

THE INSTITUTIONALIZATION OF POLITICAL DISCRETION IN POST-COMMUNIST CIVIL SERVICE SYSTEMS: THE CASE OF HUNGARY

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This article addresses the discrepancy between attempts to establish professional, de-politicized civil services and the politicization of personnel policy at the central government level of post-communist countries. It develops the concept of formal political discretion as an analytical tool for the assessment of how and to what extent legislative frameworks governing civil services provide institutional conditions for the de-politicization of personnel policy. The case of Hungary shows that since the change of regime in 1989/90, four civil service reforms have led to the adoption, implementation and revision of civil service legislation that has gradually reduced the possibilities for government ministers to exercise political discretion over personnel policy. Civil service reforms have also led to the institutionalization of various discretionary instruments which ministers can and have used to politicize civil service affairs. The adoption and implementation of civil service laws therefore does not necessarily lead to the de-politicization of civil services.

INTRODUCTION

One of the major puzzles in the development of civil services in East-Central Europe, including here the eight new member states of the European Union plus Bulgaria and Romania, is the discrepancy between attempts to establish a professional, de-politicized civil service and the continuing politicization of personnel policy at the central executive level. One decade after the change of regime in Hungary, the record of civil service reform in East-Central Europe as a whole suggests that governments have had difficulties in establishing even the 'legal minima' for the development of a professional civil service that is insulated from political interference. As Hesse (1998, p. 176) argues, '[w]ithout a legal framework, provided by a comprehensive civil service law, it will be impossible to attract an elite into public services. Confidence (...) will only be ensured if employment duties as well as rights are guaranteed and made enforceable'. Since Hungary passed civil service legislation shortly after the change of regime in 1990 and 1992 and has subsequently embarked on a path of continuous civil service reform leading to several amendments of the original legislation, it is widely regarded as the frontrunner in East-Central Europe. In other countries, civil service reforms have been subject to delays, incomplete reforms and failures to implement

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legislation. In contrast to Hungary, it was only towards the end of the 1990s and thereafter that most of the East-Central European governments considered here adopted formal legal frameworks governing their civil services. Poland, Lithuania and Latvia adopted laws governing the civil service in the mid-1990s but, failing to implement them, adopted revised laws in 1998, 1999 and 2000 respectively. Among the other East-Central European countries that have adopted civil service legislation, Estonia passed its first Act of Parliament in 1995, Bulgaria and Romania in 1999, Slovakia in 2001, and Slovenia and the Czech Republic in 2002.

At the same time, empirical research on civil service developments in East-Central Europe has found little evidence that the adoption of civil service legislation spurs the creation of professional, de-politicized civil services. Verheijen (2000, p. 29) argues, 'civil service laws have seldom been the expected catalysts for the stabilization, depoliticization and professionalization of the central administration'. Similarly, the World Bank has sought to evaluate the performance of East-Central European civil services in the context of European Union accession with reference to international best practice. It concludes that real progress is evident when it comes to 'credible efforts to delineate the basic legal and institutional foundation for a professional, de-politicized civil service. [However, the] study's findings reinforce the impression from previous analyses (...) that administrative development in Central and Eastern Europe, has been incipient or intermittent [and that] considerable distance still needs to be travelled to achieve sound international practice' (Nunberg 2000, p. 7).

The discrepancy between the ostensible intention of civil service legislation and the practice of personnel policy has been especially evident with respect to the senior civil service. Verheijen and Rabrenovic (2001, p. 411) argue that politico-administrative relations are characterized by 'instability', that is, '[t]he prevailing pattern in [post-communist] states is still one of the top echelons of the civil service changing with each election, or, in worse cases, government re-shuffle'. Similarly, Goetz and Wollmann (2001, p. 880) observe a 'persistent influence of party politics in the management of personnel policy' and the tendency of ministers to 'surround themselves with entourages of political advisors'.

The coincidence of: (1) efforts to professionalize and de-politicize civil services; and (2) the continuing politicization of personnel policy raises questions with respect to the content of the civil service legislation that has been adopted in post-communist Europe. Empirical research on administrative developments in post-communist Europe has provided several country-based surveys that open the black box of national civil service systems (Nunberg 1999; Verheijen 1999; Baker 2002; Bossaert and Demmke 2003) as well as country-based studies of emerging politico-administrative relations at the central executive level (Verheijen 2001). However, this research has paid curiously little attention to the impact of newly established formal-legal frameworks governing post-communist civil services on the kind of personnel policy processes that may and do occur within these frameworks.

In an attempt to fill this gap, this article takes into account the insights of the body of delegation studies. The first part develops the concept of formal political discretion as an analytical tool for the assessment of how and to what extent formal-legal frameworks governing civil services provide institutional conditions for the de-politicization of personnel policy. The second part applies the concept of formal political discretion to the analysis of civil service developments in post-communist Hungary. As has been said, Hungary differs from other East-Central European countries insofar as it was the first country to pass and implement civil service reform legislation. At the same time, Hungarian civil service developments exhibit a surprising degree of similarity to other countries in the region, in that personnel policy has continuously been subject to politicization (Körösesnyei 1997; György 1999; Sente 1999; Vass 2001a; Fricz 2004). In Hungary, in comparison with other East-Central European countries, the discrepancy between attempts to establish a professional, de-politicized civil service and persisting politicization of personnel policy has therefore persisted longer than in any other country in East-Central Europe. The analysis of the Hungarian case shows that four civil service reforms since the change of regime have led to the adoption, implementation and revision of civil service legislation that has improved the institutional conditions for the de-politicization of personnel policy on a continuous basis. However, the formal-legal frameworks governing the civil service have also institutionalized a set of discretionary instruments, which governments and their ministers can use and have used to politicize civil service affairs. The discussion outlined here therefore concludes that the adoption and implementation of civil service legislation does not necessarily lead to the de-politicization of personnel policy in post-communist Europe.

BUILDING POLITICAL DISCRETION INTO CIVIL SERVICE SYSTEMS

The extent to which legal frameworks governing civil services provide institutional conditions for the de-politicization of personnel policy can be analysed by employing the concept of formal political discretion, which is based on the assumption that civil service legislation allows governments and their ministers more or less leeway to influence personnel policy decisions. The concept of formal political discretion is adapted from the body of delegation studies that analyses institutional arrangements for the political control of public bureaucracies on the basis of the new economics of organizations, in particular transactions costs economics and agency theory (Milgrom and Roberts 1992). The body of these 'delegation studies' can be broadly distinguished as two strands of research (Pollack 2002). The first strand pays attention to the behaviour of bureaucratic agents, mainly taking the form of US regulatory agencies, by assessing the impact of different control measures on bureaucratic decision-making, including measures such as budget appropriations, personnel appointments, rights to conduct public hearings and

investigations and the different kinds of administrative procedures that can be written into legislation (McCubbins and Schwartz 1984; Calvert *et al.* 1987; McCubbins *et al.* 1987; Bawn 1997). This research seeks to determine whether democratically elected politicians control their bureaucratic agents or whether delegation can be equated with an abdication of authority to the bureaucracy. The second strand of research directs the focus from the behaviour of bureaucratic agents to the delegation stage itself by assessing the impact of political context variables such as problems of informational uncertainty, problems of credible commitment, and problems of conflict between political principals and bureaucratic agents on politicians' choice of governance strategies (McCubbins and Page 1987; Bawn 1995; Epstein and O'Halloran 1999; Huber and Shipan 2002). To this end, the research analyses the extent to which politicians delegate policy-making discretion to executive agencies. The new democracies in East-Central Europe are either of a parliamentary or semi-presidential type. When studied through the lens of agency theory (Strom 2000), both democratic styles share similar features. Until recently, there have been few studies of parliamentary democracies that analyse the origin and impact of institutional arrangements that govern the relation between political principals and their bureaucratic agents by applying the new economics of organizations. Exceptions here are the studies of, for example, Ramseyer and Rosenbluth 1993; Huber 2000; Huber and Lupia 2001; Huber and Shipan 2002. However, with the exception of Horn (1995) and Moe and Caldwell (1994), there are no applications of the body of delegation studies to the analysis of civil service systems in liberal democracies.

The two strands of delegation studies provide the toolkit for the comparative analysis of civil service systems in East-Central Europe. Taking into account an ideal typical perspective upon parliamentary systems suggested by Strom (2000), the first strand of delegation studies suggests that civil service legislation defines the specific set of personnel policy instruments which ministers can choose to use as control measures in order to achieve bureaucratic compliance with political objectives. Personnel policy is, however, just one among different possible control measures which ministers can adopt in order to mitigate potential losses of agency and to (re-)align the incentives and preferences of ministers and civil servants. Secondly, with reference to the second strand of delegation studies, civil service legislation seen as a means to provide the set of personnel policy instruments which ministers can apply in the policy process, suggests that civil service legislation defines different degrees of formal political discretion. Formal political discretion over personnel policy can generally be defined as the freedom of ministers to determine the outcomes of personnel policy. In contrast to the standard conceptualization of discretion as 'agency discretion' (see, for example, Epstein and O'Halloran 1999), the emphasis in this article therefore is on the possibility for political principals to exercise discretion in the governance of bureaucratic agents rather than the possibility of bureaucratic

agents to exercise discretion in the implementation of public policy. The definition of formal political discretion begs two questions. First, where does formal political discretion apply, that is, what are the domains in which political discretion can be exercised? Second, because civil service legislation is unlikely to assign political discretion in a uniform way across domains, national boundaries or time, the second question refers to the extent to which political discretion can be exercised.

Personnel policy domains and degrees of formal political discretion

Let us begin with the domains of personnel policy in which political discretion can be exercised and discuss the extent of this discretion in order to provide a working definition of 'degrees of formal political discretion'. The relevant personnel policy domains here are: (1) the allocation of civil servants to the administrative organization; and (2) the determination of civil servants' levels of remuneration. Civil service management systems are commonly characterized as 'internal labor markets' (Silberman 1993; Wise 1996) defined as 'an administrative unit (...) within which the pricing and allocation of labor is governed by a set of administrative rules and procedures' (Doeringer and Priore 1971, pp. 1–2). Both personnel policy domains are therefore central to the study of internal labour markets, and both are distinguished in that they tend to require a residual decision-maker (Milgom and Roberts 1992, p. 330). As will become clear in the discussion below, other aspects of civil service systems can be integrated into these two domains.

The measures to determine the allocation of civil servants in the administrative organization are commonly referred to as ministers' powers of appointing civil servants. However, they equally apply to the promotion and lateral transfer of civil servants, the decision to recruit new members to the civil service, and their dismissal from the civil service. The key to an understanding of the concept of formal political discretion is the distribution of decision-making authority and the procedural constraints upon its exercise (figure 1). Sticking for the time being to the ideal perspective of a minister (rather than a government) as the principal of a civil servant, civil service legislation rarely delegates unilateral authority over different kinds of allocation decisions to a minister *per se*. Rather, civil service legislation may set out decision-making procedures in which the minister shares decision-making authority with other political actors, for example, the Prime Minister, and/or administrative actors such as a civil service commission. Moreover, a minister may not wield any direct authority over decisions that concern the recruitment, appointment, transfer and dismissal of civil servants because civil service legislation delegates such personnel policy authority to a civil service commission.

Secondly, the power of a minister to allocate civil servants may be restricted not only through the need to get involved in collective action, but also as a result of the procedural constraints a minister has to follow before taking a decision. Civil service legislation may predefine the pool of eligible

Decision-making authority to determine: – the allocation of civil servants within the administrative organization – remuneration levels of civil servants	Procedural constraints on the exercise of decision-making authority:	Degree of formal political discretion:
Members of the government	Low	Highest ↑ ↓ Lowest
	Medium	
	High	
Administrative actors	Low	
	Medium	
	High	

FIGURE 1 *Degree of formal political discretion over personnel policy*

candidates a minister can recruit or appoint in that they may be obliged to select candidates who meet certain standards of qualification or experience rather than be granted a free choice among all potential candidates. As an example of this, civil service legislation may oblige a minister to choose candidates, especially in the senior and higher ranks of the civil service, who hold a university degree. Similarly, civil service legislation may stipulate that a minister selects from only those internal candidates for senior office who have already been members of the civil service for a certain number of years. Obligations relating to civil servants’ political and professional activities may further narrow a minister’s freedom of choice. For instance, if the law prohibits the simultaneous holding of party office and an occupation in the private sector, potential candidates may incur opportunity costs of foregoing the benefits of activities outside the civil service (see also Huber 2000, p. 400). Finally, a minister’s discretion to transfer or dismiss civil servants may be constrained in that transfers require the consent of civil servants being transferred, dismissals are only possible following complicated disciplinary procedures, and civil servants have the right to appeal against the outcomes of such decisions. Consequently, even if a minister is assigned decision-making authority, in practice, the constraints may restrict the possibilities of exercising political discretion over allocation decisions.

The second domain of personnel policy over which a minister may be allowed to exercise political discretion refers to the determination of civil servants’ levels of remuneration. The characterization of civil service employment systems as internal labour markets and the importance of varieties of social dialogues (Bossaert *et al.* 2001) in determining the remuneration levels of members of the civil service does not seem to be conducive to the provision of political discretion. Civil service legislation, for example, does not necessarily define a residual decision-maker, since personnel policy outcomes may be determined by administrative rules such as promotions to a higher grade on the basis of seniority. Moreover, the determination of pay levels, either in form of collective bargaining or as a unilateral act of

parliament, does not leave room for the adjustment of remuneration levels of individual civil servants. Thus, the rules stipulated in civil service legislation appear to provide few opportunities to exercise political discretion over the determination of an individual civil servant's level of remuneration.

However, civil service legislation may also establish more flexible remuneration systems, providing ministers with the possibility of bringing more or less influence to bear on the determination of civil servants' levels of remuneration. First, if civil servants' remuneration is individualized rather than linked to a classification system, ministers may be authorized to set levels over the entire remuneration range. Second, within the context of a classification system, ministers may have the discretion to 'adjust' civil servants' levels of remuneration within a predefined range. For instance, ministers may reward performance and grant different kinds of monetary and non-monetary bonuses (Hood and Peters 2003). Moreover, if wages are attached to a classification system, ministers who are able to exercise a certain degree of political discretion over promotion decisions may reward civil servants by means of promotion to a higher grade in the classification system. At the same time, as in the domain of personnel allocation, ministers' discretion to intervene into the determination of civil servants' remuneration levels depends on the distribution of decision-making authority and the formal procedures and standards that have to be met before taking action. For instance, a well-designed performance evaluation system that delegates the appraisal process away from ministers and establishes the right for civil servants to appeal against its outcomes restricts ministers' opportunities to adjust individual civil servants' remuneration levels.

In summary, civil service legislation serves both to enable and to constrain the exercise of political discretion in the personnel policy domains of allocating civil servants to the administrative organization and determining their levels of remuneration. Two dimensions matter for the degree of formal political discretion. On the first dimension, it is simply a matter of who is authorized to take a personnel policy decision. Is it a minister who can decide unilaterally; does a minister have to share the authority with other members of the government or members of the civil service; or is it a body consisting of civil servants such as an independent civil service commission? Looking at figure 1, above, on the first dimension, civil service legislation assigns decision-making authority over personnel policy to members of the government and/or sets of administrative actors. The second dimension refers to the restriction upon the exercise of this decision-making authority. These restrictions can be understood as procedural constraints. They include the standards and formal procedures a minister or any other authorized set of actors has to follow before taking a personnel policy decision.

We can therefore define the degree of formal political discretion over personnel policy as the extent to which the government of the day, or its ministers, has the *possibility* to exercise personnel policy authority and the extent to which the exercise of this authority is subject to specific procedural

constraints. Although the US delegation studies do not make this distinction, the definition emphasizes the word 'possibility' because a high degree of formal political discretion does not mean that it is exercised in practice. Rather, a high degree of formal political discretion gives governments the opportunity to do so. As a result, we can understand the degree of formal political discretion built into civil service legislation as a possibility frontier enabling governments to use personnel policy instruments in the day-to-day process of civil service governance. A second step in the analysis of civil service governance and personnel policy is to what extent governments exercise the discretion at their disposal. The shaded area in figure 2 indicates to what degree governments can in fact exercise political discretion.

The logic adopted here has implications for the impact that newly adopted civil service laws can have on the practice of personnel policy in post-communist Europe. Such logic means that, strictly speaking, civil service legislation can only provide institutional conditions for the de-politicization of personnel policy if it incorporates a low degree of formal political discretion. Under these circumstances, civil service legislation creates the institution of a civil service in public law, defines clear boundaries for the civil service and establishes a set of rules that regulate the decisions in both personnel policy domains. Moreover, to the extent that decisions cannot exclusively be determined by administrative rules, non-political actors such as an independent civil service commission are authorized to take personnel policy decisions in order to safeguard civil service management from political interference. Finally, personnel policy decisions are subject to a dense web of formalized standards and procedures that serve to ensure the professional ethos of the civil service. The implication here is that governments have virtually no possibility to use personnel policy as an instrument to control their bureaucratic agents.

At the time of regime change in 1989/90, East-Central European personnel systems were effectively located at the other end of the continuum: no civil service law was yet in place that could limit the discretion of politicians to determine the outcomes of personnel policy. The absence of a civil service law means that no separate formal-legal framework exists that formally

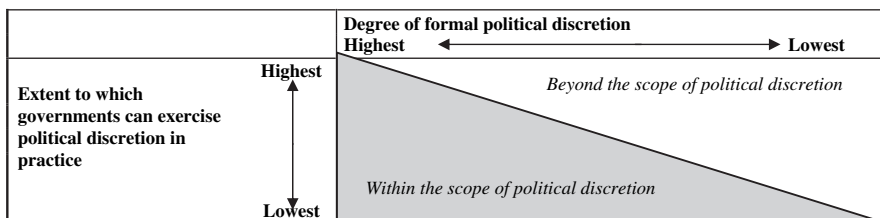


FIGURE 2 *The relation between the degree of formal political discretion and the exercise of political discretion*

defines the institution of a civil service. Instead, administrative personnel are typically regulated by labour legislation, which makes no distinction between employment in public administration and other forms of private and public sector employment. There is neither limited scope for the civil service nor a civil service management system that applies uniformly across public administration employees. Moreover, members of the government, as constitutionally defined heads of distinct administrative organizations are exclusive holders of decision-making authority over personnel policy domains. Effectively, there are no restrictions upon the exercise of this authority because of the general lack of formalization. Put simply, employment is a matter of will, subject to labour legislation only. As a consequence, governments and their ministers are completely free to use personnel policy as an instrument of control in order to induce bureaucratic compliance with political objectives.

The civil service record of East-Central European countries outlined above suggests that these countries have already travelled some way towards the establishment of professional, de-politicized civil service systems. Although all East-Central European countries have now adopted and implemented civil service legislation, an exception may still be provided by the Czech Republic. Civil service legislation was adopted by the Czech Republic in 2002 but only a few provisions of the Act came into force at that time and the general implementation of the Act has been postponed several times. At the time of writing, implementation was scheduled to commence in 2007 but is not expected to be complete before 2009/10. However, the theoretical discussion above implies that the adoption and implementation of civil service legislation does not necessarily lead to the de-politicization of personnel policy. Rather, civil service legislation only develops the capacity to de-politicize personnel policy if it institutionalizes a low degree of formal political discretion. By contrast, the higher the degree of formal political discretion built into civil service legislation, the more possibilities governments have to determine the outcomes of personnel policy and the lower the capacity of the legislative framework to prevent the politicization of personnel policy.

We can therefore hypothesize that the discrepancy between attempts to establish formal-legal frameworks governing the civil service and the continuing politicization of personnel policy that is commonly argued to be characteristic of post-communist civil service developments rests on two conditions. First, assuming that civil service reform attempts have led to the adoption and implementation of civil service legislation, these new formal-legal frameworks must have incorporated a comparably high degree of formal political discretion, that is, they must have institutionalized a set of discretionary instruments available to governments and their ministers. Second, governments and their ministers must also have used the discretionary instruments at their disposal to determine the outcomes of personnel policy. The section that follows focuses on a discussion of civil servants who are

employed by central government ministries. It assesses the above hypothesis by analysing the formal-legal basis of the civil service and the practice of personnel policy in post-communist Hungary.

THE INSTITUTIONALIZATION OF POLITICAL DISCRETION IN THE HUNGARIAN CIVIL SERVICE

Since 1990, Hungary's civil service has undergone four reforms. These reforms have included the passage of seven Acts defining and amending the legal governance structure of the civil service, including the ministerial civil service. The first reform was passed between 1990 and 1992. In May 1990, shortly before the investiture of the first democratic government, the Hungarian Parliament adopted the Temporary Act on State Secretaries that regulated the allocation of the top two ranks of the ministerial hierarchy, Administrative and Deputy State Secretaries. The first civil service reform (which also included those with the rank of state secretary) was completed in the spring of 1992 when Parliament adopted the Act on the Legal Status of Civil Servants (henceforth Civil Service Act). Up to 1992, central government employees (excepting state secretaries) continued to be regulated by the Labour Code of 1967. The second civil service reform was enacted in 1997. It included the adoption of the Act on the Legal Status of Members of the Government and State Secretaries, which replaced the 1990 Act on State Secretaries, and the amendment of the 1992 Civil Service Act. In 2001, the third reform led to a further amendment to the Civil Service Act. In 2002 and 2003, Parliament passed two further amendments of the Civil Service Act and this can be considered to be a fourth civil service reform, and another small amendment was made in 2005. The remainder of this section of the article analyses the civil service reform of 1990/92 in more detail before turning to the subsequent reforms of 1997, 2001 and 2002/3. For each case, it examines both the extent to which the legislative framework has allowed governments and their ministers to exercise political discretion over personnel policy and the extent to which they subsequently exercised that discretion in practice.

The first civil service reform and its effects on personnel policy

At first glance, the first civil service reform of 1990/92 established a civil service system that grants very little discretion to government and should thus provide few possibilities to politicize personnel policy. The 1992 Civil Service Act defines higher, middle and two further categories of lower ranking civil servants, distinguishes heads of departments, their deputies and heads of divisions as senior civil servants below the two top ranks of administrative and deputy state secretaries, and sets up rules and procedures that regulate personnel policy. According to the 1992 Act, the recruitment and admission of new civil servants is delegated to the administrative state secretary as administrative head of the ministry. Furthermore, the administrative state secretary's authority to recruit new civil servants is relatively

unrestricted; candidates have to meet only general entry criteria and a procedure for the recruitment and selection of new civil servants is neither properly formalized nor compulsory. Promotions are primarily seniority-based; there is very limited possibility for the administrative state secretary to accelerate promotions by means of a performance appraisal system, and lateral transfer requires the consent of the civil servants to be transferred. The dismissal of individual civil servants is restricted and can only take place as a result of a disciplinary procedure or when a civil servant has been judged to be incapable of performing his or her duties. In both cases, the administrative state secretary has the authority to take the final decision but they have to prove the case by means of strict procedures. In addition, the professional and political activities of civil servants themselves are restricted. Finally, civil servants' remuneration is linked for the most part to a detailed classification system with clearly defined rights for supplementary pay. At first sight, the civil service system that was in place by 1992 suggests that it institutionalizes a low degree of formal political discretion, delegating personnel authority away from members of the government to administrative state secretaries, and establishing standards and procedures that reduce the possibilities to exercise political discretion over personnel policy.

Closer scrutiny reveals that the two Acts passed in 1990 and 1992 provide governments with a number of discretionary instruments which they can use to determine the outcomes of personnel policy. First, in spite of the fact that administrative reformers sought to integrate the 1990 Temporary Act on State Secretaries into the Civil Service Act, this attempt failed. Instead, the allocation of state secretaries continued to be regulated by the 1990 Act on State Secretaries while the Civil Service Act refers to the governance of state secretaries only insofar as their remuneration is concerned. The 1990 Act on State Secretaries assigns the authority to appoint and dismiss state secretaries exclusively to members of the government and places only minor constraints upon the exercise of this authority. Formally, administrative and deputy state secretaries are selected by the prime minister and the relevant minister respectively. Candidates have to meet only general entry criteria such as Hungarian citizenship or the possession of a university degree. State secretaries are appointed for an indefinite period, something that suggests that they enjoy permanent tenure but that their appointment may be withdrawn by the government at any time without explanation. As a consequence, governments and their ministers are almost entirely free to select and de-select their state secretaries. New governments may choose between replacing or continuing to work with 'inherited' state secretaries. They may recruit new appointees either from the ministerial bureaucracy or from other settings such as organs of public administration under government control, the private sector, academia, non-governmental organizations or interest groups. Furthermore, governments may recruit new state secretaries from political parties and political institutions such as Parliament since the 1990 Act on State Secretaries merely requires appointees with a political

background to resign from their political posts before taking up a position as state secretary.

As argued above, although governments do not have to exercise the discretion at their disposal over the allocation of state secretaries, they may choose to do so. Thus, the rules governing the allocation of state secretaries lack the capacity to prevent a politicization of the top two ranks of the civil service. Following the initiative of the first post-communist Prime Minister, József Antall, a legislative framework was put in place that sought to separate ministers and political state secretaries as the political leadership of the ministries from administrative and deputy state secretaries as permanent, professional civil servants. Viewed through the lens of formal political discretion, however, the first reform of 1990/92 led to the establishment of a legislative framework that institutionalizes a high degree of formal political discretion relating to the governance of state secretaries. This allows Hungarian governments and their ministers complete freedom to fill the top positions in the ministerial hierarchy from both inside and outside public administration.

It is well known from studies of Western European senior civil services that governments have the power to appoint and dismiss senior officials. For instance, the appointment and dismissal of both the German *politische Beamte* and the French *directeurs d'administration* and *directeurs de cabinet* are subject to the discretion of the government of the day (see Goetz 1999; Rouban 2004). By contrast, the virtual absence of political interference into senior personnel affairs, such as in the UK, is an exception rather than the rule in Western Europe (Page and Wright 1999). The general evidence reported by studies of Western European senior civil services suggests that governments do not necessarily take full advantage of their discretionary powers. In Germany and France, for instance, many top officials are replaced after changes in government but most of the new appointees are recruited from senior civil service ranks rather than from a non-public administration background such as academia or the private sector or even from political parties (see Derlien 1988; Rouban 2004).

During the early 1990s, the recruitment of senior personnel policy in Hungary appeared to take the same course. The first democratically elected government, led by Prime Minister Antall from the centre-right Hungarian Democratic Forum (MDF), replaced the overwhelming majority of senior officials inherited from the last communist government led by Prime Minister Miklos Németh. These were replaced by senior officials who had already worked in the ministerial bureaucracy during the communist government. The initial personnel policy strategy of the Antall Government, however, was to remain an exception in post-communist Hungary because the Antall Government itself began to change its personnel policy strategy shortly after taking office. Many of the first generation of state secretaries appointed in 1990 left the administration and were replaced by officials who were either recruited by the Antall Government in 1990 or who were directly recruited

into state secretary ranks from other settings than the ministerial bureaucracy. Moreover, the closer Hungary came to the parliamentary elections in 1994, the more state secretaries were recruited who unambiguously had a political background: officials of one of the governing parties or members of parliament, for example.

After the formation of the first democratic government in 1990, Hungary witnessed three wholesale changes of government after the parliamentary elections of 1994, 1998 and 2002. In 1994, a Socialist-Liberal coalition under Prime Minister Gyula Horn from the Hungarian Socialist Party (MSZP), took office. In 1998, the Horn Government was replaced by a three-party National-Liberal-Conservative government led by Prime Minister Victor Orbán from the Alliance of Young Democrats (Fidesz) and, in 2002, another Socialist-Liberal coalition took office under the leadership of Prime Minister Péter Medgyessy. In 2004, Ferenc Gyúrcsány succeeded Medgyessy as Prime Minister of the Socialist-Liberal government and the 2006 elections confirmed for the first time an incumbent government in office. All three wholesale changes in government led to an almost complete substitution of all state secretaries in office. Most of the new appointees were recruited from other settings than public administration, and many of the new state secretaries had a party political background (see Fricz (2004) and Meyer-Sahling (forthcoming) for a more detailed discussion of senior personnel changes in Hungary). In particular, by appointing members of parliament and high-ranking party officials to state secretary positions, Hungarian governments have stretched the exercise of political discretion to the outer limits of what is allowed by the legislative frameworks. In accordance with the legal requirements, although these state secretaries resign from their official political posts, it can usually be assumed that they will continue to play important informal roles in party politics.

In Hungary, the possibility of exercising political discretion is neither limited to state secretaries nor to the domain of allocating civil servants to the ministerial organization. First, the rules governing the allocation of senior civil servants, that is, heads of departments, their deputies and heads of divisions, which make up levels three to five in the ministerial hierarchy, differ only marginally from the rules that govern state secretaries. The draft proposal of the 1992 Civil Service Act sought to minimize the influence of ministers over the allocation of senior civil servants, but the representatives of the governing parties in parliament were keen to retain political discretion by government over the appointment and dismissal of civil servants in managerial ranks below those of state secretaries. As a result, the composition of the entire group of civil service managers, making up approximately 20 per cent of the ministerial civil service, is subject to the discretionary powers of government and its ministers. In addition, during the 1990s, senior civil servants, in particular heads of departments (level 3 in the administrative hierarchy), like administrative and deputy state secretaries themselves, have increasingly become subject to the exercise of political discretion.

Second, as mentioned above, allocation decisions that concern civil servants in non-managerial ranks are subject to the discretion of administrative state secretaries, as administrative heads of the ministries rather than an independent civil service commission as can usually be found in Western European governments. In fact the first Hungarian reform of 1992 sought to establish an independent civil service commission responsible for the management of personnel policy. This proposal, however, was rejected during the preparation of the Civil Service Act. Line ministries opposed a civil service commission, since they feared losing control over personnel management. Moreover, during negotiations in parliament, the governing parties rejected the proposal – to a large extent because they could not agree on the appointment of a head of the civil service who promised the necessary expertise without having a reputation that associated them with the communist regime (Meyer-Sahling 2001). Instead, the Civil Service Department in the Ministry of Interior became responsible for civil service management; its powers, however, are limited to the administration of the personnel registers and the supervision of personnel policy in the line ministries (Nunberg 2000). In 2002, the Civil Service Department was reorganized as the Office of the Civil Service within the jurisdiction of the Ministry of Interior, but the Office ‘has little authority to compel compliance with the Act’s requirements, or to interfere with the ministry when it exercises the discretionary powers conferred to it by the Act’ (SIGMA 2003, p. 3). Consequently, because the appointment of administrative state secretaries may be politicized, administrative state secretaries are virtually unable to act ‘as a barrier to political interference with the departmental civil service’ (Vass 2001b, pp. 85–6). In other words, the 1992 Act delegates the authority to take recruitment and selection decisions away from members of the government to administrative state secretaries, but it does not establish provisions that can safeguard the political independence of the administrative state secretary him- or herself. Ministers may therefore politicize the allocation of higher and middle-ranking civil servants indirectly, that is, through the administrative state secretary, even if in practice ministers are not particularly known for displaying a great deal of interest in the allocation of civil servants further down the ministerial hierarchy.

Third, the 1992 Act creates options for ministers to unilaterally dismiss groups of civil servants by means of different kinds of ministerial reorganization and restructuring. This can happen, for example, if an administrative agency or unit is dissolved without a legal successor, if the activities of an administrative agency are terminated, or in case of reorganizing a ministry. It is primarily the latter option of reorganization that provides ministers with nearly complete discretion to dismiss civil servants: this occurs because ministers’ right to reorganize the internal structure of their ministry is explicitly included in the Hungarian Constitution. An example of the reorganization clause at work arose in the summer of 1998. A total of 125 civil servants were affected when departments responsible for regional development were

transferred from the Ministry of Environment to the Ministry of Agriculture. The new Minister of Environment seized the opportunity of reorganization to dismiss six senior civil servants and 12 higher and middle-ranking civil servants from the civil service altogether.

Fourth, when looking at the remuneration system that came into effect after 1992, it turns out that the standard remuneration system is paralleled by an important discretionary scheme since the 1992 Act grants ministers the right to define a 'personal remuneration' for civil servants displaying outstanding performance that is different from the standard remuneration system. In this case, the evaluation of 'outstanding performance' is subject to the judgement of the minister so that the Civil Service Act does not pose any specific restriction to apply this provision. Moreover, the budgetary constraint upon the use of the personal remuneration clause was very minor indeed, since ministers were free to determine the size of the ministerial wage bill and thus the use of discretionary remuneration instruments within the overall ministerial budget. As in the case of allocation decisions, Hungarian governments and their ministers may therefore offset the standard remuneration system by invoking the personal remuneration clause. In the Ministry of Transport, for example, which together with the Ministry of Justice is usually cited as the least politicized ministry in Hungary during the 1990s, the personal remuneration clause was applied for the first time in 1995. After the change of government in the summer of 1998, the proportion of ministerial staff on the Minister's personal remuneration list rose from 1 per cent to 6.5 per cent within six months and after the first change of minister in June 2000, the proportion rose again from 9 per cent to 16 per cent within six months. The use of the personal remuneration clause in a comparably de-politicized ministry such as the Ministry of Transport suggests that this discretionary instrument increasingly gained importance in setting civil servants' levels of remuneration.

In summary, the first civil service reform in post-communist Hungary confirms but also qualifies the reasons for the emergence of a discrepancy between attempts to establish professional, de-politicized civil services and the continuing politicization of personnel policy in East-Central Europe. The first reform of 1990/92 led to the adoption and implementation of civil service legislation. The new formal-legal framework established rules and procedures for both personnel policy domains that delegate personnel authority away from government politicians, especially to administrative state secretaries, and place procedural constraints upon the exercise of this authority. Compared with the communist era and the immediate period after the change of regime, the implementation of the 1992 Civil Service Act therefore presented a great leap forward for Hungary's civil service in the direction of a professional, de-politicized civil service because it made possible a practice of personnel management that would no longer rely on the exercise of political discretion.

At the same time, the first Hungarian reform shows that the adoption and implementation of civil service legislation is not sufficient to prevent a

politicization of personnel policy and that even the establishment of a set of low discretion provisions is not sufficient, in practice, for the de-politicization of personnel policy. Instead, the first reform demonstrates that the inclusion of discretionary instruments into civil service legislation may provide ministers with possibilities to influence civil service management. Governments and their ministers do not need to use these discretionary instruments in practice but if they do so they can effectively offset the role of low discretion provisions in shaping civil service management. The discussion of personnel policy in the aftermath of the first reform showed that governments have indeed made far-reaching use of their discretionary powers in both personnel policy domains. The first reform therefore confirms the hypothesis, formulated above, that the Act on State Secretaries and the first Civil Service Act institutionalized a high degree of formal political discretion and governments and their ministers made use of their discretion to influence civil service affairs in both personnel policy domains.

Subsequent civil service reforms and their impact on personnel policy

The subsequent reforms of 1997, 2001 and 2002/03 included new attempts to reduce the degree of formal political discretion over personnel policy and thus new attempts to institutionalize conditions for the de-politicization of personnel policy. The Public Administration Reform Program of 1996 especially, which prepared the ground for the second reform of 1997, made another attempt to establish an independent civil service commission and set the scene for later attempts to refine and tighten procedural constraints upon the exercise of political authority. New standards and procedures that seek to rationalize and de-politicize civil service management were indeed adopted in the three reforms since 1997. However, the reforms also resulted in the establishment of additional and the substitution of old with new discretionary instruments which, as outlined below, government politicians could and did use to influence personnel policy.

First, by including the possibility of establishing ministerial cabinets, the 1997 amendment of the Civil Service Act grants ministers the right to appoint political advisors in addition to the virtually unconstrained discretion over the allocation of senior civil servants and state secretaries. In fact, organizational structures equivalent to ministerial cabinets already existed before 1997, since ministers tended to establish directly subordinated advisory units in the ministries. The heads of these units were variously labelled chief of staff or chief of secretariat and were ranked as either deputy state secretaries or senior civil servants such as heads of departments. The possibility to establish ministerial cabinets can thus be understood as the formalization of the existing informal practice and it took until the reform of 2001 to include the formal limit that the size of a ministerial cabinet may not exceed 5 per cent of the ministerial staff.

Second, in addition to the personal remuneration clause, the 1997 reform introduced the notion of performance related pay into the civil service

system, this being intended to be a measure of public administration modernization. This provision, however, became a discretionary instrument in the hands of ministers and administrative state secretaries, who, since the early 1990s, in conventional terms, were political appointments (see above). Such performance evaluation depended exclusively on ministers' personal judgements; neither was it subject to any particular budgetary constraint. The possibility to grant a performance-related bonus makes it possible for ministers to raise the remuneration of state secretaries and heads of departments by up to 40 per cent and for administrative state secretaries to lower or raise the remuneration of all other civil servants by up to 20 per cent. As in the case of the personal remuneration clause, ministers also took advantage of this discretionary instrument. In the Ministry of Transport, for instance, almost all state secretaries and senior civil servants had enjoyed some level of performance bonus since shortly after the discretionary performance related pay scheme came into effect in 1997. As a consequence, by the end of 2000, approximately one-third of ministerial staff was either on the personal remuneration list of the minister or could take advantage of the minister's performance bonus.

Overall, the Public Administration Reform Programme of 1996 became the handbook for the introduction of rules and procedures which were aimed at limiting the exercise of political discretion. First, the 1997 reform added the requirement for state secretaries and senior civil servants to pass a special public administration examination within one year of their appointment. The special examination is regulated by a Government Decree that came into force in 1998. It emphasizes legal knowledge and assesses civil servants in areas such as European Union law, Hungarian constitutional law, the workings of public administration, its modernization, and the budgetary process. Although there is evidence that the special examination tightens the entry criteria for senior officials, it does not pose a serious constraint upon the selection of state secretaries and senior civil servants, since it effectively assesses whether or not a new appointee has become acquainted with his job responsibilities in the area of legal knowledge within one year after his appointment. Moreover, thus far, there are no reports that a state secretary or senior civil servant has been dismissed due to the failure to pass the special public administration examination.

Secondly, both the reform of 2001 and 2002/03 established additional procedures and standards that sought to narrow the scope for the exercise of discretion over the recruitment and appointment of civil servants. New recruits need to show evidence of foreign language skills. Ministers can only appoint a civil servant to the rank of head of department if they have worked for at least one year within the same ministry; otherwise, it has become mandatory that heads of departments are recruited by open competition. As a result, civil service legislation makes it impossible for ministers to directly recruit outsiders into the rank of head of department, even if it is not unusual for job advertisements to be tailored to the candidate most desired by the

appointing minister. Moreover, it should be noted that the same constraint of recruitment by open competition is not placed on state secretaries, deputy heads of departments or division heads. Thus, with the exception of heads of departments, ministers have effectively retained full discretion to recruit officials from other settings than the ministerial bureaucracy and to insert them into senior positions.

Thirdly, the third reform of 2001 especially introduced major changes in the domain of remuneration policy. One of the main objectives of the 2001 reform was the restructuring of the civil service grading system and the raising of civil servants' wages, since their wage levels had seriously fallen behind those in the private sector. In this context, the amendment modified the performance appraisal system in a way that has made it very difficult to exercise political discretion over the performance-related component of civil servants' remuneration. Under the new performance evaluation system, performance is evaluated annually: by the minister in the case of state secretaries and by heads of departments and by the administrative state secretary in the case of all other civil servants. Performance criteria are also defined one year in advance; remuneration levels can either be lowered or raised by up to 20 per cent and since 2005 up to 30 per cent; and civil servants have the right to appeal against the outcomes of their appraisal. While this scheme does not eliminate the possibility for ministers to exercise political discretion over a performance-related adjustment of remuneration levels, ministers have effectively forgone a good deal of their former discretion in that they can no longer determine a performance bonus on the basis of their subjective judgment. Moreover, the 2001 reform deleted the personal remuneration clause from the Civil Service Act. As a result, the 2001 reform significantly reduced the degree of formal political discretion in the domain of setting civil servants' levels of remuneration.

The 2001 reform, rather than entirely de-politicizing the domain of remuneration policy, did introduce a new discretionary scheme for ministers and thus did not close all the loopholes to influencing civil servants' levels of remuneration. Under the new rules, ministers gained the power to grant a one-off bonus payment to civil servants. The one-off bonus payment was initially limited to six times the monthly salary of a civil servant; this restriction was eventually lifted as a result of the 2003 reform. In addition, one has to bear in mind that the rules governing the promotion, or more generally the assignment of civil servants to senior ranks, provide another loophole for the exercise of political discretion over remuneration policy. Because governments have retained decision-making authority over the allocation of senior officials, they can still create new senior positions or promote civil servants to senior ranks, something which leads to assignment to a higher rank on the classification system and hence a higher level of remuneration.

Finally, a major innovation of the 2001 reform was the creation of a senior executive service of 300 staff as a 'corps of experts' under the leadership of the prime minister. Members of the senior executive service enjoy a

privileged status among civil servants. Their level of remuneration may be up to three times higher than the remuneration level of officials in equivalent ranks. Furthermore, opportunities for dismissal from the senior executive service are more restricted. If an assignment is revoked, members of the senior executive service are put into a stand-by position for up to five years and remain on the payroll of the government. Members of the senior executive service are selected from the group of state secretaries and senior and higher civil servants. The Act leaves it to the government whether or not to adopt a Government Decree that defines specific standards and procedures for the recruitment of senior executive staff. As a result, the prime minister enjoys virtually complete freedom to select members of the senior executive service, and Prime Minister Orbán exercised this right before the approaching parliamentary elections in the spring of 2002, without the definition of specific entry criteria, when most of the 300 available posts were filled.

One of the first legislative actions of the Medgyessy Government that took office in the summer of 2002 was to modify the provisions governing the senior executive service. The new government looked for ways and means to avoid the payment for five years for those members of the senior executive service who had been closely affiliated to the outgoing center-right government while at the same time maintaining some level of protection against the political dismissal of its 'own senior officials'. The solution has been threefold. First, state secretaries automatically become members of the senior executive service upon their appointment. Their admission to the senior executive service therefore no longer involves the exercise of any political discretion. Second, other civil servants are only eligible for membership after at least five years of experience in public administration, something that implies a very effective constraint upon the exercise of political discretion. Third, the period of guaranteed tenure after an assignment is revoked has been reduced from five to two years. This fourth reform has therefore considerably reduced the possibilities for the prime minister to exercise discretion over the composition of the senior executive service; in addition, the potential politicization of the senior executive service, when compared to other senior civil servants, is lower. At the same time, it may be said that membership rights in the senior executive service have become equivalent to a generous severance pay: two years' salary rather than a right towards permanent tenure; secondly, the senior executive service in the main has become a vehicle for enhancing the remuneration levels of state secretaries.

In conclusion, the civil service reforms of 1997, 2001 and 2002/03 introduced major changes to the civil service system. The reforms further differentiated the structure of the civil service by creating a senior executive service and ministerial cabinets; they sought to rationalize the system of recruitment and selection; and they modified the remuneration system by reforming the civil service grading system and by introducing provisions for performance-related pay. In terms of political discretion, the changes were more significant in the domain of setting civil servants' levels of remuneration.

The reforms of 2001 and 2002/03 especially delegated further authority away from government politicians, mainly by gradually eliminating the discretionary instruments that were at the disposal of ministers and by tightening the standards and procedures upon the exercise of authority by administrative state secretaries. The possibilities for ministers to exercise political discretion in the area of remuneration policy have not been eliminated but compared with the 1992 civil service system they have been significantly reduced.

By contrast, in the area of the allocation of civil servants, the reforms carried out between 1997 and 2003 have been less effective in addressing the tension between provisions that grant little scope for the exercise of political discretion and provisions that allow governments and their ministers the use of highly discretionary instruments. Government politicians have retained discretion over the appointment and dismissal of civil servants in managerial ranks and they have also continued to use the discretionary powers at their disposal. Moreover, governments and their ministers have retained the right to indirectly influence civil service management further down the ministerial hierarchy through the administrative state secretaries but this discretion has proved to be less relevant in practice. At the same time, attempts to establish an independent civil service commission have remained unsuccessful. As a result, even if we take into consideration the fact that four civil service reforms in Hungary have almost continuously improved the institutional conditions for the de-politicization of personnel policy, Hungary's civil service still presents a discrepancy between attempts to establish professional, de-politicized civil services and the continuing politicization of personnel policy, especially when it comes to the appointment and dismissal of civil servants at the managerial level.

CONCLUSION

Verheijen and Rabrenovic (2001, p. 416), in one of the first comparative studies on the emerging politico-administrative relations in Central and Eastern Europe, concluded by asking: 'Laws: how much can they help?'. According to the country studies in Verheijen's volume and an earlier comparative study on the emerging civil service systems in Central and Eastern Europe (Verheijen 1999), the relations between politicians and bureaucrats in the region were widely characterized by instability and politicization. Failures and delays in the area of passing civil service reforms and implementing civil service legislation were commonly identified as key factors impeding the successful de-politicization and professionalization of Central and Eastern European civil services. By 2001, most countries of Central and Eastern Europe had finally passed their first civil service laws and were in the process of implementing them. But this was also the time when scepticism with respect to the role of civil service legislation was growing, for one thing, the adoption and implementation of civil service laws did not seem to have

the expected effects: with or without civil service laws in place, there were few signs that indicated a trend towards less politicization of personnel policy, especially at the level of the senior civil service. Hence the question: 'Laws: how much can they help?'

This article has applied the body of literature that applies the new economics of organizations to politician-bureaucrat relations in order to derive a threefold answer to this question. First, it has argued that engaging in civil service reform and implementing civil service legislation is neither a necessary nor a sufficient condition for the de-politicization of personnel policy. The capacity of reform legislation to do this depends on the degree of formal political discretion built into civil service legislation. Second, civil service laws can, on their own, develop the capacity to prevent a politicization of personnel policy, but the conditions for de-politicization through legal means are difficult to meet because of the requirement that laws institutionalize a low degree of formal political discretion. This means that a formal-legal infrastructure for civil service management has been put in place that delegates authority over personnel policy away from government politicians and subjects the exercise of personnel authority to a dense web of formalized standards and procedures in order to reduce the potential for political interference. As a consequence, civil service laws eliminate or minimize the availability of the discretionary instruments that government politicians can use to determine personnel policy outcomes. Third, if civil service laws incorporate a high degree of formal political discretion, personnel policy is not necessarily politicized. Instead, the law provides the institutional conditions for the politicization of personnel policy. But whether or not and the extent to which – and why – government politicians do intervene into personnel policy are separate questions and require separate answers.

For East-Central Europe, this logic has meant that the expectations initially placed on the passing of civil service reforms in post-communist Europe were too optimistic. In fact the adoption and implementation of civil service laws were only the first step towards the establishment of a professional, de-politicized civil service. Moreover, practice very much accorded with theory in this case: the first generation of civil service laws that were adopted and implemented institutionalized a high degree of formal political discretion and post-communist politicians made far-reaching use of the discretionary powers at their disposal. The Hungarian case has largely confirmed, but it has also qualified, these expectations. On the one hand, it has shown that the adoption, implementation and revision of civil service legislation have been insufficient for a de-politicization of personnel policy to occur. As has been discussed, Hungary's civil service has undergone four reforms since the change of regime in 1989/90. Each reform has led to the adoption and revision of civil service legislation. The reforms have also institutionalized various discretionary instruments, which governments and their ministers can and do use to politicize civil service affairs. In short, despite several

institutional reforms, the capacity of the formal-legal framework to prevent a politicization of personnel policy has remained limited.

On the other hand, this analysis also demonstrates that the institutional conditions for the de-politicization of personnel policy in Hungary have improved over time. The very first reform of 1992 set up a civil service system that implicitly had the potential to function as a decentralized, closed career system. This potential, however, rested on the assumption that government politicians would not use the discretionary instruments that were also incorporated into the formal-legal framework. Subsequent reforms have further shrunk the freedom of governments and their ministers to influence civil service management, either by eliminating discretionary instruments or by tightening the procedural constraints upon the exercise of political authority over personnel policy. As a result, the continuous politicization of personnel policy has remained extremely relevant for the appointment and dismissal of civil servants in managerial ranks. However, it has become less relevant in the area of remuneration policy and has generally been less important for civil servants further down the ministerial hierarchy. If this trend of incremental capacity-building continues, Hungary, like other East-Central European countries that have embarked on a course of civil service reform, may be well on track for the emergence of a professional, de-politicized civil service. But as in the case of Western Europe (see Raadschelders and Rutgers 1996), we have to conclude that it takes more than 15 years to complete this process.

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