
CREATING A SUSTAINABLE CIVIL SERVICE AS A CONDITION FOR AN EFFECTIVE PUBLIC ADMINISTRATION

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Abstract: This project aims to present the creation of the Albanian Civil service as a form of organization of state administration in Albania. Albania has supported this system for the first time in 1996 and then with Constitution in 1998 attaches great importance to the position and status of state officials by listing the law that will customize this area among the laws that need to be adopted by a majority qualified by 3/5 of the votes of the Albanian Parliament. In a brief analysis presented the features of this system in Albania by presenting and analyzing the institutes and institutions responsible for the implementation of the civil service legislation in the country, without leaving aside the analysis of the state of the service and the problems that have accompanied for more than two Decade of its existence and its implementation in Albania. Creating a sustainable, motivated and above all professional civil service and able to cope with the development and integration challenges of the country is at the heart of the reform agenda in public administration and can be provided through one multilateral intervention that logically combines recruitment based on merit professional and intellectual, guaranteeing the rights, stability and motivation of civil servants as well as the permanent and continuous improvement of capacities human.

Likewise, the paper deals with a broader perspective of the civil service, based on the commitments undertaken by Albania in the framework of the efforts to obtain the status of candidate country for European Union membership, which aim to be guided and concrete based on special strategic documents in the area of public administration and civil service that are concrete with the adoption of the Law "On Civil Servants", in order to provide an effective state service to its citizens, characterized by professionalism, sustainability, transparency, merit and political impartiality. In all organizations and especially for the public service, human resources are the inputs of the greatest relative value, more than anything else, they determine not only the amount but the quality of the outputs that themselves constitute administrative institutions that manifest the will of the state. An independent civil service does not mean it is completely uncontrolled. Some professional standards should be respected and legal and sub-legal regulations should be respected. Thus, a balance must be struck between the value of independence and loyalty to the legal norms in the state administration. The frequent changes in the structure and organization of the central administration institution have become sources of disagreement for the new position of employees. This creates difficulties in conception of the cause of this structural change, affecting sustainability and effectiveness of the civil service.

Keywords: civil service, employe, civil service reform, Department of Public Administration, Commissioner for Civil Service Supervision.

INTRODUCTION

The Stabilisation and Association Agreement (SAA) was signed in June 2016 in Luxembourg between Albania and member states of European Union (EU). This agreement constitutes of four pillars: political dialogue and regional cooperation, trade provisions in relation to progressive liberalisation of exchanges up to the establishment of a free trade area between parties, cooperation in prior fields, especially in legal field and internal affairs. SAA became absolute on April 1st, 2009 after its ratification from 25 member states of EU, which were part of EU when SAA was signed, as well as its approval in Albanian Parliament. The topic is treated in a more complete and detailed way regarding the engagement of Albania in the field of public administration and civil service by concrete provisions of SAA in this direction. This way, not only when this Agreement became absolute in 2009, but also some years ago in attempt to have such an agreement with EU, Albania has undertaken a good deal of steps so as to realize a reform in public administration and civil service in order to accomplish step by step the conditions of membership in EU. We refer to the reform of public administration and civil service as Priority 6 that should be realized according to EU from a state which aims to be its member. The reform of public administration provides that “fundamental steps should be absolutely undertaken by including changes in legislation for civil service and empowerment of Public Administration Department with the aim of strengthening the professionalism and depoliticization of public administration, as well as strengthening a transparent system grounded on the principle of meritocracy in their designation.” With the entry into force of the new law in 2003 and its finalization with the respective decision of the Council of Ministers a considerable part of this priority has been accomplished, but there is still a lot to do from Albanian state in order to realize the existence of a professional, sustainable, politically uninfluenced, and transparent civil service which fulfils the requests and needs of citizens. This is part of the following monitoring from EU institutions toward Albania and the final evaluation if the state has fulfilled the preliminary conditions; in this

case, the state has respected the principles of the European administrative area so as to deserve the status of candidate state and its membership in the great family of EU.

LIABILITIES OF THE ALBANIAN STATE FOR THE FULFILMENT OF STANDARDS IN THE FIELD OF PUBLIC ADMINISTRATION AND CIVIL SERVICE

In the title VIII of SAA “Cooperation policies”, article 111 is focused on public administration.¹³³ The aim of this provision is to develop an effective and responsible public administration which supports the implementation of the principle of the state of rights. This way, the cooperation between EU and Albanian in the framework of SAA is focused in the field of implementing transparent and impartial recruiting procedures, management of human resources, and career development in public service such as central administration as well as in local one.¹³⁴

For the fulfilment of recommendations of the Opinion of European Commission, for the membership application of Albania in EU, and especially of 12 main priorities, the government prepared the Action Plan. The Action Plan was approved in June 2011 and most of its provisions has been realized or are still ongoing.¹³⁵ According to this Action Plan, a reform in public administration which includes changes in basic legislation for the organisation and function of civil service of the state is envisaged.

Among 12 main priorities, the reform in public administration is ranked as the 6th. This priority envisages that “fundamental steps should be undertaken for the reform in public administration, by including changes in legislation for civil service and empowerment of Public Administration Department with the aim of strengthening the professionalism and depoliticization of public administration, as well as strengthening a transparent system grounded on meritocracy in designation and career advancement.”

Regarding the Action Plan that Albania has undertaken, the first main point was the approval of the new law for the civil service, competences of which has been clarified in relation to the solving of complaints of civil officials and observation of institutions that are part of the civil service system. The final aim is to enhance the role of the Commission of Civil Service (CCS) and the latter be exposed more powerful regarding the competences that the new law for civil service includes. Competences of CCS with the final content that this law has, are more restricted because for the law “For Organising and function of Administrative Courts in Albania”¹³⁶ to become absolute the latter should undertake the competence of solving work disputes in public administration and civil service of the state. We should emphasize the fact that the system of civil service and civil administration of the state has been completed in legal norms conform to acquit, not only in legal aspect but also the executive norms that emerge on grounds of and for the implementation of legal ones.

PROGRESS REPORTS PRESENTED BY EU YEAR AFTER YEAR REGARDING PUBLIC ADMINISTRATION AND CIVIL SERVICE IN ALBANIA

From 2009 (the year when SAA became absolute) the European Commission observes closely the situation of the state and the steps that Albania has undertaken, through its institutions so as to fulfil the integration conditions in the great European family. Year after year the report of advancement, in relation to this field as well as respective recommendation has been as an alarm bell to the Albanian state.

What is coming into prominence year after year is the problem regarding the productivity and recruitment of the staff of Albanian public administration. As a summary: in the Progress Report of 2010¹³⁷ in relation to public administration and civil service it is stated that:

Even though the practices of open recruitment in civil service are gradually being accepted, the delays and non efficiency in recruiting may cause shortage of staff in main fields (such as in legal administration). Some

¹³³ Article 111 of SAA states that: “The cooperation will aim the possibility of developing an efficient and responsible public administration in Albania, which supports in particular the implementation of a state of rights, the appropriate function of state institutions in the benefit of Albanian population in general and of the normal development of the relationship between EU and Albania. The cooperation in this field will be focused particularly in the institutions’ constructions, by involving the development and implementation of transparent and impartial procedures of recruitment, management of human resources, career development in public service, the continual training and promotion of ethics in public administration and electronic government. The cooperation involves the central administration, as well as the local one.”

¹³⁴ Ibidem

¹³⁵ The National Action Plan for implementation of SAA, 2012, page 15, found in <http://www.mie.gov.al/>, opened on January 16, 2013

¹³⁶ The Law “For Organising and function of Administrative Courts in Albania” 49/2012(amended)

¹³⁷ European Commission, Brussels, November 9,2005, SEK (2009-2010) 1421, Albanian Progress Report 2010, { KOM (2005) 561 final}, page 15-17 found in <http://www.mie.gov.al/> [opened on March 6, 2013]

shortages and amendments planned for the law of Civil Service are recruitment of the appeal period for the designation and possible contradicts in the Administrative Procedural Code.

After one year, in 2011, there are still visible problems in the civil service, more precisely:

*Political designations of high officials are still prominent, by restricting the enhancement of civil service in high professional levels.*¹³⁸

In 2013, regarding the public administration the Progress Report¹³⁹ states that: *The government has changed the process of recruitment to attract in the civil service Albanian students graduated in foreign universities. This restricts the recruitment of effective staff for the public administration, and the sustainability of existing staffs in administration is still a problem.*

Nevertheless, the progress report of 2013¹⁴⁰ brought forth a successful finalization of the approval of the new law with the qualified majority, the approval of the new law brought forth a great number of innovations regarding subjects that are part of legal, public, administrative relationships. In the following progress reports, the emphasis has been placed in the efficiency of legal framework in practice because the legal and judicial is in compliance with that of acquire. Conform to the approval of the new law of “Civil Service” is necessary to treat in a general way the innovations that his law brought forth by its approval in May 2013 and its publishing on June 7, 2013 in the Journal of Laws.¹⁴¹

In Progress Report of 2014 and 2015 the problems remain almost the same regarding the public administration and civil service of the state. *The Strategy for the Reform in Public Administration was approved, but the implementation has not yet begun in that period. The movements of public officials with political motives still happen but in a lower rate. The vacancies that are filled by contract employees remain high, around 20% of all vacancies. This practice damages the implementation of Law for Civil Service and creates space for politicization of administration. Recruitment in civil service is still done with non-transparent procedures.*¹⁴²

If we refer to Progress Report of 2016¹⁴³, we can see that it is declared that there has been a restricted advancement in the field of public administration reform, which is one of the advantages where the opinion of EU is based for the achievement of candidate status. *The implementation of Prime-Minister Order¹⁴⁴ for a maximum of 2,5% of annexing in working relations in public administration through temporary contracts (from 3 months to 1 year) is still a problem; it shows legal deficiency and efficiency in administration work.*

THE REPRESENTATION OF THE CONTENT OF THE NEW LAW FOR THE CIVIL OFFICIAL AND CHANGES FROM THE PREVIOUS LAW

The new law for the civil official aims to create a sustainable, professional civil service, grounded on merit, moral integrity and political impartiality and regulates the legal relationship between the state and the civil official, and determines rules for the administration of civil service by considering the relationship of civil service as judicial relationship of administrative nature.¹⁴⁵ Basic innovations that brought forth important changes:

- The passing of responsibility for the management and guidance of civil service from the Minister of Internal Affairs to the respective minister for the affairs of public administration.
- The appointment in law of the responsibility of the Department of Public Administration (DPA) in drafting training policies. It is proposed that DPA should determine policies for civil officials’ trainings, taking into consideration the developments of legislation and state policies.
- Dispositions of two laws are unified regarding the citizenship of civil officials of high management level (TND) by excluding from applying opportunity for this category foreign citizens conform to article 21 and article 65, point “b” of law, which provides that civil officials are only Albanian citizens.
- With the new law there is a solving of cases when it is impossible to transfer civil officials, positions of who does not exist as a consequence of the closure or transference of institution, by providing the

¹³⁸ Commission of European Communities, Brussels, 8.11.2011 SEK (2011) 1383 Commission Staff Working Document, Albania – Progress Report 2011

¹³⁹ Progress Report of 2013 (the affair of public administration, treated in page 13-14)

¹⁴⁰ Progress Report 2012 for Albania that accompanies the Communication of Commission for European Parliament and the Counselling Strategy of Expansion and Main Challenges for the period of 2012-2013

¹⁴¹ Published in the Journal of Laws, no 95, on 7.06.2013, pages 3952-3976

¹⁴² 10-Commission of European Communities, Brussels, 8.11.2014 SEK (2014) 1337, Commission Staff Working Document, Progress Report 2014 for Albania, that accompanies the Communication of Commission for European Parliament and the Council Strategy of Expansion and Main Challenges 2013-2014, COM (2014) 533

¹⁴³ Progress Report 2016 for Albania, chapter I “regarding public administration” page 9-10.

¹⁴⁴ Order of Prime-Minister no 174, on 01.10.2015, “For taking some measures for the improvement of implementation of legislation of civil service in ministries and the system of Ministers Council”

¹⁴⁵ Article 1, of Law no 152/2013

notice of these officials, release from civil service and their compensation with salary of 1-3 months, according to work experience.

- Innovations of the new law regarding institutions that it envisages to create with respective competences are the establishment of Public Administration School and transformation of Civil Service Commission from one collegial organ to a monocratic institution by revising its competences.
- In the new law there is also the differentiation of high level civil officials from those of the executive level, as it is envisaged that they are to be accepted in the civil service or to serve only for those that conclude the profound training in ASPA.
- The new law provides that civil officials of high level cannot be members of political parties, which is permitted in the law of 1999.¹⁴⁶
- The new law includes more detailed provisions, but also more enriched regarding the transference of civil officials, because it provides two types of transference: permanent and temporary¹⁴⁷, which is not included in the law of 1999.

CONCLUSIONS

As a European state, the efforts of Albania to become a member of the great European family are continual. Its achievement requires the fulfilment of political criteria, regional cooperation and especially the approach of legal legislation with norms of *acquis* and their absolute implementation in practice. For this, an effective administration requires a civil service with professional officials who guarantee independence, integrity, transparency toward citizens, but at the same time these civil officials deserve to respect their rights provided in the legislation of the field and in case these rights are infringed they should be defended and repositioned by special state organs, be it judicial ones, such as the Administrative Court. For several years, in the progress reports of EU toward Albania it has been emphasized the non-positive fact that institutions that have management and observing competences (DPA and CSC) for the civil service should be strengthened, because their role becomes minor as a result of non-legal attitudes undertaken. Likewise, the instability of the system of civil service is reflected in high figures of renewal of its composition by being damaged by non-legal grounds recruitment in a considerable extent year after year. Given the fact that during the last 17 years of the action of Laws No. 8549, dated 11.1999 "Status of Civil Official" and 152/2013 "For Civil Official" amended, the state budget spends every year millions of Euros for the compensation that emerges from the execution of final court decisions in favour of former dismissed employees. Based on this situation, unfortunately we conclude that Albanian taxpayers' money is used for inefficient payments instead of being returned in the form of public investment, goods, services or better social policies.

REFERENCES

- [1] Stabilisation and Association Agreement
- [2] The National Action Plan for implementation of SAA, 2012,Albenia.
- [3] Law "For Organising and function of Administrative Courts in Albania" 49/2012
- [4] Progress Report of 2010 the affair of public administration
- [5] Progress Report of 2011-2012 the affair of public administration
- [6] Progress Report of 2013 the affair of public administration
- [7] Progress Report of 2014-2015 the affair of public administration
- [8] Order of Prime-Minister no 174, on 01.10.2015
- [9] Law the civil official no 114/1999
- [10]Law the civil official no 152/2013

¹⁴⁶ Article 37, of the Law no 152/2013, dated 30.05.2013

¹⁴⁷ Chapter VIII Transferences in civil service, articles 48 to 52, of Law o 152/2013, dated 30.05.2013