Open letter to the Prime Minister and members of Government regarding the Law on Public Administration Officials

Dear Prime Minister, Dear Deputy Prime Ministers, Dear Minister, Dear Members of the Cabinet,

This open letter addresses the issue of preparation the "Law on legal relations and education of employees in public administration legislation" (hereinafter Law on administration officials).

The act under preparation should be the foundation pillar of needed professionalization of state administration, the fulfilment of the Constitution (Article 79), the elimination of the situation when the Czech Republic stands out as the only EU member which has no legislation regulating the legal status of state administration employees and, least but not least, an instrument limiting the risks of corruption in public administration.

Being aware of the importance of this legislation, this government has noted in its programme statement:

"The government (shall seek to) depoliticize the public administration by introducing modern principles of control of the bodies of public authority and methods of quality control. The government shall present a proposal for unified legal regulation of the rights and duties of public administration employees, which will make clear distinction between political appointees and civil servants, and ensure depoliticisation, professionalization and stabilisation of public administration."

Similarly, the Government Anti-Corruption Strategy for the Years 2011 and 2012, approved by the government resolution of 5 January 2011, no. 1, calls in its Objective 1.7 for *"enhancing the performance and stability of public administration by means of a new law on public administration employees"* and stipulates that the "*government be submitted a consultation paper on the proposed Public Servants Act, provisions of which will make a clear distinction between political appointees and civil servants , determine a systems of remunerations, stipulate means making the public administration less political, and more professional and stable, and determine a system of remunerations".*

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The Ministry of the Interior has recently submitted the draft Civil Servants Act to other ministries to make comments and suggestions

The undersigned NGOs are convinced that the submitted draft of the Public Servants Act does not meet the requirements posed by the Government Programme Statement and the Government Anti-Corruption Strategy.

To begin with, it fails to ***ensure "depoliticisation"*** and fails to make **"a clear distinction between political appointees and civil servants"**. The draft legislation does not outline the demarcation line between political appointments and clerical jobs and reacts to the demand for an institutional solution of depoliticising the state administration by proposing a questionable "determination of maximum possible legal protection of civil servants" (see consultation paper). This omission most acutely demonstrates itself in the definition of the role of deputy minister, presented here as a civil service category but not outlining the service duties (e.g. public tenders) thereof. The draft legislation does not introduce a uniform, apolitical personal management of state administration or propose any administrative hierarchic structure, which would control, supervise and guarantee the implementation of the Public Servants Act. There is the absence of a higher administrative body, such as a General Directorate of Civil Service and of structures for the various public service offices, such as a "personnel manager". The role of "state secretary" is insufficiently defined and his/her appointment does not include sufficient guarantees. Hence the implementation of the Public Servants Act remains in the hands of political figures.

In regard of the regulation objectives, this solution is totally insufficient and therefore unacceptable, as it does not provide public servants with adequate protection against political influences and cannot be seen as the fulfilment of EU accession criteria.

Furthermore, the draft legislation does little to make the public administration ***"less political, and more professional and stable"***. The career code conditions are not properly explicated and there is no linkage between an employee's evaluation and his/her remuneration and career growth. The proposal introduces four new categories of public administration employees, but especially the distinction between "officials" and "employees" has no logic in the field of state administration. It excludes from the category of "officials" the whole areas of implementation of European funds, public procurement IT systems (with billion-crown contracts involved), as well as personnel management.

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Regardless of the practical snags of this classification and potential conflicts over assigning personnel to the various categories, the proposed concept is completely at variance with the stated anticorruption character of the proposed legislation. Last but not least, the legislation does not include any further elements of stability except for an extra week of holiday.

Finally, the draft legislation **fails to determine a modern and responsible *"system of remuneration ".*** In the sphere of remuneration (Chapter VII of the draft), the proposed regulation adopts a totally ill-conceived approach, whereby instead of determining stability elements consisting in increasing the entitlement component of salary at the expense of the discretionary component it takes a very unusual path of support of contract pay. Moreover, the performance-based evaluation of officials and civil servants is not geared towards their remuneration. This approach further enhances the recently detected negative and potentially corruptive trend of totally nontransparent bonuses to selected employees.

One of the arguments in favour of a public servants act is its lower cost in comparison with the service act. But neither variant is supported by the calculation of merits of a legal regulation ensuing from an increased efficiency of public administration. For example, there is no proof that the professed improvement in the professional performance of public administration will dispense with the need of outsourcing many legal services, reduce the fluctuation of officials, thus cutting recruitment and training costs, i.e. cutting the costs of inefficiently assigned public contracts. The consultation paper states that by and large, it is not possible to exactly evaluate the impact of regulation on costs. We are convinced that the promoter should exert more effort to calculate such impacts. Such calculation is all the more necessary as the variant of single legal regulation is preferred especially due to the higher costs of introducing the service act.

The proposed legislation will not introduce a greater stability and better professional standards into the discharge of state administration or self-administration. The core idea of the proposed legislation consists in extending the present Law 312/2002 Coll. concerning officials of territorial self-governing units. This approach (unique in Europe) unilaterally emphasises the common features of state administration and self-government (e.g. administrative chores) but ignores significant differences between the two, entailing different competences and character of work, as well as the fact that officials of the state have a single employer, unlike an estimated 6,000 employees of the officials of self-governing units. A single solution enhances the undesirable tendency towards

weakening the role of state and strengthening the particular and selfish interests of public offices.

Moreover, the recent developments in the Prague City Hall (OpenCard case), the Central Bohemia Regional Office (David Rath affair) or the Ústí Region (Regional Council affair) have shown that Act 312/2002 Coll. has in practice not increased the legal protection of officials against political influences.

One can hardly speak about a comprehensive, system-based precaution, as it ushers chaos into the current state of affairs, or worse still, encourages the legalisation of the present-day dysfunctional mechanisms, asserted in everyday practice.

At the same time it should be noted that by adopting the resolution in its present form, the government can impose at this stage a series of personnel policy precautions on public administration offices without requesting legal authorisation. Thus, compulsory tenders for state administration positions and standardised performance evaluations or requirements for education could be adopted and utilised almost instantly.

The proposed regulation should be therefore rejected and a new political specification drafted in order to better reflect the needs of effective management of the state and thereby also of the abovementioned Programme Statement and Government Anticorruption Strategy.

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