

# INNOVATIONS OF THE IMPLEMENTATION OF THE NEW LAW "FOR CIVIL SERVANTS" IN THE REPUBLIC OF ALBANIA, THE FUNCTION OF CONTEMPORARY PUBLIC ADMINISTRATION

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## **Abstract**

Civil servants are those employees who serve the public interest through their performance, and therefore labor relations for this category are regulated by the law of "Civil Servant" and not the general provisions of labor legislation. Given that it is a law that serves the public administration, it aims to regulate labor relations for civil servants so that they can contribute to a better service to the public interest. This is why having a good civil service is considered as a state governance.

In this paper, the main purpose is to address innovations of the new Law "On Civil Servants" in Albania, in order to reform public administration. Entry into force of this law has given a chance to Albanian public administration, to handle tasks as a small state, but effective, being renovated through fair competition and creates opportunities for professional and career. This law enables the administration based on decision-making processes transparent, inclusive and responsive to public.

Public administration reform within the frame of this law, brought a radical change in terms of the relationship of state employees, at the workplace. Work in public administration can not be considered as a job where only the employee benefits from the advantages and comfort that the post provides without giving in return for which it provides its task. This law puts an end to this model, to restore civilian employee in the civil service through professional progress and efficiency of the service provided. In these conditions, public administration Its main challenge is in order to increase public confidence through increased quality of service, in compliance with European standards.

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**Keywords:** Status, civil servants, legislation, reform, public administration

## **INTRODUCTION**

European Commission through the progress reports over the years, and the Albanian Government expressly agree to problems and the need for a professional civil service, impartial and efficient, and the fundamental importance of public administration reform in order to increase its capacity, to continue reforms in the country's development and modernization of economy and society, and to prepare Albania towards full membership in the European Union (Public service Principles for the EU civil service, the European Ombudsman, 2012).

The creation of a sustainable civil service, motivated and above all professional and able to face development and integration challenges of the country has been on the center of the agenda of public administration reform (Cross-cutting Strategy for Development and Integration 2007-2013).

In her view it was essential that the new law on civil servants to combine rationally, the recruitment based on professional merit and intellectual, guaranteeing the rights, stability and motivation of civil servants and permanent improvement and continuous human capacity. The new law "On Civil Servants" adopted in 2013 and with a force action in February 2014, brought several innovations that enable the creation of an efficient and professional administration, enabling the elimination of the "magic power" of political interference and nepotism (European Commission Progress Report on Albania for 2013). Applying this law, Albania intends to leave behind a tradition of not honest party administration.

The new law provided the basis of civil service reform, according to European legislation, containing a set of elements that work in a positive direction for achieving the goals, and whether these elements will practically be implemented, then the prospect of a public administration very similar with the European Union countries, would be very close.

### **1. BASIC INNOVATIONS OF LAW “ FOR CIVIL SERVANTS”, IN VIEW OF REFORMING PUBLIC ADMINISTRATION.**

The Entry into force of the new law "On the Civil Servant", brings a significant change to public administration in Albania. It contains a set of elements that work in a positive direction for achieving the goals. Under the new recruitment in public administration has undergone a radical change.

- Changing the recruitment procedure has to do with the entry of officials in the administration, initially at specialist level, which means that the employee can not enter in public administration from the beginning to the position of director, but gradually climbing career ladder. Also competitions for job vacancies are no longer organized separately for each job position, but grouped massive competitions for similar positions. Thus the possibility that the

winner, according to the results obtained in the competition, have the right to choose their preferential position. In order to create stability in public administration, and supervisors excluded from the expression of preferences in the selection of candidates (Law No. 8549, "Civil Servant Status", 11.11.1999), the new law has enabled the winning candidate's right to choose the institution where he wants to work, and not the opposite. In this way the procedure is more transparent and is much reduced the possibility of abuse by the institutions.

- Another novelty of this law is to improve the system of civil service and human resource management. Given that the management of civil servants is a state responsibility exercised by politicians, and in order to prevent the politicization of civil servants, the new law created the possibility that the responsibilities for managing the civil service to be completely separated between the Council of Ministers (as political leaders), Department of Public Administration (responsible for management) and Supervisory Civil Service Commissioner (as controlling and managing the main problems). Distribution of managerial competence of the civil service under this model, is an advantage of the public administration reform, as it devolves competences and strengthens their control from every responsible institution.
- Law "On the Civil Servant" aims to create a strong system of public administration career and unifies the procedures in human resources management. Career development mechanisms are lateral (within the same category) and promotion (in a category above). Parallel movement is carried out through a competitive internal based on the position offered, so selecting the best possible candidate within the civil service. Promotion to a certain position, is based on an open and organized competition. This law allows for the creation of Directors Troop Senior Civil Service (TND). This body has a special legal regime of employment and appropriate management instruments. Details are regulated in the bylaws (Decision of the Council of Ministers No.118 dated 05.03.2014), (Instruction No. 6, dated 09.19.2014), but the main features of the legal regime of the body are provided herein and are based on the principle of merit. Thus, recruitment in this body is made through a national competition, before a national commission composed of reputable individuals rotated according to a rotation system alternated.

Selecting the level of senior managers will be open only to civil servants middle management level. The way to assess the candidates will

include a written test and an oral interview where the written test will have more weight in order to ensure the principle of meritocracy.

- The new law also establishes the basis for a new system of remuneration that would be fair and transparent. Wages may be lower, but what is not acceptable is the lack of transparency and injustices that are on the payroll management schemes. This law tries to solve this problem by presenting the wage system with all regulatory components, presenting and providing high levels of fairness and transparency. Through this policy, the law aims to mitigate the difference between the salaries of private and public system, improving the quality of work and vazhdimësinë qualified personnel in public administration sectors.
- The new law of the civil servants provides rotation and transfer to different places in public administration, as instruments of mobility and career. Troop Movement members of Senior Management of the Civil Service, among the various positions will be quite flexible and rotation that will be done within and between institutions, will aim to civil servants working in various positions, in order to understand how institutions function in their entirety.
- Law "On the Civil Servant" establishes the obligation of the state to ensure (at his expense) for civil servants, professional training periodically during the course, as one of the rights of civil servants, but on the other hand, respectively promotes civil servant obligation to participate in training activities. Training is one of the most important mechanisms in promoting career development of civil servants, to improve their competencies to offer a qualified service, and to make public administration more attractive and credible by citizens. For this reason it was created School of Public Administration (ASPA), (For Legal and Institutional Framework on Training of Civil Servants in Albania-Developments Over The Years (page 211), April 2014), which is established as an institution under the Ministry of Innovation and Public Administration. ASPA will have administrative and academic autonomy and its goal is the professional training of civil servants. The establishment of the school of public administration is not only a positive innovation to comply with Common Strategy for the Reform of the administration 2009-2013, (Decision of the Council of Ministers No.1017 dated 18. 09. 2009) but because this school will provide short and long term training for civil servants at all levels, and for more employees must successfully complete this school in order to be appointed as clerk of a higher level.

## **2. THE CONTINUING NEED FOR THE IMPROVEMENT OF LAW NR.152 / 2013 "FOR CIVIL SERVANTS".**

Referring to the European Commission Progress Report for 2013 (European Commission Progress Report on Albania for 2013) estimated that "adoption of the new Law on Civil Service, as one of the measures required for the status of candidate country, was a major step towards de-politicization of public administration".

Despite the fact that the new law on civil servants brings important changes in the performance of public administration, continuation of reforms even in a short time, brought undertaking new initiatives for amendments to this law.

During the period February - March 2014, with the proposal of the Council of Ministers were proposed two legislative initiatives for changes and additions to the law nr.152 / 2013 "For Civil Servants".

The first legal initiative aimed to regulate some problems of legal character, contradictory aspects adjustments resulting in several articles of the law and resolving unregulated situations.

Through this initiative changes the responsibility of managing public administration of ministries and their subordinate institutions, remedy the situation of employees for whom it is impossible the regulation to have in case of restructuring or closure of the institution, harmonized requirements are laid down in specific provisions for the same issue as well as selected other situations previously unregulated.

The second legal initiative aims to create legal conditions to respect the independence of the Financial Supervision Authority (FSA) excluding from the field of use the law for the civil servants, employees of the FSA, whose status is regulated by the organic law of the FSA and the Labor Code.

During the review of these initiatives to the Committee on Legal Affairs, Public Administration and Human Rights, both initiatives were integrated into the law nr.178 / 2014 "On some additions and changes to the law Nr.152 / 2013" for civil servants".

- This law sanctions the transfer of responsibility for the management and direction of civil service passes by Interior Minister to the Minister responsible for public administration issues. Failure to the specific designation of the Ministry avoids changes in the law, in cases when changing the composition of the Council of Ministers in the future.
- Also is sanctioned the responsibility of the Department of Public Administration (DPA), in the design of training policies, taking into account developments in legislation and public policies. It is provided that in determining the policies of selection and training, ASPA must cooperate with DPA, taking into consideration the recommendations

adopted by it, as the entity in charge of developing and overseeing the implementation of state policies in the civil service ".

- Unification of provisions that opposed the concept of citizenship and civil servants in senior management (TND), excludes the possibility of applying to this category, foreign nationals in accordance with Article 21 and Article 65, paragraph "b" of the law, which provides that civil servants are only Albanian citizens.
- An important change is the forecast of procedure of resolution of cases when it is impossible to transfer the civil servants, whose position does not exist due to the closure or transfer of the institution, provided the notice of these officers, and their compensation pay up to 12 months, according to work experience. To protect the status of this category of officers, is placed as a guarantee that within two (2) years after the end of the relationship in the civil service, the employee is entitled:
  1. To compete as civil servants for procedures of parallel movement or promotion under Articles 25 and 26 of this Law;
  2. To be appointed on a temporary basis by the responsible entity with their consent in civil service positions.
- Expansion of the number of entities that are exempt from the application of this law is to be welcomed, because the nature of the work of these entities requires flexibility in order to perform their duties effectively throughout the country. From the area of law enforcement were excluded, not only employees of the Financial Supervision Authority, *but also employees who carry the attributes of agent / judicial police officer and who by law are allowed to carry arms*; The status of these categories is regulated by specific laws that provide a series of guarantees for the appointment and disciplinary prosecution of these officials. Also, *Civilians in the structure of Armed Forces, in order to maintain* a state of high alert operability and the structure of the Armed Forces that require frequent changes. In this situation disposition of civilians presents a problem and does not serve the readiness of the Armed Forces. Also were excluded employees *Drainage Board*: This change was proposed taking into consideration the functions of Drainage Boards, the way of organization and their functioning, which is regulated by special statute and to increase the autonomy of these structures in the conduct way of their staff.
- A necessary adjustment of the process of recruitment of employees is filling job vacancies created temporarily by winning candidates unnamed yet, who have won over 70% of the total test score. In none of the case, this process is not carried out without the consent of the

winning candidates and shall not affect the rights they enjoy under this law. The need for this adjustment was based on the fact that, from the data available from the PRO, are created vacancies on a temporary basis, which are not always completed through temporary transfer. Thereby is guaranteed the normal functioning of the administration, in cases where the vacancies are created temporarily.

- To ensure the principle of merit and professionalism in the management of civil service, and to further enhance and strengthen the professional skills of civil servants, higher periodicity on performance evaluation, in every 6 months; Periodic assessment of civil servants to update additional knowledge required to carry out their functions in accordance with the general management group / special where they belong; and was given the opportunity to the civil servants who are evaluated unsatisfactory in the assessment procedure of additional knowledge, to undergo a mandatory training and revaluation of 3 months.
- The regulation of the effects of suspension of the civil servants, who at his motivated request has claimed this suspension, due to other legitimate interest for a period of up to two years, enabling their return to the civil service. In cases where it is impossible to return or transfer of civil servants in a position of the same category, these employees are subscribed to a list, which is administered by the responsible entity and their position in this list until their disposition in a regular position in the civil service. The responsible unit is obliged, at the time of the creation of a vacancy in the civil service, to provide this vacancy position primarily those civil servants who meet the relevant criteria. These civil servants may be appointed temporarily with their consent for filling the vacancies created temporarily. The responsible unit in this case makes a temporary appointment of these officials.
- Civil servants, who have left the civil service as a result of resignation, are guaranteed the right to compete as civil servants for parallel movement procedures, or promotion, up to 2 years after the end of employment in the civil service.
- Given that the enforcement of judicial decisions is final problem practice, to meet the constitutional obligation provided for by Article 142, paragraph 3 of the Constitution stipulates that: decisions are final court for the return of civil servants on duty immediately implemented by the unit responsible. If the return of civil servants on duty is objectively impossible, then they are recorded on a waiting list until their system in a regular position in the civil service. If the return of civil servants on duty is objectively impossible, then they

are recorded on a waiting list until their system in a regular position in the civil service. The responsible unit is required at the time of creation of a vacancy in the civil service, initially appoint their consent, civil servants registered in the list, and under the appropriate category and that meet the criteria of the relevant work.

## CONCLUSIONS

- The new law is essential for the building of a professional public administration, effective and based on merit. This law aims to create a stable legal framework, provides a clear classification of civil servants, formally establishes a management body of high-level civil servants, provides the basis for a transparent recruitment and career of civil system.
- The new law on civil servants aims at creating a stable civil service, professional, merit-based, moral integrity and political impartiality and to regulate the legal relationship between the state and civil servants. It defines the rules for civil service administration, considering the relationship of civil service legal relationship of administrative nature (Law no.152 / 2013 "For Civil Servants", art 1) The law contains a number of important definitions, which replace some the old law definitions, and clearly defines expanding the scope of its operations and, ranking officials who will be excluded from the application of this law and therefore will not enjoy the status of civil servants (Law no.152 / 2013 "For Civil Servants", art 2).

The new law classifies civil service positions by categories, classes and nature of the position as follows (Law no.152 / 2013 "For Civil Servants", art 19):

- a) Senior Category Leader;
- b) Secondary Category Leader;
- c) Low Category Leader;
- d) Executive category;
- The new law expands the powers of the Department of Public Administration by predicting as a power the overseeing of the implementation of civil service legislation in public administration institutions, while the old law provided only the competence to central public administration institutions. (Law no.152 / 2013 "For Civil Servants", art 7). The new law explicitly provides for the establishment and operation of the School of Public Administration, which will deal with the formation of continuous professional civil servants. (Law no.152 / 2013 "For Civil Servants", art 8)
- The new law also significantly outlines the organization and functioning of the Civil Service Commission. This institution will be



named Commissioner of Civil Service Supervision and is a monocratic body, (Law no.152 / 2013 "For Civil Servants", art 11), which oversees mainly the initiative or at the request of institutions, the law enforcement service administration servants in all institutions that employ civil servants. In exercise of the powers, the Commissioner conduct an administrative investigation, seeks and receives from institutions any information necessary for the performance of his duties, inspect files and any document relating to the administration of civil service requests, or upon request, evidence of any employee or official of the institution, watching and inspects each management practice in any institution that employs civil servants.

- Are considered as novelty of this law, the provisions for procedural institutions of civil service recruitment. Admission to the executive category is made with open competition for positions that group belong to the same category and the results of such a worthy competition for appointments to positions in this category that can be opened within a period of 2 years from the first announcement of the winners.

Because of the importance that represent different categories of civil servants, law categorizes way between civil servants recruitment of senior managers from those of executive level. TND, according to this law shall be accepted only those persons who have completed the formation of the depth of the ASPA, while admission to predict depth training program for TND in ASPA done through a national competition, which is open only to civil servants medium category management, as well as any other individual, domestic, that is not part of the civil service that meet the specific requirements for admission to the TND. (Law no.152 / 2013 "For Civil Servants", art 28)

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