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Summary

Main Developments since last year

The government started to prepare an administrative reform strategy in August 2007; a draft was presented to an international conference in July 2008. The strategy included civil service reform goals that would have brought the civil service system closer to European principles. The strategy was principally focused on amending the Civil Service Law, which requires a qualified majority in the Assembly. However, the government did not involve the opposition, whose support would be required. Further, it is not clear to what extent the government itself was really behind the strategy since, at the time of writing (April 2009), it had not yet been adopted by the governmental Commission on Strategic Planning.

A lustration law, proposed by the government and passed by the Assembly on 22 December 2008, was suspended by the Constitutional Court on 16 February 2009. The law passed with only the votes of the Democratic Party-led governing coalition. The law prevents former members of the country's previous communist regime from holding public office. It bans from public service all persons who had been linked to the former secret police, *Sigurimi*, during the period November 1944 – December 1990. It establishes an all-powerful five-member board to “lustrate” all civil servants and members of the judiciary and prosecutorial services. The OSCE and the Council of Europe, amongst others, expressed their concerns about the law's fairness, proportionality, severity of punishments and openness to abuse. The Council of Europe's Secretary General said that the lustration law adopted on 22 December by the Albanian Assembly did not comply with Council of Europe standards of democracy, human rights and the rule of law. The Czech Presidency of the EU Council issued a declaration on 13 February 2009, pointing out that the law gave rise to concern for the independence of constitutional institutions and underlining the importance of the rule of law and the independence of the judiciary as criteria for EU membership.

Main Characteristics (strengths and weaknesses)

1. Legal Framework and Scope of the Civil Service

The legal framework regulating the civil service (Civil Service Law - CSL) complies with many of the generally accepted European standards and principles but with important omissions – in particular, it is deficient in respect of the merit system. The law provides for exceptional legal remedies, such as retrenchment and restructuring, which have been frequently used to dismiss civil servants on uncertain grounds. In contravention of the CSL, it has become frequent to employ individuals under the labour code on temporary contracts, without competitive procedure, and assign them to civil service positions. The individuals are then converted into tenured civil service after six months, without further checks. This practice undermines the intent and effectiveness of civil service policy and creates an opening for politicisation.

The legal scheme for recruitment grants discretion to choose any of the three best-ranked candidates in a competition. This scheme is open to abuse because it does not specify criteria, limit discretion or enforce any transparency requirement, which weakens the merit and competitive nature of the procedure as well as impairs the constitutional right of equal access to the civil service.

2. Selection

Whatever the merits of the legal framework, it is not followed in practice and implementation capacities are insufficient, reducing the attractiveness of the civil service.

- Competitions need to be organised separately for each vacancy, which makes the system burdensome for hiring bodies. The procedures are also lengthy. Hiring bodies have incentives to bypass the system and there are few and weak controls/sanctions.
- Recourse to labour law on an urgency basis to govern temporary contracting, without competition for civil service positions, was significant in the months subsequent to the

government changeover of July 2005, and the practice became regular afterwards. The 2007 and 2008 Annual Reports of the Department of Public Administration (DoPA) and the Civil Service Commission (CSC) provide some statistics, but the extent of this practice may be higher, as these statistics reflect only cases where the hiring body has requested the legally mandatory DoPA authorisation.

- Delays and annulment of competitions are frequent. A number of competitions are annulled or delayed because of a rule establishing a required minimum number of four candidates. Data analysis has shown an increase in failed competitions and thus a decline in the efficiency of the recruitment system. The poor reputation of the system reduces the number of applicants.

3. Discipline and Integrity

- Discipline is often used arbitrarily. The CSL is unclear in setting limits to discretionary decisions by the administrative hierarchy, which creates uncertainty and may lead to the abuse of power, disproportionate sanctions and arbitrariness.
- The 2003 Law on the Rules of Ethics in Public Administration confuses ethical and legal rules. Enforcement of the law is difficult or simply ignored. Fulfilment of the disclosure obligations imposed by law is usually carried out in a formalistic and routine way, and verification capacities are insufficient.
- The scope of the 2005 Law on Preventing Conflict of Interest mixes politicians and civil servants, thus creating problems of enforceability and includes a high number of classifications and exceptions. The poor legal clarity results in many legal interpretation conflicts and undermines the ability of the law to influence understanding and behaviour. The roles and powers of the bodies responsible for implementation of the law are not clearly delimited.
- The Law on the Co-operation of the Public in the Fight against Corruption (2006) aims to protect whistle-blowers and encourages reporting of corrupt activity. The law provides the possibility of granting monetary rewards if the information given leads to a conviction. In the historical and social Albanian context in particular, this creates dangers of abuse for political and/or corrupt purposes. However, this law remains largely unimplemented.

4. Remuneration

The CSL-based salary scheme is relatively transparent and leaves little leeway for discretion in determining individual salaries. However, arbitrariness in determining individual salaries is being reintroduced by the establishment of a performance-related pay scheme in a context marked by the absence of necessary management mechanisms and capacities to effectively run the scheme. Government interventions with regard to salaries have further undermined the unitary character of the remuneration scheme.

5. Management of the Civil Service

The general management system, based in the DoPA in the Ministry of the Interior, needs greater powers and capacities if it is to be respected by the institutions employing civil servants and by politicians. The human resources management tools (e.g. performance appraisal) need to be revised to reduce subjectivity and arbitrariness. Attempts to introduce more objectivity through the organisation of exercises related to job descriptions and job evaluations have failed. Restructuring of public institutions has been used for patronage purposes. The control over the management of the civil service by the Civil Service Commission has been undermined by the government's frequent disregard for its decisions.

Recommendations for Reform

- **Legal basis and civil service management:** It is recommended to amend the civil service law, enlarging its scope and ensuring the merit system in the management of the civil service, including recruitment, tenure and stability in the event of political alternation, and an objective and unified remuneration scheme.
- **Civil Service Commission (CSC):** The authority of the CSC should be strengthened as well as the effective protection of its independence, which still remains a valuable asset in the current Albanian institutional context.
- **Department of Public Administration (DoPA):** The DoPA's authority as the competent government agency for civil service policy and management should also be strengthened.

Introduction

This report updates Sigma's 2008 assessment report on the Public Service in Albania. No improvement in overall public service legislation and in management practice is noticeable in comparison with the features highlighted in Sigma's assessment reports in this area since 2006. Recruitment and dismissal have continued to be carried out under labour contracts, thereby contravening the Civil Service Law.

Nevertheless, the current civil service legislation in Albania, passed in 1999, has been a decisive instrument, in spite of its shortcomings, in initiating the development of a timid professionalisation of the civil service and in improving the quality of work of the public administration, even if these improvements are still tiny and liable to be easily cancelled. In view of the developments since July 2005, it is undeniable that much more needs to be done in terms of better legislation and better practices.

The civil service system remains fragile. In fact, it did not withstand the 2005 government changeover, and the still incipient merit system was damaged. The government did not manage to push a much needed legal reform through parliament due to a lack of political consensus and to the fact that amending the civil service law required qualified majority voting in parliament. In addition, the compliance of government bodies with decisions of the Civil Service Commission and with rulings of the Court of Appeals is low.

1. Legal Status of Public Servants

1.1 *Does an appropriate legal basis exist, defining the status of public servants in a way that is compatible with prevailing standards in EU Member States?*

Constitution

The 1998 Constitution outlines (article 107) the main characteristics of the civil service by requiring that public employees apply the law and work to serve the people. Employees in the public administration are to be selected through competitive examinations, and guarantees of tenure and the regulation of public employment are to be provided by law. The Constitution also requires (article 81) the regulation of the status of the civil service by an organic law.

Ordinary legislation

Prior to the Constitution, a Law on Civil Service was passed in 1996 by parliament (Law no. 8095 of 21 March 1996 "For Civil Service in the Albanian Republic"); the law was never applied to civil servants, but is still in force for political appointees. The main legal instrument currently regulating the civil service is the Civil Service Law (CSL) of 11 November 1999, which entered into force on 15 January 2000 (Law no. 8549 on the Status of Civil Servants). During the first semester of 2000 the law was complemented with by-laws (nine in total), detailing the procedures established in the law. Other laws are also applicable to various aspects of the civil service. These are detailed below in the relevant section of this report.

The Labour Code applies to public employees who are not civil servants and to civil servants as supplementary legislation to the CSL. The Labour Code is the general legislation to which all other legislation refers in the event that no specific provisions are foreseen in those pieces of legislation.

Scope

The CSL defines the scope of the civil service as including "positions exercising public authority" or directly involved in policy-making at central and local self-government levels. The law enumerates the institutions or type of institutions that are included within its scope. Regarding central government, the law does not apply to either subordinate institutions (i.e. autonomous agencies that depend on ministries or on the Prime Minister's Office) or to the prefect administration. At local government level, the "basic" unit – the commune – is left outside the scope of the law, but

municipalities (*bashkite*) and regions (*qarqet*)¹ are included. There are 65 municipalities, 308 communes and 12 regions in Albania. Municipalities are deemed to employ some 2500 civil servants all combined and regions some 600. The Civil Service Law does not seem to provide sufficient protection for civil servants at state level, in municipalities and at regional level. Civil servants are easily dismissed from office, and it is very difficult for them to be reinstated in their positions, even if they win their case before the Civil Service Commission (CSC) and the courts.

The situation of local civil servants is aggravated because the salaries of municipal civil servants are much lower than those of state civil servants (the Association of Municipalities reckons that, roughly speaking, salaries are 50% lower), even though the Council of Ministers (CoM) decides the ceiling for salaries of municipal civil servants and mayors. In fact, these salaries are set in ranges, and each local government decides on the exact amount, depending on local financial possibilities. However, data on local government remuneration levels is unclear and not easily accessible.

Civil servants in the executive branch currently number about 2600 (of whom about 1512 are in ministries). Other central institutions that are independent from the government, all combined, employ some 2800 civil servants. The total public employment is about 90,000 employees, according to a December 2008 decree of the Council of Ministers. However, according to the World Bank (2006)², there is no single, updated and published source of information on the size of either the civil service or the public service. Information is only partially available in the various institutions and must be pieced together from the budget laws and from the databases of the Department of Public Administration, Ministry of Interior (DoPA), the Ministry of Finance and several other institutions, which are still under construction. The size of employment in local governments (9613-strong, see footnote 3) is known only in the aggregate, and no information exists about its evolution and composition.

The World Bank data provided in the report mentioned above shows that the civil service represents only a small proportion of government employment. Only 3.4% or 3500 central government employees are civil servants, while in municipal governments civil servants represent more than 27% of all local government employees.

When the 1999 Civil Service Law was adopted, the strategy envisaged by the government was to adopt a narrow concept of the civil service so as to allow institutions to learn the practice of the constitutional mandate of recruitment through meritocratic mechanisms. The status of civil servant was meant to be extended later on to other groups of public employees. The exclusion of subordinate institutions from the CSL came as a natural interpretation of this strategy, even though there were discussions at juridical-theoretical level on the actual legal notion of these institutions.

As from 2003-2004 the government took some legislative initiatives to extend *de facto* the scope of the civil service by awarding to other categories of public employees the same set of rights and obligations as those of civil servants. The legislation passed to create institutions usually tended to include a cross-reference to the regulation of the working relationships within institutions in the Civil Service Law. This trend was encouraged by the European Commission³ and other international organisations⁴.

That trend was reversed with the government's changeover of 2005, as all of the new institutions created or new legal frameworks adopted since then have expressly excluded the new institution from

¹ According to data provided by the Albanian Statistics Institute (INSTAT), the local government in Albania numbers 9613 employees.

² World Bank, *Albania Public Expenditure and Institutional Review: Restructuring Public Expenditure to Sustain Growth*, December 2006

³ See European Commission, *Stabilisation and Association Report 2004 – Albania*, page 3

⁴ World Bank, *Albania: Restructuring Public Expenditure to Sustain Growth – A Public Expenditure and Institutional Review*, December 2006, page 87

the scope of the CSL by applying the Labour Code instead⁵, thereby opening more possibilities to return to the old ways of politicisation and patronage.

The CSL draws a clear dividing line between political and professional civil service positions. Only university graduates can be civil servants in the professional staff group. Support and clerical staff are under the Labour Code. According to the CSL and the secondary legislation, the Secretary General is the highest civil service position in an institution and serves as a linking position between politicians and technical staff. Decree no. 325 of the Council of Ministers of 21 February 2003 sets in detail the responsibilities of secretaries general in ministries, which include human resources management. According to the 2008 statistics of the Department of Public Administration (DoPA), the staff in ministries are 19.1% support staff, 8.9% political appointees, and 72% civil servants.

However, the civil service is politicised and hindered by a pervasive lack of understanding of the need for a real separation between political and administrative levels, or by an unwillingness to implement such a separation. The highest civil service positions are the secretaries general of the Council of Ministers (CoM) and of ministries, department directors and general directors. All of these positions involve policy-making, monitoring of policy implementation and interdisciplinary areas. In the majority of ministries, political appointments are still the rule. As the appointment of secretaries general in particular remains political, their role is severely compromised.

With the government's changeover of 2005, all of the secretaries general were replaced (except for the secretaries general of the ministries of Economy and Environment). As a rule, all of the new appointments were made with temporary contracts. For some of the secretaries general, an examination procedure was organised, but some 53% of them are still bound by temporary labour contracts⁶ (out of 15 secretaries general, eight are under temporary contracts).

Given the situation that was thus created and the turnover in high management positions after the change of government, there are discussions in government on lowering the upper dividing line between politics and administration and including the positions of department director and above in the sphere of political appointments. This change, if adopted, would compromise the overall structure of the civil service by further increasing the instability of the system and the prospects for individuals to make a professional career in the civil service, thereby further diminishing the already limited attractiveness of the civil service.

Employees in the education system (teachers), police⁷, army⁸ and professional health services⁹ are not civil servants under the CSL. For these categories special statutes apply. These four categories constitute 77% of the Albanian public employment. The CSL is not applicable to the judiciary either¹⁰, but special statutes and regulations apply. Diplomats in the Foreign Service¹¹ are civil servants. They are recruited as civil servants but the mobility (promotion and transfers) and disciplinary provisions are governed by the Foreign Service Law, which basically establishes a career system.

⁵ Examples are numerous: ALUIZNI agency (CoM Decree no. 289 of 2006); Concessions Agency (CoM Decree no. 150 of 2007); National Centre of Registrations (Law no. 9723 of 2007, which expressly denies employees the right to lodge a complaint with the Civil Service Commission, even though they are considered as civil servants); National Agency for Information Society (CoM Decree no. 248 of 2007); National Authority for Exports Control (CoM Decree no. 43 of 2008), etc.

⁶ Source: DoPA

⁷ Law no. 9749 of 4 June 2007 "on the State Police"

⁸ Law no. 9210 of 23 March 2004 "on the Status of the Armed Forces"

⁹ As from 2009 the professional health care system will no longer be considered as being paid from the state budget. Following the reform in this sector, the employees will be paid directly by the Institute of Health Insurance. For this reason in the CoM Decree on the number of employees in the public sector the health sector employees were excluded – the overall number of public sector employees was therefore reduced.

¹⁰ Law no. 8436 of 28 December 1998 "on the Organisation of the Judiciary"; a new law is under discussion in parliament (already passed end-February 2008)

¹¹ Law no. 9095 of 3 July 2003 "on the Foreign Service"

Albania's legal framework regulating the civil service in some ways complies with generally accepted European standards and principles, but not with all, especially because the merit system is not fully present in the legislation and in administrative practice. Problems are also implementation-related, where commitment – especially political commitment – and capacities have been and still are either lacking or weak.

2. Professionalism of the Civil Service

2.1 Are civil servants' recruitment, rights and obligations defined, regulated and enforced in such a way as to ensure their commitment to constitutional and public law values, such as legality, impartiality, political neutrality and integrity?

Recruitment

In addition to the Constitution, which establishes the principle of competition for employment in the public sector, both the Civil Service Law (CSL) and the special statutes require, as a general rule, competition for filling vacancies (article 13 of the CSL and Decree of the CoM no. 231 of 11 May 2000 on Recruitment and Probationary Period in the Civil Service). The principles of publicity and equality of chances for candidates are also recognised by law.

The employer of civil servants is the institution in which they are working, not the state. This arrangement weakens the sense of serving the state and undermines the system of allegiance of civil servants, even if recruitment is organised centrally by the DoPA for line ministries and separately by each of the “independent institutions”¹².

Following the advertisement of a vacancy and the pre-selection of candidates, the DoPA creates an ad hoc committee to administer the examination procedure. The committee consists of five members: two from the institution where the vacancy is located, two from the relevant university or two specialists in the field, and one representative of the DoPA. The examination is carried out in two phases: written examination and oral evaluation. The members of the ad hoc committee prepare the topics for the written examination one hour before it begins. The written test is worth 70% of the total mark. In the oral evaluation, the committee evaluates the job experience of the candidates, their academic qualifications (university degree, masters or PhD), and their publications and special skills (basically communication). The ad hoc committee has discretion to award marks to candidates, and a shortlist of three candidates is submitted to the future direct superior of candidates.

In December 2006¹³ the government brought about some changes to the structure and score of the evaluation to attract to the civil service those individuals holding postgraduate university diplomas, such as masters or doctorate degrees. As a result, candidates with a masters' degree are awarded almost 50% of points in oral evaluation and for candidates with a PhD degree the award is automatic of 100% of the points in oral evaluation. Currently there are no statistics available to assess the outcomes of this initiative.

The intended direct superior subsequently interviews the three best candidates selected by the ad hoc committee in order to choose one of them, but not necessarily the candidate who scored the highest. In making a choice, the direct superior is supposed to take into consideration the principles of equality of chances between candidates, non-discrimination and good faith. After the direct superior makes a decision, the DoPA issues the formal act of appointment to the civil service.

The civil servant is placed on probation for one year. At the end of this probationary period, and according to the results of the performance appraisal, the civil servant is confirmed, dismissed or extended in the probationary period for an additional period of up to six months.

¹² “Independent institutions” are the autonomous entities reporting to parliament, e.g. Supreme State Audit, Ombudsman, Parliament Administration and Energy Regulatory Entity. The CSL also defines local government entities as independent.

¹³ CoM Decree no. 838 of 13 December 2006

Candidates have the right to appeal to the Civil Service Commission (CSC)¹⁴ at each step of the procedure. The CSC may re-examine the procedures to see whether mistakes have been made or whether the ad hoc committee has disregarded relevant CV data or scientific publications of candidates. However, vis-à-vis the written examination the CSC has decided, as a matter of principle, not to question the authority of the ad hoc committee. This practice is now well established.

The competition is announced in various ways, usually through newspapers and on the information bulletin board of the institution concerned. Since mid-2004 all recruitment notices have also been published on DoPA's website¹⁵. Unfortunately, this good practice, which really contributed in the past to increasing the transparency of the recruitment procedure and offered a better service to the public, has encountered several infrastructure problems within the DoPA and is no longer functioning properly. The lack of IT investments, the moving of the DoPA to other premises, and the continuous problems with Internet connections in Albania have led to a situation whereby the website is almost unusable and the information provided on the website is no longer regularly updated. In addition, the DoPA changed the choice of newspapers where vacancies are published and is now using some newspapers that do not have a high circulation. What is more disturbing is that the DoPA uses the various newspapers on a rotating basis, making it more difficult for the public to follow up or trace the vacancy developments since successive steps concerning a given vacancy are published in different newspapers.

This situation is considered to be contributing to the decrease in the number of applications for vacancies. A few years ago the DoPA launched an initiative to publish all vacancy announcements on its website and invited all institutions to use that webpage as the recruitment portal. Unfortunately, mainly because of IT unreliability and institutions' reticence to be too strictly controlled, this initiative did not succeed and was abandoned.

Legal design drawbacks of the recruitment scheme

On the other hand, recruitment procedures have legal design shortcomings. First, the discretion of direct superiors to choose any one of the three best-ranked candidates contributes to the degradation of the true competitive nature of the procedure and of the constitutional right of equal access to the civil service. Direct superiors (employers) often make decisions that cannot be considered to have been taken in good faith or with respect to the principle of equal opportunity among candidates. It has happened that direct superiors have chosen the second or even the third candidate when the first one had 20-30% more points. This has also created a situation whereby the ad hoc committee has been forced to include on the three-candidate shortlist the superior's favourite for a position. This is one of the reasons why recruitment is unfair, not totally aligned with the merit system and mistrusted by the public.

In addition, the fact that competitions need to be organised separately for each vacancy makes the system costly and cumbersome. Recruiting institutions are obliged to reiterate separate testing procedures for positions that have the same or almost the same job description, whereas by pooling all of them together into a single procedure the system would be more economical. The existing pattern should be reformed so as to allow for "pooled recruitments" for similar positions. In order for this to work properly, it would also be necessary to improve the management of recruitment through better staffing planning.

An additional problematic point is that the same scoring system is used for all categories of civil servants, from executive to managerial and top managerial positions. If for junior and executive positions the written test should have the same weight in terms of points allocated, for managerial positions the experience of the candidate should be given greater weight. The more senior the position to be filled, the more relevant are the candidate's experience and prior achievements. For these

¹⁴ The Civil Service Commission (CSC, see below) is an independent body reporting to parliament. It is a quasi-judicial institution that examines the complaints of civil servants regarding the protection of their rights. It also has a supervisory role and can exercise control over the legality of the management of the civil service.

¹⁵ www.pad.gov.al

positions, what is really important is the candidate's vision and capacity to innovate and manage change; academic knowledge, although relevant, is less important. However, to bring about such a reform of the scoring system there is a need, in addition to certain amendments to the law, to increase the capacities of the ad hoc committee members, who are usually not trained in human resources management and do not have the proper interviewing skills.

The competition structure could be further streamlined. The topics for the written component of the examination procedure are based on a bibliography that is published with each vacancy and from which the ad hoc committee prepares the topics one hour before the examination. The examination usually turns out to be a reproduction of the chapters of relevant legislation because the ad hoc committee has had little time at its disposal to compose proper and relevant subjects. Likewise, there is insufficient time to create case studies or multiple-choice questions. As a result, the quality of the written examinations does not offer sufficient guarantees for selecting the best professionals available.

Excess of temporary contracting without competition

The other and more important cause for the decrease in applications for vacancies in the civil service is the proliferation of temporary contracting without competition. The competitive nature of the recruitment procedure has been further hampered by the profuse utilisation of "temporary contracts". The Civil Service Law does not allow for temporary recruitment of civil servants to fill vacancies on an urgent basis. Based on specific needs and on the excuse that the time required (approximately 90 days) for a competitive recruitment procedure is long, institutions conclude individual contracts under the Labour Code. This procedure, tolerated by the DoPA, contravenes the law and is not new. In 2004 an initiative was launched to supervise the phenomenon, and the DoPA succeeded in reducing by the end of 2004 the number of temporary contracts to 2.2% of the total number of positions¹⁶ (38 positions in total). However, this practice was taken up again as from 2005, with the result that temporary contracts reached about 11% by the end of 2006¹⁷ and 7% by the end of 2007 (97 positions in total).

Officially the DoPA reports only 56 approved temporary contracts in the administration for the year 2008, but the real number is much higher, as in a number of cases institutions did not request the DoPA's approval or continued the contracting procedure even if the DoPA had rejected the proposal. According to the CSC, in the Ministry of Tourism, Culture, Youth and Sports alone there were 37 temporary contracts in 2008, most of which were not approved by the DoPA.¹⁸

These numbers show that an exceptional, pragmatic way of providing for the staffing needs of institutions has become the regular recruitment mechanism, circumventing the competitive procedure established by law. The situation seems more worrying in certain institutions and bodies when data from previous years are analysed. In the Ministry of Finance, 42 positions were filled by using contracts; while 23 of the 42 positions were filled, following a formal testing procedure, by the already contracted incumbent, the remaining 19 positions continued to be filled by using temporary contracts. In the Ministry of Agriculture, 27 vacancies were initially filled by contractual employees, all of whom succeeded in the subsequent examination procedures. In the General Department of Taxation, out of 228 positions initially filled by using contracts, 178 positions were filled, following the organisation of an examination procedure, by the person already occupying the post; a total of 50 positions continued to be filled by using temporary contracts¹⁹.

This situation negatively influences recruitment procedures and diminishes the credibility of the competition process. Statistics show that differences between the top-scored candidate and the remaining candidates are sometimes as wide as 40% of the score, which may indicate that the recruitment process is pre-set so that competitors' chances compared to those of the preferred

¹⁶ Source: DoPA, *Annual Report 2004*

¹⁷ Source: DoPA, *Annual Report 2006*

¹⁸ Source: CSC, *Annual Report 2008*

¹⁹ Source: CSC, *Annual Report 2007*

candidate are purposely limited. The competition then becomes a mere formality. Unfortunately, the DoPA rarely intervenes to redress such a situation.

Recruitment based on temporary contracts is also influencing the length of the examination procedure and the actual application of these procedures. In the majority of cases, when a position is already occupied by an incumbent under a labour contract, the examination procedure is always delayed and in some cases postponed *sine die*.

Data analysis shows that the number of temporary contracts correlates negatively with the number of successful recruitments, i.e. the greater the increase in the number of temporary contracts, the greater the increase in the number of incomplete recruitments. Temporary contracts seem to not only decrease the number of successful competitions, but also to affect the quality of recruitment due to an ebbing number of competitors for each position²⁰. Temporary contracting also negatively affects the attractiveness of the public service and diminishes public trust in a transparent and impartial competition procedure.

Frequent delays and annulment of competitions

A number of competitions are annulled or delayed because of a curious rule establishing a required minimum number of four candidates. As many vacancies are publicly perceived to be destined for the incumbent, the number of applicants is more and more often fewer than the four required by law. Data analysis has shown that the number of recruitment procedures successfully completed, as a percentage of the number of announced positions has significantly decreased, which means an increase in failed competitions and thus a decline in the efficiency of the recruitment system.

Situation worse in local self-governments

The situation seems to be more worrisome in many local government authorities, where proper recruitment procedures are not used and civil servants are employed following a simple, discretionary decision of the head of the institution. In some other municipalities all civil servants are employed on a temporary contract²¹. Some institutions have tried to justify this practice by a lack of funds to cover recruitment expenses, while others simply disregard the law. In the absence of a strong controlling institution and proper accountability mechanisms, it is likely that this situation will continue in the future. The CSC tried to intervene to sort out the situation, but its institutional capacities are weak and the legal instruments at its disposal are not appropriate.

Rights and Obligations

The Civil Service Law (CSL) establishes the rights and duties of civil servants. The obligations and rights of civil servants provided in articles 19 and 20, together with the principles of the civil service as defined in article 3, constitute a legal framework that overall adequately balances the working discipline-related obligations with the constitutional role that the civil service is called upon to play and with the inherent obligations associated with that role, such as impartiality, political neutrality, transparency, service to the public and integrity. Other laws and regulations may establish other rights and duties that may be general (for all civil servants) or special (only for a category of civil servants). In the event that a civil servant is denied the rights guaranteed under the law, or should the individual's rights be infringed upon, an appeal in writing may be filed with the Civil Service Commission (CSC).

Violation of duty may result in the commencement of a disciplinary procedure against a civil servant. In that case the law recognises the right of the civil servant to be notified of the beginning of the procedure, the causes and evidence; he/she has the right to be heard, to submit counterevidence, and to be assisted by a lawyer in the hearing organised by the direct superior. In instances where a

²⁰ *Review of Civil Service Law Implementation Challenges in Albania*, an unpublished report carried out by PAI and ISB for the World Bank and delivered to the DoPA on 10 February 2008; the report was reviewed by Sigma at the request of the DoPA.

²¹ Source: CSC, *Annual Report 2008*, pp. 45-46

disciplinary measure is taken, the civil servant may lodge an appeal with the CSC. The disciplinary scheme does not work well, however.

Discipline is often used arbitrarily

Direct superiors have often misused their legally awarded discretionary powers and, in the majority of cases, the disciplinary measures do not respect the principle of proportionality. The CSL is unclear in setting limits to discretionary decisions by the administrative hierarchy. This creates uncertainty and may often lead to the abuse of power and arbitrariness. In recent years, a high percentage of disciplinary measures (80% in 2006, 79% in 2007 and 55% in 2008) involved dismissal from the civil service. In 2006, 78% of the disciplinary sanctions were either replaced by a milder one or repealed by the CSC²². The same situation occurred again in 2007²³. In 2008, the CSC replaced or repealed 56% of all disciplinary decisions.

Duty of Integrity

All Albanian governments, including the current one, have stressed the importance of the issues of anti-corruption and ethics and have set them as priorities. However, despite these efforts, corruption still persists in the country, corruption scandals are used in the media as weapons in political disputes, and little progress has been made in combating corruption.

The 2003 Law on the Rules of Ethics is relatively ineffectual

The Law on the Rules of Ethics in Public Administration (Law no. 9131 of 8 September 2003), also known as the Code of Ethics, and the Law on Prevention of Conflict of Interest in the Exercise of Public Functions (Law no. 9367 of 7 April 2005) complete the legal framework for ordinary civil servants and public employees and for those involved in administrative decision-making respectively, namely managers in the public administration and other state institutions and in customs and tax offices (articles 29 and 32 of Law no. 9367).

Law no. 9131 of 2003 on the Rules of Ethics in Public Administration confuses ethical and legal rules, and enforcement of the law is therefore difficult or simply ignored. It establishes ethical standards for all public employees and mandates the Council of Ministers (CoM) to develop them. For this purpose, in 2004 the CoM adopted a decree prohibiting the acceptance of gifts for rendering services to the public. The Law no. 9131 of 2003 also regulates some procedures related to conflict of interest, secondary employment, the use of public property and so forth, and pronounces the first official definition of conflict of interest in Albania. This law is applicable to all public employees except those in the judiciary, who are regulated by special statute. The law does not apply to elected officials either.

According to Law no. 9131, all public employees, from the moment they are appointed to a position – and taking into consideration the job description and attached legal obligations, must declare that they do not have interests that might interfere with their public duties. Since 2004 the Department of Public Administration (DoPA) does not issue the appointment act if this declaration has not been attached (with the signature of the employee, the direct superior and the representative of the HR unit in the ministry). Law no. 9131 also states that public employees cannot be hired in the private sector for a period of two years after leaving office if that employment entails using information gained during the term of public duty. Likewise, a former public employee cannot act as a representative in a case against the public administration if the case refers to the job previously performed in the public service by that former employee.

²² CSC, *Annual Report 2006*

²³ According to the CSC's *Annual Report 2007*, in the General Department of Taxation a number of civil servants were given the hardest disciplinary measure (dismissal from the civil service) following an audit carried out by the Supreme State Audit (supreme audit institution – SAI). In a number of cases, however, the SAI reports had recommended further evaluations and controls, but the institution nevertheless immediately imposed a disciplinary penalty on the civil servant.

The fulfilment of the disclosure obligations imposed by the law is usually carried out in a formalistic and routine way, while many of its provisions are hardly enforceable.

The 2005 Law on Preventing Conflict of Interest is unclear and open to abuse

The 2005 Law on Prevention of Conflict of Interest in the Exercise of Public Functions (Law no. 9367 of 7 April 2005) applies to elected officials (members of parliament, ministers, mayors, etc.) and to certain civil servants, such as managers in the public administration and other state institutions and customs and tax offices (articles 29 and 32). According to this law, public employees should not be directly involved in economic activities in the area(s) of their public engagement, and for some categories of high officials this prohibition is limitless. This law, which was drafted in close co-operation with civil society, is complicated, unclear and liable to result in many legal interpretation conflicts, consequently creating implementation difficulties as well as opening up possibilities for abuse. Even the roles and powers of the bodies responsible for implementation of the law are unclear, especially the roles of the units in public institutions that will be the first to be asked to interpret various situations.

The 1999 Code of Administrative Procedures regulates cases of incompatibility, namely the obligation of a decision-maker to withdraw and the right of any person to ask for the withdrawal of a decision-maker from the decision-making process when the incumbent has an interest in the outcome of the procedure. The Code sanctions with nullity an administrative act adopted in conditions of incompatibility and sets out the possibility to undertake disciplinary procedures against the relevant official. The Code also establishes the procedure for declaration of incompatibility and the procedure for the replacement of public officials who have been declared incompatible.

In order to enhance the understanding of ethical standards by public employees and of the procedure to be followed to avoid conflict of interest and other procedures established by legislation, the Training Institute for Public Administration (TIPA) organises training sessions on ethics and anti-corruption. In the period 2003-2006, a total of 24 training courses on this topic were provided to 404 public employees. In 2007 the training was extended to local government institutions and combined with training on conflict-of-interest issues. A total of 501 public employees²⁴ were trained in 2007 on these topics in local government institutions. In 2008 this training was delivered to specific institutions dealing with the public and involved in decision-making, such as the Office for Registration of Immovable Properties, ALUIZNI Agency, the Agency for Restitution of Properties, the Ministry of Education and Science, and the Ministry of Health.

A problematic Law on Whistle-Blowing was passed in 2006

Law no. 9508 of 3 April 2006 “On the Co-operation of the Public in the Fight against Corruption” aims to encourage whistle-blowing, i.e. the denouncement of public employees or civil servants for corrupt behaviour. There are worries that the law could easily lead to the evolution of a police state, as it provides the possibility of granting a monetary reward if the information given is true and the public servant is convicted. However, to date no examples of implementation of the law or of cases uncovered due to the incentives provided by the law have been communicated by the government, which seems to indicate that the law is not applied in practice, perhaps fortunately so.

Some areas where administrative corruption is a matter for special concern

According to the Union of Chambers of Commerce and Industry (UCCI), the public administration is clearly mistrusted, mainly due to corruption. The UCCI usually recommends its affiliated businesses to avoid direct contact with civil servants and public employees and thus to avoid opportunities for them to ask for bribes. The popular mentality among ordinary citizens – that nothing can be obtained from the administration without paying a bribe – also plays a role. The UCCI considers, however, that corruption in the judicial system is worse, due to its effects, than corruption within the public administration.

²⁴ Source: TIPA annual reports and website www.itap.gov.al

The UCCI considers that progress has been made in the fight against corruption in the customs administration in the past few years. However, despite some recent improvements, corruption can still be found in the tax administration, which seems to affect more the small and medium-sized enterprises. This situation is deemed to be due to a large extent to the complexity of tax procedures. The government reformed tax procedures by introducing the electronic declaration of taxes so as to minimise the physical contact between taxpayers and the tax administration. Progress in this area has occurred, but a great deal remains to be done to enable tax administration employees to cope with the new technologies, which require working at a distance from the public. So far the main part of this reform has been carried out by foreign technical assistance offered to the government, but the tax administration should develop in-house capacities and systems.

Other areas where corruption is a real problem are property registration (despite recent improvements) and urban planning and construction permits (at the level of municipalities), where the absence of plans for several years has left room for arbitrariness and corruption. It is often heard that “it is more important in terms of business priorities to get a construction permit in Tirana than to have the capital to build”.

Rather ineffective remedies

The Department of Internal Administrative Control and Anti-Corruption was reorganised in early 2006 in the Council of Ministers to control ministries and their dependent institutions or agencies as well as the de-concentrated administration under the prefects. Complaints about local governments are outside the remit of this department. The department may receive complaints from citizens by mail; it is also possible for citizens to refer to the Public Relations Department of the Prime Minister’s Office and to a special telephone hotline. These complaints are then transmitted to the Anti-Corruption Department, which has discretion in handling these complaints. It does not intervene automatically but sets its own priorities. It recommends measures to be taken and follows their implementation. It may also refer the problem to the relevant authority, respecting the responsibilities of other institutions. The Ombudsman may also refer cases to the Anti-Corruption Department. The department also has a role in co-ordinating the gathering of information from other departments on corruption-related problems.

When there is an important case that may constitute a criminal offence, it is referred to the Prosecutor. Since the Anti-Corruption Department’s creation, some 200 persons have been referred to the Prosecutor. In 2007 224 officials were identified as having been involved in corruption and abuse of power and 53 of these officials were arrested and prosecuted.

There are internal inspection and audit bodies within ministries (e.g. General Directorate of Internal Audit in the Ministry of Finance), which operate independently, without having to go through the Anti-Corruption Department (e.g. in order to refer a case to the Prosecutor). Inspections and audits do not suffice to prevent corruption, and audit institutions look towards the administration, as they are not legally open to relationships with businesses. This situation makes audit institutions rather insensitive to businesses concerns. The supreme audit institution and judges are often seen as “abusing their independence” and as being largely unaccountable.

Dissatisfaction with the public administration, arbitrariness, illegal and unjustified decisions, and the lack of standardised licensing procedures are some of the reasons why the UCCI believes that it is necessary to legislate so as to render civil servants and public employees personally responsible for damages caused to businesses by their decisions. This sentiment and the proposal to legislate direct, personalised responsibility clearly show a lack of understanding of the role of the state. It is nevertheless the state’s responsibility to make sure that its employees, organs and services work properly and according to the law. This situation also shows the weakness of the state and of the rule of law in their various expressions, including the administrative system and the judiciary.

In essence, all of these comments demonstrate that corruption and other weaknesses in the Albanian civil service and public administration stem from a culture of weak accountability and disrespect for lawful and responsible behaviour, and from the relative absence of sound and workable accountability mechanisms.

2.2 *Does the law fix the salary scheme and is the determination of individual pay transparent and predictable?*

Classification of the Civil Service

Article 11 of the Civil Service Law (CSL) makes a clear classification of civil service positions in institutions falling within the scope of the law. There are four general classes that may have different categories: a) civil servant of high-level management; b) civil servant of middle-level management; c) civil servant of low-level management; and d) civil servant at implementing level. In December 2008 approximately 4% of civil service positions within ministries were high-level management positions, 11% middle-level management, 19% low-level management, and the remaining 66% were positions of civil servants at implementing level²⁵.

Each of the above four general classes comprises two to three categories of civil service positions. The criteria used for this classification are as follows: a) resource management responsibilities, b) decision-making responsibilities, c) complexity and creativity, d) contacts and representation, and e) required knowledge, skills and experience. As from 2006 the same categories of positions started to be used in all subordinate institutions. The government adopted a positions' grid that allows the comparability of all positions in almost all of the institutions in the executive branch. The positions' nominations were also unified, giving more space for a future interchange and mobility of employees between institutions.

The salary system is centralised. Individual institutions have little leeway to adopt separate or different salary schemes and levels. The state salary levels and the salary ceilings for local government civil servants are approved by the CoM. Three different salary schemes apply to different groups of public employees: a) salary based on class, b) salary based on grade, and c) salary scheme of the CSL.

The class-based salary scheme is the old salary scheme, which was applied until the new civil servants' salary scheme was put in place at the beginning of 2002. It remains in vigour for ancillary and auxiliary positions only (the position-holders are not civil servants) within ministries and public institutions. It is composed of the basic salary and various incentives applied on top of the basic salary, e.g. working conditions, working with dangerous material, and management supplement. In some cases the incentives are set by the head of the institution and may reach up to 100% of the basic salary²⁶. On average, incentives range from 40% to 60% of the basic salary. This system is opaque and arbitrary and creates internal imbalances and inequity, as persons working under the same conditions and in the same type of job may be paid differently.

The grade-based salary applies to the armed forces, the police and diplomats (for each of these categories specific provisions exist). In these cases the employee is paid according to his/her grade, regardless of the position occupied in the organisational structure. These institutions have a career system.

In December 2001 the CoM approved a new salary scheme for the civil service, which began to be applied in 2002. This scheme is based on article 18 of the CSL. There are four salary components: 1) the basic salary (or salary group), which is a fixed component rewarding the pre-entry required qualifications for the job; 2) the seniority supplement, which is a percentage supplement applied each year to the basic salary (2% of the basic salary per year, up to a maximum of 25 years); 3) qualification supplement/special working condition supplement. Under the previous government this supplement was not in use, but in recent years it has started to be utilised for some categories of employees in various sectors. First it was applied to IT positions in order to face competition from the private sector, where the demand and pay for these positions are more attractive than in the civil service. Then it was extended to some other categories sensitive to corruption, such as Property

²⁵ Source: DoPA

²⁶ The CoM decides the ranges/bands of the supplements, and the head of the institution decides the exact percentage to be applied for a specific employee.

Registers, Tax Administration, ALUIZNI Agency²⁷, General Department of Prisons, and Public Procurement Agency; 4) position supplement, which is the largest part of the salary (in very high positions it constitutes up to 80% of the total salary) and reflects the importance of the position within the hierarchy. The value of the position supplement is supposed to be determined by means of a job evaluation exercise.

This civil service law-based salary scheme is relatively transparent and leaves little leeway for discretion in determining individual salaries. The only variable part of the salary is the seniority supplement, which varies depending on the number of years of service. This scheme has been applied to all civil service positions, including in local governments and in education and health care systems. It was gradually extended to almost all subordinate institutions in 2006-2007, including the majority of public employees in the executive branch. The old system based on classes continues to be used only for support staff.

Arbitrariness in determining individual salaries is being reintroduced

In the civil service salary scheme no bonuses are paid, except for performance bonuses²⁸. Institutions used to take the savings from unfilled vacancies to pay this bonus, but the Supreme State Audit considered that this practice was not in conformity with the law. It is suggested that institutions acted like this because the budgetary funds to cover the performance bonus represented only 5% of the wage bill, an amount that was not sufficient to develop a proper performance bonus system. In 2006 the state budget included a supplement of 15% of salary funds, which was to be used to pay performance-appraisal bonuses. Unfortunately, by the end of that year, the government decided to apply a unique bonus system of 10,000 ALL (80 EUR) per public employee, regardless of the employee's performance²⁹.

In 2007 the 5% threshold was legally reinstated. This is a shortcoming in the system, given the lack of necessary management mechanisms and capacities to effectively run a performance-related pay scheme, in addition to the current insufficiency of financial means to support the process. The way in which the government adopted these decisions is worrying, as it did not consult the DoPA and disregarded the need for developing workable performance management systems, which amounts to reintroducing more arbitrariness in the salary system. The discretion of managers in determining individual salaries needs to be reduced in some sectors and institutions.

Fragmentation is increasing

Law no. 9584 of 17 July 2006, passed without the required 3/5 qualified majority in parliament, (i) regulates the salary levels of positions of high state officials by linking them to the salary of the President, which is the highest salary in the public sector; (ii) generalises the use of the same categorisation system and the position titles of the civil service in independent institutions; (iii) delegates to the Council of Ministers the approval of the salary levels for these institutions, linked to the salary levels of civil service positions; and (iv) reserves for parliament the approval of the salary structures of institutions reporting to parliament. Some of the provisions of Law 9584 were declared unconstitutional by the Constitutional Court, which considered that the double contradictory regulation gave prevalence to the original regulation of special organic laws. As a result, the new legal framework is only applicable to some institutions, leaving some other institutions of the same category outside the general regulation. This situation adds further fragmentation to the system.

Although a Salary Strategy was approved in 2004, government interventions with regard to salaries have been erratic, sometimes approved in a rush without proper consultations. Political distrust between the various parties in parliament has negatively influenced some major decisions in this area, where interventions have produced long-lasting effects stretching beyond political election cycles. The salary scheme needs to be unified for all public employees and made more transparent.

²⁷ Agency for the Legalisation of Informal Zones

²⁸ For more details, see below in the section on Performance Appraisal.

²⁹ Idem

Another shortcoming of the system and failed reform

The civil servants' salary scheme has another shortcoming. The CSL establishes a position-based system in which a civil servant has to be promoted in order to receive a higher salary. Few promotion possibilities exist, as fewer and fewer vacant positions are available as one moves up the hierarchy of the institution as a consequence of the reduction in the number of top positions that are open to competition due to their progressive politicisation. A horizontal career development system was designed in 2005 in order to offer some career development prospects, but it was never adopted.

Recent salary increases

During the period 2006-2008 the government increased the salaries in some institutions, especially in the education and health care sector. In the health care sector the increase was 20-25% in 2006, 22-26% in 2007 and 15% in 2008. In the education sector the salaries were increased by 27% in 2006, 22% in 2007 and 15% in 2008. In the year 2006 the overall salary increase for the public administration was 19.8%³⁰. The increases for civil service positions amounted to a mere 5.5% in 2006 and 7% in 2007. Further salary increases are expected as from May 2009 in certain areas of public employment, but these increases had not yet been published at the time of writing.

2.3 Do sufficient and reasonable mechanisms (basically mobility, training, and motivation) exist for good performance and career development within the civil service so as to make it attractive?

Promotion and Mobility

According to article 15 of the Civil Service Law (CSL), there are two ways for career development: lateral transfer and vertical promotion. In either case the procedure requires competition. In addition, for vertical promotion examinations are required as well as the competition of at least four candidates who are in positions immediately below the vacant position in the hierarchy. In practice, when a vacancy is opened and published, the first step is lateral transfer. If there are no applications for the transfer procedure, then the promotion procedure begins. If there are no applications from within the institution for the vertical promotion procedure, then the competition is open to any interested candidate from inside the civil service.

Promotion and mobility rarely take place

According to the Department of Public Administration (DoPA), vertical promotions and lateral transfers have been scarcely used, however. This is mainly due to the fact that civil servants are unaware of the possibilities offered by the CSL and because these procedures start with the application of the civil servant to a vacancy rather than from any initiative of the institution. On the other hand, in some cases the institutions have rejected proposals for lateral transfers, preferring open competition on the grounds that it offers more possibilities for choosing the best candidate. However, the widespread use of temporary contracts influences the application of mobility procedures. The prior decision concerning the person to be employed in a vacant position, even before the vacancy is announced, inhibits the desire or opportunity of civil servants to apply for promotion to that position.

Also, in the case of vertical promotion, there is the requirement of a minimum number of candidates for the procedure to go forward. This requirement is a useless barrier for civil servants and has the effect of lowering the number of promotion procedures. In addition, the system allows vertical promotion only from a position at the level immediately below that of the vacancy.

Lateral transfers are hampered by meaningless formalities

A shortcoming of the lateral transfer procedure concerns the probationary period. A civil servant who has been transferred must once again undergo a probationary period of one year. This requirement is useless and meaningless, because the incumbent has already successfully completed the probationary

³⁰ Source: DoPA, *Annual Report 2006* and *Annual Report 2007*

period in the previous position, and in this case there are not many additional functions since the positions are at the same level. The CSL also establishes the rules for a transfer resulting from institutional needs, whereby a civil servant can be temporarily transferred to another position at the same level for a maximum of six months. The institution submits the transfer proposal to the DoPA for approval. The civil servant is entitled to all of the rights of the new position, but these may not be fewer than those of his/her permanent position. The civil servant can refuse the transfer only if the location of the new job is further than 30 km from his/her current workplace.

Public Service Attractiveness

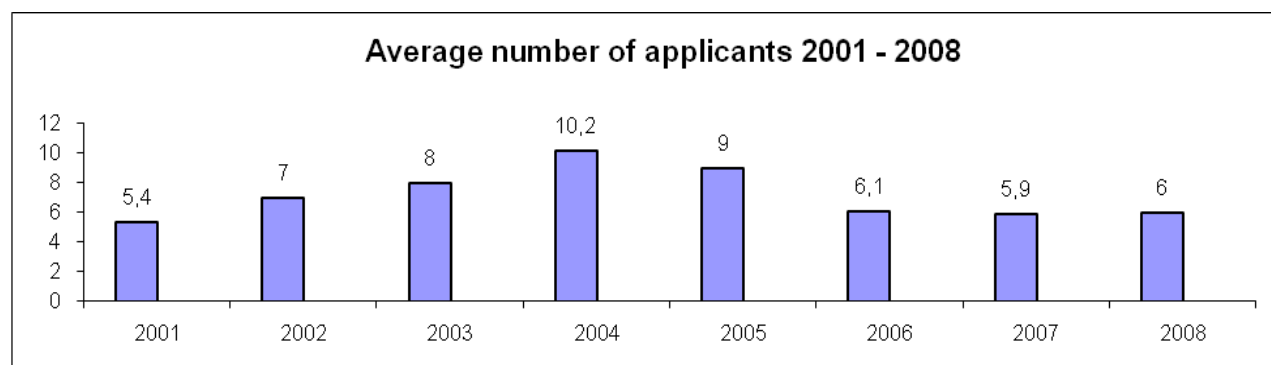
The public service seems to be attractive to young people, who consider that some years of experience in the public sector will be productive for their future careers. Usually employment in the public sector is seen as being the first step towards future employment in the private sector because the public sector offers fewer career advancement possibilities and political and personal relations are crucial for that progression. In 2004, the Albanian Government decided to lower the barriers for participation in recruitment competitions in order to attract recently graduated students from universities. This decision, together with the review of salaries, produced an increase in the average number of participants in recruitment procedures, and only a few competitions were cancelled due to an insufficient number of candidates. However, this situation has now changed, mainly due to the proliferation of temporary contracting (see above).

An insufficiently tested “qualification bonus” to attract candidates to the civil service

As part of a policy aimed at attracting bright individuals, the government decided to award a “qualification bonus” for all civil servants working in central institutions if they possess a post-university qualification (masters or doctorate degree). If this is the case, a consistent bonus is to be added to the monthly salary of the civil servant. To date the DoPA and the Ministry of Finance have approved this bonus for 369 civil servants in institutions of the executive. It is far from clear whether the “qualification bonus” has any positive effect. It is likely to only add more distortion to the salary system. The introduction of this salary supplement shows once more the erratic decisions of the government on personnel policy.

Some policies also make the civil service unattractive. The employment of civil servants with contracts, without passing a competitive process, and the organisation at a second stage of a formal recruitment procedure to legalise the existing situation have severely damaged public trust in a professional and impartial civil service. In most cases the competition procedure is a mere formality.

Another indicator that reveals the system’s decreased credibility is the average number of applicants per vacancy³¹. The variation of this indicator is reflected in the variation of the percentage of civil servants employed under temporary contracts. The number of candidates has decreased significantly in recent years³², as has the number of applicants.



³¹ Source: DoPA

³² It should be borne in mind that competitions are cancelled if there are not at least four candidates.

3. Management of the Civil Service

3.1 *Have systems for personnel management and a cross-government structure been established so as to ensure the application of homogeneous standards across the administration?*

The Civil Service Law – CSL (articles 4 and 5) created two institutions, charged respectively with the tasks of managing and monitoring the management of the civil service at the state level. The Department of Public Administration (DoPA) has the task of managing the civil service in central institutions, while in independent institutions the human resource units fulfil this function. The Civil Service Commission (CSC) supervises the legality of management decisions concerning the civil service and judges the appeals of civil servants in all areas connected to the civil service statute: recruitment, administrative proceedings, probationary period, performance appraisal, functional review, etc. The CSC is an administrative body with adjudicating powers, preceding recourse to the courts.

The DoPA, with 18 staff, is entrusted with developing civil service policies and issuing general instructions related to recruitment, performance appraisal, job description and job evaluation, functional review and salary structure. The DoPA supervises the implementation of civil service regulations by ministries, and proposals of institutions regarding the above-mentioned issues must be agreed by the DoPA prior to approval by the Council of Ministers (CoM). Ministries have been strictly controlled by the DoPA, whereas HRM information from other institutions is lacking.

The 1999 CSL established the DoPA within the Prime Minister's Office (PMO) so that it would have a general overview and control of the civil service in all ministries. At the end of 2005 the government transferred the department to the Ministry of Interior, which in itself is not negative.

In parallel with this transfer, the DoPA's regulatory and monitoring capacities were de facto weakened. Staff changes and the replacement of the director five times in the last four years have negatively affected the work of the department. Under the Ministry of Interior the DoPA lost the oversight capacity of the entire system and as a result many legal acts in the areas covered by the DoPA were approved without the department having been consulted³³. This situation may lead to the fragmentation and deconstruction of the still fragile Albanian civil service system, which runs the risk of disintegrating. To counteract this risk, the legal, managerial and infrastructural capacities of the DoPA need to be strengthened so that it is able to exercise oversight and to steer the development of a more professionalised state bureaucracy.

As indicated above, the Civil Service Commission (CSC) is an independent administrative body that reports yearly to parliament. Its main task is examining complaints of civil servants regarding their statutory rights. Decisions of the CSC are mandatory for institutions, although they may appeal to the courts. In fact, quite often ministries and institutions delay the implementation of CSC decisions until they have been confirmed by the courts. The Supreme Court, with a certain degree of ambiguity, has ruled that the CSC is to be considered as a quasi-judicial body and that its decisions, although of an administrative nature, should be considered as a first-instance judgement. This legal stance should be further ascertained by legally considering the CSC's decisions as "execution titles", i.e. rulings that can be enforced.

The CSC has control powers over the management of the civil service. This competence has resulted in some disputes with the DoPA. A Memorandum of Understanding to resolve these disputes was signed in 2004 and reconfirmed in 2008. The CSC should focus its supervisory role on independent institutions and local governments, areas in which the DoPA has no competence. The CSC, despite some efforts, has failed to do so, mainly because of lack of staff and capacities³⁴. Legal procedures in

³³ EC, *Albania – Progress Report 2007*

³⁴ In 2008 the CSC focused its supervisory role on local government authorities. The implementation of the law in these authorities has proved to be very problematic and out of control. There is very little respect for the

the CSL to enforce CSC recommendations are long and ineffective, but the main problem is the refusal of institutions to comply with the CSL regulation. There is not a single example of an institution enforcing a CSC decision without passing through the court. Politicians in both parliament and government have tried to influence decisions of the CSC by exerting pressure. In addition, difficulties and unjustified delays have occurred in replacing members of the CSC at the end of their mandate³⁵.

In ministries and institutions, units for human resources management have been created. Their main responsibility is the day-to-day management of human resources. One issue is that the personnel in these units do not always have the skills to communicate their findings and proposals effectively, with the result that they are hardly listened to by higher managers. However, the DoPA has organised several training sessions for them, but to little avail due to the high staff turnover in these units.

Secretaries general are responsible for personnel within ministries. There is a problem in that the authority of secretaries general is not recognised by the entities subordinated to the ministry. The consequence is that if a secretary general issues an instruction to ministry staff, the minister has to issue a similar instruction to the ministries' subordinate entities as they will not act on an order from the secretary general. The high turnover of staff in these positions since 2005 has had a negative effect on the activities of the institutions concerned and on the sustainability of civil service professionalism.

In conclusion, the management system is weak. It still needs to be made more relevant if it is to be respected by the institutions employing civil servants.

3.2. What are the main management tools used in practice?

Subjectivism and insufficiency of funds feature high in the performance appraisal scheme

The CSL (article 16) sets the obligation of institutions to appraise their civil servants yearly. A CoM Instruction in this regard was approved in 2000, but the first appraisal process did not take place until the end of 2002. The performance appraisal has three important consequences for a civil servant: 1) At the end of the probationary period, determination of the suitability of a civil servant depends on the appraisal. A negative appraisal may lead to the dismissal of a civil servant from the position. In practice this situation has occurred very rarely³⁶. 2) A positive appraisal is a factor favouring promotion or lateral transfer. In cases where a civil service position is abolished and a civil servant is declared redundant, the performance appraisal results are one of the factors that are taken into consideration for the selection of those civil servants who will stay. 3) A performance-related pay scheme (performance bonus) has been established. The civil servant appraised with the mark of 1³⁷ is paid a bonus of one month's salary for good performance. Civil servants appraised with marks 2 and 3 are respectively paid 70% and 50% of one month's salary as a performance bonus. In the CSL it is established that this bonus is to be given if there is budgetary affordability. The amount of the performance bonus was changed in December 2007³⁸. Previously the performance bonuses had been the equivalent of three months, two months and one month of salary for performance marks 1, 2 and 3 respectively.

In practice, however, the performance appraisal scheme has not achieved the expected results. Reliable data on appraisals exists only for ministries. In local governments and other small institutions within the scope of the law, the scheme has not been applied. In ministries performance appraisal was formally carried out from 2002 to 2008, with the exception of 2005, when the process was followed

law, and the procedures are deliberately disregarded. Unfortunately, the CSC cannot really influence the system in view of the weak legal remedies and low accountability behaviour of managers.

³⁵ In one case the replacement period lasted for more than eight months.

³⁶ According to the DoPA, only in three cases were civil servants dismissed after a negative appraisal mark.

³⁷ Mark 1 is the highest in a scale of 4.

³⁸ CoM Instruction no. 5 of 19 December 2007

only in a few ministries because of the change of government, the merger of some ministries³⁹ and the instability in the administration that occurred at that time. Data shows that a majority of civil servants was given high marks. As a consequence, the bonus was applied only in selected cases because the financial means were insufficient to pay the bonus in the way in which it was established by the 2007 CoM Instruction. The bonus was proportionally reduced or in some cases employees received across the board the same amount.

In practice the exercise was very subjective. No links with the general performance of the institution were made. For example, in spite of the fact that many of the government's engagements in the framework of the EU Stabilisation and Association Process were not fulfilled, the civil servants in charge were appraised as having performed excellently. This shows a poor understanding of the reasons for and philosophy of the performance appraisal; the process was carried out only formally, without a genuine assessment of whether objectives had been achieved. Instead, the personal relationship between the civil servant and the direct superior took prevalence. The assessment interview took place in rare cases and even then it was again a mere formality. The DoPA tried to raise awareness of the process by organising training for civil servants, but to little avail due to the high staff turnover of civil servants.

With the amendments to the regulation approved in December 2007, the DoPA tried to improve the legal and theoretical bases for the appraisal process. Unfortunately, these amendments turned out to be a legalisation of the existing bizarre situation. Previously, "mark 1" corresponded to the civil servant whose performance was excellent, having achieved not only all of the pre-set objectives but also results that were beyond expectations. With those criteria, very few civil servants should have been appraised with the mark 1. In the amendments approved in December 2007, mark 1 corresponds to the civil servant who has simply achieved the pre-set objectives, thereby lowering the level of expectations of civil servants' performance and eliminating the possibility of distinguishing between civil servants whose performance is excellent and civil servants whose performance is good. At the same time, this set-up diminishes the incentives for a civil servant to perform well.

Another negative factor of the appraisal process is the insufficiency of funds accorded by the government for this purpose (see above, in the section on salaries). Likewise, the new limits for the bonus decided in December 2007 are too low to stimulate the good performance of civil servants. These financial means are not sufficient to support a proper performance management exercise.

Civil servants may challenge the appraisal's results before the Civil Service Commission, but since appraisals have in general been positive, few complaints have been lodged with the CSC. Prior to going to the CSC, a civil servant may file an internal administrative complaint with the secretary general of the institution, but this intermediate step is not obligatory. In the most recent practice, cases have been observed of civil servants appraised negatively, but without any reason given in the form from the direct superior, just the marks. This leads one to think that the appraisal was carried out only formally, with the intention of exerting pressure on the civil servant and of using the results in future processes, such as restructuring. The fairness of the system is thereby also put in jeopardy.

Failed Exercises on Job Description and Job Evaluation

The introduction of job descriptions has begun in institutions falling within the scope of the CSL. The CoM approved an instruction on drafting job descriptions and designating the responsible persons in institutions. In each institution a position of job analyst was created within the human resources unit. The direct superior was responsible for establishing the principal tasks that a particular position was entrusted with, and the job analyst was responsible for the harmonisation of that position with the other positions in the institution. Since positions already existed and were occupied and the job-holders had a role in drafting the original job descriptions, problems arose as the job-holders tended to "bias" the job descriptions to fit their own particular skills.

³⁹ The current government reduced the number of ministries from 17 to 14 at the end of 2005 by merging several of them.

As from 2002 the drafting of job descriptions was associated with job evaluation exercises. With the approval of the new salary scheme, the job evaluation exercises gained importance. The job evaluation exercise was decentralised at the very beginning. In this way institutions were to propose descriptions and evaluations of their positions and the DoPA had to monitor and agree on the proposals before they were submitted to the CoM for final approval.

This process failed. Ministries proposed categories that represented an inverted pyramid. Almost 60% of the specialist positions were categorised at the first salary level, 30% at the second salary level and only 10% at the third salary level. This situation was the result of the work of non-trained personnel combined with the desire to take maximum advantage of the salary increase. After one year of negotiations, coupled with training, the situation remained unchanged.

As a consequence, the DoPA decided to recentralise the system and to carry out job evaluations on its own if ministries did not fulfil certain conditions. First of all, fixed percentages of the positions within the salary levels were established, and only in very exceptional cases were they not respected. The DoPA clustered similar positions in various ministries and applied the fixed percentages to all of them. As a result, supporting positions were set at the same salary levels in all ministries. Ministries had the liberty of distributing job positions in the established categories, although the DoPA intervened in cases where a policy-making position was categorised at a lower level. Later on the DoPA and the Ministry of Finance also maintained their decision-making power in the distribution of positions among salary levels⁴⁰.

According to the approved methodology, special evaluation committees were to be created in each institution, but in reality that never happened, or if it did happen the work of these committees was insufficient. Although a large training initiative took place, in the end capacities were not in place and job analysts were not able to fulfil their functions. Furthermore, a point-ranking system was never put in place and no points were awarded to positions. Institutions and the DoPA have had practical difficulties in implementing this system because of the lack of capacities, limitations of financial resources, and the centralisation of the system. The existing system does not allow differences between positions of the same denomination in similar institutions, i.e. department directors are paid the same across all ministries, regardless of their real tasks.

Another issue observed is the personalisation of the process. Job description and job evaluation have always been seen as connected to the person occupying the position. Usually the job description has been drafted by the job-holder and in accordance with his/her qualifications or even preferences. Moreover, ministries tend to consider the person holding the position and not the position as such, which leads to a situation whereby civil servants with the same job description are paid differently. This situation, although foreseen at the beginning and considered as temporary, still persists and few efforts have been made to redress it.

Political partisanship in restructuring of public institutions

In 2005-2006 a large-scale functional review took place in ministries, followed in 2006-2007 by a review of the majority of subordinate institutions. The ministries were organised in pillars, corresponding to the functions allocated to each department, according to the principle of ministries performing policy-making functions (but not only) and subordinate institutions performing regulatory and service-delivery functions. This division of functions, although useful with regard to the policy-making functions, should not be extended in all cases to other functions, such as personnel management. However, the functional reviews helped public institutions better define their roles and functions.

The functional review exercise coincided with the staff reduction initiative adopted by the government. From 2005 to 2008 the overall staff reduction in the public administration resulted in a

⁴⁰ The proposal of job evaluation for the ministry is made by the minister, and prior to the approval of the Prime Minister the proposal must be reviewed by the DoPA and the Ministry of Finance. Without their consent the proposal is not submitted to the Prime Minister.

diminution from 110,000 to 104,700 public employees. The number of civil servants in ministries decreased from 1667 in 2005 to 1512 in 2009, with a net reduction of 9%.

However, the restructuring of ministries and the staff reductions were not carried out for the purpose of improving performance and making savings from the budget allocated for salaries and operational expenditure, but mainly for political reasons, i.e. to enable the employment of politically connected candidates. The shortage of staff was accompanied by the registration on a waiting list of all of the civil servants who had been declared redundant. In 2006, 367 civil servants or 27% of all civil servants⁴¹ were registered on the waiting list and were paid the same salary as they had received before being declared redundant. At the same time, 339 positions became vacant in 2006, and that year the DoPA organised 140 competition procedures for recruitment in ministries, ignoring the legal requirement of appointment without competition of civil servants registered on the waiting list. Only 21 appointments concerned persons on the waiting list. The government accepted to pay the salaries of all civil servants on the waiting list for one year, instead of reintegrating them in vacant positions. The situation was the same in 2007, although by the end of the year there were 330 vacant positions. In 2008 only 10 appointments concerned civil servants on the waiting list, whereas 307 appointments were made during the year and 227 vacant positions were registered in ministries.

Another issue concerning the organisation of the administration and the stability of the civil service is the frequency in changing organisational structures. In 2007 the structures of the 15 ministries were changed 26 times in total, which indicates that the interventions were made erratically, without a thorough analysis of all factors and functions. In 2008 the structures of the ministries were changed in total 18 times, whereas the structures of the subordinate agencies under the ministries were changed 43 times. There has been a continuous shift of responsibilities and functions from ministries to subordinate agencies and vice versa.

It should be noted that the lack of employment guarantees and the insufficiency of the system of waiting lists are aggravated by the wide discretion in organisational restructuring, which usually leads to dismissals. The CSC cannot easily evaluate technically these restructurings and any abuses that are aimed simply at getting rid of certain staff members⁴². The high number of decisions issued by the CSC in favour of civil servants indicates that a great deal needs to be done in terms of employment guarantees for the civil service.

Training

The civil service legislation establishes the obligation of training for civil servants during the probationary period and in the case of a change in the job description following a functional review. In these cases the institution is obliged to offer training to the civil servant⁴³. However, promotion within the civil service is not linked to training for the time being, although this is a topic under discussion in connection with the public administration reform strategy currently being prepared.

To accompany the building of the civil service system, along with the passage of the CSL, the Council of Ministers (Decision no. 315 of 23 June 2000) created the Training Institute for Public Administration (TIPA) to train civil servants. TIPA is directed by an advisory board composed of the secretaries general of ministries and representatives of universities, and it runs its activities under the direct supervision of the DoPA. The DoPA approves the annual and multi-annual work programmes of TIPA and the annual reports on training that TIPA has delivered. TIPA staff are training managers, not trainers; all of its experts and lecturers are contracted out. Trainers are recruited from public institutions – practitioners (60%), universities (20%) and civil society (20%)⁴⁴.

⁴¹ Source: DoPA, *Annual Report 2006*

⁴² For example, it is hardly believable that the Tax Administration required 118 dismissals because of restructuring in 2007, as a result of 150 complaints filed against that department before the Civil Service Commission.

⁴³ Paragraph 12 of CoM Decision no. 315 of 23 June 2000 and articles 14 and 24 of the CSL

⁴⁴ Source: TIPA website www.itap.gov.al

TIPA delivers two types of training, general and specific. The general training focuses on general administrative law on the functioning of the public administration and is usually targeted to junior civil servants on probation (induction training). TIPA also delivers training to small target groups on very specific and technical issues, such as EU integration and public finance.

A unit on training in financial matters was created in 2005 as a part of TIPA. Another unit on training for local government was created in February 2008. The creation of these units marked an important evolution of TIPA's role by stressing the importance of specialised training. Special attention is paid to EU-related training. A special training strategy was approved, covering a long-term period stretching from the Albanian EU association process up to EU membership. The training activities foreseen in the framework of this strategy started to be delivered in 2005. In 2007 a total of 328 and in 2008 a total of 145 civil servants were trained in EU-related matters. Statistics on the increasing number of participants in training activities (5050 in 2008 compared with 2360 in 2005) and the decreasing costs of training – while keeping the same quality standards (6.4 on a gradient of 1 to 7, with 7 indicating the highest standard) – can be found on the TIPA website (www.itap.gov.al).

The TIPA and the Association of Municipalities dispense training for local government employees. The former is more inclined to provide basic training while the latter contributes to more specialised subjects, such as new legislation. It also offers services, such as dissemination of best practices, and more general information (e.g. when a bill is drafted). Apparently the TIPA is not seen by the Association of Municipalities as being sufficiently sensitive to local government training needs, despite the presence of local representatives on TIPA's board. The Association also provides training on subjects such as local economic development and project design, while the TIPA collaborates on the organisation of training with the three existing associations at local government level (i.e. municipalities, communes and regions).

Training needs analyses have constituted a crucial exercise but have presented some shortcomings. At the beginning of TIPA's activity, these analyses were not that important, as public administration employees required training in various fields and all of the training offered by the TIPA easily found "clients". In time, civil servants became increasingly interested in specific training related to the specific processes of their work. To meet their needs, the TIPA carried out a training needs analysis implicating all institutions, but this was ineffective as the institutions were not able to properly perform the exercise or identify their real training needs. Furthermore, there was also an improper implementation of the performance appraisal scheme.

It needs to be stressed that training needs are largely influenced by the type of civil service in place (e.g. career vs. generalist). Therefore, the lack of clarity or awareness concerning training needs may be linked to the current structure and development of the Albanian civil service. Additionally, the high staff turnover in a mainly position-based system may lead to a waste of training resources, in the event that those trained move to other public or private organisations before they really make their contribution to the institution that had invested in their training.

Another negative aspect to be noted is the lack of impact assessment of training on the performance of civil servants. Almost none of the institutions has carried out post-training evaluation. Sometimes these institutions sent employees to training simply because they felt obliged to do so and not because the employees really needed it. This situation has really decreased the interest of civil servants in participating in training because often their concerns did not fit with the training topic. The TIPA was obliged in some cases to shorten training sessions because of the lack of participation or because of the lack of interest and interaction from participants.

Gender Equality

The number of women working in the civil service is higher than the number of men, but men are dominant on the upper hierarchical levels. According to a DoPA survey of May 2005, women represent 55.8% of all civil servants in ministries and men 44.2%. In 2007 the newly recruited civil servants were 60% women and 40% men. In 2008, 64% of all applicants for vacancies were women. Most managerial positions (56%) are occupied by men (all managerial levels combined). Only four secretaries general are women. In the Council of Ministers there are two female ministers.

3.3 *Are staff numbers and personnel costs controlled and published?*

Law no. 9702 of 23 April 2007 on internal audit in the public sector provides instruments for monitoring personnel expenditures in ministries and state institutions. The Directorate of Internal Audit operates within the framework of a treasury system that does not allow overspending.

The CSL imposes an obligation on public institutions to develop staffing plans for the forthcoming year. However, due to the lack of institutional capacities to forecast future developments, this obligation is rarely respected. General staff numbers are limited each year by the State Budget Law and are spelled out in a decision of the CoM (issued usually in March), which establishes limits to the number of personnel for each system (i.e. education, police) and for each institution. The Ministry of Finance supervises its implementation. Individual institutions have no possibility to exceed these numbers, except in cases where they have funds available other than from the state budget and with the approval of the supervising authority. Only through amendments to the decisions of the CoM can institutions obtain a green light for adding staff. In the absence of this authorisation, the institution would not be able to pay the employees newly added to the payroll.

Accurate and reliable data on staff numbers is not readily available. The DoPA has reliable data only from ministries and from the Prime Minister's Office, but not from other institutions because they do not report to anyone on their human resources management. The Ministry of Finance has data reflecting the total number of personnel in the institutions financed by the state budget, but data is missing for the institutions that are self-financed or that generate their own revenues (see "secondary revenues" above, under the section on the salary system).

The absence or inaccuracy of data related to staff reflects the absence of a functional central management personnel database and of a system concerned with analysing staffing needs. Since 2001 the DoPA has been developing a central personnel database of all public employees. The database is not yet functional, although some progress has been made. The system is interactive with the Treasury (Ministry of Finance) for the calculation of the public employees' payroll. This system will allow for the development of better informed salary and personnel policies. However, the lack of qualified personnel and the half-hearted political will have delayed the completion of the database for some time now.

The lack of proper IT equipment and space for the servers caused the interruption of database activity for more than two years. As a result, all of the data already inserted was not updated and therefore needed to be reinserted again, and in all ministries the process began from the start. Added to this problem was the high staff turnover and the obsolescence of the IT equipment installed in the DoPA. It was only at the end of 2008 that the DoPA purchased new hardware equipment for its own needs and for the database. In addition, the use of the database is linked to the treasury system in the Ministry of Finance, which is also facing a number of difficulties, and the timetable for launching the full operation of the database is therefore uncertain. The government should invest in equipment and staff capacities for these important e-government projects so as to achieve tangible results. A signal in this direction is the allocation in the fiscal year 2009 of a small amount of money for the maintenance of the database by external service-providers. As a result of recent developments, the DoPA and the government in general have no capacities to maintain and develop complex IT databases.

3.4 *Do staff representatives participate in decision-making and control concerning personnel management matters?*

The CSL (articles 19 and 20) establishes the right of civil servants to be organised in unions and professional associations but prohibits strikes. The prohibition of striking is in conformity with article 51 of the Constitution. These legal provisions have been judged to be inappropriate by the European Committee of Social Rights, which considers that they are not aligned with article 6 of the European Social Charter, a critique that is questionable from a European comparative perspective. The Albanian Government decided to amend these provisions at the same time as amendments to the CSL are passed in order to comply with the request of the Committee.

Although Albanian civil servants have the right to be organised in unions and to take part in negotiations on civil service issues, they do not take advantage of these provisions, as no union or professional organisation of civil servants is in place. Other public employees in education and health care have relatively powerful trade unions.

4. Recommendations

- **Legal basis and civil service management:** It is recommended to amend the civil service law, enlarging its scope and ensuring the merit system in the management of the civil service, including recruitment, tenure and stability in the event of political alternation, and an objective and unified remuneration scheme. Partisanship and arbitrariness should be removed from the management of the civil service.
- **Civil Service Commission (CSC):** The authority of the CSC should be strengthened as well as the effective protection of its independence, which is a most valuable asset in the current Albanian institutional context.
- **Department of Public Administration (DoPA):** The DoPA's authority as the competent government agency for civil service policy and management should also be strengthened and its operational capacities streamlined.