

When a Market Runs a Hierarchy: Retrenchment of Bureaucratic Practices in Lithuanian Uniformed Services

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Abstract

Some public administration literature that focuses on public administration reform indulges in constructing grand narrative theories such as New Public Management (NPM), or New Governance (NG). The most recent such theory that has been gaining attention over the past decade is the Neo Weberian State (NWS). The content of the theory with regard to its practical implication when it comes to reform is still unsettled. However, one key assumption behind the NWS is that reforms should be handled with care, as they may undermine the very institutions that have brought Western societies to the levels of their development they are in now. NPM's drive to increase efficiency, and NG's – democracy from the point of view of NWS is impossible if reforms deconstruct institutions that ensure the protection of the public interest and rule of law. NWS's critique of post-communist reform efforts in the new eastern EU member-states is a case in point suggesting that leapfrogging the construction of a professional bureaucracy is ill-advised and does not lead to politically desired outcomes. In this paper we aim to evaluate which path of reform may lead to the best outcomes in a particular area of the public service – two non-military uniformed services of Lithuania – customs and penitentiary. These services have to a large degree avoided sweeping reforms throughout the independence period, in both cases – a soviet institutional legacy is also a factor. Both Customs and the Penitentiary service are suffering from multiple corruption scandals and very low public trust levels. These services are continuously in the crosshairs of reform, but few have been clearly articulated, even less so – implemented. Applying NPM to uniformed services, due to the nature of their functions was complicated, so as reforms in the 1990s and 2000s went along in the other sectors, policy-makers have largely left uniformed to their own devices, and this has led to retrenchment of the bureaucratic principles as would

historical institutionalisms theory predict. We suggest that NPM-oriented governance avoids intervention in areas where NPM principles are hard to apply, leaving such areas without proper attention to continue down undesirable development paths. When the deconstruction of a hierarchy appears impossible, higher order governance needs to remain modelled as hierarchy as well. NWS in this case does offer a management modernization agenda, which could keep state institutions in step with social, technological, and economic developments.

Keywords: uniformed services, civil service, public governance in Lithuania.

Introduction

Lithuanian public service regulation is very complex – the Law on Civil Service (Žin., 1999, Nr. 66-2130) covers only a minority of public employees. On average agencies that conduct “public administration functions” as mandated by the Law on Public Administration (Žin., 1999, Nr. 60-1945) have a staff of 60 percent civil servants, and 40 percent of other employees. In addition, there are multiple agencies that conduct activities akin to public administration. But their legal status allows such organizations to perform their functions without needing to ensure the status of civil servants to their employees. Statistics on how specific government functions relate to the status of employees that perform them are rather vague. In large part this is due to the fact that the Law on Public Administration defines administrative functions vaguely, leaving room for ample interpretation what it is that civil servants should or should not do. Public service providers, such as schools, hospitals, etc. almost invariably employ their staff under the Code of

Labor (TAR, 2016, Nr. 23709). Another category of public servants are the uniformed service members. There are services, which in Lithuania are classified as statutory (Lith. *statutinės*). Another service – the military (Lith. *karo tarnyba*), is legally distinct and set apart from all others. The distinctions between statutory services and the civil service are complex and highly dependent on the varying paths of development of regulation of these services. The statutory services are to be part of the civil service (or in direct translation – state service, Lith. *valstybės tarnyba*) insofar as they use the Law on State Service to cover bits and pieces of relevant regulation. However, in practice this mostly means that over time statutory services have sought to resolve all relevant regulations in statutes. Many of these services as a result fall out from the scope of the Law on State Service, and as a result no longer need to provide data to the Department of State Service on various metrics of their services.

This tendency for regulation of uniformed service regulation to fragment and grow distant from the civil service is in line with provisions of NPM. However, a closer look at the content of statutes themselves suggests that at higher order of regulation the retrenchment of outdated practices can occur at lower level. Neither the government, nor the parliament over the three decades of Lithuania's modern state made efforts to coordinate the content of Law on State Service and various statutes (Smalskys and Minkevičius, 2013). Furthermore, the Law on State Service does not list the various statutory services, leaving ample discretion to the parliament to set particular regulation in the statutes. The multiplicity of statutes and the near absence of co-ordination of regulation and management practices among these services creates byzantine complexity and is counter to nearly all theoretical insights in public administration.

Lithuanian political establishment has never explicitly espoused a holistic public administration reform philosophy, e.g. along the lines of NPM. Nonetheless, many of the reforms that were conducted, especially in the period of 2008–2012, government fell clearly within the scope of NPM (Bileišis, 2012). Nonetheless, NPM reforms steered clear of uniformed services regulation. These continued to change incrementally, usually on the initiative of senior leaders of these services. In this paper we attempt to evaluate the current condition of uniformed service regulation from a neo-Weberian State perspective. This model is an alternative to NPM, which shifts focus from managerial practices in the public organization to the regulatory environments in which such organizations operate.

We hypothesize that the current situation of regulation of uniformed services cannot encourage improvements in overall performance of the government. We conducted a review of regulation changes in Customs and Penitentiary services over a period of last few years. Our analysis attempts to map the various regulations and offer a conclusion on what changes would improve the performance of uniformed service. For this, we use a dichotomy of NPM and NWS (Lynn, 2008), as an analytical tool. However, we are careful not to claim that applying principles of NWS is necessarily the best solution to problems outlined (see Dunn and Miller, 2007).

Research question. What is the state of regulation of uniformed services in Lithuania from the perspective of neo-Weberian State?

Aim. To define the desired scope of regulatory co-ordination and discretion with regard to uniformed service in Lithuania.

Uniformed services – how are they distinct?

To begin with, uniformed services have a dress code, which makes officials instantly recognizable as representatives of the state. In most instances these services have originated and perform functions which are at the core of modern state conception, such as defense or law enforcement (Peters, 2014). This core is highly resistant to the implementation of market-type solutions as proposed by NPM, as services hold monopolies for their core competence by design as an expression of state power, and dilution of that power can potentially undermine that power at the peril of the state. Equally, informal, or network-based solutions are hard to apply, as uniformed services are coercive in their nature, and a distance from other organizations is desired for both information security and effectiveness of such services. All uniformed services in the Soviet system were militarized and referred to as statutory (Drechsler, 1995). Lithuania in the early 1990s opted to keep this concept, although it clearly distinguished statutory and military service. However, the variety that ended up being included in the statutory category is immense and this led to the concept becoming too vague to be useful as a tool for regulation.

The 1999 edition of the Law on State Service identified the statutory service-member by listing their various subcategories and indicating the existence of a special law for each category. This situation resulted in the separate laws never receiving legislative attention from the point of view of mutual consistency, as parliaments would consider each law separately, and more statutory services were moved from the policy area of the Ministry of Interior to other ministries. This specifically was the case

with the Penitentiary service and Customs, which respectively fell under the area of responsibility of Ministry of Justice and Ministry of Finance. Although the diplomatic service does not have uniforms, it is recognized by the law as statutory; while some other institutions, such as the Prosecutor's office, have never been categorized as statutory. The service has had distinct regulation outside the scope of Law on State Service all along. Later, new institutions with statutes came about, e.g. the Special Investigations Service, an independent law enforcement agency outside the executive branch of the government, and focused on anti-corruption activities. The current edition of the Law on State Service offers only one key element which distinguishes a civil servant and a statutory servant. Statutory servants have authority over persons outside their organization in their line-of-duty. But even in such cases, this applies only in contexts where physical force may need to be used. Other forms of coercion, e.g. various inspection authorities employ civil servants with authority to conduct broad activities (such as to enter premises of private persons) without having a statutory status.

In summary, statutory services are distinct from the civil service conceptually in two dimensions: (i) specialized regulation; (ii) broad coercive powers. Closer look at the specialized regulation suggests that many of the differences are limited in scope; however, generally statutory services have greater social benefits, especially early retirement and explicitly demand highly formal interactions between officials.

What is the place for uniformed services in public administration theory?

It is well known that agencification is a doctrinal element of NPM (Overem, 2012; Marcinkevičius and Rauleckas, 2016). Fragmented executive agencies with narrow tasks make it easier to measure performance, reduces pyramids of hierarchies and, it is hoped, releases creativity and initiative. In EU-acceding post-communist countries agencification became wide-spread in 2000s (Smalskys and Skietrys, 2008; Raipa, 2014; Drechsler and Randma-Liiv, 2015). In part this was a response to "administrative capacity" standards imposed by the EU, as such agencies may participate in Europe-wide networks and both increase professionalism and gain tools to fight off politicization in their home countries. However, even the smallest of statutory organizations dwarf many of the larger civilian agencies. Furthermore, uniformed services because of their proximity to the sovereign core of the state are relatively sheltered from EU standards, even in the contexts of Union matters, such as the Customs

Union. Management aspect of the service is rarely debated at the EU level, it is mostly debated at the level of treaties, which outline policy where co-ordination occurs.

In the case of post-communist European states it is often hard to distinguish where free-market formation ends as part of the process democratization, and NPM begins as a reform agenda within the democratic states. The two processes coincided and central European nations became democratic at the precise moment when the Western governance model was in flux. This conflation leads to a formation of attitudes that effective economy is somehow related to weak institutions. Law enforcement structures that were constructed on soviet practices, infrastructure and to a large extent personnel in the early 1990s in this context were neglected by policy-makers, and leaderships in these organization, rather than espousing NPM, perpetuated what they knew the best – good old soviet-style bureaucracy (Pollitt, 2008).

Some researchers in Central Europe see the concept of neo-Weberian state (Randma-Liiv, 2008; Pollitt and Bouckaert, 2010; Drechsler, 2014) as a solution to the conflation of NPM and post-communism that resulted certain governance practices to paradoxically retrench despite an ideological drive to root them out. The view is that the state needs to have the tools to set policy, and that these tools need to be expressed through hierarchies. The uniformed services appear to be the hot-spot of the problem, where policy makers have left these services to follow their paths in the belief that market forces will sort things out, only to discover that in areas of governance where market forces do not apply, no sorting out can occur. Uniformed service reform may be far more responsive to NWS, rather than NPM.

Looking into the details: how are uniformed services organized?

Table 1 lists various regulations that form the legal basis of statutory services. There is a complex relationship in various service branches between statutes which detail service conditions and laws under which these services operate. Some of the laws include details that others have in separate statutes. In the case for Prison Department there is no particular law, as penitentiary functions cover a large spectrum of activities, including social service. The Ministry of Interior and its organizations share a single statute, whereas the Ministry of Defense has a statute for civil servants largely outside the scope of law on civil service. It is important to note that Law on State Service only applies in cases which statutes

do not cover, while further the Code of Labor, it is hoped, covers all other gaps that may occur in service relations. The various statutes over time have created a compartmentalized system where mobility of civil service members is next to impossible as ranks and seniority will not be recognized. Furthermore, most statutes regulate the minimum duration in service for full-benefits and change service negates durations in other services.

Further, we have looked into two services (according to three specific regulations – Statute of Service in the Prison Department (TAR, 2014, Nr. 21326); Statute of Service in Customs (Žin., 2003, Nr. 64-2881); Customs Law (Žin., 2004, Nr. 73-2517)) which were moved from the area of responsibility of the Ministry of Interior in the process of EU accession. These services have very low approval rates and are small compared to military service or interior service: penitentiary service (prison department) and customs. Their larger counterparts in the Ministry of Interior and Ministry of Defense areas of responsibility can compensate the lack of mobility and professional opportunities in across uniformed services and the civil service by share size of their own service. This

option is not readily available to prison guards and customs officers.

In Table 2 we have summarized our findings on the differences of regulation of these services that demonstrate our claim of these institutions being bureaucratically organized and highly fragmented. The similarities we found are superficial insofar as they meet the standards we outlined above that in principle distinguish uniformed and civil services. Whereas there are pronounced differences in all major areas that establish details of service regulation. We, however, were unable to find reasoning in the argumentation submitted to the parliament before votes on the relevant laws and statutes how specific differences are expected to impact the performance of these organizations. It is clear that when motions for legislation are made, no attempts at coordinating the conditions of service are made, and the minor discrepancies between regulations have been ever expanding since the early 1990s. However, at the core of regulation lie the principles, which have not evidently been affected by NPM. In our opinion, this is a clear indicator of weakness of the state’s abilities, as different services operate separately, and it is easier for officials to move to work in private sector than to another service.

Table 1

Regulations of various uniformed (statutory) services in Lithuania

Service branch	Statutes that regulate the service	Branch-regulating laws
Prison department	Statute of service in the Prison Department	<i>None</i>
System of Defense	Statute of Military service Statute of Civil Service in the Military	Law on System of Defense and Military Service
Police Department	Interior Service Statute	Police Law
State border guard service		Border Security Law
VIP protection department		Law on VIP Protection Department
Financial Crimes Investigation Service		Law on Financial Crimes Investigation Service
Public Security Service		Law of Public Security Service
Other organizations under the Ministry of Interior (most notably Fire and Rescue Service)		Law on Fire Safety Law of Civil Protection
Professional training organizations under the Ministry of Interior		
Customs	Statute of Service in Customs	Customs Law
Special investigations service	Statute of Special Investigations Service	Law on Special Investigations Service
State Security Department	<i>defunct</i>	Intelligence Law
Diplomatic service	<i>none</i>	Law on Diplomatic Service

Source: developed by authors.

Penitentiary service and customs differences and similarities

Similarities	Differences
Coercive authority over non-members of the organizations	System of ranks
Greater discipline requirements than civil service	System of remuneration
	Social guarantees and benefits
	Age census
	Qualifications for service requirements
	Health and fitness requirement

Source: developed by authors.

Conclusion

From the NWS perspective, the regulation of uniformed services of Lithuania lacks coordination. The implementation of review of terminology, the creation of a common system of social benefits, and remuneration from the point of view of NWS are desired and would lead to more effective policy implementation. Consecutive Lithuanian governments declared intents to move to more efficient, NPM-like governance modes. But these intentions were not followed through at the level of agencies. Changes in organizational subordination of customs and penitentiary services have not yielded changes in the organizational processes, which could affect the efficiency of these organizations. Our findings corroborate the idea that it is only reasonable to expect that a clearly formulated and expressed top-down common policy would lead to better outcomes and growth of capacity and competence in uniformed services, whereas the NPM reforms have produced opposite results so far in areas of responsibility of uniformed services. Several clear steps can be taken with little effort to achieve significant results at the level of regulation, which could improve political decision-making in the future: (i) clear and strict definition and use of terminology across the regulation of public employment; (ii) requiring new regulation initiatives to aim at harmonization, i.e. to introduce a *rule of thumb* to align regulation. Exceptions to that rule should be specifically and persuasively explained how the differences will improve not only the performance of the service in question, but also the overall effectiveness of state institutions.

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Kai rinka valdo hierarchijas: biurokratijos ištvirtinimas Lietuvos statutinėje tarnyboje

Santrauka

Straipsnyje analizuojama esama statutinių tarnybų reglamentavimo situacija dviejų viešojo valdymo reformų teorijų – Naujosios viešosios vadybos (NVV) ir Neovėberinės valstybės (NWS) kontekste. Lietuvoje politiniai lyderiai niekada nevartojo NVV žargono, tačiau nuo nepriklausomybės atgavimo įgyvendintos reformos neabejotinai atitiko šios teorijos reformų principus. Lietuvoje (kaip ir kitose pokomunistinėse ES šalyse narėse) demokratinės rinkos ekonomikos principais pagrįstos valstybės kūrimas sutapo su Vakaruose prasidėjusia NVV reformų tendencija. Sudėtinga pasakyti, ar Lietuvos reformų vykdytojai gebėjo atskirti, kuri dalis reformų buvo būtina kuriant demokratinį valdymo institutą, o kuri buvo NVV teorijos įkvėpta. NVV, pasisakydama už valstybės vaidmens mažinimą, siekė kurti stipriai fragmentuotą viešojo valdymo sistemą. Lietuvos statutinių tarnybų reglamentavimo fragmentacija yra vienas iš šių procesą iliustruojančių reiškinų. Statutinių tarnybų funkcijas nėra lengva įsprausti į rinkos modelius, kuriais būtų galima matuoti veiklos rezultatus ar statutinės tarnybas lyginti pagal tokius rezultatus. Situacijoje, kai įstatymų leidėjai nekreipia dėmesio į statutinių tarnybų veiklą reglamentuojančių teisės aktų terminologijos ir nuostatų tarpusavio dermę, galima daryti išvadą, kad tarnybinis kaitumas ar inovacijų diegimas tampa itin retu reiškiniu. Negaudamos aiškių nuorodų iš politinės valdžios, statutinių tarnybų vadovybės inicijavo tokius pokyčius, kurie tolino skirtingų tarnybų reglamentavimą vieną nuo kitos ir taip įtvirtino dar sovietmečiu nusistovėjusias biurokratinio valdymo praktikas. Paradoksalu, bet NVV siekis dekonstruoti valstybės biurokratinį aparatą sudarė situaciją, kurioje ėmė formuotis fragmentuotas mažų biurokratijų tinklas. Jų veiklos rezultatai menkai stebimi ar vertinami. NWS modelis yra reakcija į NVV nesėkmes, kurių buvo pastebėta visame pokomunistiniame ES regione. NWS modelyje laikomasi nuostatos, kad inovacijos sukelia pasipriešinimą ir jam įveikti reikalingi veiksmingi administraciniai įgaliojimai, centrinės valdžios kompetencijos. Jos būtinos tikintis pašalinti įvairių Vyriausybei pavaldžių įstaigų priešiškas nuostatas naujovių atžvilgiu.

Diferencijuotas Lietuvos valstybės tarnybos reglamentavimas, atskiriant karjeros ir statutinę tarnybas bei

išskiriant karo tarnybą yra neaiškus, egzistuoja daug skirtingų specializuotų statutų ir įstatymų. Valstybės tarnyba yra tokia abstrakti, kad galima teigti, jog turime ne bendrą statutinę valstybės tarnybą, o atskirai veikiančių statutinių tarnybų mišinį. Dėl tokio teisinio reglamentavimo ministerijų valdymo srityse vykdomos tarnybų reformos nekoordinuojamos tarpusavyje, todėl vykdomi modernizacijos procesai neefektyvūs ir trumpalaikiai. Remiantis Lietuvos statutinei valstybės tarnybai būdingais bruožais straipsnyje analizuojama jų veiklą reglamentuojanti teisinė bazė, identifikuojami statutinių tarnautojų atskyrimo kriterijai, pagrindinės sąvokos, nagrinėjami ir lyginami tarnybos Kalėjimų departamente ir Muitinės įstaigose ypatumai, atskiras tarnybas bendrinantys aspektai, vertinama jų atitiktis išskirtiems kriterijams. Analizės metu gauti ir susisteminti duomenys nagrinėjami neovėberinės doktrinos plėtros kontekste, todėl tyrimo duomenys aktualūs tiek mokslo, tiek praktinio pritaikymo atvejais.

Atlikus teisės aktų, reglamentuojančių statutinės tarnybas, analizę nustatyta, kad teisėkūroje nėra siekiama derinti skirtingų tarnybų reglamentavimo. Reglamentavimo keitimas yra inkrementiškas, dažniausiai iš esmės nekeičiantis tarnybos sąlygų, tačiau pokyčiai yra dažni, o nekoordinuotas pokyčių vykdymas reiškia, kad per nepriklausomybės periodą sąvoka *statutinė tarnyba* faktiškai yra netekusi turinio. Remiantis tyrimo duomenimis, galima konstatuoti, kad analogiškai teisiniai santykiai reguliuojami tiek atskirų tarnybų statuteuose, tiek ir specifiniuose veiklos įstatymuose. Statutinėse įstaigose nėra užtikrinami vienodi priedų už turimus tarnybinius rangus ar kvalifikacinę kategoriją dydžiai, vyrauja skirtinga kvalifikacinių kategorijų ir laipsnių (rangų) sistema. Taip pat pastebima, kad užtikrinamos skirtingos socialinės garantijos, numatytas nevienodas minimalus ir maksimalus tarnybos atlikimo amžius, ne visiems keliami specialūs reikalavimai fiziniam pasirengimui. Tokia fragmentuota teisės aktų bazė kelia teisinio netikrumo, nesaugumo ir neapibrėžtumo problemų. Nuolatiniai bandymai tobulinti Lietuvos statutinę tarnybą rodo, kad trūksta nuoseklaus teisinio pagrindo.

Statutinės tarnybos kontekste galima teigti, kad sisteminių ir ilgalaikių viešojo valdymo modernizaciją

užtikrinančių procesų galima tikėtis tik sustiprinus teisinės valstybės pagrindus. Pokomunistinės šalys, siekdamos ilgalaikės valdymo transformacijos, pirmiausiai turi sukurti demokratinės administravimo tradicijos aplinką, užtikrindamos tvirtą pagrindą demokratiniams procesams ir jų plėtrai remiantis tradicine hierarchine viešojo administravimo doktrina, griežtais atskaitomybės ir lojalumo

valstybei principais. Vykdomomis reformomis turi būti siekiama sukurti bendrą statutinių institucijų sistemą. Lietuvos statutinės tarnybos modernizavimas turi apimti pagrindinių sąvokų turinio peržiūrą ir korekciją, teisinio reglamentavimo suderinimą.

Pagrindiniai žodžiai: statutinė valstybės tarnyba, valstybės tarnyba, viešasis valdymas Lietuvoje.