
The Sustainability of the Public Administration in Albania

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Abstract:

The origin of Albanian Civil Service was found during the first Albanian principality of 1914, but as an authentic system, dates relatively late, in 1996. During nearly two decades of its life, are made different legal and political efforts to make it a professional and independent service. Albania is currently facing also the challenge of European Union membership. Reinforcement and depoliticization of public administration remain a key issue and precondition of EU. But despite of that the entire system, still remains fragile and with a big influence of the political parties, in processes of recruitment, promotion and layoffs. The public administration demonstrates a serious lack of professionalism and integrity, dependence from the government, frequent movement of staff and general instability of the system.

Key words: Public Administration, Sustainability, Civil Servants, Meritocracy, depoliticization.

The History of Civil Service in the world ¹

Strands of 'civil service' as a need to create the public

¹ W. A. Robson, *The Civil Service in Britain and France*(1956);
P. Van Riper, *History of the United States Civil Service*(1958);
E. A. Kracke, *The Civil Service in Britain and France*(1968);
F. C. Mosher, *Democracy and the Public Service* (1968);

administration, are firstly found in China since Han Dynasty from 206 BC to 220 AD . In this dynasty for the first time, to select a category of civilians officials was used the competition. Later on, it was in the Sung Dynasty from 960 to 1279 AD, during which officials of all important positions, were elected through competition . In a completely opposite way, was the appointment of officials in the Roman Empire. In this empire appointment and recruitment of officials was not based on competition and meritocracy, but mainly on the basis of habit and judgment of superiors. Creating a modern civil service is closely related to the collapse of feudalism and the creation of national autocratic states. It was Europe in that time, that took the relay of administration based in meritocracy . In Prussia, around the middle of the 17th century , Frederick William , created an efficient civil administration personnel, selected on the base of competition . The Prussian model selection, was embraced from France shortly before the revolution in the 18th century. This model became the base for the Napoleonic reforms, transforming the royal service in the civil service . While in U.S (United States) and UK (United Kingdom) establishment and development of a professional civil service, came several decades later . Specifically in U.S, the reformation of the way the civilian officials were selected, began after the Civil War in the 19th century. Deeper changes are recorded after Hoover Commission, by approving two reports respectively in 1949 and 1955. In Britain, the Civil Service Commission was established in 1855, but the British civil service system, has shown significant element of sustainability and a politicization . In the same time, this system has received constant criticism due to the lack of flexibility in the highest level. During that period, in former communist countries , the ruling party was the one that had the mechanism to appoint government officials. The competition and merit criteria, were only found as demagogic stone of the system, because the ruling party dictated completely the process .

2- The History of civil servants in Albania

The first elements of civil servants under the nomenclature of "state employee" in Albania, are found in the first Constitution of Albania, of the first Albanian principality in 1914, under the leadership of Prince Vidi, drafted by the International Control Commission. In this constitution, which had the format of a statute, a whole chapter (Chapter B), was dedicated precisely to the so-called "Organization of State Service".

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B. Organization of state service .

86 . Any person charged with a service that belongs to the state, is considered a state employee.

87 . All appointments of state employee are made in accordance with the rules that define also the relevant conditions .

88 . Each state employee , before starting to fulfill his duties , must be sworn in loyalty and respect for the prince and state laws .

89 . Each state employee who gives evidence of good behavior, honesty and competence in performing the duties , has the right of promotion and other benefits under the provisions that will be determined by special regulations .

90 . Each state employee should conscientiously and honestly fulfill the duties entrusted to him ; he should maintain professional secrecy and must obey orders of his superiors, as long as these orders are within the limits set by law.

91 . Each state employee who forswears and doesn't perform his duties, can be dismissed and punished according to the provision and safeguards set by the law .

92 . Disciplinary penalties, except those that are under the courts's jurisdiction , should be applied according to internal regulations of each ministry . They are: reprimand, suspension of functions and salary, dismissal.

93 . In case of collection of many state tasks, the state employee will receive only the highest salary provided for these tasks .

94 . The state employee who is employed based on a job contract, has no other rights against the state, except those provided in the contract.

As clearly seen in this section of the statute , the first founding document of the Albanian state, are found a set of components in relation to the civil employee, starting from the way of

² *Statute of the first Albanian principality, 1914;*

recruitment, promotion, compensation, performance of duties, principles, appeal, disciplinary measures, rights and obligations etc.

³Later in other statutes or constitutions of the Albanian State, as in the one of Lushnja Congress in 1920 , Lushnja Extending Statute in 1922 , the Basic Statute of the Republic of Albania in 1925, Albania Kingdom Statute in 1928, the Basic Statute of the Albania Kingdom in 1939, the Statute of People's Socialist Republic of Albania in 1946 , the Constitution of People's Socialist Republic of Albania in 1950 and the Constitution of People's Socialist Republic of Albania in 1976, can be found disconnected elements of the entire recruitment process and operation of the civil service . Almost in all the above mentioned constitutions are superficially found elements of operation's process, in terms of general principles of recruitment and the right of appeal against civil employee .

The 1976's Constitution, in its Article 44, stipulates the guarantee of the right to work for citizens of the state, without any specific legal arrangement for their different categories .

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Article 44

In the People's Socialist Republic of Albania, citizens have the right to work guaranteed by the state.

Work is a duty and honor for each able citizen.

Citizens have the right to choose and exercise their profession, according to ability, personal inclination and in accordance with the needs of society.

In general, in this constitution as well as in the previous ones, are given only general principles of recruitment or complaints to state officials.

³ *Congressional statute of Lushnja, 1920;*
Extension of Statute of Lushnja, 1922;
Basic Statute of the Republic of Albania, 1925;
Statute of the Albanian's Kingdom, 1928;
Basic Statute of the Albanian's Kingdom, 1939;
Statute of the People's Republic of Albania, 1946;
The Constitution of the People's Republic of Albania, 1950;
⁴ *The Constitution of the People's Republic of Albania 1976;*

The collapse of the dictatorial system in Albania in 1990, was followed by a difficult transition period, for the state employees too. There were closed and mass privatized hundreds of state-owned enterprises, making out on the streets most of their employees. ⁵Number of employees in the public sector fell from 850 000 in 1991 to 189 000 in 2001, and 176 000 in 2004 .

The transition of the economy from a centrally - planned to a market economy, presented as necessity the increasement of the demands of human resource's professionalism and meritocracy. Albania had to face the challenges of a new epoch, which certainly required skilled and professional people . One of the reforms in the public administration of the Republic of Albania after 90-s, was the regulation of labor relations in the public administration . This reform was based on the adaptation of the basic principles as meritocracy, professionalism , career along the practice of labor life ect.

However, in regard to legal employment relationship, even after the transition, until the year 1996 in Albania there has been no difference between the public administration's employee and other working relationships. They were all regulated based to the Labor Code. Civil Service Commission, as a special institution for the civil service's work- relations, was firstly established by Law 8059 dated 21.03.1996 "On Civil Service in the Republic of Albania". For the first time this year it was set up the concept of civil servants. Implementation of this law had many problems in practice, because the Civil Service Commission had a conflicting interest task , as it was the selection of candidates to be appointed as civil servants and also the protection of their rights. It was a bias institution, hanging through the appointment of its members by the Council of Ministers. This law was later repealed by Law Nr. 8549, dated 11.11.1999 "On the Status of the Civil Servants". The new law corrects dependence of the Civil Service Commission, turning it into an independent institution, whose

⁵ *Employment Sector Strategy 2007 - 2013 page 5;*

members were elected by parliament. At the same time this law revised conflict of interest mission of the Civil Service Commission, (CSC) through its limitation only in terms of protecting the rights of civil servants and not their appointments. During nearly 13 years since the implementation of this law, there were highlighted serious problems in terms of ensuring real civil servants rights, regarding to the process of recruitment, promotion, penalties etc. Public administration continued to be a dancing holl for militants or political supporters, instead of being a place of meritocracy and outside politics impacts.

The obligation to create a public administration with officials who implement the law, who must serve to the public, who are appointed by the competition principle and who have the guarantee of tenure , is a Constitutional obligation (article nr. 107 of the Republic of Albania's Constitution). Strengthening public administration was one of the repeated recommendations of the European Union (EU) progress reports related to the Albania's request for membership. So well-knowing the precondition of EU for the need of a new law regarding to the public administration, in May 2013 the Albanian Parliament approved the Law 152/2013 " On Civil Servants", abrogating this way the Law Nr. 8549.

3- The issue that has accompanied the civil servant status over the years in Albania

3/a- Civil service recruitment

Recruitment is one of the first but also main process, regarding to a professional and stable administration . It turns out, that the Albanian administration throughout transition years but nowadays also, continues to suffer a high level of violation of the law " On the status of the civil servants", during the recruitment process . Illegal recruitments in central administration covered 19 % of total recruitments for 2013.

...from 343 job positions controlled , it is concluded that in 267 cases , or 78 % of the total number of posts in the civil service are met in accordance with the law , while in 64 cases , which means 19 % of the total number of positions in civil service, are filled through temporary appointments. This figure represents a high level appointments violating the law, referring the group of independent institutions surveyed, compared with 2.5 % threshold, that seeks to preserve the central administration.

Most dramatic is the situation in local government.

In local administration institutions....., in the supervision process are controlled 393 positions in the civil service and concluded that in 217 cases , which occupy 55 % of the total number of the civil service's positions , appointments are conducted according to law, while in 152 cases , or 39 % of all civil service's positions controlled , it is concluded that free job positions are filled in violation of the law , since the temporary contract under the Labor Code of Republic of Albania is used as a legal instrument for labor relations.

3/ b Individual performance's process assessment of civil servants

The evaluation of the performance of individual civil servant , is not only a legal obligation of the administration, but also an important element for the civil servants themselves , because the consistency of the labor relations of them, promotions, parallel movements, the benefits due performance etc. depend on this estimation. The monitoring process of this element made during the year 2013 from CSC, noted that this process is generally right carried out in its formal view, but the report has its reservations with regard to subjective assessment .

⁶ Civil Service Commission, *Annual Report 2013*, page 8;
http://www.kshc.gov.al/siti/sito_website1089_alb/upload/documenti/1246_3147_7.pdf;

⁷ Civil Service Commission, *Annual Report 2013*, page 9;
http://www.kshc.gov.al/siti/sito_website1089_alb/upload/documenti/1246_3147_7.pdf;

⁸ Civil Service Commission, *Annual Report 2013*, page 13;

The CSC has determined that the job evaluation scheme has not reached the proper expectations .

The monitoring process, highlights that there are improvements in regard of the care shown by institutions to implement formal evaluation procedures , which include the completion of the evaluation forms in all their sections , respecting announcements's deadlines regarding to the assessment of civil servants. But in the other side, it is not found real categorization of the employees that work better. This situation is found in almost all controlled institutions where there was used almost everywhere the level of evaluation 1 or "very good" and 2 , "good", without using approximately in no case the level of evaluation 3 or "satisfactory" and in no case the level 4, that means "not enough".

The report notes that one of the reasons for this situation, is because the assessment of individual performance is made at a time when the measuring process of the institution's performance lacks and as consequence can not be made a realistic assessment that is associated with the achievements of the institution . This situation also comes from the fact, that the assessment of performance in recent years, has not been accompanied by the payment of bonuses for civil servants, which are related to the level of assessment.

3/c- Promotion

Career System is used only for a few cases regarding to the promotion of civil servants. The Department of Public Administration's (DoAP) report for 2008, highlights that from 307 new appointments this year, 14 are under lateral procedure and only 2 nominations were made by promotion procedure⁹. So the law is not implemented regarding the promotion, affecting in this way, the increasment of instability in the country's civil service system.

http://www.kshc.gov.al/siti/sito_website1089_alb/upload/documenti/1246_3147_7.pdf;

⁹ Department of Public Administration, *Annual Report 2008*;
<http://www.pad.gov.al/botime/Raportivjetor2008.pdf>;

3/d- Disciplinary measure of dismissal from civil service.

Illegal dismissal from civil service is one of the deepest wounds of the system from the time that it was set up. CSC in its report for 2013 , (the report covers the period 1 January - 1 October 2013, date when it was put into force the new law 152/2013 " On the Civil Servant"), presents a very difficult situation regarding to the number of civil servants to whom the disciplinary measure of dismissal from the civil service is taken.

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According to the data presented, within the group of disciplinary measures for 2013, results that dismissal from civil service is applied in 64 % of them. If the situation will be compared with that of a year ago, where the dismissal from the civil service constituted 60 % of the applicable disciplinary measures, there will be found an increase of about 4 % of cases , which could be higher, taken in consideration that the period of 2013 is a 3 -month shorter than that of the previous year. This indicator can be considered as a trend of increased administrative pressure on civil servants, especially in times of elections. However, this does not mean that problems appear only in terms of increasing the application of administrative measures, but because the fenomen of violating the administrative procedures still exists, especially in the arbitrariness shown due to non- implementing of the decisions taken by the competent authorities, even in those cases when they are judicial executive titles .

3/dh- The Control of the Civil Service Commission and also the Court regarding the civil service dismissal's legality.

The control that was made for the disciplinary measure of civil service's dismissal, from the CSC, as well as from the Appeal Court in 2013 , showed that in 72 % of the cases this measure has been illegal and the complaints were accepted by CSC, while the judicial Control Appeal Court has considered the decision of CSC in 98 % of cases a right decision.

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¹⁰ Civil Service Commission, *Annual Report 2013*, page 28;
http://www.kshc.gov.al/siti/sitowebseite1089_alb/upload/documenti/1246_31477.pdf;

¹¹ Civil Service Commission, *Annual Report 2013*, page 21 & 22;

... During 2013, the CSC has accepted the complaints in 150 cases, result that in 60 % of the total number of cases, finishing with complaint's acceptance, public institutions have appealed the CSC' s decision in the court .

Appeal Tirana's Court, has taken a decision on 95 cases, of which has decided to appeal rejection and uphold the decision of the CSC in 93 cases ; dismiss of the case in 1 case and the abrogation of the CSC's decision only in 1 case. So the quality of CSC decisions results in a high level, about 98 % of the decisions upheld by the court.

Meanwhile, regarding the rest of the 58 decisions, the issue is resolved by the CSC deciding crash, break, suspension or lack quorum in decision making.

Analyzing the data in the table above, it is concluded that in 72 % of cases appealed to the CSC, the dismissal's sanction from civil service was illegal during the period of time 1 January - 1 October 2013, which means a very high level regarding to sustainability, legality and quality standards, that should characterize the civil service's system. The situation became more dramatic after 1st October. There is no official figure of civil employee's dismissal , but the opposition and association " On Protection of Public Administration's dismissed" newly created in 2014, declared a figure of 4 000 civil servants, unfairly dismissed from work ¹². While up to 31 December 2013, the date considered by the government as deadline to apply for a free job position, according to Law Nr. 8549 dated 11.11.1999 "On the Status of Civil Servants", (after the postponement of the entry into force of the new law by approving Normative Act Nr. 5, dated 09.30.2013 "On Amendments to the Law Nr.152/2013 "On Civil Servants" and also the Law Nr.161/2013, "On approval of the normative Act Nr. 5, dated 09.30.2013 "On Amendments to the Law Nr.152/2013 "On Civil Servants",) in the DoAP's official website were published 350 free work positions¹³. Meanwhile, the CSC considered the application's deadline for the free job places

http://www.kshc.gov.al/siti/sitowebseite1089_alb/upload/documenti/1246_31477.pdf;

¹² <http://www.revistaklan.com/index.php?id=4231&mod=2>;

¹³ Ibbid;

under the Law Nr. 8549 dated 11.11.1999 "On the Status of the Civil Servants" the date 1.07.20013. While the Constitutional Court decision Nr. 5 dated 5.02.2014, declared unlawful the Normative Act Nr. 5, dated 09.30.2013 "" On Amendments to the Law Nr.152/2013 " On the Civil Servants" and also the Law 161 / 2013" On approval of the Normative Act Nr. 5, dated 30.09.2013 "On Amendments to the Law 152/2013 "On the Civil Servants"".

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The Article 68 of the law, entitled "The applicable law and initiated procedures" is another important reason for the CSC to issue this giude. In its first point, is expressly prohibited the start of the competition's procedures, 3 months before the expansion of the effects of this law .

For this reason , these institutions were instructed that after 01.07.2013, can not start any new competition procedure, while the proceedings initiated until that date, were oriented to finish under the provisions of Article 13 of Law Nr. 8549, dated 11.11.1999 "On the status of the civil servants".

3/e- Execution of executive orders of court's final decisions

The level of acceptance of complaints for unjustly civil-servants's dismissal is high. Even after judicial review in the Appeal's Court, the execution of their executive titles remains at very low levels, violating in this manner the so- called "due process", guaranteed by article 42 the Constitution of the Republic of Albania, and article 6 of the European Convention of Human Rights, approved by Law Nr. 8137, dated 31.07.1996 from the Albanian Parliament. Such a situation, seriously undermines legality, quality, efficiency and sustainability of public administration.

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¹⁴ Civil Service Commission, *Annual Report 2013*, page 11 & 12; http://www.kshc.gov.al/siti/sito_website1089_alb/upload/documenti/1246_3147_7.pdf;

¹⁵ Ombudsman, "*For the situation created by the non-execution of final court*", *Special Report 2012*; http://www.parlament.al/web/pub/2012_raporti_per_vendimet_gjyqesore_1541_3_1.pdf;

For the year 2012 , the flux's deposition of complaints, according to which citizens have requested and still request the re-location of the violated right for a fair trial, as result of non-execution of executive titles, is in higher level, compared to the same period of years earlier .

No argument used by the public administration can justify non-execution of the right, which the citizens have earned through judicial way. The ECHR's Decision dated 18.11.2004 after reviewing the first Albanian appellate issue, undertaken by the creditor, the construction firm "Qufaj" sh.pk, for non-execution of a final court decision from Tirana Municipality, noted that: "Nothing, not even a lack of funds by the authorities does not justify the non-execution of a court decision". So, with the position held by budgetary institutions by not completing the imposed obligations, brings as consequence an unacceptable decrement of the degree of the state's seriousness in the protection of human rights, in reference to the sanctions made in article 142/3 of the Constitution.

4-The News of the new Law 152/2013 "On Civil Servant"

4/a- The news in terms of coverage subjects.

New Law 152/2013 "On civil servant " significantly expands the categories of employees to be included in the civil service. Thus Article 2 establishes that its scope is on the whole public administration employees excluding the below categories:

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Article 2

This law shall apply to any official (hereinafter referred to as "civil servant"), who

exercises public authority in a State administration institution, an independent institution, or in a

local self – government unit, with the exception of the following categories:

- a) elected officials,
- b) ministers and deputy ministers;
- c) officials appointed by the Assembly, the President or Council of Ministers;
- ç) judges and prosecutors;
- d) civil judicial administration;
- dh) militaries of the armed forces;
- e) personnel of the State intelligence service;
- ë) personnel of the direct service delivery units;
- f) members and chairmen of the steering committee of the collegial bodies or

¹⁶ Law 152/2013 "On Civil Servant";

institutions
under the Prime Minister or Minister;
g) administrative employees;
g) cabinet officials.

Article 3

Special statutes

1. The police officials and the foreign service officials shall be civil servants and this law shall apply to them, to the extent that isn't otherwise provided by the special law.
2. Special laws may regulate some of the elements of the civil service relationship, on:
 - a) the diplomatic service
 - b) and the structures, which according to the law are allowed to carry arms

So it can be clearly understood that employees of customs, taxes, municipalities, police, foreign service and the armed forces are already part of the civil service system, as far as the special law provides not differently. Also the system covers under the new law a considerable number of the central administration's dependence institutions, labor relations of which according to the previous law were regulated by the Labor Code or special laws.

4/b- The news in terms of protecting and promoting the rights of civil servant, as well as recruitment and training performance.

Law 152/2013 first aims to strengthen the state mechanism of recruiting, of training and promoting the rights of civil servants, aims to strengthen the selection candidates's rules, according to meritocracy and also sanctions in case of unjustified disciplinary measures. So, except DoAP that existed with the previous law, the new one sets up the so-called Albanian School of Public Administration (ASPA), which will provide in-simple and in-depth training for civil servants. The CSC returns from an independent collegial institution and 'quassi' judicial, in a monocratic institution, with monitoring powers, represented by the Commissioner for the Supervision of the Civil Service Management, which will be an independent

body, approved by parliament for a period of 5 years with the repetition right. It has supervisory, investigative and sanctioning competences. For the first time is applied the sanction from 20, 30 or 50 % of the monthly salary of the responsible person that does not implement the tasks assigned by the Commissioner. The new law also provides the establishment of the National Selection Committee, which is the mechanism that will make the assessment and selection of civil service's applicant. For the first time DoAP will create the central registry with the necessary data for all civil servants in national level .

Also for the first time is introduced the concept of "Annual plan of the civil service system", which is a mechanism that aims to plan the number of civil servants that the administration will need every year . This planning is also connected to new way of recruiting. The new law introduces also firstly the concept of Top Level Management Body (TLM), which is a body that includes top-level management civil servants who have completed in-depth training in ASPA.

The competitions will not be done for each job by each institution, but in a group way. The public institutions have to present their requests to the DoAP. Those requests will be collected and based on them, DoAP will announce the free job positions. Next step it will be the organization of the national competition. The National Selection Committee or the Permanent Admission Committee, for all the categories of civil servants, will list the winners with over 70 % of the total points. The winners according to the ranking will select the job position. That means that it will be not the head of the institution that chooses the person, but the applicant has the right to choose the job as a winner. Establishment and operation of administrative courts in 2013, is an accelerator mechanism that makes possible a fast review of different complaints.

5- The Politico – legal battle of entry into force of the

new law.

New Law 152/2013 "On the Civil Servant ", in his final provisions, provides 1 October 2013 as entry date into force of the law, while the sub-legislation acts should enter into force no later than 6 months from the entry into force of the law . The period immediately after the law was approved, was the peak of the pre-election campaign. Experience has shown that in Albania, before and after election campaigns, the pace of work of public administration decreases, primarily dictated by fear and the threat of a new governing majority and secondly because usually the public administration is used for electoral-political interests from the governing party. Adding the fact that after the parliamentary elections of June 2013, the governing position was won by a new majority (ex opposition), the date of 1 October 2013 found the Law 152/2013 "On the Civil Servant", without sub-legislation acts. In this situation, just a day before , on September 30, 2013 the government hastened to approve the Normative Act Nr.5, dated 30.09.2013 "On Amendments to the Law Nr.152/2013" "On the Civil Servant" and also the Law Nr.161/2013 "On approval of the Normative Act Nr.5, dated 30.09.2013 "On Amendments to the law Nr.152/2013 "On the Civil Servants"", who postponed with 6 months the entry into force of the new law .

The Normative Act Nr.5, dated 30.09.2013 "On Amendments to the Law Nr.152/2013 " On the Civil Servant", as well as the Law Nr.161/2013 "On approval of the Normative Act Nr. 5, dated 30.09.2013 "On Amendments to the Law Nr.152/2013 "On the Civil Servant", were appealed for nullity in the Constitutional Court. The Decision Nr.5 dated 5.02.2014, of this Court, published in the Official Gazette dated 26.02.2014 decided to : ¹⁷Repeal as incompatible with the Constitution of the Normative Act of the Council of Ministers Nr.5, dated 30.09.2013 " On Amendments to the Law Nr.152/2013 "On the

¹⁷ Constitutional Court Decision Nr 5, 05.02.2014;

Civil Servant" and the Assembly Law Nr.161/2013 "On approval the Normative Act Nr. 5, dated 30.09.2013".

The new law also expose another problem, because contradicts the Constitution and the European Convention on Human Rights regarding to freedom of expression. Article 37 of the law, prohibits the expression of civil servant's political convictions.

6- The consequences of the transition period between the repeal of the Law Nr. 8549, dated 11.11.1999 "On the Status of the Civil Servant" and implementation of the Law 152/2013.

While the new Law 152/2013 entered into force on 1 October 2013 , its regulations were not completed even after a period of 6 months, which makes it inapplicable. From 1 October 2013 until 26 February 2014, when the Constitutional Court's decision took effect, based on the old Law Nr.8549 "On the Status of Civil Servants", a series of dismissals and new recruitments were made in administration.

According to a simple interpretation of the law, after the decision of the Constitutional Court, all acts of dismissal from civil service or those of new recruitments, realized after 1 October 2013, are nullity, because they are based on the Law Nr.8549, which was not in force at the moment. The Constitutional Court concluded in its decision the nullity of the act because this act with law's power, is issued by an administrative authority (Council of Ministers) in excess of its legal competences (such a competence is the responsibility of the parliament); and the action is inconsistent with the form and procedure required by law . The Constitution provides that such a law must be approved by 3/5 of the deputies and also excludes this law from the list of laws that can be adopted using accelerated procedure, as actually happened with normative act and the law approving it.

¹⁸ Decisions of the Constitutional Court are mandatory. The Execution of Constitutional Court decisions must be ensured by the Council of Ministers using the respective organs of state administration. According to Article 76 of the Constitutional Court's Organic Law, Constitutional Court's decision that repeal a law or a normative act as incompatible with the Constitution, as a rule brings legal effect from the date of its entry into force. The decision has retroactive power, only for the cases that are still in trial and their decisions have not become final, and also for the repealed law's consequences still not yet exhausted. That means that the persons dismissed from the civil service, benefits from the effects of the Court's Decision only if they are still in a unfinished trial. Their judiciary return in work position will put in question the status of newly employed and in the same time will exacerbates states's financial balance. This because the state should pay for one work position two persons for a certain period of time; the new employee and the civil servants dismissed in a illegally way. The process of new recruitments as well this of dismissal are both illegal.

This vacuum and this uncertain period has produced a difficult situation on both groups of the civil servants, impacting in a negative way the concentration, efficiency and quality of the public administration.

7- Public Administration and the EU regarding the membership aspiration

Public administration reform has been and remains a priority monitoring key to measure the progress of Albania and also a precondition for EU membership. The membership process requires administrative capacities capable for the recognition and the implementation of the EU law . The law "On civil servant", which entered into force in October 2013, was highly

¹⁸ Law no. 8577. 10.02.2000 "On the organization and functioning of the Court. Constitution of the Republic of Albania ";

appreciated by the EU as a fundamental law for the construction of a professional , effective and merit based public administration , but in the meantime has also identified a number of problems that puts into questioned the establishment and consolidation of a stable and meritocratic administration.

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The law abrogates existing legislation without providing the necessary transitory provisions until its implementing legislation enters into force; the government approved in September 2013 technical amendments to avoid this legal vacuum. Timely adoption of the secondary legislation compliant with the principles of the law and proper implementation is essential. The Law on General Administrative Procedures is still pending.

The implementation of the Law on the Organisation and Functioning of the Public Administration needs to be enforced.

With a view to meeting the 2.5% target set in 2010, the proportion of temporary contracts in state bodies was further reduced to currently 4.8%. The Department of Public Administration is unable to fully enforce its decisions or to effectively coordinate with other institutions, partly because of budgetary constraints. The Human Resources Management Information System is not fully operational; its second pilot phase has faced considerable delays.

The rate of implementation of Civil Service Commission decisions remains low. Under the new Civil Service Law, the Commission will be replaced by a Civil Service Commissioner, who will keep its monitoring tasks. The new institution needs to function properly and to demonstrate its independence

Weak analytical capacity and high staff turnover in line ministries, together with insufficient transparency and consultation with relevant stakeholders, continue to hamper the legislative drafting process. Regulatory impact assessment and the implementation and monitoring of adopted legislation need to be improved. □ It now needs urgent implementation to enforce merit-based practice. Enforcement of existing legislation and administrative acts needs to be stepped up. The Department of Public Administration needs to be strengthened. Independent institutions need to be enhanced and their recommendations acted upon. Further efforts are needed to depoliticise the public administration, ensure continuity, fight corruption, strengthen meritocracy in appointments, promotions and dismissals, and increase its efficiency and financial sustainability. □

The European Parliament Rapporteur for Albania, Mr. Nikola

¹⁹ EU Progress Report for Albanian, 2013-2014, page 9;

Vuljaniç on 19 February 2014, in an interview for the Albanian TV channel “ABC News”, criticizes the dismissal of public administration experts. According to him, the changes in public administration should not be at the expense of the expertise.

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I got letters from citizens that are dismissed from public administration and talked with the Ambassador of Albania here. She promised that will convey to the government the concern. The dismissal of experts is not a good thing, is the loss of people, is a waste of money. Albania is not a big country. You're a little more than two and a half million. You can not allow yourself to dismiss people who are specialized and have received adequate training on relevant issues. Why do not use their knowledge and experience? This is the meaning of professionals. No matter who is in power, professionals are professionals. This is a time to start from the beginning. And can not weld the next stage of the integration process, because hasn't time. It is not proper movement.

8- Conclusion

Analyzed as above situation of the civil service in Albania, unfortunately concluded clearly, that despite the relatively long time, almost two decades, from the time that the system was set up, still remains fragile and with a big influence of the political system in processes of recruitment, promotion and layoffs. The public administration demonstrates a serious lack of professionalism and integrity, dependence from the government, frequent movement of staff and general instability of the system. Despite of the governments's political propaganda, the system until now, consists in group of militants who have served during the electoral campaign to the victorious. The so-called competitions remains just a farce of the daily demagogy, without a real competition of meritocratic values. The Sustainability of civil servants seems to be a hardly reached kilometer.

²⁰ <http://www.abcnews.al/lajme/politike/1/39432;>

BIBLIOGRAPHY:

Reports

EU Progress Report for Albanian, 2013-2014;
Civil Service Commission, *Annual Report* 2013;
Department of Public Administration, *Annual Report* 2008;
Ombudsman, "For the situation created by the non-execution of final court." Special Report 2012;

Studies

Mosher, F. C. 1968. *Democracy and the Public Service*.
Kracke, E. A. 1968. *The Civil Service in Britain and France*.
Riper, P. Van. 1958. *History of the United States Civil Service*.
Robson, W. A. 1956. *The Civil Service in Britain and France*.

Laws

Statute of the first Albanian principality, 1914;
Congressional statute of Lushnja, 1920;
Extension of Statute of Lushnja, 1922;
Basic Statute of the Republic of Albania, 1925;
Statute of the Albanian's Kingdom, 1928;
Basic Statute of the Albanian's Kingdom, 1939;
Statute of the People's Republic of Albania, 1946;
The Constitution of the People's Republic of Albania, 1950;
Law Nr. 8549, dated 11.11.1999 "On the Status of the Civil Servants"
Law 152/2013 "On Civil Servant";
Law no. 8577. 10.02.2000 "On the organization and functioning of the Court. Constitution of the Republic of Albania ";
Constitutional Court Decision Nr 5, 05.02.2014;

Strategies

Cross-Cutting Strategy for Public Administration Reform 2013-2020;

Employment Sector Strategy 2007 – 2013

Internet side

http://www.parlament.al/web/pub/2012_raporti_per_vendimet_gjyqesore_15413_1.pdf;

http://www.kshc.gov.al/siti/sito_website1089_alb/upload/documenti/1246_31477.pdf

<http://www.pad.gov.al/botime/Raportivjetor2008.pdf>;

<http://www.revistaklan.com/index.php?id=4231&mod=2>;

<http://www.abcnews.al/lajme/politike/1/39432>;