

ALBANIA AND CHALLENGES FOR DEPOLITICIZED PUBLIC ADMINISTRATION

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Abstract:

In a dynamic and full of challenge economy, like the one in which we currently are, one thing remains consistent and this is "human capital". Technological development, globalization, financial crisis and the ongoing process towards the EU has made the Albanian government and foreign organizations to be much more attentive to public administration. The approval of the Civil Service Law in May was a major step towards de-politicization of public administration. Law, no. 152/2013 "FOR CIVIL EMPLOYEE " which entered into force in October, is essential for building a professional public administration, effective and based on merit. It aims to create a stable legal framework consisting of state administration, independent institutions and local government units. The law also provides a management body of high-level of civil employee and the basis for a transparent recruitment and promotion system.

Keywords: public administration, human resources, management, civil employee

1. DEVELOPMENT OF PUBLIC ADMINISTRATION IN ALBANIA

Public administration can be defined as a collection of people and processes through which the state seeks to realize the provision of services to its citizens. In the realization of this objective, the development of human resources, strengthening capacities of civil employees, their recognition of the methods, techniques and processes of modern administration and management remain of crucial importance in any public administration and it is at the same time a precondition for a democratic and efficient governance.

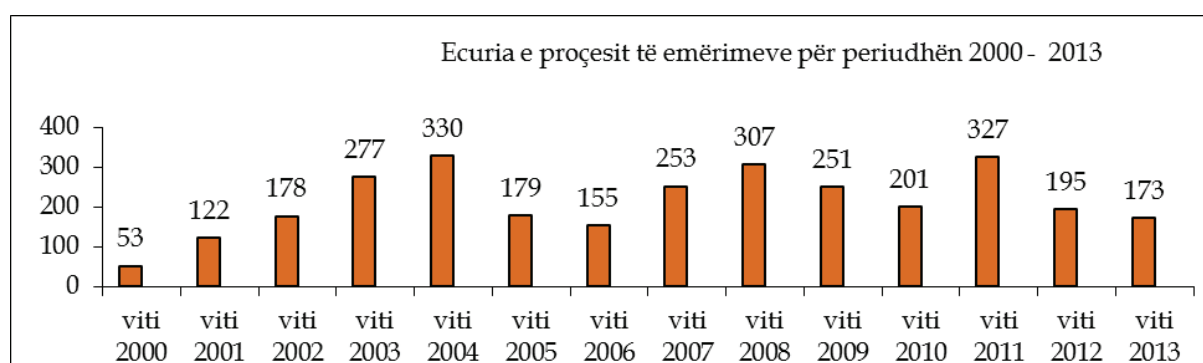
Until the '90s as a result of centralized economic system in which Albania was, the concept of human resource management was very little known or different from that developed in Western countries. Socialist system itself as a result of ideology in which was based, had built for Public Administration a system where the state party decided the needs for jobs and persons considered as suitable for the job. It was the party which made the planning and determining the persons needs.

Such processes like recruitment or motivation of employees or their performance were little or no perceived at that time. For the first time civil employee law enters into force on 23 March 1996 no. 8095, after two years in 1998 were made its first changes, and in 1999 was approved Law 8549 which remained in force for almost 14 years, until May 2013 in which was adopted Law No. 152. What so obvious for every democratic country is the fact that political power and administration are two separate concepts from each other, the first based on political trust and the second in personal abilities of the officers.

It is almost 24 years from the moment of democracy in Albania but we are still discussing whether Albania is still in transition or has already passed it. What is certain is that in 2014 Albania received the status as a candidate country, a very significant step for the country. As a candidate country naturally arises the need to further develop its public administration, increase its credibility and establish procedures that achieve to give a structure to administration processes.

Public administration reform has been one of the key requirements of the EU. Through this reform was intended to solve one of the main and so much discussed problems in Albania, that of de-politicization of public administration. For many years Albanian political parties have accused each other of using public administration as an instrument to "satisfy" the relevant electorate, violating the principles of good governance, meritocracy and efficiency of administration.

Table 1: The performance of the appointments process for the period 2000-2013



Source: Annual Report 2013 Department of Public Administration (DAP)

The above graph shows the progress of the appointments in the public administration for the period 2000-2013. From the graph we may note that election years 2001, 2005, 2009 and recently 2013 were characterized by an increase in admissions before and after the electoral process, 2004 and 2008 significantly have the highest number of employees in public administration. As noted from the above data the number of the bidding process organized and consequently the appointments, in 2013, a year in which entered into force the new law 15/2013, has decreased in comparison with 2012, while the number of published positions has increased significantly. This is due to the accession process which until August 2013, was almost blocked. This is due to the provision of article 68/1 of the Law no. 152/2013 "On the Civil Employee", according to which no new procedure of competition could begin three months before the date of entry into force of this law (ie no new procedure could start from 1 July

2013) . Meanwhile, because of the blockage which created the prediction of Article 68/1 of the Law no. 152/2013, and the impossibility of enforcing it because of the lack of bylaws (note that by that time the work on drafting laws had not started yet), was adopted the normative act which extended the deadline for beginning of the effects of law. Then immediately after finishing the process of approval of ministries and prime ministerial structures according to the formatting of the new government and existing civil employees system, were declared the vacant positions. (Annual Report DAP 2013).

2. LEGAL CHANGES, IMPROVEMENTS IN THE SYSTEM OF PUBLIC ADMINISTRATION

Law no. 8548, dated 11.11.1999 at the time of its adoption had as its main aim entering the civil service based on meritocracy, career development and construction of an acceptance procedure with standardized rules. The law aimed the establishment of a fixed procedure for admissions and dismissals as well. Like any law except of good formulated articles what makes it successful is the will to implement it by its users. With the passing of time was noted that the law had some areas that could be used for political reasons, violations had different nature such as the employment of employees without undergoing the competition. In many cases, the institutions in order to avoid the bidding process use the form of temporary contracts which is a negative phenomenon that allows subjectivity, nepotism and narrow, unfair and personal interests of the heads of institutions, whose administration is involved in the civil service. This way of human resource management unsupported in law, and widely used seriously harmed the functioning of law. Such a thing has impacted negatively on applications for admission by discouraging interested persons or professionally prepared persons. Very often changes in leadership roles who were accompanied by changes in implementation level, resulting in lack of stability and effectiveness in the administration, and certainly all of this means financial cost to the state.

New Law 152/2013 'On Civil Servant' 'was approved by the Assembly on 30 May 2013 and was published in the Official notebook no. 95, dated 7.06.2013. Following the approval of the Law no. 152/2013, "On the Civil Servant", work in drafting the necessary legislation during the months of October to December 2013 were prepared 10 drafts in detail of the law 152/2013. At first glance the new law contains twice the articles compared to the old one, in terms of content below will be listed the main changes that this law brings in relation to efforts for the de-politicization of the administration.

1. For the first time the law requires the creation of a unit for human resource management, which will be responsible for managing clerks.
2. Aiming good management of human resource the law requires formulation of Annual Plan for admission to the civil service.
3. For the first time in civil service shall enter into force the concept of the degree of career, stopping initially and later limiting appointments to leadership positions of persons who do not have proper experience in public administration, which is allowed based on the previous law. More specifically, the law requires that every person who enters for the first time in the civil service can not be appointed except in executive position, and only after a specified period (usually 3 years) can compete for a position on a higher level than the one he has.
4. The law amends the process for entering the civil service, the previous law gave to the head of the institution the right to choose the winner among the three final candidates, while according to the changes independent commission is the one who selects the winners, selecting the applicant with higher points after applying for the vacancy.
5. The greatest innovation of this law is the creation of a TND's (Senior Corps of the Directing Level). To have a well prepared governing body the law requires that the admission of TND can be done only by persons who have completed the depth formation at the School of Public Administration (ASPA). Filling a vacancy belonging to managerial category in a state administrative institution can only be made by a member of TND. Any appointment of senior management category, contrary to the provisions made in the law, is absolutely invalid. National competition, which is open only to civil employees belonging to medium management category, as well as any other individual, domestic or foreign, that is not part of the civil service, who meet the specific requirements for admission to the TND.
The process of selection and appointment of candidates is done by a special independent commission which consists of nine members:
 - a. a representative from the DAP;

- b. two representatives from the ASPA, but not ASPA's employees, one of whom a foreign expert;
- c. a representative of TND's;
- d. five independent personalities with professional experience and integrity.
- e. Five independent personalities appointed by the Council of Ministers with a 5 years a term, with the exception of the first members, one of whom, chosen by chance, is annually replaced.

The need to meet the vacant managerial positions, made that until the emergence of the first group of students of ASPA's or when the students from ASPA are not enough, admission to TND is done through a national competition.

In January 2015 DAP held the first competition of TND's as follows (DAP 2015):

Table 2: TND competition

| Free positions | Qualified | Winners |
|----------------|-----------|---------|
| 82 | 37 | 27 |

Source: Department of Public Affairs Albania

The need to have an independent and prepared governing body was very evident and constantly mentioned in the EU recommendations for Albania. Also, this process aims Generating a professionally capable administration, where special attention should be given to individuals with better education and more experience in public administration through appropriate means for "the reinstatement of the brain".

Progress Report 2013 For Albania accompanying the Communication of the Commission to the European Parliament and the Council, which is also the progress report that precedes the signing of the MSA for Albania stated that there had been progress in the reform of public administration and was taken a big step in this key priority with the approval of the Civil Service Law (2015). Department of Public Administration needs to be strengthened. Independent institutions should be improved and their recommendations should be taken into consideration. Further efforts to depoliticize public administration, to ensure continuity, to fight corruption, strengthen meritocracy in appointments, promotions and dismissals, to increase its efficiency and financial sustainability (2013 progress report for Albania - European Commission) are necessary.

Even though we need time to better understand the effects of a new law in force seems that in some way this law has given its positive effects.

3. RECRUITMENT WITH THE LAW 152/2013

The main objectives of public administration (PACS, 2014) for the following years are listed as follows:

- Implementation of an efficient and effective management system of human resources for the public administration, and monitoring of this management system;
- Improving the performance and capacity development of public administration, including programs promoting continuous learning and providing short and long term trainings;
- Improving the services offered to the public, by strengthening the existing structures and building new structures;
- Increasing the accountability of public officials, by delegating decision-making closer to the charge position to exercise the function;
- Taking well informed decisions on human resource policies and salaries in public administration through the use of Information System for Management of Human Resource.

Continued consolidation of the civil service and public administration reform, raise as a primary task the increasing level of surveillance of management of civil service at all institutional levels, where it develops.

The rule of law means order and stability. This principle should be implemented in each chain of the state, as a symbol of modern democracy and as a challenge for the completion of the new legal and

administrative system, within the integration process in the European Union. In this section we will analyze the details of the recruitment process for the first time under the law 152/2013.

Table 3: Recruitment process under Law 152/2013

| | In total | S.P | D.P | DR | PS | SP/INS | KOORD |
|----------------|----------|-----|-----|----|----|--------|-------|
| Recruitment | 126 | 1 | 0 | 0 | 0 | 125 | 0 |
| Parallel | 18 | 0 | 0 | 1 | 1 | 16 | 0 |
| Implementation | 24 | 2 | 0 | 5 | 2 | 14 | 1 |
| Increase | 29 | 0 | 0 | 6 | 21 | 1 | 1 |
| In total | 197 | 3 | 0 | 12 | 24 | 156 | 2 |

Source: Albanian Department of Public Affairs

During 2014 the Department of Public Administration has opened a total of 197 procedures by which the majority (126 positions) has been recruiting for the first time in public administration, positions for which it competed were specialist positions. There were 18 parallel movement so changes in different positions of the same category. Regarding the promotion have been developed 29 proceedings of which 6 positions for Director directorate and 21 for Supervisor of sectors, unlike previous years the right to compete in these positions have been only to those persons who were part of the administration and that had a minimum of 3 years experience in the category of a lower level than the position for which they applied.

The table below presents recruitments in Public Administration according to the positions classified by gender.

Table 4: Recruitments in Public Administration according to the positions classified by gender

| | S.P | D.P | DR | PS | SP/INS | KOORD |
|---------|-----|-----|----|----|--------|-------|
| Females | 0 | 0 | 8 | 12 | 95 | 2 |
| Male | 3 | 0 | 4 | 12 | 61 | 0 |

Source: Albanian Department of Public Affairs

During this year there were 117 female nominations, expressed in percentage 59.4%, versus 80 males or 40.6%.

A year after the entry into force of the law 152/2013 the need for some changes arose. Exceptionally, the Council of Ministers, to institutions of the state administration and the competent authority for independent institutions may decide that the procedure of filling the vacancies in the category of low or middle managers to be open to other candidates who meet the requirements for vacancies. In any case, filling of vacancies in this category can not exceed 20 percent of the total number of vacancies in each calendar year¹.

Admission to TND can be done only by persons who have completed the deep formation in the ASPA, except of the cases provided by law. Admission in the deep training program of TND-in at ASPA done through a national competition, which is open only to civil employees of the medium management category and employees of senior management at independent institutions, as well as any other individual, that is not part of the civil service that meet the specific requirements for admission to the TND.

Department of Public Administration, with the request of senior officials in the independent institutions and after obtaining the consent of the responsible unit in these institutions, may appoint the employee in a TND position in the institution of the state administration. In this case, the employee is obliged to pursue a deep training program of candidates for members of the board of civil employees in senior management in the ASPA.

¹ Law 152/2013 “ The civil servant”

4. CONCLUSIONS

From the above said we can come to some conclusions; firstly, civil services' values are legally binding; secondly, regulating civil service goes beyond regulating of labor relations between the state and its employees, it has to do with regulating one of the state powers in a broad sense. Likewise, these principles constitute the benchmarks against which acceptable standards for the civil services and public administrations in the Member States of the EU, and the EU institutions.

The civil service is part of the power of the state, is integrated into the public domain and is formed in accordance with the agreements of constitutional and administrative rights.

Civil service should be seen as a management function within the public administration. This common function is intended to ensure that the principles of administrative law and basic legal, as recruitment and promotion based on merit, fair payment and equal rights and duties, disseminated, understood and supported in a homogeneous way of public administration.

A modern civil service and constitutional democracy is seen as possible only when a set of conditions are complied:

- Separation between the public sphere and the private sphere.
- Separation between politics and administration

It requires well educated and capable public managers. Job protection, durability and enough level of payment and the rights and duties defined for civil servants.

All of these conditions contribute, to a large extent, in determining the nature and values of a modern professional civil service.

The Constitution of the Republic of Albania in Section 107 provides that "public officials execute the law and are in the service of people. Generally the existing legal framework has taken into account the experience of some European Union countries who have restricted the scope of the concept of civil service in the so-called "Core Public Administration".

The previous law no. 8549, dated 11.11.1999, "civil employees status" created a mixed system (mix) of the civil service, based mainly on position, combining it with elements of the career system. The dominating character of the positions is distinguished in such elements like recruitment criteria, promotion, parallel movement etc.

This law determines the framework of the civil service administration, and regulates the legal relationships between civil servants and public administration institutions of central or local level.

Changes in the new law aimed the improving of the system of recruitment, evaluation and exclusion from civil service, the first evaluations have been positive, but without exceeding a year it has undergone changes. Changes in the law must be balanced otherwise they bring uncertainty and destabilize its users.

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