ABSTRACT The public services which fulfil some common social needs are provided by public, private and mixed institutions in Macedonia. Their legal framework is the Public Institution Act. Public institutions can be established by the state-owned, municipal and private funds. An institution has the capacity of a legal person with the rights and obligations determined by law. It can conclude contracts and perform legal affairs within the professional framework as it is registered in the Central Register. Each institution has its own bodies: the management board, director, a supervisory body and other bodies determined by law. During the 17-year process of Macedonia’s approaching the Euro-Atlantic integration and legal harmonization, the field of profession-specific organizations, oriented solely at providing public services, has undergone major changes. The results of these changes are still to be measured and assessed.

KEY WORDS: • public service delivery • public institution • financing public service delivery • public management • Macedonia

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Legal Regulations in Local Self-Government and Public Services in the Republic of Macedonia

The first law to regulate local self-government in Macedonia is the Local Self-Government Act adopted in 1995. It was supposed to finalize the Constitution in finally abandoning the old system of municipalities and establishing a new municipal system of administrative decentralisation. Aimed at creating a new legal framework for the construction of a consistent system of local self-government and consequent realization of constitutional provisions regarding the autonomy of local self-government units, the Macedonian Government adopted the Strategy for the Reform of the Local Self-Government System in November 1999. Following the strategy guidelines, the Legal Council, a body within the Government Cabinet, proposed a new draft Law on Local Self-Government. The new Act was adopted by the National Assembly in 2002.

The main goals of the new Act were: strict distinguishing municipal competences, improving direct citizen participation in municipal public affairs, establishing new legal and financial control over municipal operations and redefining relations between municipalities and the Central Government. Regarding the essential issue of the local self-government competences, the Act determines the areas of competence, grouping them in the following manner: organizing public services, urban and rural planning, environmental protection, local economy, municipal affairs, culture, sport and recreation, social and child welfare, education and child protection. The list is not final and the Act foresees a possibility of adding new competences through lawful provisions.

Public services are basically all the services fulfilling some common social needs. The French theorist, Leon Duguit is considered to be the founder of the theory of public services. He was a representative of the theory of social functions, according to which administrative law is just public service law whose core is not the right to issue unilateral orders, but rather the right and obligation to regulate and manage public services (Davitkovski & Pavlovska-Daneva, 2007: 48).

The Administrative Reform Strategy (adopted by the Government in May 1999) set a priority to adopt a new law which would set unified criteria for the legal status of organizations (institutions) offering public services. The operationalization of this provision required that the Ministry of Justice should prepare a Draft Law on Public Institutions. In the beginning of 2001, the Government acknowledged and determined the Draft as such and delivered it to the National Assembly. The Assembly adopted the new Act in May 2005, thus enacting the Public Institution Act.
2 Definition and Types of Institutions

The Macedonian current Act uses the term ‘institution’ (in Macedonian: 'Ustanova') rather than the term ‘service’ stated in the beginning of the Public Institution Act, even though it refers to the public services and, in effect, it gives them the same legal treatment as most European countries do.

The Act regulates the conditions and means of performing the public interest services, public institutions and other forms of organizational provision of public services; the legal conditions and procedure of establishing such organizations, issuing and revocation of licenses, management of public institutions, status changes and cease of existence, development, financing, investments, property, by-laws and other regulations, organizational units and forms of collaboration and cooperation, as well as other matters of significance for proper public service performance and propriety transformation.

The Public Institution Act has a subsidiary effect, and its provisions apply only to the matters that have not been regulated by other legal regulations.

Institutions are classified by two basic criteria (Davitkovski, 2001: 205-215):
1. according to subject (founder), and
2. according to profession (field of operations)

In the first group, institutions can be established as
1.1. Public institutions,
1.2. Private institutions,
1.3. Mixed institutions.

Public institutions can be established by the State (using the state-owned funds) as a national institution. A public institution can also be established as a municipal public institution or as a public institution of the City of Skopje by a municipality or by the City of Skopje with municipal funds.

A private institution can be established by domestic or foreign natural or legal persons with private funds.

A mixed institution can be established by the State (using the state-owned funds), by a municipality or the City of Skopje with municipal funds, and by foreign or domestic natural or legal persons with private funds. In this case, the institution cofounders gain a founding share of the institution.

The second group of criteria distinguishes types of public institutions according to their specific field of operations. The Public Institution Act states that public
institutions are established according to the type and needs of public service for which they are established\(^2\).

According to this criterion, public institutions are established in the following areas:

- 2.1 Education: schools, universities, faculties, etc.;
- 2.2 Science: institutes, etc.;
- 2.3 Health: clinics, hospitals, medical centres, health care centres, natural rehab centres, drugstores, ambulances, etc.;
- 2.4 Social protection: social institutions, kindergartens and other child care institutions;
- 2.5 Culture: culture centres, theatres, operas, ballets, etc.;
- 2.6 Child protection;
- 2.7 Protection of persons with intellectual or physical disabilities, and
- 2.8 in other fields of operations defined as public services by law.

A public institution has the capacity of a legal person with the rights and obligations determined by law. It can conclude contracts and perform legal affairs within the professional framework as it is registered in the Central Register.

3 Establishing a Public Institution

A public institution can be established upon the fulfilment of the following conditions:

1. A prepared study on the relevant profession, including the following guarantees granted by the founder:
   - a) necessary staff meet job-specific competency requirements, employed full time;
   - b) proper facilities and equipment;
   - c) protection of employees during work;
   - d) protection of service consumers and
   - e) other terms of operations determined by law.

2. A financial plan, or guarantee for sustainable levels of funding the institution operation.

These primary terms for the establishment of institutions are further regulated through secondary regulations and standards set by the competent minister upon the proposal of the Professional Chamber or other authority or organization determined by law.

3. Along with the aforementioned terms for establishing a public institution, the founder needs to submit a viable financial plan, proving he will be able to maintain continuous provision of service, and he will guarantee
the ability to reimburse clients in the event of eventual damages if the institution ceases to function.

The establishment procedure consists of several stages:

- The first stage commences with the Founding Act adopted by the founder. This Act contains: establishment name and headquarters, its field of operations, permanent sources of revenue, the founder’s rights and obligations, mutual rights and obligations between the institution and the founder, the institution’s life-span, the institution’s rights and duties in legal traffic, founder’s accountability for the institution’s debts, persons representing the institution, appointment of the managerial board members, deadline for adoption of a by-law and appointment of Director, surplus revenue management method, appointment of the person in charge of control until final constitution of the institution, and the provision applying to the remaining issues. The founder appoints the person performing the Directorate tasks, making preparations for the start of operations. If the institution is established by two or more founders, they conclude a contract for joint investment in the institution to determine their specific rights and obligations as well as the rights and obligations of the institution stakeholders according to the Law of Obligations.

- Along with the Founding Act, the founder shall submit:
  1. A study on the establishment,
  2. the document providing the necessary facilities according to regulations and standards,
  3. A full list of equipment and funds necessary for operation,
  4. An expert personnel list,
  5. The proof of secured financial guarantees,
  6. A joint investment contract if the institution is established by two or more founders, and
  7. Other documents determined by law or other regulations and standards.

So, the founder shall submit the Act, a study, and complementary documentation to the competent ministry to apply for a licence to begin operation. An exception from this is in cases where the institution is established either by law or by the decision by the Government of the Republic of Macedonia;

- The competent ministry shall make a decision within 30 days to issue a license to begin operation;

- The next stage is concluding an administrative contract between the founder and the competent ministry which further determines the means of conduct in performing actions in public interest and in regulating mutual rights and obligations between the both parties;
Following the decision on start of operations and the conclusion of the administrative contract during the preparation period, the institution has pre-operational status and may apply for temporary registration in the central register;

Afterwards, the founder applies for an inspection by the competent ministry to evaluate the institution’s readiness and capability for the operation at full capacity. If the ministry has determined that all criteria are fully met, it will issue a permit for operation with an administrative decision;

Following the full legality of the decision (permit for operation), the founder applies for registration in the appropriate register of public institutions at the competent ministry. It is a public book.

After the registration is concluded, the institution’s bodies are constituted (election of an executive officer, appointment of a managerial board and adoption of a by-law).

After the institution’s bodies are constituted, the institution with full legal capacity is registered in the central register and may start in full operation.

### 4 Legal Acts and Status Changes in Public Institutions

The public institution’s highest general act is the By-law or Statute. The By-law regulates the institution’s organization, methods for performing its operation, its name, headquarters, management, internal revision, the rights and obligations of public service consumers and other issues of significance to the institution’s operation according to law. The By-law and other secondary legislation are published in official journals and other public papers making them available to the general public.

The institution’s founder may decide on the following changes in the institution’s status:

a) the institution may join another institution,
b) two or more institutions may merge into a single institution,
c) an institution may be divided into two or more institutions,
d) a part of the institution (an organizational unit) may join another institution or may be organized as an independent institution.

The basic principles on which public institution management is based are expertise and competence.

### 4.1 Management, Control and Financing of Public Institutions

An Institution has its own bodies which by law are:

1. The Management Board (managing body),
In the Founding Act, the establisher may anticipate an organizational structure without a managing body, but rather leave institution management to a team of professional managers or one executive manager. In these scenarios, the founder and the manager conclude a managerial contract which constitutes an administrative contract. A special emphasis is to be placed on the provisions of the Public Institution Act providing protection of public interest through public institutions. Thus, in the event of degradation of the institution’s operational capacities, or in the case of violation of legally determined obligations by the institutions, which are not related to any form of the founder’s irresponsibility defined in the Founding Act, the founder is authorized to enforce measures to provide for continuous operation of the institution.

The state-owned public institutions provide funding primarily from the state budget, and municipally-owned institutions provide funding from the municipal budget. Other sources of funding are public funds, direct consumer participation, service sales in the commercial market, interest rates, intellectual property rights and the institution-owned patents, gifts, donations and other sources of revenue determined by law. The ways of providing revenue are regulated by the Founding Act.

4.2. Institution Personnel and the Right to Strike

Institution employees have the rights and obligations derived primarily from the Employment Relations Act, unless otherwise regulated by other law. Also, the specific law, determining the terms and modes of performing certain public interest professions, can state that employees in some public institutions will have the same status, rights and obligations as state servants. Just like other employees, institution employees have the right to strike. However, they are obliged to take preventive measures during protest hours. So, the strike committee and the employees participating in the strike are obliged to organize strike behaviour in a manner that will provide physical safety of all the employees and property of the institution’s facilities and equipment, as well as performing duties towards citizens, and legal persons and state authorities simultaneously making sure the following terms are fully met:

- the necessary level of production process that will not endanger the life, health, economic and social safety of citizens and the vital state functions; the strike shall be organized in the scope and manner determined by the relevant law,
- the necessary and uninterrupted execution of international agreements.
5 Supervision over Public Institutions

Public institutions undergo several forms of supervision.

1. Supervision over the legality of their operations and individual acts is conducted by the Competent Ministry. When the competent minister detects an illegal act or action done by a relevant public institution, he will point out illegalities through a protocol and thereby determining the deadline for removal of the noted irregularities. The deadline cannot be shorter than 6 months. If the irregularities are not removed during that period of time, the competent minister is authorized to suspend the illegal act from enforcement. He will inform the institution founder of that.

2. Supervision is also performed over the constitutionality and legality of general acts. Thus, if the institution’s general act is not in accordance with the Constitution or law, the competent minister has the right to suspend its enforcement and is obliged to initiate the procedure for assessment of constitutionality and legality before the Constitutional Court of the Republic of Macedonia.

3. A public institution also undergoes supervision over its competence to issue public documents. In the event that the competent ministry finds out that a public institution has issued a public document contrary to legal regulations, it will make a decision on the annulment of the illegal public document. The decision and annulled public document are published in a public medium and the case is submitted to the Public prosecutor for a criminal charge against the perpetrator.

4. The supervision over the institution’s substantive and financial affairs is conducted by the competent ministry and the National Audit Office.

5. Institutions also undergo expert supervision. This type of supervision is performed by the specialized experts, chosen by the competent authority by law.

5.1 Privatization of Public Institutions

For more than a decade, the Republic of Macedonia had no law on specific regulation of public institutions until 2005. At that time, all relevant legislation to regulate public services had already been adopted (health, education, culture, science, social protection, child care, etc.). The public service system was considered a public sector, primarily as a result of delayed privatization. According to the Socially-Owned Enterprise Transformation Act (i.e. with socially-owned capital⁶), the transformation of organizations, determined by law or by a general act adopted in accordance with law to provide services as public interest services (hence public services), it was then determined that they should
no longer operate under the general provision of that law, but rather according to the new Public Institution Act adopted in 2005. Unlike the privatization of enterprises with the socially-owned capital, public institutions had a known owner which then was solely the State, i.e., the Republic of Macedonia. Public institutions are state-owned. It is because of this fact that, in these cases, we cannot talk about privatization where the owner is determined, but rather about a change in ownership where institutions fall under different owners.

The Public Institution Act foresees the forming of a new body – a Privatization Board consisting of ministers from competent ministries: Education, Science, Culture, Health and Social Protection, Child Welfare and Protection of Persons with Disabilities. The Chairman of the Board was appointed by the Vice-President of the Government. A seat on the board was secured for a member of the major trade unions without the right to vote. In order to cut down costs, organizational and other expert affairs regarding privatization of public institutions were delegated to the Ministry of Economy. The competence, organization and operation of the Privatization Board as well as the affairs delegated to the Ministry of Economy were regulated by the Government’s Decision.

According to law, privatization can only be performed according to one of the six models, or techniques of privatization:

1. transformation of a public institution into a private institution;
2. transformation of a public institution into a limited liability company or a holding company;
3. organizing parts of the public institutions performing commercial activities in limited liability companies or holding companies;
4. sales of shares in a mixed institution;
5. sales of part of institution’s facilities or equipment;
6. lease;
7. other methods determined by law.

The decision on privatization by transforming a public institution into a private institution is made by the institution’s founder upon the proposal of a competent minister. The Government of the Republic of Macedonia has to give consent to the decision.

Before the decision on privatization is made, the institution subject to transformation is offered to its employees for purchase. If the personnel reject the purchase priority, the founder will issue public invitation to tender for the most suitable offer.

Once a public institution is transformed into a commercial company without liquidation, the institution can simultaneously undergo the privatization procedure in accordance with the provisions of the Public Institution Act.
The transformation of a public institution into a commercial company is regulated by the Companies Act.

Within the rationalization of public services, it is crucial to separate all the institution activities that may be organized as limited liability companies and are subject to private law legislation.

It is because of this that the law foresees the possibility of transforming part of the institution’s estate and facilities, along with the pertinent personnel involved in accounting, financing, legal, technical-administrative and other utility operations such as hygiene, maintenance and transportation, preparation and distribution of food (restaurants and mess-halls, etc.), lodging (homes, hostels, etc.) or performing other commercial tasks, into limited liability companies or holding companies while simultaneously conducting the privatization procedure for them.

Once a cofounder of a mixed institution determines that his interest in the institution has ceased, he can sell his share of the institution to other co-founders. If all co-founders refuse to buy, an open invitation to bid is issued in search of the most suitable offer.

The law determines the possibility of partial privatization of a public institution, e.g., only the part that is not essential to the institution’s operations. Namely, the founder will be able to sell part of the estate, equipment and other assets suitable for public services to other legal or natural persons who meet the terms determined by law that regulates the provision of public services. Foremost, the purchase right will be offered to the personnel employed in the organizational unit subject to privatization. If the pertinent employees refuse to realize their priority right to purchase, the competent ministry shall issue public invitation to tender. The purpose of purchasing part of the institution’s estate suitable for public services can only be to continue provision of public services. What this means is that the part of the estate subject to sale cannot be reassigned to serve a purpose other than that for which it was primarily established. This is why the purchaser may take over the management of the subject of sale only after he had previously obtained a license to provide that particular public service. In addition, the buyer will be obliged to provide uninterrupted public service provision. He can realize this either independently or in cooperation with the public institution he purchased the related asset from, or in collaboration with other public institutions. The terms and conditions of continuous provision of public services will be determined in the contract signed by both parties. The buyer will not be allowed to change the profession previously taken up and practised by him in the institution, nor will he be allowed to lease his share without the prior consent of the competent ministry. In the event that the buyer is not an institution, he will be tasked to found a public institution and to obtain a license. If the buyer does not obtain the license by the
determined deadline and therefore does not found a public institution, does not provide the necessary conditions for the continuous provision of public services, changes the profession he used to practise in the institution or leases the object without the prior consent of the competent ministry, the concluded contract shall be deemed void by force of law.

The lease is a very specific model of proprietary transformation. In this case, it is not the estate that is privatized, but rather the profession. The objects and equipment, considered as organizational units capable of providing public services, can be subject to lease. As in the model of the transformation of a public institution into a private institution, the competent ministry as a lessor shall offer the lease to the employed personnel first. If they refuse, the competent ministry shall issue public invitation to tender. The basic responsibility of the lease party is to take control over the subject of lease and to provide continuous public service provision independently. The lease party is not allowed to change the profession conducted in the leased unit, nor can they rent the facilities without the prior consent of the lessor. In the event that the lease party cannot be an institution, he shall be obliged to found a public institution and to obtain a license by the deadline determined in the contract. If he does not found an institution by the given deadline, or founds one, but does not obtain a license, the lease contract shall be considered void by force of law.

6 Conclusion

Public services find their place and great significance and respect in the Macedonian national law, but with their own distinct characteristics. During the 17-year process of Macedonia’s approaching the Euro-Atlantic integration and legal harmonization, the field of profession-specific organizations, oriented solely at providing public services, has undergone major changes in both positive and negative directions. By far the most important positive milestone was the Public Institution Act adopted in 1995. However, things have changed since then. Even though public institutions were strictly distinguished from other forms of the socially-owned organizations conducting commercial activities, e.g., public enterprises, we have seen better and worst days in their privatization and transformation. The most recent events depicting this occurred in early 2008, such as the division of the Skopje Clinical Centre into several separate medical institutions, and the new Higher Education Act which enforced a strict centralization in higher education institutions, relieving all the educational organizations from their legal capacities and thus rendering them into the mere organizational units within universities. The results of these changes are still to be measured and assessed, hence it is too early to make any definable conclusions, or to make judgments. However, it will remain a challenge and the subject of the near-future research.
Notes

1 Art. 3, the Public Institution Act (Skopje: Official Journal of the Republic of Macedonia): 'A public institution is a form of organization performing a non-commercial activity determined as a public service by law'.
2 Art. 5, the Public Institution Act: ibid.
3 In the Republic of Macedonia, the public administration employees employed in the central and local authorities are called civil servants according to the Civil Servants Act: Official Journal n. 22/05. The term ‘state servants’ represents the remaining element from the legislation adopted during Macedonia’s socialist regime emphasizing their commitment to fulfilling government directives in terms of executive authorities. The new Civil Servants Act was adopted in 2002, even though the terminology remained unchanged for the nomotechnical reasons, their purpose, legal rights and obligations put them in service to the general public interest as part of a service-oriented administration.
4 Public documents in this sense are personal identification cards, passports, various certificates, etc.

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