

The status of the Civil Servant and Rules of Ethics in Public Administration efficacy in preserving the integrity of civil servants and preventing corruption: the case of Albania

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Abstract

Since several years already, a public law has been adopted in the Republic of Albania on the civil servants as well as their ethics in workplace. Integrity of civil servants and prevention of corruption are two key elements needed highly required from the latter aiming at serving the public interest at best. The legislation is a key measure to reach such a goal. This papers aims at assessing the efficacy of the two main laws, the status of civil service and rules of ethics for such a pursue and their consistency with best international practices of provisions of civil service legislation related to recruitment, promotion, job security, the independence and capacity of the body/bodies responsible for oversight, including OECD/SIGMA and Council of Europe recommendations. The paper presents several suggestions, according to which either the integrity of civil service recruitment should be better monitored or several legislation amendments are needed.

Keywords: civil servants, ethics, integrity, corruption, international standards

1. Introduction

Civil servants are public employees who serve the public interest through their performance. This is the main reason why the employment relations aspects of such a category are regulated by a public law rather than the labour law. Being a public law branch, it aims to serve both the purpose of having dispositions regulating employment aspects as well regulations that would contribute to a better public interest service. That is why attractiveness of the public service is considered a matter of good public governance.¹ To reach such a goal, incentives for civil servants are also important, *i.e.* civil servants perform in an attractive environment. Thus, the legislation should balance both the regulation of legality and avoidance of conflict of interest or corruption with the guaranteeing of a working environment that strengthens the integrity of the civil servants. In a democratic state, the performance of state functions firstly requires a better organization of the state apparatus and in particular, the administrative apparatus, and secondly, the apparatus should consist of professionally skilled employees who have incentives of performing well. Their professionalism

¹ Cardona F. in OECD/Sigma, *Building a Civil Service System*, 2002.

and sustainability in work is necessarily translated into sustainability of the public administration.

2. Constitutional and legal framework on civil servants: regulation by law

Employment relations of public administration employees in the Republic of Albania are regulated on the basis of a constitutional and legal framework. The Constitution, or other laws, such as the Code of Administrative Procedures (CAP), or the Law on the Status of Civil Servants (LCS), or the Law on Ethics in Public Administration (LEPA), have elaborated principles such as constitutionality and lawfulness,² reasoned decision-making,³ justice and impartiality,⁴ accountability and responsibility,⁵ efficiency and de-bureaucratisation⁶ for the public administration and its employees. Such a legal basis in the Albanian legislation requires that any public employee, civil servants included, perform in a manner that the public interest is served well. *Such rules serve thus a safeguard not only to the public interest but to a better performance, more ethical and not corrupt, of the civil servants as well.*

The Constitution, in its article 107 requires that employment aspects of public administration employees be regulated by law and that they be selected by competition, regulates that:

Public employees apply the law and are at the service of the people.

Employees in the public administration are selected by competition, except when the law provides otherwise.

Guarantees of tenure and legal treatment of public employees are regulated by law.

When drafting this article of the Constitution, the discussions held supported the argument that,

in a society like ours deriving from the dictatorial regime, it is not unreasonable . . . to establish a certain security for civil servants through proving for guarantees so that we do not have continuous changes o the Albanian administration personnel.⁷

² Art. 4 of the Constitution; Art. 9 of CAP, Art. 19 of LCS, and Art. 3 of the LEPA.

³ Art. 107 of CAP.

⁴ Art. 11 of CAP.

⁵ Art. 44 of the Constitution; Art. 14 of CAP; Law No. 8510, 15 July 1999 "On the extra-contractual liability of state administration bodies".

⁶ Art. 16 of CAP.

⁷ Imami A., in OSCE Presence in Albania 'Debati Kushtetues', Tirana 2006.

According to Art. 81 of the Constitution, the labour relations of public officials are approved by a law that requires a qualified majority of votes, 3/5 of all the Assembly deputies. The terminology used in Art. 81 and Art. 107 is different, however, the Law on Civil Servants (which is the subject of the present analysis) was adopted with a qualified majority of votes, 3/5 of all the Members of the Parliament. This is one element that helps sustainability of the regulation. In addition, the Constitution (Art. 107) requires transparency in the selection of public employees in general, which is a necessary element for establishing and keeping a professional civil service. *Such a constitutional requirement is another safeguard for a stable regulation of employment relations of civil servants in the country. This is in accordance with the Sigma legal approach described as the necessary “entry port” for the eastern European countries in the European Union.*⁸

In implementation of such a Constitutional framework, a special status of civil servants was approved with Law no. dt. 11 November 1999 “On the status of civil servants” (hereinafter LCS). The purpose of this law was to create a civil service that is sustainable, meritocratic and apolitical.⁹ This law considers that several employees of the Assembly, office of the President, independent central bodies, municipalities and regions, Council of Ministers and Ministers enjoy the civil servant status. (Art. 2 of LCS) Such employees are: secretaries general, directors of departments or directors general, directors of directorates or sector/office chiefs, specialists (and positions equivalent to the above).¹⁰ Not all employees in the public administration are civil servants, thus any regulation provided in LCS cannot be applied to other employees in the public administration automatically. This is an important element which indicates that any ethical regulation or even regulations regarding recruitment, carrier, benefits, evaluation and termination of employment relations of civil servants, that might be *considered as important legal elements in support of the integrity and ethical behaviour and decision-taking of such civil servants, cannot be by definition considered as a legal basis for any employer in the public administration.*

LCS includes specific provisions on recruiting, continuation and termination of labour relations, and also guarantees rights and requires civil servants to obey to rules as provided in the law. *Integrity and non-corruption being important elements of a sustainable public administration are also addressed in the LCS directly or indirectly. It should also be mentioned that such issues are regulated by other important laws, such as:*

- Law no. 9131, dt. 8.9.2003 “On Rules of Ethics in Public Administration” (LRE) that provides rules on the behaviour according to the rules/standards required

⁸ EC DG Enlargement D - Financial Instruments and Regional Programmes D4 Institution Building, 2008.

⁹ Art. 3 of LCS.

¹⁰ Art. 11 of LCS

- Law no. 9367, dt. 7.4.2005, "On the prevention of the Conflict of Interest in the exercise of the public functions" (LPCI) that requires every official employee (civil servants included) to declare their incomes and avoid conflict interest in their work
- Law no. 8510, dt. 15.7.1999 "On the extracontractual responsibility of the state administration" that if the civil servant has by fault caused damages to legal interests and rights of third parties, s/he must pay such damages personally, etc.
- Law on Administrative Procedures (LAP) that provides for procedural aspects of the work that should be observed by civil servants as well.

Such legislation, tackling different aspects of the civil servants work, is thus one important part of the "Ethics Infrastructure" that OECD refers to in its recommendations, as an important element of a non-corrupt and with integrity administration.¹¹

3. Specific aspects of regulation for civil servants

3.1. Recruitment

Civil servants are recruited on the basis of a competition as per Art. 13 of LCS. This process includes:

- announcement of job vacancies, for not less than 30 days in two newspapers with the widest circulation in the country.
- preliminary selection
- written and oral test by an ad-hoc committee composed of representatives from the institution, Public Administration Department (hereinafter PAD) or personnel departments (depending on the institution) and independent experts.
- selection of one out of the three best candidates by the direct superior
- appointment by DPA for the central institutions and by the personnel department for the independent institutions.¹²

The country has experienced a decrease in the average number of applicants, which is an indication of the decrease of trust in the meritocracy and sustainability offered de facto though the LCS.¹³ Thus, in 2008 the average number of applicants was 6.1, in 2007 6.2, while in 2004 it was 10.2.¹⁴ Such figures are influenced by a complexity of elements, selection process included. This process incorporates certain elements that support corruptive actions, or do not necessarily help meritocracy. One to be

¹¹ OECD Recommendation: 1998 and 2003.

¹² Article 13 of LCS

¹³ Department of Public Administration Annual Report: 2008

¹⁴ Department of Public Administration Annual Report: 2008

mentioned is the *selection by the direct superior of one out of the three best candidates: it is a discretionary selection, where no criteria exist. Meritocracy is not thus the legal principle that guides the selection itself.* This regulation does not thus clearly comply with Art. 5-Recruitment procedures, of the Recommendation No. R (2000) 6 of the Committee of Ministers to member states on the status of public officials in Europe, which requires for the 'best candidate that meets the specific needs of the department or organisation concerned be appointed.'

Further, LCS also provides for a carrier system, parallel movement and upgrading, however¹⁵ there is no clear legal rule when such a procedure is used living thus to the discretion of the organs part of the civil servant. Thus, even though the competition is an obligation in every procedure, the system is basically an open one living giving limited or no possibility to civil servant for a career. Lack of carrier in the civil service does not help at integrity and sustainability of the civil service.

In addition, even though recruitment through a transparent call published for 30 days in the two newspapers with the biggest number of selling and a selection of candidates based on the general and specific criteria¹⁶ is the normal procedure to be followed, temporary contracts are generally applied. LCS stipulates that aspects not regulated therein (See art. 1 of LCS) will be governed by the Labour Code. On such basis a Decision of the Council of Ministers was approved in 2000 to provide for the detailed regulation of such contracting.¹⁷ This is the legal basis for contracting (temporarily) persons in civil service positions. According to DPA, during 2006, 161 contracts were signed, in 2007 62, and in 2008 3.4% of the civil service jobs were occupied by temporary contracts.¹⁸ Such a figure should be carefully considered as PDA is the institution that observes the civil service for central institutions only, *i.e.* Council of Ministers and Ministers.¹⁹ Not only this is in conflict with the general goal of the LCS, but it also damages any potential future competition process that will occur to occupy the position in conformity with the LCS, because temporary contracted persons are in a better off position as compared to any other candidate to the position. *Use of temporary contracts does not help in creating a sustainable environment within civil service²⁰ and thus it indirectly helps potential corrupt actions of such civil servants.*

¹⁵ See Art. 15 of LCS

¹⁶ See Art. 12 and 13 of LCS

¹⁷ Republic of Albania CoM Decision no. 231 of 11 May 2000

¹⁸ Department of Public Administration Annual Report:2007

¹⁹ See Art. 9 of LCS

²⁰ Department of Public Administration Annual Report: 2008

3.2. Continuance of the employment relations

The first year (potentially 6 more months) after appointment, civil servants are in a probation period. LCS provides that the direct superior evaluates if the civil servants have performed good enough as to be definitely employed. During this period the civil servant is guided by a senior civil servant. *The law does provide for compulsory training during the probation period which is offered by Institute for Trainings of the Public Administration as per the Albanian legislation.*

Civil servants are appraised at the end of each year for their annual work. Relevant guidelines are approved to conduct such an appraisal; however it is constantly evaluated thus such guidelines are not clear enough and live room for abusive decisions.²¹ It also influences the termination of the service: two consecutive negative evaluations are needed. Appraisal without a clear regulation, can *potentially lead to abusive decisions against the interest of the civil servant and serve thus as a mechanism to put pressure over the latter.*

Art. 17 of LCS provides for situations when a transfer can happen in a civil service: not for longer than 6 months and no further than 30 km away from the current workplace. Although such elements are clear protections to civil servants, this decision can be taken in cases of temporary need. *There is no legal indication that such a decision is taken only in the public interest and, in particular, of a good public administration, as Art. 6 of the Recommendation No. R (2000) 6 of the Committee of Ministers, CoE, requires.*

3.3. Conflict of interests and ethical regulations

Conflict of interest and corruption are considered the primary risk in the public sector. (Sigma Paper No. 36: 2006) That is why the legislation requires civil servants to declare and avoid any conflict of interest before being employed in the civil service (See Art. 5 of LRE and Art. 6 of LPCI). Both laws aim at addressing both the case by case and continuous conflict, as well as the factual and apparent conflict of interest. The issue is not only regulated as a matter of the law, but it is also provided as a matter of ethics in the public administration. Thus, LRE requires public employees (civil servants included) to declare their interest before being employed and they avoid any conflict of interests of their related persons as defined in the law. However, *LRE does provide for a wider concept of the related persons including even relations for political reasons or for any civil relation. Such a broad scope of the law, being even different in formulation from LPCI is a situation that brings potential conflicts in the applicable law.*

²¹ OECD/SIGMA Paper 44: 2009

Also, LPCI is a complex law, governing different categories of public employees, including political employees, public employees with a special status, public employees without any special status, as well as civil servants. *Such a generalist approach of this law and the complexity of categories it includes have contributed to a difficulty in understanding and implementing the law.*

Both laws are not that much known, especially LRE, and as a consequence not a necessary element for a real 'ethical administration' as OECD recommends.²² Majority of institutions do not have an internal regulation to address ethical issues in the working place for the public employees. *This indicates that either the laws should be reviewed to be more realistic for the purpose of implementation, or training is needed to make such legislation understood properly and thus implemented.*

Further, LRE regulates that the clarification of several issues related to ethical behavior are done by the human resources structures in cooperation with the PAD. It is not possible for such a cooperation to occur, considering that all municipalities, regions, independent institutions, Presidency and Assembly are also part of the civil service, thus any ethical issue related to these employees need the consultancy of PAD, an institution established as a dependent one to the Council of Ministers and to manage the civil service for central institutions only. That is why *the LRE must be amended regarding the regulation of the structures to guard ethical behavior of civil servants.* It should also be considered that LRE requires direct superior and the human resources both to observe the ethical aspects (conflict of interest is one element of such behavior), while LPCI requires that the official superior must take the measures against the public employee in cases of conflict of interest. As long as the terminology is not consistent and those charged with control and monitoring might potentially be different persons or structures dealing with the same case, this brings confusion in applying properly ethical and conflict of interest rules. It potentially brings chaotic implementation of the legislation and will be an obstacle in addressing corruptive or unethical behavior of the civil servants. *Thus, both laws must be reviewed to be clear and consistent when addressing the same issue, or to leave the regulation of one issue (conflict of interest) under the scope of one law.*

3.4. Rights and duties of the civil servants

LCS provides for several rights and duties of civil servants in its Art. 19 and 20, addressing thus a *social dimension of the employment relation of these servants.* Civil servants are allowed to get engaged in other activities upon condition that they do not damage their performance. Also, rights to associate professionally and politically are expressly confirmed, however strike is not allowed. LCS generally declares that they enjoy financial benefits, but these are not clear what they are. The law *must be more*

²² *ibid.*

specific in providing for the right to get a salary and specified benefits: this would help in making the position more attractive and also keep qualified civil servants. Art 12 of Recommendation No. R (2000) 6 of the Committee of Ministers, CoE, specifically requires remunerations 'should be sufficient so as to ensure that public officials are not put at risk of corruption or engaging in activities incompatible with the performance of public duties'.

LRE as well as LCS requires that civil servants respect legal and ethical requirement. LRE mixes ethical requirement with legal ones, thus not providing for a clear regulation of what ethical rules are. In fact, LRE requires that institutions approve specific regulations on ethical rules, which in most of cases do not exist. Thus, general categories of ethics, such as 'serious clothes',²³ "good behaviour",²⁴ 'not damaging the image of the public employee'²⁵ remain unregulated at large, leaving room for abusive discretionary interpretations. *LRE, being the specific law on rules of ethics in public administration needs to be reviewed even in this regard, so that ethical duties aiming at increasing the integrity of civil servants do not serve an adversarial aim.*

3.5. Termination of employment relations

Employment relations of civil servants can terminate if the civil servant him/herself resigns, for health reasons and if condemned by a final court decision, when retired, if the discipline measure of dismissal is taken, in cases of two consecutive negative evaluations, or the institution is restructured or closed or even if it is concluded that s/he is not appropriate for the position due to changes in the working requirements. There is no regulation of when the institution is restructured or closed or when the position requirements change. It is an open possibility left highly to the discretion of the competent organ as provided in specific laws, such as the Council of Ministers, Prime Minister, Minister, Head of Municipality or Municipality Councils, Secretary Generals, direct superiors, etc. Frequent changes, as have been the case, contribute to an unstable and inefficient civil service, a feature of the administration that does not help integrity and non-corruption. *LCS must thus provide for at least general guides of such structural or positional changes.*

In addition, disciplinary measures, taken by the direct superior, do not have a hierarchy. Failure to fulfil duties, violation of work discipline and rules of ethics, etc., are causes for taking any of the following measures:

- written reprimand;
- reprimand with admonition;

²³ Art. 15 of LRE

²⁴ Art. 10 of LRE

²⁵ Art. 7 of LRE

- suspension from the right to promotion for a period of up to two years;
- demotion to a position of a lower level or category for a period of thirty days to one year;
- dismissal from the civil service.

The process must be due in such cases. The decision is decided on the basis of the proportionality principle. This principle is not defined in the law, leaving thus in the discretion of the direct superior. *If not proper training in understating such managerial competencies is not given, the risk of abusing in such cases is present.*

3.6. Institutions charged with specific duties in the civil service

Integrity and non-corruption in the civil service, even if very well addressed by the law, depends a lot on how the competent institutions apply the law. Institutions such as High Inspectorate on Control and Prevention of Conflict of Interest being an independent institution have shown a very good will to combat conflict of interest and corruption. The same independent status enjoy the Civil Service Commission (CSC) that administratively decides on the appeals of the civil servants. However, the Commission being a collective organ, did not properly function, and after the 2009 report to the Assembly, the latter has clearly expressed its highly critical view on such a work and also spoke of its closure.²⁶ Thus, the institutional structure established to support civil servants, has turned to be a non-effective institution. The reasons might be different: such might be a bad selection of members, or a legal reform set on table such as that of the administrative courts draft-law that foresees repeal of the CSC. Any of such reasons tells that selection of the decision taking persons must be professional or that the legislator must be careful when starting a reform. However, *CSC is an important structure that serves as a filter to the long way of appeals with the courts, thus it must be strengthened even more. It must be the case until the administrative courts are approved, if the reform will conclude.*

In addition, DPA even though managing only the CoM and Ministers civil service, has an important role to play in the civil service as it develops all the draft policies and draft sublegal acts related to the civil service. Its role seems to be important also regarding the interpretation of ethical behaviour rules as per LRE. *Such a role of this institution being inconsistent with its position, structure and subordination to the Council of Ministers (now moved to the Ministry of Interior) must be reviewed so that it enables the institution to properly exercise the competencies the law provides for.* That will also create a proper legal framework for defending civil servants rights as well as taking proper decisions to combat corruption or guarding ethical rules in public administration.

²⁶ Civil Service Commission, Annual Report to the Assembly of the Republic of Albania, 2009.

4. Conclusion

A constitutional disposition requires that public employers' employment relations be regulated by law. LCS and several laws serving as an ethical infrastructure regulate different aspects serving the stability, professionalism and integrity, as well as combating corruption, conflict of interests and unethical behaviour. However, specific regulations do not serve the declared scope, such as:

- the discretionary selection by the direct superior of one out of the three best candidates
- the system is basically an open one, living thus limited or no possibility towards a career in the civil service
- use of temporary contracts in civil service positions
- lack of clear regulation of how to evaluate the performance of civil servants
- lack of clear legal indication of when the temporary transfers happen
- lack of clarity as related to ethical issues, such as 'image' 'good behaviour', 'serious or official clothing'
- different regulating of the same issues by different laws, such as the related persons to the public employee
- a broad scope and a generalist approach of the LPCI
- regulation of the structures to guard ethical behaviour of civil servants of LRE
- a general regulation by the LCS regarding the right to get a salary and benefits
- huge discretionary power in closing, restructuring or changes in positional requirements
- lack of consistency in legal norms regulating similar aspects in different laws, or even problematic norms that are per se not realistically applicable

A final conclusion has to do with the manner how legal norms are applied. Understanding such legal norms and applying those properly is a challenge that still is missing especially regarding LRE and LPCI regulations. More training and understanding and stronger monitoring and sanctioning mechanisms are required.

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