serbia.

2.2. Civil Servants

The legal status of civil servants is governed by the Civil Service Law, which defines the concept of a civil servant on the basis of the tasks performed. Hence, according to the Law, a civil servant is a person who carries out jobs which are within the competence of the civil service bodies and other state bodies⁸ or related general legal, IT, material-financial, accounting and administrative tasks.⁹

The Civil Service Law also regulates the principles of action of civil servants, their rights and responsibilities, types of civil servants' jobs (the difference is made between *position* and *executive jobs*), conditions and method of employment (including internal and public competition), evaluation of work performance and advancement of civil servants, transfer of civil officers, professional development and training, disciplinary responsibility and responsibility for damage, as well as termination of employment.

Although the Civil Service Law prescribes that recruitment and selection should be carried out on the basis of the principle of merit, which is to be secured by mandatory public competition, there is an exception of public competition for fixed-term employment (*zaposleni na određeno vreme*) in case of temporary workload increases. The amendments of the Civil Service Law adopted in 2018 abolished this exception, envisaging that open competitions are also mandatory for fixed-term employment. However, entering into force of the provisions on open competitions in this case was postponed to 2023 through amendments to the Civil Service Law adopted in 2020.¹⁰ In its

⁶ Information Booklet of the Ministry of Defence of Serbia, updated on the 1st of June, 2023. Ministry of Defence of the Republic of Serbia.

⁷ Their status is regulated by the Law on the Armed Forces, *Official Gazette of the Republic of Serbia* nos. 116/2007, 88/2009, 101/2010, 10/2015, 88/2015, 36/2018, 94/2019, 74/2021.

⁸ Courts, public prosecutor's offices, the State Attorney's Office, the services of the National Assembly, the President of the Republic, the Government, the Constitutional Court and the services of bodies whose members are elected by the National Assembly.

⁹ Law also explicitly states that civil servants are not parliamentarians, the President of the Republic, judges of the Constitutional Court, members of the Government, judges, public prosecutors, deputy public prosecutors and other persons elected to office by the National Assembly or appointed by the Government and persons who, according to special regulations, have the position of officials.

¹⁰ Amendments to the Civil Service Law, *Official Gazette of the Republic of Serbia* no. 157/2020.

latest monitoring report, SIGMA/OECD notes that the percentage of total fixed-term employment, where recruitments have been carried out without competition, is significant, amounting to 11.7% of total civil service employment at the end of 2020¹¹ (SIGMA, 2021), which shows the seriousness of this problem in the Serbian civil service.

Remuneration system of civil servants is governed by law and based on job classification, regulated by the Law on Civil Service Salaries adopted in 2006.¹² The principle of equal pay for equal work, which assumes the existence of job evaluation methodology, has been established by the legal framework. The job evaluation methodology is governed by the Decree on Job Classification and Criteria for Job Descriptions of Civil Servants, which was adopted in 2005 and amended in early 2019 to allow for the introduction of competencies in the job descriptions¹³ and is in line with the intranational standards.

2.3. Professional Military personnel

The legal status of professional military personnel is regulated by the Law on Armed Forces and their recruitment and selection is based upon completion of specific military education or training. In compliance with the Law on Armed Forces professional military personnel are professional members of the Serbian Armed Forces and they are ranked as follows: officer, non-commissioned officer and professional soldier. Their recruitment is based upon completion of high school education and training (for non-commissioned officers) or military university education (in case of commissioned officers).¹⁴

Salaries of military personnel are based on the rank in the army which rests upon a career system. As the details of the regulation of civilian and military staff are left to the Minister of Defense in the form of tertiary legislation (Rulebook), they are not publicly accessible and available, while the data on the total (summary) amount of salaries and other income of managers and employees at MoD is available in the Information Booklet.¹⁵

2.4. Military Servants and Military Employees

Civilians serving in the Serbian Army may have the status of a military servant or a military employee. The Law on Armed Forces makes a distinction between these two categories on the basis of the performed tasks. Hence, a military servant is a person whose workplace consists of tasks within the jurisdiction of the Serbian Armed Forces or general legal, IT, material-financial, accounting and administrative tasks related to them, while a military employee is a person whose job consists of supporting technical tasks in the Serbian Armed Forces.¹⁶

¹¹ 2 160 fixed-term employees out of a total of 18 442 employees.

¹² *Official Gazette of the Republic of Serbia* nos. 62/2006, 63/2006, 115/2006, 101/2007, 99/2010, 108/2013, 99/2014 and 95/2018.

¹³ *Official Gazette of the Republic of Serbia* nos. 79/2005, 81/2005, 83/2005, 64/2007, 67/2007, 116/2008, 104/2009, 99/2014, 94/2017, 16/2018, 2/2019 and 4/2019.

¹⁴ Article 40 of the Law on Armed Forces.

¹⁵ Article 95 of the Law on the Armed Forces.

¹⁶ Article 10 of the Law on the Armed Forces.

There are, however, important exceptions to the open competition rule when it comes to civilians (military servants and employees) in the Serbian armed forces. The Law on Armed Forces explicitly allows that civilians serving in the Serbian Armed Forces may be admitted to service without public competition, by a transfer from another state body, public institution or other public service institution and a candidate is a scholarship holder,¹⁷ which is not in line with international standards.

As civilians serving in the Army are employed in the MoD and not only in the Armed Forces,¹⁸ it may be argued that the MoDe can, without any legitimate obstacle, hire any person who already works anywhere in the area in the public sector without a competitive procedure. In addition, the MoD keeps a record of persons interested in employment in the MoD and the Serbian Armed Forces for the purpose of recruiting civilians to serve in the Serbian Armed Forces without public competition.¹⁹ However, as there is no competition procedure, there is significant room for discretion in deciding on who will be admitted in the defence system.

The salaries of civilians in the military are regulated in a similar manner as the salaries of professional military personnel.²⁰ They are governed by secondary and tertiary legislation and amounts of average basic salaries available in the Information Booklet.²¹

2.5. Additional rights of the Serbian MoD personnel determined by the Law on Defence

The Law on Defence grants additional rights to all employees of the MoD,²² equally applicable to civil servants, military personnel and civilians in the army service. This piece of legislation is a very convenient tool to regulate issues for all MoD staff in the same manner.

Additional rights of the MoD staff (and armed forces) are related to the issue of remuneration and housing needs. Namely, the Law on Defence entitles a minister of defence to increase the level of salaries of employees and senior managerial positions of the MoD due to the special working conditions and to difficulty and nature of the tasks they carry out. The Government, on the proposal of the Minister of Defence, can increase the level salaries of the MoD staff by a special act by up to 20%.²³ A Minister of Defence is also authorised to prescribe the method and criteria for solving the housing needs of employees in the MoD and the Serbian Armed Forces with the approval of the Government.²⁴

¹⁷ Article 120 of the Law on the Armed Forces.

¹⁸ Article 120a, para. 2 of the Law on the Armed Forces.

¹⁹ Article 120a, para. 1 of the Law on the Armed Forces.

²⁰ Article 127 of the Law on the Armed Forces.

²¹ Article 95 of the Law on the Armed Forces.

²² *Official Gazette of the Republic of Serbia* nos. 116/2007, 88/2009, 88/2009,104/2009, 10/2015, 36/2018.

²³ Article 111, Law on Defence.

²⁴ Article 111a, Law on Defence.

3. LEGAL STATUS OF THE MINISTRY OF DEFENCE STAFF IN SLOVENIA

3.1. Background

Principles of internal organisation of the MoD of Slovenia and other civil service institutions and judicial bodies are regulated by a single Act on Internal Organisation and Systematisation.²⁵ This Act is a public document.

The status of all public sector employees, including the personnel of the MoD, is governed by the Law on Public Servants (the first part of the Law on Public Servants), which establishes key principles of public employment common to all public officials. These are: the principle of equal access to employment; the principle of legality; the principle of professionalism; the principle of honourable conduct; the principle of confidentiality; the principle of protection of professional interest; the principle for responsibility for efficient execution of public tasks; the principle of good financial management and prohibition of harassment.

The Law on Public Servants also governs the legal status of civil servants, who are recognised as a special category of public servants who work in state bodies and local self-government bodies. Within this category, the Act recognizes two groups: 1) civil servants (*uradnici*) who perform administrative tasks,²⁶ and 2) professional-technical civil servants (*strokovno-tehnični uslužbenci*), who perform accompanying personnel and material-financial tasks.²⁷ This Act also regulates the relationship between civil servants and the Republic of Slovenia as an employer, equal access to all candidates in employment, conditions for professional training, protection of secret data, responsibility for work results, responsibility for the use of public funds, as well as protection of civil servants from harassment.

Salaries of all public sector employees are governed by the Law on the Salary System in the Public Sector,²⁸ which is a systemic law which regulates salaries of all public sector employees. The Law on the Salary System of Employees in the Public Sector includes all jobs of employees in the state administration and military personnel in category C. Employees of state administration (and judicial administration and local authorities) are categorised in subcategory C2, while military personnel are classified within subcategory C4.

The salary classes for civil servants (C2) are determined by the collective agreement for the sector, while the salaries of group C4, which refers to military personnel, are regulated

²⁵ Regulation on internal organization, systematization, jobs and titles in public administration bodies and judicial bodies, *Official Gazette of the Republic of Slovenia* no. 58/2003, 81/2003, 109/2003, 43/2004, 58/2004 - cor. 138/2004, 35/2005, 60/2005, 72/2005, 112/2005, 49/2006, 140/2006, 9/2007, 33/2008, 66/2008, 88/2008, 8/2009, 63/2009, 73/2009, 11/2010, 42/2010, 82/2010, 17/2011, 14/2012, 17/2012, 23/2012, 98/2012, 16/2013, 18/2013, 36/2013, 51/2013, 59/2013, 14/2014, 28/2014, 43/2014, 76/2014, 91/2014, 36/2015, 57/2015, 4/2016, 44/2016, 58/2016, 84/2016, 8/2017, 40/2017, 41/2017, 11/2019, 25/2019, 54/2019, 67/2019, 89/2020, 104/2020, 118/2020, 168/2020, 31/2021, 54/2021, 203/2021, 29/2022, 80/2022, 103/2022 and 125/2022.

²⁶ Article 23, paras. 1 and 2 of the Law on Public Servants of Slovenia, *Official Gazette of the Republic of Slovenia*, nos. 56/02, 32/05 and 63/07.

²⁷ Article 23, para. 3 of the Law on Public Servants of Slovenia.

²⁸ *Official Gazette of the Republic of Slovenia* nos. 108/09 – updated. version, 13/10, 59/10, 85/10, 107/10, 35/11– ORZSPJS49a, 27/12 – odl. US, 40/12 – ZUJF, 46/13, 25/14 – ZFU, 50/14, 95/14 – ZUPPJS15, 82/15, 23/17– ZDOdv, 67/17, 84/18 and 204/21.

by a decree.²⁹ The salary levels of military personnel are regulated by the Decree on the classification of formation duties and ranks in the Slovenian army in the paid classes.³⁰

In spite of well-regulated general framework on the legal status of public and civil servants, all personnel in the MoD have a special status.

3.2. Employees in the Area of Defence

In accordance with the Law on Defence, an employee in the area of defence is a military official, a civilian person who works professionally in the army or another person who professionally performs administrative and professional technical tasks in the MoD.³¹ This means that all MoD staff have the status of employees in the area of defence.

The Law on Defence determines that all areas which are not regulated by this law are going to be governed by regulations applicable to public servants.³² This means that employees of the MoD have the status of a public servant in all aspects which are not covered by the Law on Defence itself. However, it is not clear whether civil service regulations are applicable to them or not.

The jobs in the area of defence are subject to important exceptions from the general public service principles, such as the principle of equal access to public employment positions by a public competition. Thus, for example, the Law on Defence stipulates that an employment relationship in the field of defence may be concluded without public competition for the following positions:

- officials or professional technical workers who perform operational tasks of civil defence, administrative unions, informatics and telecommunications, crypto-protection and anti-electronic protection, technical protection, military, development, intelligence and counter-intelligence as well as security tasks;
- commanders of military territorial commands and their deputies, battalion commanders and other, equal or higher positions;
- military personnel performing operational duties in the army;
- inspectors in the defence field, who must meet the conditions set by the general regulations and the special conditions set by this law.³³

These provisions are against the principles set out in the Law on Public Servants and are not in line with international standards and best practices.

The Law on Defence also allows the Government to increase the level of basic salaries for the defence employees, in relation to the provisions that govern conflict of interest. Namely, the Law allows that an employee in the area of defence may, in addition to his work, perform work in commercial companies or perform the same or similar work

²⁹ Article 13 of the Law on the Salary System in the Public Sector.

³⁰ Decree on the classification of formation duties and titles in the Slovenian Army into salary classes, *Official Gazette of the Republic of Slovenia* nos. 71/08, 78/08, 85/10, 46/17, 86/18 and 6/22.

³¹ Article 14a of the Law on Defence.

³² Article 88 of the Law on Defence.

³³ Article 89 of the Law on Defence.

as he performs at his workplace, at another body or organization only with the written consent of the Minister.³⁴ It is interesting to note that this article provides a basis for the Government to increase the basic salary for employees in the area of defence. Namely, the Law provides that „in order to evaluate the special prohibitions and restrictions from this article, the Government shall determine the percentage increase of the basic salary for employees in the area of defence in accordance with general regulations“.³⁵

The provision of a special legal status for all employees in the MoD in Slovenia is not in line with practices in other analysed countries and opens up a number of questions regarding their legal status. It is not clear which provisions are applicable to these personnel in certain HRM areas, such as for example, the level of their remuneration, as they do not have the status of a civil servant or any other category determined by the Law on the System of Salaries in the Public Sector. Further research in this regard would require additional analysis and interviews with the Slovenian officials in the MoD.

4. LEGAL STATUS OF STAFF OF THE MINISTRY OF DEFENCE IN CROATIA

4.1. Background

The MoD of the Republic of Croatia is responsible for defence affairs in the Republic of Croatia. The Ministry is established on the basis of the Decree on Internal organisation of the MoD.³⁶

The Decree on the internal organisation of the MoD is a public document and regulates the internal organization of the MoD, the names of administrative organizations and other internal organizational units within the MoD, their scope, the way these units are managed, the way work is planned, working hours, the approximate number of civil servants, employees and active military personnel, as well as other issues of special significance for the work of the MoD. The Decree also determines that tasks within the scope of the MoD are performed by civil servants and employees and active military personnel assigned to workplaces in accordance with the regulations, depending on the type, complexity, level of education and other conditions. This act also provides for the approximate number of civil servants, employees and military personnel required to perform tasks within the scope of the MoD.

Hence, the legal status of personnel in the Croatian MoD includes four categories of personnel:

- a) civil servants;
- b) employees;
- c) military officials; and
- d) civil servants and employees in the armed forces.

³⁴ Article 91, paras. 1 and 2 of the Law on Defence. It is not necessary to obtain the written consent of the Minister for workers to carry out scientific, pedagogical or journalistic work, or for workers to carry out non-professional work in cultural, artistic, sports, humanitarian and other societies and organizations.

³⁵ Article 91, para. 4 of the Law on Defence.

³⁶ *Official Gazette of the Republic of Croatia* no. 97/2020 (original title “Uredba o unutarnjem ustrojstvu Ministarstva obrane”).

4.2. Civil servants and employees

Civil servants are persons who, in the MoD and other state bodies, as a regular occupation perform tasks within the scope of the MoD which are determined by the Constitution, primary legislation or other regulations. The scope of the civil service also includes persons who perform IT tasks, general and administrative tasks, planning, material-financial and accounting tasks and similar tasks.³⁷

The legal position of civil servants is regulated in detail by the Civil Service Law (*Zakon o državnim službenicima*), which determines key rights and duties of civil servants and different aspects of HRM in the civil service. The Law provides unique rules that regulate admission to the civil service based on competition; classification of positions of civil servants; establishes the right professional development of civil servants; promotion in the service on the basis of merit as well as other matters of importance for the realization of rights and obligations of civil servants. It also determines the key civil service principles such as: the principle of legality and legal certainty; the principle of prohibition of discrimination; the principle of hierarchic subordination; and the principle for responsibility for results.³⁸ In matters which are not regulated by the Civil Service Law general labour regulations and collective agreements are applicable.

Salaries of civil servants are determined by an obsolete provision of the Civil Service Law (Articles 108-112)³⁹ and a Government Decree⁴⁰ which determines the value of a job by a coefficient for each single post in the civil service. A coefficient is multiplied by a coefficient value which is determined by the Government.

Employees are persons who work on auxiliary technical tasks and other tasks, the performance of which is necessary for the timely and high-quality performance of tasks within the scope of government bodies.⁴¹ Their rights and responsibilities are governed by the section XIV of the Civil Service law. In this section, it has been envisaged that the rules on most HRM functions of civil servants (recruitment and selection; performance appraisal; disciplinary responsibility) are also applicable to employees, with some exceptions.

³⁷ Article 3, para. 2 of the Civil Service Law (*Zakon o državnim službenicima*), *Official Gazette of the Republic of Croatia* no. 92/05, 140/05, 142/06, 77/07, 107/07, 27/08, 34/11, 49/11, 150/11, 34/12, 49/12, 37/13, 38/13, 1/15, 138/15, 61/17, 70/19 and 98/19.

³⁸ Articles 5-8 of the Civil Service Law.

³⁹ *Official Gazette of the Republic of Croatia* no. 27/01.

⁴⁰ Decree on Names of Job Posts and Coefficients for Complexity of Work in the Civil Service, *Official Gazette of the Republic of Croatia* nos. 37/01, 38/01 – ispravak, 71/01, 89/01, 112/01, 7/02 – ispravak, 17/03, 197/03, 21/04, 25/04. – ispravak, 66/05, 131/05, 11/07, 47/07, 109/07, 58/08, 32/09, 140/09, 21/10, 38/10, 77/10, 113/10, 22/11, 142/11, 31/12, 49/12, 60/12, 78/12, 82/12, 100/12, 124/12, 140/12, 16/13, 25/13, 52/13, 96/13, 126/13, 2/14, 94/14, 140/14, 151/14, 76/15, 100/15, 71/18, 73/19 and 63/21.

⁴¹ Article 3, para. 4 of the Civil Service Law.

4.3. Military officials and civil servants and employees in the armed forces

The legal status of military officials is governed by the Law on Armed Forces.⁴² The Law on Service in the Armed Forces of the Republic of Croatia regulates service in the armed forces, recruitment, assignment, ranks, promotion to ranks, rights, obligations and responsibilities as well as termination of service of members of the armed forces. Members of the armed forces are military personnel, civil servants and employees of the armed forces.

The Law on Armed Forces makes a distinction between the categories of civil servants and employees in the armed forces. A civil servant in the armed forces is a person who performs tasks within the scope of the armed forces, which include the performance of scientific activities and higher education, as well as IT tasks, general and administrative, planning, material financial, accounting and similar tasks.⁴³ An employee is a person who works in the armed forces in auxiliary technical and other tasks, the performance of which is necessary for the timely and quality performance of the Armed Forces.

Although public competition is recognised as one of the key instruments in filling the vacancies of both military personnel, civil servants and employees in the armed forces, there are important exceptions to this rule. Namely, Article 27 of the Law on Armed Forces envisages that for tasks which are of special importance for defence, a Minister of Defence can exceptionally admit a person in the status of a military personnel, servant or civilian in the armed forces.⁴⁴ This is not in line with international standards and best practices and provides a wide discretion of a Minister of Defence in selecting personnel for the MoD and armed forces.

4.4. Additional rights and responsibilities of MoD personnel in Croatia determined by the Law on Defence

Similarly to the Serbian and Slovenian cases, an additional legal act that regulates the status of civil servants and personnel of the armed forces is the Law on Defence.⁴⁵ This Law gives the right to the Minister of Defence to specifically regulate several areas for employees of the MoD: salary supplements for civil servants and employees, as well as salary supplements for civil servants and employees in the armed forces and severance pay in case of termination of employment. In addition, the Law provides the Government of Croatia the authority to regulate the criteria for sending personnel of the MoD to work in an international organization or national representative office, or in EU structures, as well as to regulate their salaries.

On the basis of the Law on Defence, the Minister of Defence of the Republic of Croatia issued a Decision on Basic Salary Supplements in the MoD and the Armed Forces of the Republic of Croatia in 2018.⁴⁶ The Decision establishes that civil servants and employees

⁴² *Official Gazette of the Republic of Croatia* nos. 73/13, 75/15, 50/16, 30/18 and 125/19.

⁴³ Article 6 of the Law on the Armed Forces.

⁴⁴ Article 27, para. 2 of the Law on Armed Forces.

⁴⁵ Law on Defence, *Official Gazette of the Republic of Croatia* no. 73/13, 75/15, 27/16, 110/17, 30/18, 70/19.

⁴⁶ Decision on Basic Salary Supplements in the Ministry of Defence and the Armed Forces of the Republic of Croatia, *Official Gazette of the Republic of Croatia* nos. 92/18 of 17/10/2018.

assigned to the MoD due to special working conditions, nature of work and responsibilities, are entitled to a supplement in the amount of 10% to the basic salary. For civil servants and employees assigned to positions in the Armed Forces of the Republic of Croatia due to special working conditions, difficulty and nature of work and responsibilities, the basic salary is also increased by 10%. Financial resources for the implementation of this Decision are provided in the state budget of the Republic of Croatia at the MoD.

In addition to this regulation, the Minister of Defence also issued a special Decision on the amount of severance pay for civil servants and employees of the MoD and the Armed Forces, and the Government of the Republic of Croatia issued a Regulation on the salary standards and other material rights of diplomatic personnel of the MoD, military diplomats and persons assigned work in international organizations.

5. CONCLUSION

This comparative analysis has shown that the legal status of the staff working in the ministries of defence may have some specificities depending on the country in question. In most analysed countries ministries of defence staff are mainly civilians, who have a status of civil servants in accordance with the legislation that governs the legal position of civil servants or employees (who carry out auxiliary and assisting functions). In addition, it is a usual practice that ministries of defence employ military personnel, whose rights and responsibilities are governed by legislation that regulates the status of the members of armed forces.

Although there is a general rule that staff enters the MoD on the basis of public competition, all three analysed countries have important exceptions in this matter, which are not in line with international standards. In Serbia, the exceptions are related to temporary employment arrangements of civil servants (usually up to 6 months), which are carried out without a competition procedure. Furthermore, civilian personnel in the Serbian armed forces can be admitted from other public institutions without a competitive procedure and later transferred to the MoD. Slovenia has provided a special status to all of its personnel in the MoD and excluded them from general civil service/armed forces legislation with regard to open competition for several important positions/jobs in the MoD and armed forces. Croatian legislation also explicitly allows exceptions to public competition for both military and civilian personnel in the army, who can be later appointed to a position in the MoD. These provisions are not in line with the principle of merit and provide a risk for discretion and arbitrariness in entering the defence system in all three countries.

In all three analysed countries, a law which regulates issues of defence policy (e.g. Law on Defence) has been used to increase the level of salaries of all staff in the MoD and Armed Forces and provide them with some additional benefits (e.g. higher levels of severance pay, special housing arrangements etc). Although the desire to increase the level of salaries may be understandable in order to increase the motivation of MoD's staff, it may also have a negative consequence for the unity of the civil service remuneration system and may bring about inequalities in the status of civil servants and military officials in general.

In order to overcome the often-cited problem of large differences in pay levels between civil servants and military personnel who carry out the same jobs in ministries of defence in the countries of former Yugoslavia, it is recommended to carry out a careful job benchmarking exercise which would compare the complexity and responsibility of jobs in the civil service and armed forces and align their salary levels in a fair and acceptable manner. In the mid to long term, it would be also recommended to consider providing more flexibility in HRM in individual civil service institutions (such as for example the case in Germany and France), which would satisfy the need for more independence in managing human and financial resources in individual ministries, but with ensuring that these procedures and practices are based on merit.

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