



SIGMA

**Support for Improvement in Governance and
Management**

A joint initiative of the OECD and the European Union,
principally financed by the EU

DRAFT CONCEPT PAPER ON A NEW CIVIL SERVICE LAW IN ALBANIA

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Ministry of the Interior**

1st October 2010

A. EXECUTIVE SUMMARY

The development of a new Law on Civil Servants is one of the priorities of the Government Inter-sectoral Strategy of Public Administration reforms 2009-2013. At the request of the Albanian Ministry of the Interior, through the DoPA, this paper aims to propose choices to develop a future civil service system, which is better able to serve the EU integration ambitions of the country. The policy proposals for the new civil service system are put forward for the consideration of the ministry in an abridged manner in this executive summary and are further developed in the main body of the text.

The paper is comprehensive because it contains all or most of the elements that should be considered while designing a civil service system, but it does not mean that the main legal instrument, the future Law on Civil Service, should deal with all of them. The Law should remain general. However, this paper is relatively detailed because it aims to provide a comprehensive approach and thorough information at the disposal of all intervening policy-makers in the policy process, including members of the parliament that are called to vote the future draft legal text. Therefore this paper should be an accompanying document attached to the policy process even if the options it proposes will be channeled through various legal instruments, namely the main primary law, the subsequent pieces of secondary legislation and other administrative or managerial instructions.

1. **Proposal 1: A law which is general in nature.** The new primary law on the civil service should be a general law defining the principles and setting general management standards and responsibilities in accordance with the basic principles of the "European administrative space". Procedural and technical details should be left to be sorted out by secondary legislation. However, in order for the Parliament to acquire a more comprehensive understanding of the future civil service system, the documents accompanying the bill, including this paper, should provide exhaustive information as to how the government plans to implement the primary law.
2. **Proposal 2: Provide a homogeneous legal regime.** The new law should provide a homogeneous legal regime for all positions exercising public authority conferred by public law and safeguarding the general public interest. Technical support functions should continue to be excluded from the scope of the civil service.
3. **Proposal 3: Reinforce the DoPA.** The DoPA's role as central policy and management unit in the overall civil service should be strengthened and the law should provide adequate instruments for it to fulfill this role. The supervisory role of DoPA should also be strengthened, although this role should be clearly differentiated from that of the Civil Service Commission (CSC, see below). DoPA should continue to be part of the Ministry of Interior which should assume, together with the Ministry of Finance, the lead with regard to Public Administration Reform and public management.

4. **Proposal 4: Reinforce the Civil Service Commission.** Strengthen CSC and increase its powers by endowing it with the proper legal instrument to execute and implement its decisions and design an adequate and efficient reporting system of the management decisions taken by institutions.
5. **Proposal 5: The civil service principles should be extended and made effective through the disciplinary system.** The list of civil service principles should be extended in the new law on civil servants. These principles should be fully reflected in the concrete provision on the management and decisions related to civil servants and also reflected in the chapter on rights and obligations of civil servants.
6. **Proposal 6: Civil Service positions should be filled on a tenured basis only with civil servants.** Employment on civil service positions should be admissible only with individuals having a civil servant status and not on a contractual basis. In principle civil servants should be employed for an indefinite period; fixed term employment should be restricted to specific exceptional cases which need to be defined in principle in legislation.
7. **Proposal 7: Preserve the four current categories, but insert them into a broader two-folded classification.** The current classification system in four levels/categories should be preserved. In addition the civil service employment should be carried out either in the general administrative career/service path or in a specialist particular based service and the focal point of decisions on recruitment, promotion, and reassignment should become the “category”.
8. **Proposal 8: The new law on civil servants may pave the way for a future formal establishment of a senior civil service corps.** If so this corps will need a specific employment legal regime and managerial instruments. The details should be regulated in secondary legislation, but the main features of the legal regime of the corps should be stated in primary law and should be based on the merit principle. Therefore recruitment to this corps should be carried out through a national *concours* handled by a national committee made up of respected individuals who should rotate in an apportioned way, i.e. the members are renewed partially every year. The appointment to the senior civil service shall be open, as a rule, to civil servants only.
9. **Proposal 9: Pool recruitment.** Candidates for “entry level” positions in the civil service should be selected through an annual national *concours* aimed at composing one or more pools with candidates who meet the general recruitment conditions and the specific ones for being recruited to positions with similar requirements and responsibilities in a ministry or institution. The successful candidates shall be eligible to be appointed as civil servants. They may stay in the pool for a maximum stand-by period of 2 to 3 three years. Once this period is elapsed the right to be recruited. Selection for a particular position on the entry level should be also possible if properly justified. ends.
10. **Proposal 10: Nature of the concours.** The assessment of candidates shall include a written examination and an interview. The written test should carry more weight than the interview and should be reviewed anonymously. The assessment methods should be tailored to assessing the knowledge, skills and competences required for the functions/levels in question. The assessment standards, especially the minimum standard, should be set ambitiously.

11. **Proposal 11: Probation period**. Newly employed civil servants should be on probation for a period appropriate to test their suitability for the civil service. However, this should apply only to candidates employed for the first time in the civil service; if a civil servant is selected for a higher position no new probationary period should be required.
12. **Proposal 12: Career development and promotion**. The career development instruments shall be the horizontal promotion (within the category) and vertical promotion (to the immediate higher category). The horizontal promotion shall be based on a position-based internal competition procedure aimed at selecting the best available candidate from within the civil service. The vertical promotion should be based on a position-based open competition which could provide either for a preferential bonus for existing civil servants or consider them on an equal footing with external candidates. The choice for one of these options might be left to the Government, upon DoPA's proposal based on the assessment of the situation and of the needs. The competition for promotion should be carried out basically as if it were a recruitment procedure.
13. **Proposal 13: Career enrichment**. The new law should clearly recognize rotation and transfers as instruments of mobility and career development. Further clarification of application of secondment and transfer will be needed in secondary legislation.
14. **Proposal 14: Rights and obligations**. The system of rights and obligations should be improved and made consistent with the requirements of impartiality and integrity. The obligations supporting the integrity system for civil servants should be included in the new law on civil servants.
15. **Proposal 15: Training**. The right and obligation of civil servants to receive training and the duty of the state to supply it should continue to be included into the law. The new law should also state that the successful participation in mandatory training should be an input to decisions on personnel, whereas the operational details should be covered by secondary legislation.
16. **Proposal 16: Discipline**. The system of disciplinary procedures should be upgraded. The initiation of the disciplinary procedure should be an official duty for the direct superior; the catalogue of the disciplinary sanctions should be improved and extended in order to allow for proportionality between the misconduct and the respective sanction; the disciplinary decision should be the responsibility of a collegial disciplinary committee, where the DoPA is represented.
17. **Proposal 17: Redundancy out of restructuring**. Civil servants becoming redundant because of restructuring or the abolition of their institution should be reassigned to another position of the same category within the civil service on a regular basis within the ensuing month. The inclusion on a waiting list for a longer interlude should be an exception. Procedures for decisions on reassignment or inclusion on a waiting list should be detailed in secondary legislation.
18. **Proposal 18: Performance appraisal**. The appraisal-related provisions should be upgraded by ensuring their proper linkage to and consistency with the other elements of the career development.
19. **Proposal 19: Central Personnel Registry**. The new civil service law should provide for a single central personnel register, which should contain all the relevant professional data on civil servants, including the management decisions related to the civil servants, and should also serve as a

reporting instrument to the DoPA and the CSC. The details should developed by secondary legislation.

20. **Proposal 20: Managing the transition**. Transitional provisions should protect the incumbents' acquired rights without compromising the reform objectives.

B. INTRODUCTION

The civil service reforms in Albania entered the agenda of the government for the first time in 1995-1996, with the approval of the first civil service law (Law no. 8095/1996). However the law of 1996 was never implemented. In 1998, institutional and civil service reform regained the government's attention and a new civil service act (law no. 8549, /1999) was adopted. The new law was prepared with the assistance of SIGMA, the World Bank and the OSCE. It complies with many of the generally-accepted European standards and principles, but these principles were not fully embraced by the relevant Albanian political and administrative actors. Subsequently, in the period 1999-2002 the legislation was completed through detailed secondary regulations; the DoPA (the central policy and management unit) was strengthened and a Civil Service Commission (reporting to the Assembly) was established to deal with the functions of appeal resolution and the supervision of compliance with the civil service legislation.

After a first period of moderate success in initiating the development of a professional civil service and in improving the quality of work of the public administration, further progress on civil service reform and the enforcement of the civil service legislation proved to be difficult, unstable and "remained problematic"¹. The main problems, as identified by several assessments, might be summarized as follows: a) **non-merit based recruitment** (mainly because of the use of temporary contracts and the lack of transparency and accountability in appointments²"); b) **politicization and instability** (reflected in "politically motivated turnover³"); and c) **poor management and control** over the civil service law enforcement.

The Albanian Government has explicitly recognized the problems and the need for a professional, impartial and efficient civil service as well as the importance of a civil service reform. The aims of this latter should be to increase the state's capacity and reliability to continue the country's development and modernization of the economy and society as well as to prepare Albania for EU accession and subsequent membership.

Albania applied for EU membership in April 2009. The enlargement strategy 2009-2010 and the Progress Report 2009 recognize that Albania has made progress on key political reforms and on economic criteria, while highlighting the need "to make progress, in particular regarding the rule of law and notably the fight against corruption, as well as the proper functioning of state institutions, especially the independence of the judiciary. Administrative and enforcement capacity require further strengthening⁴". They also

¹ Albania 2009 progress report {com (2009) 533} Brussels, 14.10.2009 and Communication from the commission to the European Parliament and the Council "Enlargement strategy and main challenges 2009-2010" Brussels, 14.10.2009 com (2009) 533.

² Communication from the commission to the European Parliament and the Council "Enlargement strategy and main challenges 2009-2010" Brussels, 14.10.2009 com (2009) 533, pg. 22;

³ Albania 2009 progress report {com (2009) 533} Brussels, 14.10.2009

⁴ "Enlargement strategy and main challenges 2009-2010" Brussels, 14.10.2009 com (2009) 533, pg. 14.

consider the strengthening of administrative capacities as being a “major challenge which enlargement countries need to address⁵”.

Within this specific context, the Albanian Government approved in 2009, the Inter-sectoral Strategy for Public Administration reforms 2009-2013⁶ referred to as SNRAP. Together with the analysis and recognition of the “problems” in the civil service reform and law enforcement, the SNRAP establishes the creation of a ***professional, stable, effective and accountable civil service*** as one of the three strategic objectives. The SNRAP identifies the need to prepare a new Law on Civil Servants aiming at upgrading and aligning the civil service system with European standards and best practices in the following areas:

- a) strengthening the unity and homogeneity of the employment regime of the civil service;
- b) strengthening the merit principle in recruitment;
- c) enhancing the mobility and career development within the civil service; and
- d) improving the training system.

In the framework of the implementation of the SNRAP, the DoPA, under the Ministry of the Interior, requested SIGMA to assist in preparing a concept or policies paper on “A new civil service law in Albania”, a request which this paper accomplishes. The concept paper is a first step aiming at identifying the main issues at stake and suitable policy choices for a new civil service law and civil service system in Albania. These issues and choices are put forward in the form of propositions, which will make up the discussion and consultation basis of the DoPA and the Government with all the relevant stakeholders such as civil servants, politicians, civil society and international partners. If adopted, they shall also serve to guide the preparation of the new draft law on the civil service.

Structure of the paper

The concept paper focuses on the key issues to be addressed by the new civil service law, namely: the legal basis for a new civil service law; the scope of the civil service law; structures for managing, coordinating and controlling the civil service; principles of the civil service system; employment types; career paths, categories and classification; corps of senior managers, recruitment and the selection of civil servants; promotion; mobility; rights and duties of civil servants; training system, termination of employment; discipline; the effects of restructuring and abolishing institutions; performance appraisal; personnel files and a central personnel register.

Each of these key issues is divided into three headings, namely: 1) **Current situation and problems**, consisting of an overview of the current legal framework and the problems associated to its implementation practice; 2) **Objectives**, aimed at identifying the objectives to pursue in accordance with the SNRAP and the principles of administrative law of the “European administrative Space”; and 3) **Discussions and choices** by focusing on suitable regulations and practices to achieve the defined objective. This third heading identifies the major policy options as well as their advantages and/or disadvantages and proposes an option deemed appropriate to the Albanian context. The proposals are based on international practice and, more importantly, on the yearly assessments of the Albanian civil service carried out by SIGMA and others during the last decade or so. It should be noted that the discussions and the proposals relate mainly, although not only, to policy options that should be regulated at the level of primary legislation, whilst the

⁵ *Ib idem* pg. 18.

⁶ Inter-sectoral Strategy of Public Administration reforms 2009-2013, within the framework of the National Strategy for Development and Integration.

references to secondary legislation aim at giving a better understanding of the future development of the proposed choice at that level.

C. POLICY OPTIONS FOR A NEW CIVIL SERVICE LAW

1 LEGAL BASIS FOR CIVIL SERVICE

1.1 The situation and problems

The Constitution (art. 8, point 2/e) requires the regulation of the status of the civil servants (the concrete term used is “public functionaries”) by an organic law (approved by three fifths of all members of the Assembly). Pursuant to this constitutional provision, the law no. 8549 “Status of Civil Servant” (hereinafter referred to as “CCSA” (current civil service act)) was approved by such majority. On the other hand, the CCSA was meant to be a general law aimed at covering gradually other parts of the civil service. Despite this, it currently has a “narrow scope of application” (see below no. 2.1) and is considered to enter in too great a level of procedural detail in areas such as recruitment, promotion, lateral transfer, etc.

These two above-mentioned features of CCSA combined with the constitutional requirement of a qualified majority are conducive to two main problems: a) **impossibility to amend and adapt the CCSA** in accordance with the emerging and problems in its implementation⁷, and b) **fragmentation** in the regulation of the employment relationship in the civil service because of successive enactments of specific laws regulating the employment relationship in specific branches of public administration.

1.2 The objective

Albania is a small state, with a small public administration and a limited number of public employees. The public sector is undergoing many reforms in the path towards European integration. Given such conditions the legal framework in the area of employment in the civil service should aim to **strengthen the unity of the civil service while being flexible enough as to allow the Government to adapt the system to the rapid changes the country is undergoing and the development in the area of human capacities.**

1.3 Discussions and proposals

The legal framework on civil service is different from country to country. Some countries have rather comprehensive civil service laws covering most of the civil service employment and sometimes a series of special laws dealing with the special status of public employees in different state civil service branches or local self-governments. Some countries have detailed primary legislation, but most others only framework laws, completing the technical details through secondary legislation.

Experiences of EU countries, especially of the new member states, have shown that civil service laws needed to undergo frequent changes to adapt to transitional situations. However, these frequent changes were both difficult and counterproductive because of the overarching politicization of the debate on the civil service. Furthermore instability and politicization led to implementation gaps or plain non-implementation. SIGMA conclusions based on recent studies suggest⁸ that ... *legal instability (i.e. too many amendments to adopted laws) in new Member States suggests that the EC should favor the*

⁷The Department of Public Administration has twice tried to put forward amendments to the CCSA but with no success

⁸ SIGMA Working paper, Can civil service reform Last? The European Union’s 5th Enlargement and future policy orientations. page 10.

development of general laws rather than detailed ones, reversing the traditional practice in current and future candidate countries..”

The issue is to find a proper balance between the legal certainty provided by administrative law and managerial flexibility, especially in transition countries and at the same time to avoid a fragmentation of regulation of employment relationships in different branches of the civil service. Addressing this issue requires a choice on the nature and structure of the civil service legislation. Two aspects should be taken into account: first, **the relationship between general and special primary legislation** (the latter covering the employment in specific civil service branches) and second, **the choice between primary and secondary legislation**⁹ and there are two main sub-choices: a) option1: a framework law (general) that defines the principles and general management standards of the civil service in accordance with the basic principles of the "European administrative space", and procedural details delegated to secondary legislation, or b) option 2: a civil service law that includes a considerable level of procedural and managerial detail, (such as the detailed recruitment procedure, promotion, etc.)

Almost every argument supports the **first option**. A framework law is desirable, because it: a) would allow for the necessary adaptation of systems to the changing circumstances of the country in transition and the development of general human capacities; b) could also allow for a larger civil service scope and be conducive to a more clearly unified civil service avoiding the current fragmentation and ensuring the same set of standards in the different branches of administration which are supposed to implement the same *acquis*; c) would reduce the risk of over-regulating civil service management in civil service laws and the growing politicization of the debate caused by frequent submissions to parliament for amendments.

The **second option** would be conducive to the need of special regimes/laws (special primary legislation) for specific parts of the civil service branches, including perhaps the same level of technical details, which would undermine both the unity of the civil service and management flexibility. In accordance with article 8, point 2, of the Constitution each of these special laws would require the above-mentioned qualified majority¹⁰ and would involve the Assembly in the approval of several laws regulating mainly the same juridical relationship and lead to the further politicization of the debate each time. The **first option** would also allow the new civil servants law to be applicable to all branches of civil service, while limiting the need for special laws applicable to specific civil service branches.

Proposal 1: The new civil service law should be a general law that defines the principles and sets up general management standards and responsibilities in accordance with the basic principles of the "European administrative space". Procedural and technical details should be left to be set up by secondary legislation. However, in order for the Parliament to have a comprehensive vision of the future civil service system, the documents accompanying the bill should provide complete information as to how the government plans to implement the primary law.

⁹ or in poorer terms the debate on the “scope” of the law on civil service and on the “level of details” to be included in such a law.

¹⁰ which have been bypassed so far based on a misinterpretation of the Constitution.

2 SCOPE OF THE CIVIL SERVICE LAW

2.1 The current situation and problems

The CCSA (art.2) defines its scope by including the employees of central or local public administration “exercising public authority” in functions of a managerial, organizational, supervisory or an implementing nature. The subsequent provisions of the same article draw the vertical, horizontal and material scope of the law, as follows:

- a) *Vertical scope*: has determined the position of the “General Secretary” as the upper dividing line between the civil servants and politics (political appointees) and respectively the position of “specialist”/expert as the bottom line dividing the civil service from the support staff performing tasks of a technical support character, such as secretaries, computer operators, drivers, messengers, security guards, etc. (the latter are regulated by the Labor Code);
- b) *Horizontal scope*: in this dimension at the central level the law applies to: a) the administration of ministries, prime minister’s office (about 1500 civil servants) b) parliamentary and presidency administration, as well as, to the administration of independent institutions¹¹ that report directly to the Assembly (at around 2800 civil servants). The CCSA does not apply to either subordinate institutions (i.e. subordinated/supervised institutions or agencies that depend on ministries or on the Prime Minister’s Office) or to the prefect administration. At the local government level the law applies to the administration of municipalities (urban municipalities) and to the Regional Councils (around 3000¹² civil servants in both), whilst the administration of communes (rural municipalities) is left outside the scope of the law.
- c) *Material scope*: under this dimension the law has regulated the essential elements of relevance for the employment relations of civil servants, which are different from the other public employees, which are afterwards developed by secondary legislations (holidays, working hours, etc). In relation to certain aspects of the employment relations (e.g.: retirement age, social and health security) it contains a general reference to the general labor legislation as supplementary legislation. Certain other essential elements (declaration of assets, conflict of interest, supplementary pension scheme, etc) of relevance for the employment relations of civil servants are scattered in special legislation which usually regulates all or a larger part of the public employment.

When the CCSA 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 by practice and develop implementing capacities before proposing a second wave of extension of the scope to other public employees. In the years that followed, the government took legislative initiatives to extend partially and *de facto* the scope of the civil service by “conferring” it to other employees. Such cases are for instance the custom administration, tax administration, national registration centre administration, national licensing center, civil employees of General Department of Penitentiaries, State Attorney, State Archives, National Institute of Statistics, Public Procurement Agency, etc. The special legislation (ordinary law or even secondary legislation) usually tended to include a partial or total cross-reference to the CCSA. Despite governmental good intentions the constitutionality of these regulations was questionable. In addition, they have created a very fragmented and incoherent legal regime in the different branches of the civil service. For instance, it is enough to mention that the employees of the tax administration can appeal decisions regarding their

¹¹ except for few certain independent institutions or positions in them to which special primary derogating legislation applies.

¹² the figures comes from indirect assessments and are indicative.

employment relationship to the CSC whilst others cannot and have to go directly to the court or that the central management unit (DoPA) has no coordinative or supervisory power whatsoever over the management decisions in these sectors. Along with these partial *de facto* extensions, other special pieces of legislation were approved, providing for a set of differing regulations of employment relationship in other sectors such as the bailiffs service, fire protection and rescue administration, etc.

In conclusion the legal regime of the employment relationship remains very fragmented in the different sectors of the Albanian civil service, it is scattered in different pieces of legislation with different principles and management standards, which hampers a cohesive building up of a professional civil service at the service of the state.

2.2 The objective

The main objective regarding the scope of civil service legal framework should be to **establish a homogenous regime for all those positions which involve the exercise of the public powers conferred by public law and which have responsibility for safeguarding the general interest of the state, and where reinforced legal protection of civil servants' impartiality is necessary in order to protect better the individual rights and legitimate expectations of the citizens and enterprises.** In this vein the SNRAP explicitly recognizes the need to extend the scope (the horizontal scope) of the civil service law to the subordinated institutions to Government and Ministries as well as to the communal administration.

2.3 Discussions and possible solutions

Experience shows that choices made by the legislations of other European states with respect to the scope of the law, are different due to historical and traditional reasons. There are countries that consider every public employee as a civil servant (the broad concept of civil service), whereas other countries have chosen a narrow concept of civil service, by considering as civil servants only that part of the public employees involved in so called "core" public administration, strictly related to the exercise of the powers conferred by the public law.

2.3.1 Horizontal and vertical scope

In terms of technical definitions on the scope (*vertical and horizontal scope*), some countries establish legal criteria determining the inclusion or not of a given area in the scope of the civil service. One set of criteria used are **formal** (e.g. civil servants are those recruited according to this law) whilst others are **functional** (e.g. civil servants are those performing functions involving on exercise of public authority, preserving the national sovereignty or directly related activities) or a combination of both. Other legislations enumerate different cumulative and detailed criteria in order to determine which tasks and functions should be reserved to civil servants or others have even approved detailed lists of "positions" that are reserved to civil servants (the list might be provided within the law usually, in the budget law, internal regulation of the institution or secondary legislation).

The *vertical scope* of the CSCA should clearly determine the upper and lower division line between **respectively political functions, civil servants and support staff.** The political appointees (political advisers and other political staff) should be employed on a contractual basis based on labour law and the employment relations should be linked to the mandate of the respective political superior (Prime Minister, Minister or others). The general labor law should continue to be the primary legal source for the support staff.

The *horizontal scope* of the new civil service law **should be much broader than the one provided by the current law but should be limited to those positions that perform public authority tasks only.** Such an approach seems to be in the nature of Article 81 of the Constitution. The provisions refer to "public functionaries", that is to say "the state employees who perform public authority functions". The European Court of Justice¹³ has developed criteria which may be used. It defines¹⁴ the positions which could be reserved for (national) civil servants as those: "*involving the exercise of powers conferred by public law and the responsibility for safeguarding the general interest of the state or other public bodies closely related to the national interest, law and order, state sovereignty, law enforcement...*"

A **broader functional definition approach** would be more flexible and more easily applicable to more institutions and groups of public employees that fall within the definition. Consequently the horizontal scope of the new law **should include any public employee that fits the definition.** It should **include subordinated institutions of Government and Ministries as well as the administration of communes.** Certain exceptions should be made for sectors such as judges, prosecutors, armed forces, which should continue to be regulated by special primary law. However, the new civil service law should be applicable also to: non-judicial clerks of the judiciary and clerks in the Prosecutor offices; civilian staff in the armed forces; diplomatic services; state police; fire protection structures; penitentiary police; bailiffs officers, etc, which currently are covered by general labor law or have special public law statutes, or are in process of preparation of such statutes¹⁵.

Of course, this approach **should not exclude certain differentiation** on specific rules of management for specific branches of the civil service. The combined approach with a general or framework law (*see proposal 1 above*) would allow taking into consideration specificities of special branches of civil service. For example, those functions depending on the judiciary should be managed by the judiciary, not the government. The same should apply to parliamentary professional services, which should be managed by the parliament, not the government> The same applies to local self-government administrations. The flexibility of a framework law allows that small differences could be regulated specifically for these corps/branches by derogating in the primary legislation (special law or the provision on the general law itself) and perhaps by secondary legislation. However, the vast majority of the differences in terms of technical details such as the career development system based on the "grading" in the diplomatic services, or "job titles", etc, should be regulated by secondary legislation issued in the implementation of the new civil service law.

The new law **should exclude employees of "direct services"** (as it seems to be the predominant trend in other countries) such as employees of health facilities¹⁶ (doctors, nurses or other employees in hospitals, ambulances), employees of education system (teachers, day care and other staff in schools, kindergartens), culture institutions (museums, theatres, cultural centers, libraries, central or local) social system (homes for the elderly, orphanages, daily care centers, etc.). Employees of the sector will continue to be subject to general labor legislation (private) or to special public law statutes in order to respect the meritocratic principle in recruitment to all institutions funded from the public budgets.

¹³ As well as European Commission by interpretation

¹⁴ in the context of the case law dealing with the principle of free movement of workers - Article 39 ECT

¹⁵ Referring to the draft law on "court administration" submitted to the parliament for approval.

¹⁶ A study performed by OECD, SIGMA and PUMA showed that in a sample of 34 countries, health employee, are considered to be civil servants in 14 cases, the education employees (teachers) only in 16 cases.

In technical terms, the new law should use such a “functional definition”, with explicit exceptions, whereas a detailed list of civil servants positions could be regulated by secondary legislation.

2.3.2 Material scope

In terms of *material scope*, the new civil service law should confirm the choice made by the law in force. It should continue to regulate only the essential elements of relevance for the employment relations of civil servants that are different from the other employees, which are afterwards developed by secondary legislations (vacations, part time work, sick leave, maternity and paternal leave, leave without pay etc), while details should be set out in secondary legislation or treated by general labor law.

Labor law should have only a **supplementary function** with regard to civil servants, it should only be applicable in cases where the Civil Service Law or another primarily public law does not provide a regulation or where the Civil service Law refers explicitly to regulations in the labor law (e.g. with regard to social rights of civil servants).

With regard to the **remuneration system** the law should continue to define only the basic components of the remuneration of the individual civil servant and deal only with the principles to be applied in this context.

For issues of integrity and the inclusion of related provision in the new civil service law see no. 11.2 below.

Proposal 2: The new law on the civil service should provide a homogeneous legal regime for all positions exercising public authority conferred by public law and safeguarding the general public interest. Technical support functions should continue to be excluded from the scope of the civil service.

3 MANAGEMENT OF CIVIL SERVICE

3.1 Current situation and problems,

3.1.1 Current situation

The current civil service law seems to have provided the Department of Public Administration (DoPA) with the role of a classical "*central policy and management unit*" in the Albanian civil service, whereas the ministries and the prime minister's office (secretary general, line managers¹⁷ with the support of HRM department) are responsible for the most of day to-day management decisions.

Independent institutions (independent constitutional institutions and independent institutions established by law that report to Parliament, the administration of President and Parliament, regions and municipalities) have established their own HRM units, develop their own “second level” personnel policies (in compliance with the national standards set by primary or secondary legislation) whereas line managers are responsible for the everyday management functions.

The roles of the appeal solving and oversight of the implementation of civil service legislation belong to the Civil Service Commission (CSC) which is an independent institution that reports to Parliament. The

¹⁷ Direct superiors as defined by art. 2/5 of CSCA

CSC acts on behalf of Parliament implementing the parliamentary oversight function in this specific area and presents an annual report on the general situation of the civil service.

3.1.2 Problems

The **DoPA**: Because of the “narrow” scope of the CSCA (see above no. 2.1), DoPA’s powers on monitoring the implementation of the civil service legislation have been limited to the ministries and prime minister’s office only. To a certain extent, this is true even with respect to the “policy development” role, which with the exception of certain areas (salaries for instance) is rather limited in relation to policies concerning the employment relationship to the other specific civil service branches. In issues such as preparation of legislation and secondary legislation related to the public employment issues, DoPA only takes part in the internal government consultation process. The way the concrete competences of DoPA are articulated in the CCSA, despite its direct participation in the everyday management, its role seems to be more of a coordination and internal supervision nature. However, the legal instruments that would enable it to ensure equal standards in the implementation of legislation (within the executive) by a proper coordination are rather scarce and weak.

The **CSC**: In practice it seems that the CSC has not fully executed its intended role, and the authority of the CSC seems to be even declining because of various reasons. Related to the oversight functions, the output of the CSC so far has been poor. The CSC can only find out about non-observance of the civil service legislation during inspection missions undertaken directly to the institutions. In case it finds a breach of the legislation, the CSC may only recommend to the relevant institution to take the due measures to be compliant and in case of non-reaction from the latter, file a claim into the court. This is a cumbersome instrument, which has almost never been applied so far. Another specific problem exists with regard to the implementation of the CSC decisions which are in favor of the claim of a civil servant. Generally these decisions are not implemented by the institution. Instead the institution challenges the CSC decision before the courts and implements only after a court decision.

3.2 Objective

The main objective of the new civil service law should be the establishment of **a coherent management system, with clearly allocated responsibilities and with a consolidated position and powers awarded to the institutions involved, to propose civil service policies and ensure homogeneous standards of implementation.**

3.3 Discussions and possible solutions

Regardless of the scope of the civil service law or choice of its model (positions / career), the state as "employer" has a need for rules and policies that define standards of civil service management as well as mechanisms and instruments to ensure uniform (or at least comparable) compliance to these standards. In general, any system of civil service management involves the existence of several different functions, which as a rule are: **a) policy and standard setting, b) supervision and appeal resolution and c) the everyday management of individual civil servants.** The first two functions usually belong to the central level, whilst the latter is decentralized to the institution concerned.

When it comes to the roles, weight, responsibilities and relations of the “actors” performing the above-mentioned functions the situation varies. The more decentralized models provide for a strong decision

making power for line managers (institutions where the civil servant is employed) over most of the personnel management functions such as recruitment, training, performance appraisal etc, leaving to a central level the responsibility for defining policy guidelines, preparing primary and secondary legislation and monitoring or supervising the performance of the decentralized personnel management units. In models with a strongly centralized management capacity, major functions and supervision with regard to personnel management are exercised at central level.

The situation varies also in relation to the “location” of the central management unit. It might be a semi-autonomous institution (especially if dealing with mainly management issues); a unit located to the centre of government (prime minister); a special responsible ministry of public administration or civil service; or a part of another ministry¹⁸ (especially if dealing predominantly with policy and standard setting). In some models the oversight and appeals solving functions are transferred to independent bodies/commissions.

In broad terms, the “management and supervision system” established by CCSA is in accordance with the general recommended approach and all arguments lend support to maintaining a rather “centralized management”, especially because: a) Albania is a small country inclined to a small administration and with a relatively small number of public employees (the proposals of this paper propound a moderate scope of civil service); b) there is an evident need for deep reform in the civil service, therefore the need for a centralized reform engine is manifest in order to steer and build the civil service the country needs; c) there is tradition of centralized management already created by ten years of implementation of a EU oriented civil service (despite the well-known drawbacks); d) numerous recent SIGMA studies¹⁹ of various experiences (especially in the new EU member states) show that major reforms in the area of civil service are better achieved through “centralized settings” and that the greater the need for reform the more centralized the management should be.

The DoPA should continue to have the role of a classical central management unit (dealing mainly with: drafting of civil service legislation (primary and secondary legislation), the adoption of guidelines and standards on civil service management; proposal preparation and personnel policies; negotiating with trade unions of civil servants on behalf of government (where it is foreseen by the relevant legislation; internal oversight of personnel management in ministerial system; planning, organization and general management training system for the overall civil service, maintaining a civil servants register/database and advising the institutions on issues of civil service management, etc.

Furthermore, the DoPA should strengthen its capacity, resources and show more resolution to implement properly its functions. The DoPA should also be empowered with the necessary proper legal instruments to implement and to enforce these responsibilities. DoPA should: a) have the legal powers to obtain information and files from state ministries and subordinated institutions, or to hear witnesses, and impose sanctions due non-compliance with requests; b) participate in the internal institutional committees on mobility, discipline and reassignment of civil servants affected by restructuring process, etc.; c) if the proposal on the establishment of the Top Management corps (see below no. 7) is accepted, the DoPA’s role in the management and special training of this corps should be increased; and finally d) have a central role on “personnel planning” particularly related to recruitment (see below) along with the creation of

¹⁸ part of the ministry of Finances, ministry of Labor, ministry of Interior or of Justice

¹⁹SIGMA Paper No. 44, Sustainability of civil service reforms in central and eastern Europe 5 years after accession, pg. 21 and 76

legal obligation for each institution of the executive (under the scope of the new) to contribute. It should also continue to organize the recruitment procedures as it has done so far.

In terms of DoPA's reporting, discussions amongst several options regarding the location of DoPA have been rife during the last years. These options are basically the following : a) reporting as part of the office of the Prime Minister (as before 2005) and b) reporting to a particular minister such as the minister of interior (the current solution).

It is argued (based on past experience) that locating in the office of Prime Minister, will increase the authority of DoPA with the consequence of having a fair influence in improving the management of the civil service. However, it would limit to a certain extent the participation in government decision- making, as de facto nobody in the council of ministers will advocate the civil service professionalisation policy.

Alternatively the location under the Minister of Interior would be an appropriate place for DoPA, as it will not only create access to the decision of the Council of Ministers and the political backing of a powerful minister (such as the minister of the interior), but will also provide a synergy with other current functions of this ministry, such as the decentralization (which ultimately is a matter of public administration reform).

Recent assessment from new EU members states has shown that *“allocating the responsibility for civil service policy to a member of the cabinet of ministers, be it a minister of public administration or another minister ..., led to greater civil service professionalisation²⁰”*. Furthermore the ministry of interior would be an even better place if the Government would accept to reshape the “mission” of this ministry.

The SNRAP has significantly enriched the focus of the public administration reform by two major pillars: 1) functional and structural component of public administration organization and 2) the administrative procedures as well as the processes of the modernization of services. Related to the first component, the DoPA has dealt with, to a rather limited extent, mainly by the prospective of the impact that the restructuring of the institutions on the incumbent civil servants and by the prospective of job categorization.

The Government is now engaged in the process of preparing a general law on organization and functioning of the state administration, which is expected to provide for principles and general standards of organization as well as for screening procedures to ensure the compliance of the ministries proposals against the standards.

Administrative procedures and modernization of services deal with horizontal functions, but they have been scattered to different ministries or agencies (for instance to Ministry of Justice for the general administrative law; to the National Agency for Information Society, for e-government issues, to the Ministry of Economy for deregulation and reduction of administrative barriers, and so forth. If these functions are concentrated into a “newly” shaped ministry of interior it will certainly help to have a comprehensive approach public administration reforms and create proper synergies with the current role of the DoPA in managing the civil service.

²⁰ SIGMA Working paper, Can civil service reform last? The European Union's 5th enlargement and future orientation. pg. 5.

Proposal 3: Strengthen DoPA’s role as central policy and management unit in the overall civil service and provide for proper instruments to implement this role. The supervisory role of DoPA should also be strengthened, although this role should be clearly differentiated from that of the CSC (see below). DOPA should continue to be part of the Ministry of Interior which should assume, together with the Ministry of Finance and Justice, the lead with regard to Public Administration Reform.

3.3.1 The supervising and appeal solving function

The existence of the CSC is expected to be questioned by the ongoing establishment of an administrative court system. Instead, we strongly argue for the necessity of the existence of the CSC or a similar independent institution at least in respect of the “oversight function”. The fact that the CSC has not played its intended role fully or successfully so far should not be seen as a problem of the “institutional setting,” but rather it is largely due to the lack of will of institutions to implement its decisions and the lack of proper instruments to ensure the implementation of CSC decisions and better exercise of the monitoring function.

The CSC should continue to exist and should be further strengthened. The existence of such a specialized institution has the following advantages: a) in terms of an appeal body – a specialized institution in the area of civil service ensures a professional treatment of the cases²¹ as well as a fast and cheaper out-of-court procedure for both the civil servants and the institution concerned; b) in terms of oversight functions, especially in relation to the “independent institutions” and “local government” it would hardly be provided by a different institutional setting, but one acting on behalf of the Assembly and implementing the parliamentary oversight function. A different institutional setting would raise serious problems with the independence of the supervised institutions. Furthermore, such a supervision function could not cease to exist, as every civil service system needs such a function in order ensure the uniformity in the implementation of the legislation between different parts of the civil service and throughout the country’s territorial administrations or regions. This is especially true in a situation where, like in Albania, the civil service fundamentals are under construction.

The CSC should be further strengthened in terms of capacities, and legal instruments to enable it to better implement its decisions and oversight function. CSC should have the right to apply coercive fines to the responsible individual managers that do not implement its decisions. The immediate implementation of CSC decisions should be a precondition for the “acceptance” of the appeal against the CSC decision by the Court. Disciplinary action against those managers should also be envisaged out of arbitrary non-compliance with CSC decisions or having recourse to abuse of appeals against them. The CSC could also be provided with a mandatory reporting system concerning the decisions of the institutions related to their civil servants. Such a system might be the Human Resource Management and Information System (HRMIS) which is in the process of being established by the DoPA.

Proposal 4: Strengthen CSC and increase its powers by providing the proper legal instrument to impose sanctions and implement its decisions and provide for a proper reporting system of the management decisions taken by institutions.

²¹ In favor of this argument it is enough to say that more than around 95 % of the claims of the concerned institutions against the CSC decisions are rejected by the Courts as not founded (CSC Report to the Assembly 2008).

4 PRINCIPLES OF THE CIVIL SERVICE SYSTEM

4.1 Situation and problems

The CCSA (Art. 3) contains a list of principles of the civil service, such as professionalism, independence and integrity, political neutrality, transparency, service to the public, career continuity, accountability and correctness in the application of the law. The CCSA treats in the same article principles related to the employment relationship of civil servants and those related to the performance of their duties by civil servants.

4.2 Discussions and possible solutions

The two dimensions of a civil service ruled by law should not be confused: on the one hand the civil service is an “institution” ruled by law; on the other hand the civil service acts under the rule of law in the execution of public policy. Most modern civil service laws distinguish between two sets of different (although inter-related) principles: 1) **Principles dealing with the status and with the employment relationship of civil servants**, concerning the employment relationships in the civil service and frame the principles and general management standards such as recruitment based on merit, stability; etc; 2) **Principles related to the performance of duties of the civil servants**, which are principles related to the way civil servants perform their activities (duties) and should be also reflected in the chapter on rights and obligations of civil servants. Those obligations and rights should be consistent and proportional to what is required by the principles.

1. The new civil service law **should enrich the “list” of principles regarding both aspects, as follows:**
 - **Principles dealing with the status and with employment relations of civil servants:**
 - employment relations of civil servants shall be governed by law or on the basis of law to promote legal certainty, legal accountability and legal predictability in the civil service;
 - decisions with regard to civil servants shall be based on merit and ensure fairness and effectiveness in employment relations;
 - the stability of the civil service and of employment relations shall be protected;
 - professionalism of civil servants shall be ensured by developing their competences;
 - **Principles dealing with how civil servants perform their activity; the main obligation imposed on civil servants under this principle is that of being impartial. Impartiality is promoted and protected by a number of other principles such as:**
 - **legality:** civil servants shall perform their duties on the basis of the Constitution, laws, other regulations and in the public interest;
 - **accountability:** civil servants shall be personally accountable for their actions; the activities of civil servants shall aim at ensuring efficiency and effectiveness;
 - **Non-discrimination:** by applying this general principle civil servants shall ensure that no one is discriminated against on the grounds of religion, race, gender, political or other opinion, language, national or social origin or disability; the details of this anti-

discrimination policy could be included into a special Anti-Discrimination Law (transposing the respective EU anti-discrimination Directives).

- **transparency:** openness and transparency shall be ensured as provided for in the law or on the basis of a law.
- **responsiveness:** civil servants are required to respond promptly and react appropriately to any petition, initiative, or appeal submitted by individuals, private organizations or other organs of the public administration;
- **avoiding conflicts of interest:** civil servants shall not allow their private interest to interfere with their public position and shall abstain from performing any private or public activities that are incompatible with their public position and which might generate conflict of interest.

The “rationale” of explicitly providing for these principles is not only of a general and declaratory nature, they should be fully reflected in the overall legal framework related to the civil service (not only the civil service law) and should also serve as “a guidance” when interpreting the provisions of the law and of secondary legislation on both above-mentioned aspects.

Proposal 5: The list of civil service principles should be extended in the new civil service law. These principles should be fully reflected in the concrete provision on the management and decisions related to civil servants and also reflected more precisely in the chapter on rights and obligations of civil servants.

5 EMPLOYMENT TYPES

5.1 General

The status of the civil servant should be linked to a position **explicitly established as a civil service position**. Private law employment (e.g. with temporary contracts) on established civil service positions should be inadmissible in principle. With regard to the status of a civil servant two types can be distinguished: a) Permanent employment/employment for an indefinite period; b) Fixed-term employment. In principle all civil servants should be able to acquire the status of an employee recruited for an unlimited term (life time). For specific cases, fixed term employment as a civil servant should be possible as an exception (e.g. this might be the case of certain high managerial positions such as heads of some subordinated institutions, whose mandate could be limited in time with the possibility of extension). To avoid misuse of this instrument the criteria and conditions for fixed term employment should be set out in the Law or in secondary legislation. Of course the recruitment should be subject to the usual formalized recruitment procedures. It should be underlined that fixed-term civil service employment is public and not contractual employment.

Proposal 6: Employment on civil service positions should be admissible only with civil servants status and not on contractual basis. In principle civil servants should be employed for an indefinite period; fixed term employment should be restricted to specific exceptional cases which need to be defined in principle in legislation.

6 CIVIL SERVICE “CAREER” PATHS, CATEGORIES AND CLASSIFICATION

6.1 Situation and problems

As a rule, positions in the civil service are divided into levels or categories. CCSA (art. 11) establishes a classification system based on the criteria of responsibility / complexity of the positions, by **distinguishing four functional levels/categories:**

- high-level management civil servants (secretaries general, directors of departments, director of general directorates and equivalent positions)
- middle-level management civil servants (directors of directorates and equivalent positions);
- low-level management civil servants (heads of divisions, heads of offices and equivalent positions, and
- implementing or executing-level civil servants (experts/specialists) level.

Each category is divided into several classes/titles (1 to 3) to cover all different typologies of positions in civil service. Each class has a general job description including the respective general job requirements. Then based on a “weighting” methodology of job evaluation **each existent post/position is classified as belonging to a certain class.** While classification is rather obvious with regard to the high and middle-level civil servants because of their role within the hierarchical system, the job evaluation methodology and its implementation for the classes under the two lowest categories (low-level management and executing-level) remains rather “rudimentary”, traditional and is mainly based on the practice created over the last several years²².

The current civil system is mainly “position-based”. **Each civil servant is recruited for a particular position belonging to a certain class and is considered as “suitable” for this position only or for very few other positions of the same job description and classified under the same class.** So any “deployment²³” to another position even with very similar job requirements and within the same category would need in principle a new recruitment and probationary period accordingly. This “conception” has significantly fragmented the civil service, has increased the number of career steps, reduced significantly mobility, and has complicated the everyday management, making it time-consuming and expensive.

6.2 Objective

The SNRAP recognizes that “job requirements for a considerable number of positions of the same level are sufficiently homogenous and the possibilities for horizontal mobility are relatively high” and has set as an objective of future reforms in the civil service legislation to *“enrich the (n.a: current position-based system) with more elements of the career system, by eliminating inhibitory factors that affect internal*

²² The classification of each position to a certain class (3 classes for high-level management; 1 class for the middle-level management; 2 classes for the low level management category and 3 classes to executive –level management) is formally approved as part of the organigram of the institution (by the Prime-minister for the government institutions, by the Parliament for the independent institutions and by the elected councils for the municipal administration civil service).

²³ regardless of instrument: lateral mobility, promotion, reassignment because of the restructuring.

*mobility and vertical mobility*²⁴” and to “*review some of the elements of the position-based system, which hinder mobility and increase the costs of management*”. The suggestion is to create groups of positions with similar characteristics, where the concept of pool recruitment and horizontal mobility without a probation period could be based”²⁵.

6.3 Discussion and possible solutions

It should be understood that the general categorization system is a crucial element of any civil service system and administration. It has twofold implications: a) it should reflect and be compliant with the standardized organizational scheme for the various administrative bodies²⁶ in the country and should aim to support the establishment of flat hierarchies and to avoid an inflation of high hierarchical positions, and b) it is at the “center” of the management system, it directly influences and shapes any decision related to the civil servants: recruitment, mobility, mandatory and internal transfer, reassignment because of the restructuring, salaries, etc.

The current system of classification in the above-mentioned categories and classes is quite in compliance with good international experience, and should be broadly preserved, but it should be adapted to the need to enrich the system with certain career position elements, the introduction of pool recruitment and the enhancement of mobility. Thus, we propose two main adoptions which significantly influence the system:

- a) **Dividing the civil service in two areas: a general civil service** (with more elements of a career-based system) for rather generalist positions and **a position based civil service** (more position-based oriented) for more specialized positions, and
- b) Increasing the "importance" of the “category” versus the smaller "classes", making the first “the center” of the management decisions on civil servants.

General administration/position-based administration: It is becoming more and more recognized, including in the Albanian civil service²⁷, that along with civil servants “suitable” for one position only, any administration should have a group of civil servants who are able to occupy a broader range of positions requiring similar skills and competences²⁸. The positions in the civil service could be classified either as belonging to the general administration (with several clusters) or to the more specialized position-based administration. Under the general administration we may further distinguish “**the general administrative service**” and various **groups of “special services”**. The general administrative service should cover most activities of ministries irrespective of the particular subject area (policy advice, implementing legislation, monitoring, legal services, internal control and audit etc), whilst groups of special services would need to be defined according to the practical requirements (e.g. technical and scientific services, environmental, agricultural services, engineering, etc). Finally, very few particular

²⁴ See 2.1.1 (pg. 24)

²⁵ See 3.1.1. (pg. 30)

²⁶ Under a joint EU/GTZ Project “Support to the Albanian Department of Public Administration”, DoPA is engaged the process of preparing a draft law “on organization and functioning of public administration” which might have some impact on the proposals of this part of our paper. It should be review accordingly when the draft law would be at an advanced stage.

²⁷ this is partly the current situation in the customs, tax administration and diplomatic service.

²⁸ this is valid as a rule for the implementing-level of civil servants (experts/specialists); to a certain extent for the low-management level of civil service as well for the high-level management and should not *a priori* be excluded even for the middle-level management civil servants.

positions, which are very specific with particular job requirements could be classified as in position-based administration.

Increase of the "importance" of the "category" versus the smaller "classes": Within a particular category the level of responsibility is very similar or at least comparable, the same with the respective general job requirements. For instance, within the high level management the responsibility involves management of the organization, horizontal coordination, provision for policy advice, leadership in developing plans and budget, etc, whilst at the implementing level, civil servants' responsibility involves data gathering, analyzes, reporting, etc; similarly the level of education, skills needed, experience within the category is very similar. The category should be "the center" of the management decisions²⁹.

The combination of the two above mentioned proposals leads to a situation in which the state would for instance recruit candidates' capable of performing **the duties of relatively different classes of positions within the same category belonging to the same clusters** ("general administrative services" and the group of "special services". This adoption would meet the SNRAP objective and would provide the following advantages: a) the mobility within the "category and cluster" ("general administrative services" and "specialist services") would be significantly facilitated by improving not only the development expectations of civil servants, but also the quality of administration; b) the functional promotion would be simpler (from one category to the next one, but in fewer steps) so influencing positively the attractiveness of the civil service; c) it would make possible and easier the "pool recruitment"; d) it would increase the range of positions to which redundant civil servants could be reassigned in cases of restructuring; e) the everyday management would be simpler.

Details should be set out in secondary legislation, but in any event the number of special services and particular positions should be restricted to avoid a fragmentation of the civil service. The scope of each service should be defined according to the needs of the administration based on a careful assessment. Job titles in the general administrative service and in the special services do not need to be identical. The formal requirements for entering each category should be set out in detail in secondary legislation; these requirements should include educational qualification and, possibly, working experience.

Proposal 7: The current classification system in four levels/categories should be preserved. In addition the civil service employment should be carried out either in the general administrative career/service path or in a specialist particular based service and the focal point of decisions on recruitment, promotion, and reassignment should become the "category".

7 TOP MANAGEMENT CIVIL SERVANTS (TM)

7.1 Current situation and Problems

The CCSA (art. 11), recognizes the existence of **the high-level management civil servants, consisting of secretaries general, directors of departments, director of general directorates and equivalent positions of central and local administration.** Despite this "formal" recognition the current law does not

²⁹ On the other hand, the more detailed division on "classes" will continue to maintain its relevance, for the purpose of the salary. The civil servant performing in a certain position would receive the correspondent salary for the class in which the position is classified. This of course might need to adapt partially the current salary system.

differentiate between this level and other levels of civil servants on any other aspect of the employment regime; all of them are subject to the same legal and managerial regime (same mode of recruitment, promotion, mobility, training, management, etc.).

Every assessment of the situation in Albania has shown that the high-management level of civil service remains highly politicized and has suffered excessive staff turnover immediately after Government's or minister's changes. The situation becomes especially problematic because of the following: **1) the high level civil servants** if not "accepted" by the political executive **are pushed completely out the civil service** (the overall system loses continuously and this diminishes its already scarce capacities); **2) the recruitment to the vacancies created as a consequence starts to be mainly dominated by party or personal affiliation rather than criteria of competence or merit and the recruitment procedures (when observed) become mere formalities with foregone results;** 3) the application of a strictly position-based system at this level, has undermined a cross-institutional perspective of the civil servants.

7.2 Objective

As in any other country, and especially in one in transition, there is an evident need in Albania for a cohesive group of top managers steering, managing, and monitoring the modernization process ahead and at the same time safeguarding the continuity, institutional memory and knowledge of the institutions and the sustainability of service delivery. The 10 years of implementation of CCSA have shown that this objective is far from achieved. Thus there is a need to establish a proper legal employment regime for top managers that aims at the direction of professionalization.

7.3 Discussion and possible solutions

It is commonly agreed that the civil servants of high level-management (hereinafter referred to as "Top Managers" -TM) have a specific role within the public administration system and have specific responsibilities compared to other civil servants. TM's are: 1) bridges connecting different institutions and public administrations in the process of policy development, intergovernmental consultation and coordination – as a consequence on the one hand: their responsibilities, and accordingly the type of skills needed to perform these high-level functions, are significantly different (very high professional standards and increasing importance of "general management skills" as opposed to specialist skills) and on the other hand, they should be a group, based on a corporate culture of shared values able to "manage" across different institutions and programs overcoming fragmentation and compartmentalized thinking; 2) they are placed between the civil service and the political executive and act as an intermediary between these two areas – which makes these positions "politically sensitive", because of the trust needed from the political leadership.

Several countries have established a special group⁵ of civil servants, distinct from the rest of the civil service and with a special employment regime (including: special selection procedures, higher mobility across institutions, special appraisal procedures, special training planning and programs, etc). Currently, a special senior civil service corps exists in some EU member states like the UK, Belgium, the Netherlands, and Italy (up to a certain extent). The new member states, especially Estonia and Romania, have introduced (or are in the process of introducing) aspects of a senior civil service corps.

⁵ Called under different names, such as: Senior Civil Servants, Top Management Civil Servants, etc

As for the interface between politics and administration the solutions appear to be more challenging. Some countries have very specific and traditional selection procedures for appointment into TM positions³⁰, all of them based mainly on merit. Many other countries' systems try to balance the recruitment based on merit with political realities. They have in place mixed systems in which the merit requirement is coupled to subjective political considerations³¹. Some of them limit the political appraisal by selecting the management staff from inside the civil service whilst others use a "mixed" regime (even from outside, depending on the grades), but based on very well defined "eligibility criteria" for selection. In terms of stability the solutions also vary, the most common solution to the problem of dismissal is a "pool system" which places the candidates available for subsequent selections from where they can be reappointed.

In finding a solution for the Albanian context, the establishment of a special TM Corps offers a model to be explored, although with extreme caution. The establishment of a TM corps, managed differently, provides for the advantage of building a corporate culture of shared values and behaviors, which overcomes fragmentation and compartmentalized thinking, which is really necessary in an effort to modernize the civil service and **might be a good way to balance the "political sensitivity" and the merit principles in the recruitment and selection of these civil servants, but at the same time ensure a badly needed stability in the civil service and avoid the loss of valuable human resources.**

Generally SIGMA³² has been "cautious" in recommending the establishment of such a "corps". Indeed, the establishment of a TM corps might be rather difficult in Albania which is a small state, with limited resources, highly politicized and with a strong interpersonal culture. But precisely the same reasons make it necessary to explore and aim at it through a gradual approach. Our proposal below is to be seen as a set of smaller objectives to be implemented through some well-thought step-by-step path towards achieving the long-term objective of full public management professionalization. These proposals shall be discussed with the relevant stakeholders in Albania, during the consultation phase of this policy paper, and adopted or rejected accordingly.

A possible special regime for TM Corps could be framed as follows:

a) the new civil service law **could explicitly establish the TM corps or allow its establishment in the future or subject it to conditions.** The TM corps should have a "special status", but mainly based on the same principles of employment in civil service. The details should be regulated in the secondary legislation;

b) the **size of the TM Corps:** the size should be small and well limited. In different countries³³, the size varies from several hundred to several thousand employees depending mainly on the size of the respective civil service. The size in our case should not exceed some "tens" of persons. This number should be in accordance with the number of **regular positions** (Secretaries General, Department Directors, General

³⁰ France's civil service recruits from the École National d'Administration), UK selects the highest positions mainly from inside the civil service, through specific procedures.

³¹ Public Appointments from patronage to merit, Wily McCourt, University of Manchester:

³² SIGMA Working paper, Can civil service reform last? The European Union's 5th enlargement and future orientation, pg. 11

³³ Some countries have chosen to rely on a very small elite in terms of corpus size (for example in Spain some 276) and some other groups are creating larger numbers (in the United Kingdom 3500)

Directors and equivalent positions in the subordinated institutions, and heads of the institutions under the extended CSA scope); numbers of positions should be determined by legislation³⁴;

c) **Merit-based recruitment to the TM Corps:** the TM Corps members shall be recruited based on the merit principle only, through a **national concours** organized periodically (for details on planning, recruitment, assessment of candidates, selection commission, etc, see below no.8.3.4). Merit-based recruitment and selection at the top level is the most important feature of the concept. The recruitment based on the merit principle should be preserved even if the concept or other aspects of the TM Corps are not accepted.

d) **Eligibility:** a predetermined number of required successful candidates shall be appointed as civil servants members of the TM Corps; they shall be eligible to be assigned to any particular **regular position within the TM Corps** or be placed in charge of a specific *ad hoc* mission (management of inter-ministerial working groups, implementation of a special project, representing institutions in different negotiations, etc) in accordance with the needs of the Government.

e) **Appointment to a particular regular position:** The appointment to particular regular positions (e.g.: secretary general in a Ministry) can only be done **from among the members of the corps**. Any other appointment from outside the corps should be considered as invalid; the members can be selected to be appointed to particular regular positions³⁵ by the institution with the vacancy whether **by informal** or **by a formal selection procedures** (for details in the selection see below no. 8.3.2.4).

f) **mobility in the TM Corps:** the mobility between of the members of the corps between different positions should flexible enough and mainly based on the decision of the political executive and the consent of the concerned member as well as the involvement of DoPA;

g) **termination of employment from the corps:** the termination of the employment corps should be possible only in cases explicitly provided and under the procedural provisions established by the law. We might distinguish between two options on termination of the employment from the corps: 1) option 1: termination only in accordance with the provisions provided by the law for any level of civil servants. In addition a special established central commission for the TM Corps, should be involved in the disciplinary issues, performance appraisal, etc. This option would ensure more stability of the corps. 2) option 2: termination in the cases provided in option 1 and in addition the employment relationship of the corps members shall end when the latter have not been assigned to a particular regular position say for up to two or three years ensuing his/her removal. Upon termination, another civil service position of a lower category should be offered to the former TM member;

h) **Limited mandate to perform a particular regular position:** TM members should be tenured civil servants. While their assignment to a particular regular (rank-and-file) position might have or not a predetermined duration, two options could be distinguished: 1) option 1: limited to a 3 year mandate with the possibility of extensions; under this option the TM civil servant cannot be removed from the position

³⁴ for instance in the annual budget law or the secondary legislation issued for its implementation.

³⁵ TM Corps is proposed to include only the executive; independent institutions will continue to use individual procedures / combination of recruitment for higher level positions. Of course these institutions would be legally recognized as having the right to select from the members of the corps and even be encouraged in this direction.

but for serious breach of discipline or two consecutive poor performance results. In both cases this would mean the removal from the corps (*see above*). They can be removed also through common agreement with the institution, the concerned employee and the DoPA. 2) option 2: indefinite period of time; under this option the political executive might decide to remove the TM from the position, by a motivated decision only in which case, as in the mandate, the incumbent becomes part of the rank-and-file civil service and becomes eligible (during a maximum stand-by time-span of two to three years) to be selected to fill another particular regular position;

i) **training**: the members of the corps should participate in mandatory training, initial and periodical, under an annual and multi-year development program;

j) **management**: the DoPA will have the task of managing the creation and the strengthening of the corps and its effective everyday centralized management, including the manpower planning (recruiting process), the development of a "competence framework" for the eligibility, as well as planning and programming the training.

The above regulation of the special status of the TM corps, in the above-mentioned lines would have the following advantages, as it would : a) guarantee a recruitment procedure based on the merit criteria only; b) allow a "reasonable level" of influence of the political level (Prime-minister, ministers) over the selection of their management teams and consequently increase their trust; c) elevate the standard of quality and increase of the general trust in the recruitment process through a better planned, advertised and managed national concours; d) it would reduce the time to fill a regular position vacancy (for other advantages see also: the general pool recruitment advantages under no. 8.3.2.1); e) ensure the stability and continuity of the TM members within the civil service; f) ensure an interdepartmental mobility of TM members among various regular positions resulting in added value for the overall civil service due to a recognition of work in many institutions g) directly affect the improvement of consultation and inter-governmental coordination; h) allow the Government the opportunity to employ members of the corps in special missions in accordance with specific needs.

The main risks of the above-proposed system is the one- sided politicization of the corps in the phase of its initial establishment by the government of the day and a certain increase in the pay bill for the members of the corps. In order to minimize these risks, certain transitory safety measures can be taken (for instance the TM corps could be fully completed within a longer mandate than the normal one of the government; this would mean that for a transitional period both systems of recruitment and selections would coexist or maybe a percentage of the overall size of the pool would be filled over a certain period of time. An additional measure that would help in avoiding the risk of politicization is to provide and enforce strictly that the members of the corps should come from the existing civil servants of immediate lower level/category.

Proposal 8: The new civil service law should recognise or allow for the future phased-in establishment of a Top Management Corps with specific employment regimes of management. The details should be regulated in the secondary legislation following the lines set out in 7.3 above, but the main features of the system should be stated in primary law. In addition, this policy or regulation should be coordinated with the preparation of the policy and law on organisation and functioning of the state administration, whereby the proliferation of political posts above the senior civil service should be strictly forbidden.

8 RECRUITMENT AND SELECTION OF CIVIL SERVANTS

8.1 Situation and problems

Under CCSA the recruitment procedure is carried out individually for each vacant post. Recruitment is organized by the DoPA for line ministries (including the Council of Ministers administration) and separately by the HRM unit in each of the “independent institutions”. The current legal and practical implementation of the civil service law presents the following drawbacks:

- the fact that recruitment needs to be organized separately for each vacancy makes the system costly and cumbersome and the time needed to fill the vacancies rather long.
- taking advantage of the latter drawback the institutions fill the vacancy by temporary contracts, which have become the regular recruitment mechanism, circumventing the normal competitive recruitment procedure established by law; several assessments show that in the majority of cases the candidate initially contracted by the institutions, manages to get selected in the recruitment procedures organized afterwards;
- the current system is based on the principle of selecting three of the best offered/available (applicants) without any minimum quality threshold;
- the assessment method is primarily knowledge oriented;
- the same assessment method and scoring system is used for all categories of civil servants, from implementing to top managerial positions;
- the member capacities of the *ad hoc* selection committee (especially the one from the institutions with the vacancy) are chosen on an ad hoc basis and lack the special training to make a qualitative assessment;
- the discretion of the direct superior in the final selection stage (from the short list of the three best ranked) is considered as unfair; the interview is not conducted and the final selection act is vaguely motivated;
- because of the above-mentioned factors, the credibility of the recruitment procedures has significantly decreased in the opinion of the public and among potential candidates; this is evident by the decrease in the number of applicants per positions and the very frequent failure of the recruitment procedure because of the lack of available interested candidates;

8.2 Objective

The main objective of the recruitment system should be to **ensure merit-based recruitment only** and to **decrease the time-span needed to fill vacancies**. The SNRAP recognizes the difficulties that the recruitment for each particular position has brought in daily practice to filling vacancies. It also recognizes that “pool recruitment, based on foreseen necessities” should start to constitute the main stream of “recruitment for the entry level in the positions of the same or similar job requirements”³⁶. While case-by-case recruitment for entry level can still be used for particular positions which require very particular education or skills.

8.3 Discussion and possible solutions

8.3.1 General recruitment principles and standards

³⁶ SIPAR 2.2.1

With regard to the recruitment and selection, the following distinctions should be made: a) recruitment and selection for **entry positions in the civil service** (executive level civil servants); b) recruitment and selection for **low and middle-management level**; c) recruitment and selection for the **TM Corps**.

Experiences from other countries in terms of recruitment are various. Despite this, these experiences as well as the administrative principles of the “European administrative space” imply at the level of principle **that the recruitment and selection process in civil service, regardless of the level should be clearly based on the merit principle.**

The principles of the recruitment and general eligibility criteria, especially those provisions ensuring the quality of the process, should be set out in the new civil service law, while the details (e.g. composition of selection committees, the assessment method, the scoring system, etc.) should be covered mainly by secondary legislation. The Law should clearly discourage attempts to use any other form of recruitment and selection not based on merit, for example by making them null *ex tunc*. This means that any appointment to the civil service through illicit procedures (temporary contracts or others) should be explicitly considered as legally invalid.

The formal specific requirements for entering each level should be set out in detail in secondary legislation; these requirements should include educational qualification and, possibly, working experience.

8.3.2 Recruitment to entry level positions

On the recruitment to entry positions category (implementing³⁷-level civil servants) the implementation of the **merit principle** as well as the **equal access principle, professionalism and effectiveness**, involve the following elements³⁸ to be embedded in the new recruitment system: **1) open competition** which includes: pre-established objective recruitment criteria and compulsory and comprehensive, nationwide advertisement of job vacancies³⁹; **2) examination system** to be conducted in an objective and transparent way, in front of an impartial selection commission⁴⁰, which usually involves written exams (mostly favored as being the most objective) and/or oral exams or interviews; **3) assessment methods** corresponding to the requirements of a modern civil service and being able to properly assess and rank the candidates in accordance with their knowledge, skills, abilities and behavior; **4) an ambitious and demanding “quality threshold”** in order to ensure that only the candidates that have the competence and ability to do the job (ranked above a certain threshold) would be eligible for entering the civil service.

At the entry level, the **pool recruitment for a number of positions with similar or comparable requirements and responsibilities should be the regular (the rule) recruitment procedure**, while the **stand-alone position-based recruitment should be the exception**, applied in very well-justified cases for positions that demand a very particular education or skills. The **pool requirement procedures should include several pools**: one pool of general administrators and a certain number of pools for special services (see above 6.3).

³⁷ which currently include three classes ; Specialist III, specialist II and specialist I)

³⁸ These elements are mostly, also valid for the recruitments at other levels too, because the try to implement the merit and professionalism.

³⁹ SIGMA PAPER No. 44 “Sustainability of Civil Service Reforms in Central and Eastern Europe Five Years after EU Accession”. May 2009, available at www.sigmaweb.org

⁴⁰ *ibidem*

National Concours: For each of the established pools (general or specific), a National Concours should be carried out under the responsibility of DoPA. The concours should be announced publicly nationwide to ensure transparency and should be accompanied by an intensive advertisement campaign and other public relation techniques aiming to attract as many applicants as possible.

Manpower planning: The frequency of national concours for each pool could be determined on the basis of manpower planning needs which should be carried out by DoPA, upon proposals from ministries and concerned institutions, by taking into account the average turnover rates on the respective levels during the previous 3/5 years and the government plan to reduce or increase the staff. Pool recruitment would be facilitated if the law would establish the obligation for institutions to prepare an annual manpower plan which would summarize the recruiting needs foreseen by all institutions for the ensuing fiscal year. Recruitment needs should be debated and approved every year along with the state budget law.

Selection commissions: the assessment of the available candidates shall be conducted not by the current ad-hoc committees, but by a new type of commission (possibly appointed for several years for each pool). The composition of the new selection commissions shall include persons with special expertise and experience in assessment/selection processes and in assessing different set of skills, representatives from institutions and the DoPA. Guidance and training needs to be provided to commission members with regard to assessment procedures meeting the requirements of a modern civil service.

The successful candidates and their eligibility: All successful candidates without any numerical restriction who meet the set ambitious threshold (e.g. 70-80% or of required points⁴¹) should be listed in ranking order of scores. The successful candidates selected for each the pool should not be considered as employed in the civil service; they are however, eligible for employment in any of the positions in the respective pools. They will stay on this list until they are either employed indefinitely or respectively for a defined period of time. In determining the period, two options might be considered: 1) option 1: staying in the pool for 2-3 years (they shall continue to be part of the pool along with the candidates from the next concours accordingly re-ranked); or 2) option 2: staying in pool until the next pool recruitment is concluded. However, staying on the list until the next pool recruitment may have a discouraging impact on the candidates and might lead the direct superior to postpone the selection while waiting for the next pool recruitment. We would suggest option 1 as the more advantageous and fairer.

Final selection: The vacancies arising during the time-span of validity of the pools could be filled only from the members of the pool who are not yet employed elsewhere. The lists of available candidates, along with the list of vacant positions, shall be made public and updated accordingly. Regarding the final selection the following options need to be distinguished: 1) option 1 - secondary legislation defines a formal mandatory procedure to be followed by the institution. This formal procedure may include an invitation for application to the members of the pool and an interview or written examination focusing on the specific needs of the respective institution. The interview takes place in front of the direct superior with the involvement of HRM and is conducted by an internal selection committee; the final decisions

⁴¹ The minimum threshold should be subject to a periodical review of DoPA based on the experience of the implementation, in order to find the proper balance between a threshold that does not discourage the applicants and one that ensures the necessary quality for professionalism.

should be motivated; 2) option 2: the best ranked candidate has the right to select among the available vacant positions.

Option 1 is more time-consuming, but more transparent, and ensures uniformity in selection procedures and a fair final stage; it theoretically ensures a better fit between the candidate and the job requirements for the specific vacant positions. Option 2 clearly enhances the social legitimacy of the recruitment procedure providing more security and confidence in the recruitment and selection procedure; but the best candidate would only prefer certain positions based on the reputation of the institution or salary differences. However, both options are valid and fair.

The pool recruitment procedure organised as explained above has a significant number of advantages: 1) a national concours conducted 1-2 times a year would contribute to a wider advertisement with the application of modern and unitary assessment standards, therefore enhancing the respect for the right to equal access to civil service posts; 2) it would underline the competitiveness and objectivity of the process, and would possibly mobilize more qualified candidates; 3) it could also provide the civil service with staff that is suitable for a broad spectrum of positions; 4) it would also reduce the time required to fill vacancies, because institutions could use the pool, if and when positions become vacant, minimizing the danger of temporary employment; 5) it would reduce the cost of the procedure and the choice for the recruiting institution will become generally much larger.

However it comports some disadvantages, such as that institutions might be tempted, by the end of the pool validity, to wait for the new pool; the best candidates in the pool should be selected for filling vacancies very quickly, or, if not, will possibly find positions elsewhere; the institution with the first vacancies will have better chances to have the highest-ranking candidates within the pool, even if they do not really need top quality candidates, whilst at the end of a pool validity time-span, the chances are going to be restricted among the candidates left in the pool at the time.

The stand-alone post recruitment should be based on the same above-mentioned standards for the pool requirement (a permanent selection committee, written exam and interview, minimum demanding threshold, etc). The institution seeking to fill a vacancy should be represented on the selection commission. The best ranked candidate by the selection commission shall be appointed as the future civil servant.

8.3.3 For Recruitment and selection for low and middle-level management positions see, below under no. 9.3.

8.3.4 Recruitment and selection for TM corps

The total number of corps members to be annually recruited in the National TM Concours shall be established on the basis of an estimation of anticipated vacancies and shall be made public before the concours. The national concours for the Top Management Positions could be: 1) option 1: an internal competition, or 2) option 2: an open public competition.

Preferably it should be an internal contest, where those who are eligible to participate are the existing civil servants of the immediate lower level (civil servants of the middle-management level) only. This would constitute an additional guarantee of career development for the incumbents and for non-politicization by the government of the day. It would further ensure management experience of candidates for TM

positions. Under option 1, the idea could be further explored that the incumbent civil servants of lower management levels could also be entitled to participate in the contest, in particular cases, with the approval of the DoPA (into a sort of fast-stream career, the rules of which should be detailed in secondary legislation). Within option 2, the incumbent civil servants shall compete with outside candidates on an equal footing. The law should allow for both options, providing that option 1 is the rule, while option 2 is an exception, justified in the cases when based on a contextual assessment of the situation in the civil service there is a need to introduce candidates from the private sector. **The decision whether to go for the exception should be left to the Government.**

A competency framework for the TM Corps shall be used in the examination process. In terms of eligibility to participate in the competition, under this option the merit principle related to the definition of working experience would require that the respective working experience is relevant for the position in question (acquired either inside or outside the civil service).

The assessment of candidates shall be conducted by a National Selection Committee, which preferably would be set up on a permanent basis. A permanent committee could ensure the highest and uniform standards over the years and provide checks against inappropriate interference from politicians. However, there is also the risk that the selection committee could be “packed” by the government of the day. This disadvantage could be diminished by providing for different terms of office for the first committee, for example one member for one year, one member for two years, one member for three years, one member for five years followed by a rotating 5-years terms for all members appointed thereafter. The National Selection Committee might include representatives from institutions, the DoPA, senior corps members, experts of high reputation, etc.

Appointment to a particular regular position: With regard to the actual selection of candidates who have acquired eligibility for a TM position in the above procedure for a “regular” TM position the following options could be distinguished: 1) option 1: an informal selection procedure without formal announcement for application followed by a formal selection, the political executive (the Council of Ministers, Prime-Minister, or Minister) should have the right to choose from the members of the Corps and select any of them to regular positions (or *ad hoc* missions). The civil servants involved will be consulted informally; 2) option 2: a formal procedure of selection (see above no. 8.3.2). Option 1 allows for a simple and discreet management of recruitment and selection for these positions. The formalized procedure presented in option 2 allows for more transparency and objectivity.

8.3.5 Assessment methods

Regardless of the position or type of competition (pool or stand-alone particular post), assessment methods should be designed in such a way as to **ensure two main goals: 1) objectivity and 2) quality of the recruitment process by selecting good candidates.** At the same time, testing methods **should be adjusted to the type of position** (pool of posts) to be filled. The testing methods should be adjusted to assess the potential future performance of the candidates on the basis of past achievements (in case of internal recruitment) and competencies required for the functions/levels in question; this includes the relevant knowledge, but also a series of other aptitudes and skills including interpersonal skills. Assessment should also take into account the CV, including academic background and relevant prior working experience.

In principle each assessment of candidates should include a **compulsory written and oral part**. The written tests should be standardized and should consist of two parts: a more general one and a more job specific one (methods should not be restricted to a multiple choice format). Written tests should be reviewed by examiners in an anonymous way. The interview conducted by the assessment panel should aim to evaluate the following minimum criteria: motivation, communication skills, aptitudes, professional and managerial knowledge and competence of the candidates. The written part should carry more weight than the oral part because objectivity is better ensured by an anonymous written test.. A minimum quality standard in the examination should be introduced as a precondition to pass to the next selection stage. It is important that the minimum standard is demanding and set ambitiously.

The ranking of candidates must be based on the utmost objectivity and comparability, and above all, the system needs to be appropriate for the identification and evaluation of the desired competencies. This requires clear rules dealing with the relative weight of the written and oral parts of the assessment as well as a good design of the scrutinizing of the other components (CV, working experience, and so forth).

8.3.6 Appointment and Probationary period

The selected civil servant shall be appointed by the DoPA for the executive or by the authorized institution in the cases of the independent institutions. A probationary period for newly employed civil servants should be **mandatory**. However, if a civil servant is appointed to higher position/function (see above no.7.3) a second probationary period does not seem to be necessary because the person concerned has already served such a period at the beginning of his/her career. In cases where the appointment is for an indefinite period (possibly until retirement age), the probationary period should have a duration which is adequate to test in practice whether the newly employed civil servant is suitable. An option could be **one or two years**. During this period employment relations may be terminated upon a six-month notice.

Proposal 9: Candidates for “entry level” positions in the civil service should be selected in an annual national concours aiming at establishing one or more pools with candidates who meet the conditions for employment in positions with similar or comparable requirements and responsibilities in a ministry or other institutions. The successful candidates shall be eligible to be appointed as civil servants. They will stay in the pool for a period of up to 2-3 three years or until employed, if earlier. As an exception recruitment and selection for a particular position on the entry level should be admissible.

Proposal 10: The assessment shall include a written examination and an interview. The written test should carry more weight than the interview and should be reviewed anonymously. The assessment methods should be tailored to assessing the competencies required for the functions/levels in question. The standards especially the minimum standard should be set ambitiously.

Proposal 11: Newly employed civil servants should be on probation for a period appropriate to test their suitability for the civil service. However, this should apply only to candidates employed for the first time in the civil service; if a civil servant is selected for a higher position no new probationary period should be required.

9 PROMOTION

9.1 Situation and problems

The CCSA (article 15) specifies two instruments of career development in the civil service: 1) lateral transfer and 2) promotion. In both cases the CCSA **requires a competitive procedure**. Practically the vacant post is opened at first to the civil servants of the same level (from the overall civil service) by procedures of lateral transfers and only when there are no eligible applicants (or the direct superior selects none of them) the vacancy is opened for selection among incumbent civil servants of the immediate lower level through a competitive promotion procedure. If by any chance the required level of participation in the competition (at least four eligible candidates) is not met, the vacancy is open to public competition, in which candidates within the civil service (if any) compete (with no priority or advantage) against external candidates, making it possible for the system to recruit from the outside.

The lateral transfer procedure is very simple, as it is the direct superior who, through a comparison of the applications and an interview, chooses among the candidates and comes with a motivated decision. The promotion competitive procedure follows the rules of recruitment (ad hoc committee, examination in two stages and final selection by the direct superior). After the appointment to the new position, the civil servant undergoes a new probation period as when entering the civil service for the first time.

The provisions related to promotion and lateral transfer seem to have not been correctly understood and accordingly not properly implemented. Their implementation is based on a narrow interpretation, in which a lateral transfer is understood to be a move to another position of the same class rather than of the same category (see above no.6.1 on categories and classes), whilst the promotion is seen as being a move to an immediate higher class rather than to the immediate higher category. As a consequence, the lateral transfer was transformed into a cumbersome instrument of mobility rather than one of career development. In the ten years since the approval of the law the cases in which lateral transfer and promotion procedures have been applied are very rare; vacancies are mainly filled by open recruitment.

9.2 Objective

Both the instruments of lateral transfer and promotion should be seen as having two-fold objectives: firstly, they are instruments of motivation and attractiveness for civil servants serving to meet individual career development aspirations and secondly, they are management tools of the administration to improve the efficiency of the institution by enhancing the competencies of staff members to serve better the public interest and deliver quality services. The objective of the new law should be to find the right balance between the management's interest to select the best candidate available and the aspirations of the incumbent civil servant, and the law should also ensure that the decisions in this regard are based on merit only.

9.3 Discussion and possible solutions

9.3.1 General principles and standards for promotions

With regard to promotion two different types can be distinguished: the **functional promotion** (advancement to higher positions) and the **salary promotion** (refers to upwards movement on the pay scale without moving to a different position). However under the functional promotion we can further distinguish the following elements of the career development: 1) current **lateral transfer** (hereinafter referred to as "**horizontal promotion**"), refers to the advancement of civil servants to a position of the same or higher class but within the same category (as for instance from specialist III to specialist II or specialist I/ from head or from head of division II to head of division I).; 2) current **promotion**

(hereinafter referred to as “**vertical promotion**”), refers to the advancement of civil servants to a position of an immediate higher category (as for instance from the implementing-level to the low-level management or from the latter to the middle-level of management).

The functional promotion, as for the recruitment to enter the civil service, **should be clearly based on the merit principle and should be non-partisan**. This requires that these positions should be filled by a “**competitive procedure**” which should be made in a fair and transparent way and based on an assessment of competence and ability of the available candidates. The **competitive procedure should be organized separately for each vacant position (position-based)**. Along with the position-based procedure when possible and based on a better forecast and time planning of occurrence of vacancies in these levels, the combination of several competitive procedures to fill more than one vacant positions of the same or similar job requirement should be encouraged.

9.3.2 Horizontal promotions

The *horizontal promotion* **should be applicable for any of the categories of civil service which have several classes** (the TM is excluded because of its special regime⁴²). The **competition should be internal** (within the institution or within the overall civil service). The vacancy shall be advertised through an "internal advertising system" and the eligible candidates shall be given the opportunity to express their interest (apply) for the vacancy. If this procedure fails, the institution shall call for a different competitive procedure (for instance: in case of the implementing-level, if the procedure fails the institution should select from the pool of available candidates coming from the pool recruitment; in the case of low/middle level management it should call for one of the competitive exam approach procedures (see below no. 9.3.3)).

The selection should be done by an **internal panel** created within the institution seeking to fill the vacancy. The panel should always include a representative from the DoPA, one representative of the HRM unit of the institution and other members of institutions. The latter should hold at least the same rank as the position to be filled, and the managerial level of the respective institution should be represented on the panel. There will not be any limitation on the number of applicants. As said, there should not be any probation period after appointment to the new position. The assessment of candidates **does not seem to require an examination**; the selection should be based on an interview and documentary assessment of the candidates.

The confirmation of the lateral transfer procedure and its reshaping as above would present the following advantages: 1) it would facilitate the career development aspirations of incumbent civil servants; 2) it could enhance the general mobility system; 3) it will not affect the quality of the selected civil servants (for instance in the implementing level they would come from the pool or stand-alone recruitment based on the same standards and being eligible for the positions belonging to the cluster).

The conditions of eligibility shall be determined by secondary legislation and might be enriched with eligibility criteria such as: belonging to a certain cluster (general/special services), recent performance appraisal results, and participation in the rotation programs (see below no. 10.3) or previous success in

⁴² If the proposal on the establishment of the TM corps is not accepted, it should apply to the high level management positions too.

training programs. The secondary legislation should detail the assessment methods and scoring system in accordance with the “competency framework” for the position.

9.3.3 Vertical promotion/recruitment to low-level management and middle level management positions

The **vertical promotion/recruitment** should be applicable for filling vacancies to the low level management and middle level management categories only. The competition **should be open and it should follow the recruitment procedure rules**. We may distinguish between two options: 1) option 1: open competition giving priority to internal applicants from the lower levels (e.g. the incumbents could be entitled to a bonus compared to external applicants in terms of marking methods and assessments of candidates); 2) option 2: open competition with no priority for internal civil servants, whereby any vacancy is filled through open competition and the internal as well as external candidates shall compete on an equal footing.

Option 1 would represent a promotion mechanism and would be in the interest of the incumbents and a strong incentive to the later. It might also be in the interest of the institution. Option 2 would ensure more applications and larger choices for institutions, but may undermine the morale of those already within the civil service. However, it should be noted that the choice whether to use either option (in other terms whether to strengthen the career development aspiration of incumbents or to try to recruit the best candidates from inside and outside, should be a "managerial choice" based on a periodic assessment of the situation (e.g. every three or five years) in the civil service and on the general labor market. This requires that the new law on the civil service should be "sufficiently flexible" to allow the Government to make choices for a certain period between either option.

Whatever the choice, the assessment of the candidates **shall require an examination**. The best-ranked candidate (over the minimum required ambitious threshold) should be automatically appointed by the DoPA as a civil servant. On other issues (composition of the selection commission, a more permanent commission, assessment methods, etc) the rules laid down for the recruitment should apply.

Proposal 12: a major career development instrument shall be the horizontal promotion (within the category) and vertical promotion (to the immediate higher category). The horizontal promotion shall be based on an internal competition procedure aiming to select the best available candidate. The vertical promotion/recruitment shall be based on an open public competition which could provide a preferential bonus for the incumbents or consider them on an equal footing with external candidates. The decision to call for one of either procedure shall be taken periodically by the Government, upon the DoPA's proposal, which should be based on the assessment of the situation and of the needs. The open competition should be carried out as a recruitment procedure.

10 MOBILITY

10.1 Situation and problems

The current civil service law specifies two different instruments of mobility: 1) temporary transfer within the institution (secondment); 2) mandatory transfer for a determined short period;

Temporary internal transfer (secondment) is an instrument set forth in Articles 9 and 10 of the Civil Service Law. It has been considered as a means of tackling temporary staff shortages within the institution

by appointing an existing civil servant to another position until, by permanent filling of the post, the problem is permanently solved. However, existing legal provisions for regulating this instrument are very limited. They do not state specific rules for temporary transfers and time limits. They do not determine the positions (classes/categories) to which this type of transfer can be applied, nor do they determine the salary level of the employee while in the new temporary position. Because of these legal problems, the instrument is being used vary rarely and only in cases of temporary needs of the institution arising from the temporary leave-taking of employees (maternity leave, long-term training).

Mandatory transfer is provided for by Article 17 of the Civil Service Law. It consists of moving to another institution within the civil service. It is developed as a way of resolving the temporary needs of an institution (for a period of up to six months) and it is meant to be used for positions in which a higher level of expertise is required, which is available in another institution. This instrument has been very rarely used, (2-3 cases reported).

The current legislation does not foresee the secondment of Albanian civil servants to international organizations where Albania is a member state. The new law should.

10.2 Objective

The provisions of the new law on civil service should aim **at enhancing the use of the various forms of these instruments and making them more flexible and at the same time should strike the right balance between the management interest in utmost flexibility with regard to staff deployment, on the one side, and appropriate protection of individual civil servants against arbitrary decisions on the other side.**

10.3 Discussion and possible solutions

International practices bring arguments in favor of a better mobility system in civil service, especially from the viewpoint of extending and diversifying employees' knowledge and experience as well as creating an open job culture in public administration. Experiences from other countries offer the following different instruments for mobility such as: 1) **permanent or temporary transfer** of a particular civil servant to a particular vacant position (the transferred civil servants become fully part of the recipient organizational unit or administration); 2) **temporary secondment** of a particular civil servant to a particular vacant position (seconded civil servants are only "on loan" in the respective recipient organizational unit or administration on national or international level); 3) **rotation** (rotation refers to the collective periodical movement of several civil servants to functionally corresponding positions with the same title in other authorities);

The current provisions of the CCSA already include two of the above-mentioned instruments and should be mainly preserved. In addition the new law should recognize the "rotation" as a new instrument of mobility and clarify further the regulations on transfer and secondment, including to international organizations.

Rotation: rotation (mainly within the institution but also across institutions) should be added to the instruments of mobility at the disposal of the institution. It should be temporary (3-6 months over a period of 2-4years) and aim to enable the civil servants to work in different similar positions and understand better the way the institutions works. It should only refer to horizontal mobility of a civil servant to a

position with similar functions and with (in most cases) the same class. The rotation should be based upon the initiative of the respective institution (based on an internal human development plan) or upon request of the respective civil servant. In cooperation with different institutions, the DoPA should approve plans for rotation across the civil service. If a senior civil service is established, rotation every three or five years should be compulsory for those who belong to the senior civil service corps.

Transfer and secondment: transfer and secondment should also refer only to the horizontal mobility of a civil servant to a position with similar functions and with (in most cases) the same class in the same or a different institution. Provisions should ensure that secondment is also understood as including a secondment to international organizations where the country is a member. The law should establish this mobility and the right of the civil servant to be reinstated in his former or similar position once his assignment to the international organization expires. In addition, this will facilitate the presence of Albanians in international organizations.

Transfer and secondment, should be based upon the initiative of the respective institution or upon the request of the concerned civil servant; it should be limited in time; and nobody should be obliged to work abroad or in distant places; the decision of horizontal transfer secondment should be taken by the respective institution. DoPA shall be involved in the process by giving its consent.

The design and the implementation of appropriate mobility practices within the institutions and across the administration will be difficult. This will require detailed provisions in secondary legislation and furthermore a proactive approach with regard to mobility supported by respective guidelines issued by the DoPA and personnel development plans within each individual institution.

Proposal 13: The legal framework for horizontal mobility should recognize rotation as one of the instruments of mobility and, in addition, clarify further the principles of application of secondment and transfer within and across public institutions, including international organizations.

STATUS OF CIVIL SERVANTS (RIGHTS AND OBLIGATIONS)

10.4 General and objective

Any civil service law should contain a set of provisions dealing with the rights and obligations of civil servants. These provisions aim at ensuring the professional ethos of civil servants on the one side and at guaranteeing the neutrality, impartiality and integrity of the civil servant as well as the corresponding duties and benefits provided by the state as the employing institution.

It is widely accepted that civil servants should have the same constitutional rights as any citizen, in principle. In this context, the **political rights** (participation in political life, being members of political parties, running in elections); the **collective rights** (participation in trade unions, right of strike, participation in the decision making on civil service); the **economic rights** (second employment, economic activity) and the **employment rights** (right to fair and equitable treatment by institutions with regard to all aspects of personnel management, career development, remuneration and legal protection regarding the termination of employment), are extensively discussed because of the concern to guarantee neutrality, impartiality and integrity as the basic values of the civil service.

The exercise of these rights can be restricted for civil servants for the sake of the public interest, if the restriction of constitutional rights is allowed by the constitution itself; this exercise must be adjusted in such a way as to be consistent with the "duties" of the civil servant and the importance that his duties have within the context of "public trust". However, the limitations in the exercise must be in accordance with the principle of proportionality.

In terms of duties, most commonly civil service laws include duties related to the respect of the principles established by law **on the way the civil servants should perform their activity** (see above no. 4.2). In addition, a range of mechanisms have become popular over the last two decades in the context of anti-corruption strategies, such as codes of ethics, and systems related to the disclosure of the public officials' wealth⁴³ and systems to avoid conflict of interest and ensure impartiality.

The CCSA contains a list of rights and duties which may be considered basically in line with other European countries' practices. The regulation of the system of the declaration of wealth, conflict of interest (hereinafter referred to as "integrity issues") and ethics are regulated by other special legislation (with usually a wider scope involving the greater part of public officials, including politicians). Below, we shall limit the discussions only to some aspects which we consider as being appropriate to be included or treated differently in the new civil service law in order to create a proper balance between the rights and obligations of civil servants and to ensure a unitary regulation of all the relevant aspects of the status of civil servants under the new civil service law.

10.5 Discussions and proposals

Political rights and rights of expression: Impartiality and political neutrality should be reinforced in the new civil service law through provisions dealing with restrictions concerning political activities. Civil servants should continue to be allowed to join political parties; this will generally exclude civil servants from becoming a functionary of his/her party. In addition, they should be obliged to refrain from any political activities while performing their official duties or during the work time. With regard to manifesting their political views and allegiances in their private life they should exercise self-restraint.

The right to unionize and strike: The current civil service recognizes the right of civil servants to create and be a member of trade unions and/or professional organizations (art. 20/d), whilst it bans the right to strike (Article 19 / f) and tries to compensate this interdiction by anticipating that the trade union rights (Article 20 / d) in civil service shall be exercised in accordance with a special law (which has never been adopted). 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. However, from a European comparative perspective, this criticism is questionable.

In European Union legislation there is no explicit "*acquis*" with regard to the right to strike in civil service, whilst in different member states, the right to strike is treated differently, ranging from total prohibition (e.g. the civil service in Germany, permanent civil servants do not have the right to strike) to its partial restriction for particular sectors, or to a strict regulation in the manner of its exercise in certain sectors.

Generally speaking we can say that the right to a strike of a "political" character is generally prohibited in the civil service. The right to strike (non-political strike) is generally awarded to public employees except

⁴³ SIGMA Paper No. 44, Sustainability of civil service reforms in central and eastern Europe 5 years after accession.

to the armed forces and those employed in so-called "essential services" or under the obligation to provide the "minimal service of emergency nature" that prevents the paralysis of the sector or puts at risk life, health or national security.

The complete ban is "non-proportional" and should be excluded. **The new civil service law should recognize the right to strike for civil servants as a rule.** Of course, if the proposal on a general law with a broader scope is accepted, particular civil service branches that are considered to be "essential services"⁴⁴ should have the right to strike banned or should be awarded a restricted right to strike under the conditions of providing the "minimal service of emergency nature". These exceptions could be included explicitly in the new civil service law or in the special legislation covering the specific sector. The criteria to determine the exceptions and respective proportional restriction⁴⁵ to the right to strike are well-articulated in a set of formal documents of international organizations such as the International Labor Organization (ILO) or Council of Europe.

Transparency and confidentiality: transparency in the civil service is one of the main principles of the "European administrative space". As such the duty of transparency should be added in the catalogue of duties in the new civil service law. The law should explicitly state that transparency should be the ruling principle of the civil servants activity and confidentiality is only an exception in the cases explicitly provided by law (state secret law, law on personal data protection). Other laws that regulate such exceptions should be properly reviewed in order to ensure that the duty of transparency and the need of confidentiality are fairly balanced.

Personnel participation: experience from European countries shows that many civil service systems provide for the participation of trade unions and professional associations of civil servants in consultation processes of decision-making. This has had a major impact on the social and economical situation of the staff as for instance in the case of new legislation, salary issues, reduction of personnel, etc. Likewise some legislations provide for the involvement of representatives of trade unions and other associations in the "management" of civil servants. Participation in management processes is usually carried out by elected staff representatives (mostly trade union members) who represent the civil servants in internal consultation processes or are part of the management decisions on issues (such as individual recruitment, promotion, performance appraisal, disciplinary procedures, etc).

Certain elements of personnel participation should be part of the provisions of the new civil service law, which should encourage the right of individual civil servants to mandate members of trade unions and other professional associations to represent their interests in most employment matters. The introduction

⁴⁴ in accordance with International Labor Organization (ILO) the notion of essential services includes: transportation, public television, water supply, gas and electricity, prison administration, justice, national defense services, emergency health services; According to the European Social Charter of the Council of Europe, the ECSR has extended the notion of "essential services" (mentioned above) to food supply and air traffic control.

⁴⁵ The restriction to the right to strike in the "essential service" sectors is considered as legitimate if in accordance with Section G of the second half of the European Social Charter, meaning if the restriction to the right to strike is established in a law; pursues a legitimate purpose provided by the Charter (i.e. aimed at respecting the rights and freedoms of others or the protection of public interest), and is necessary in a democratic society (corresponds to a social request and is proportional to the objective pursued).

of this principle should be limited to the articles dedicated to the individual rights and obligations, but future broader legislation must be enacted regulating the collective rights of civil servants.

Integrity system: the provisions on integrity are among the pillars of any civil service system and one of the areas which have had the attention of the new member states. Various reform measures have aimed to provide incentives, guidance and advice to encourage high standards of compliance with public service values (e.g. codes of conduct), to prevent conflict of interest situations (e.g. laws on the conflict of interest) as well as to detect non-compliance, and to ensure exposure of misconduct by internal and external control and monitoring processes as well as the disciplinary consequences for breaching these obligations.

In some countries the legal provisions dealing with the integrity system for civil servants, especially with conflict of interest, are included in the respective civil service law. Other countries have a separate conflict of interest law. Albania has adopted a Law on Preventing Conflict of Interest, covering politicians, civil servants and other public employees. The most recent SIGMA assessment⁴⁶ of the integrity system in the Albanian civil service has emphasized the fact that such an approach leads to problems with regard to the coherence of the system. There are conceptual and practical differences between the integrity systems for politicians on the one side and civil servants on the other side. **The main distinction lies in the fact that the integrity requirements as well as the consequences and procedures for dealing with violations of integrity are different.**

Actually the separation between these two spheres represents one of the principles of a modern public service⁴⁷. It is advisable that the provisions establishing the integrity system for civil servants should be included in the civil service legislation insofar as they are constituent for the status or system of rights and duties of civil servants. This is a must for the coherence of the new civil service system and is especially valid for the provisions on incompatibilities, secondary employment, gifts and other benefits, financial disclosure etc.

Proposal 14: The system of rights and obligation should be improved in accordance with the identified needs above. The integrity system for civil servants should be included in the civil service law and separated from that of politicians.

11 TRAINING SYSTEM

11.1 Situation

The CCSA establishes the obligation of the state to provide (at its expense) to civil servants, job-related training on a regular basis as one of the rights of civil servants (art. 20/h), and, the duty of civil servants to take part in training activities organized accordingly (art. 19/ç). It establishes also the duty of civil servants to undergo mandatory training during the probationary period and in case of a change in the job description. The training is provided by the Training Institute for Public Administration (TIPA) as the

⁴⁶ SIGMA Public Service Assessment, Albania, 2009.

⁴⁷ SIGMA Working paper, Can civil service reform last? The European Union's 5th enlargement and future orientation, pg. 13.

specialized institution established for this purpose. TIPA is directed by an advisory board composed of the secretaries general of ministries and representatives of universities. It runs its activities under the direct supervision of the DoPA which 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%).

It is observed that the disposition of civil servants to participate in training activities and that of the institutions to send them on these activities is not high.

11.2 Objective

Training is one of the most important mechanisms to promote career development of civil servants, to improve their competencies, to perform better and to make the civil service more attractive and effective. Recognizing this importance the SNRAP established as the main objective in relation to the training system to “*better incentives boosting the individual and institutional will (n.a: interest for training)*”

11.1 Discussion and possible solutions

Improving training is more a practical than a legal issue. However, civil service legislation should cover the following aspects:

- Each civil servant should have the right to receive and undertake training at the **expense of the employer (state)**. Training should aim at improving the skills required for the current position and developing the capacity of the civil servant concerned.
- Training should be implemented on the basis of an **(annual) programme** prepared by the central body responsible for training issues. This body and not the individual ministries should also organize, monitor and evaluate training activities. Training should be delivered primarily by practitioners, complemented by the private sector and universities.
- The responsible institution could be the **central management unit** (or a body reporting to the central management unit) or a specialized and independent body.

The CCSA provisions on training are in conformity with the above mentioned cornerstones and should be preserved as such. However, the incentives for participating in training activities remain pretty scarce. Thus the new civil service law should explicitly mention that the successful participation in mandatory training should provide (along with other factors) a basis for decisions in personnel matters of the civil servants concerned (eligibility or assessment criteria for promotion, recruitment, etc). The details should be regulated by secondary legislation and should aim to make participation in training worthy and related to career development.

Proposal 15: The right and obligation of civil servants to receive training and the duty of the state to supply training should be continued to be included into the law. The law should also provide that successful participation in training should be one of the elements of reference for the decisions on personnel. Operational details should be covered by secondary legislation.

12 TERMINATION OF EMPLOYMENT

Termination of employment in the Albanian civil service is possible only for one of the reasons and in accordance with the procedures provided by the civil service law. CCSA service law (art. 21 art. 23 and art 24) distinguish (i) termination because the general requirements for employment in civil service have ceased to exist (e.g. citizenship, criminal punishment), (ii) termination because of retirement; (iii) termination because the resignation of the civil servant, (iv) dismissal as a disciplinary sanction, (v) termination as a consequence of two successive evaluations of individual performance, (vi) removal as a consequence of incompatibility with job position because of changes in job requirements after the period of accommodation and (vii) termination because of redundancy (if reassignment is not possible in cases of restructuring or in cases of abolition of an institution).

The CCSA is generally in line with good practices on the matter of termination of employment in the civil service. It fulfils two basic conditions in accordance with this experience: a) the termination of employment is possible only for the reasons explicitly determined by law; and b) for each of the individual reasons the law prescribes the principles of the procedure to be conducted for the termination of employment. Certain improvements related to termination because of redundancy and as a disciplinary measure are necessary; for the details see below under no. 14 and no. 15.

13 DISCIPLINARY PROCEDURE

13.1 Current situation and problems

The CCSA (art. 25) provides for disciplinary procedures to be initiated by the direct superior on his/her initiative or because of a complaint or information from any interested individual. Using his/her discretion, the superior decides whether to initiate the disciplinary procedure and formally notifies the employee of the initiation of a procedure, the practical and legal violation claimed, the right of a written hearing, the right to defense, either in person or through an authorized representative, the right to invite into the hearing session other people who have information on the case and the exact date and time of the hearing session for the alleged violation. After hearing the official, the direct superior⁴⁸ decides to take one of the disciplinary measures, specified in detail by the Civil Service Law. In principle, this procedure is “closed” within the decision-making of “the direct superior”. The decision of the direct superior can be appealed directly with CSC, which, after the review of legality, can decide to repeal it or impose a lesser disciplinary measure to the employee.

Recent assessment reports⁴⁹ have found three main problems encountered in the legal framework and the practical application of disciplinary rules: 1) failure to observe disciplinary procedures; 2) lack of proportionality between violations and measures adopted; and 3) ambiguity of certain rules (mainly in secondary legislation) and the practical impossibility to enforce some of the disciplinary measures provided by the law.

⁴⁸ In accordance with CCSA, the “direct superior” in the cases of a specialist or the head of division position is the Head of respective Department, in the case of the head of Department, and heads of General Departments the direct superior is the Secretary General and the direct superior of the latter is the minister.

⁴⁹ World Bank; “Civil Service in Albania; An Assessment of the implementation” Public Administration International/ Institute for Contemporary Studies Albania, 2008.

13.2 Objectives

The disciplinary provision in the new civil service law has a two-fold objective: 1) to **enforce accountability** within the civil service as an instrument to sanction willful or negligent violations of duties of civil servants; and 2) to provide the proper clarity and guarantees in order **to avoid arbitrary decisions that might unfairly affect stability in the civil service.**

13.3 Discussion and possible solutions

The best experiences from other legal systems and their assessment show that generally discipline-related provisions address the following issues:

- a. **grounds** for disciplinary action – adequately identified in relation to statutory duties of civil servants and code of conduct; some legislation between minor disciplinary irregularities and major disciplinary offences.
- b. **principles of disciplinary procedure to be followed** – which should guarantee the presumption of innocence; impartial investigation of the facts; right to hear evidence, fair hearing, the right to receive legal assistance and, the right to appeal and to be heard during the appeal, etc;
- c. **bodies involved in the initiating of the procedure, decision and review;**
- d. **a catalogue of disciplinary sanctions** – which should be broad enough to ensure proportionality between the disciplinary sanction and the violation of official duties, and
- e. other issues such as suspension while pending the outcome of the disciplinary proceeding and their right during such suspension if found not guilty; or the statute of limitations.

The provisions of the CCSA dealing with the disciplinary procedure correspond basically to common practices. However, there are some legal shortcomings which should be addressed better in the new civil service law and, on the following lines:

- the initiation of the disciplinary procedure should be an official duty of the direct superior, if there are actual indications of misconduct and does not depend on his discretion.
- in order to enforce the implementation of the proportionality principle between the disciplinary infringement and the sanction, the law should explicitly foresee the factors that would ensure the proportionality (the gravity, the consequences, and circumstances of violation, the type of guilt and general behavior in the line of duty as well as on the existence or not of former disciplinary measures);
- the disciplinary measure “reprimand with admonition” should be further clarified and ranked as the lowest gravity measure and specify that it is an oral warning or advice of a preventive character, in the sense that in case of other minor violations, the relevant employee is subject to disciplinary proceedings for one of the other more severe measures.
- the disciplinary measure “transfer to a lower level position for a period of 30-days up to 1 year ⁵⁰” should be modified because implementation of this ”sanction” would impede the operations of the respective administrative body.
- the catalogue of disciplinary sanctions should be enriched with other sanctions in order to increase the choice and ensure the proportionality as a way to avoid direct extreme sanctions (one example of the additional sanctions could be the fines, which should relate mainly to the financial wrongdoings);

⁵⁰ Prescribed in article 25.

- it should distinguish between the minor disciplinary irregularities and major disciplinary offences; this would allow the suspension of the civil servant during the proceeding in instances of major offences as a precautionary measure; the law should also regulate the rights of the civil servants during the suspension if found not guilty
- Another discussion regarding the disciplinary procedures relates to the decision-making: there are two options in this regard: 1) option 1: the current solution - the “direct superior” of the respective civil servants as the decision-making authority on the disciplinary sanction, or 2) option 2: each institution establishes an internal disciplinary commission, which investigates and decides on the sanction upon the procedure initiated by the direct superior or acts *ex officio* in case the latter does not initiate a procedure in case of revealed wrongdoings. DoPA should be represented on all disciplinary committees as well the mandated representatives of trade unions or the employees’ association. The first option is a valid option and is in conformity with the overall role of the direct superior which is one of the pillars of the Civil Service Model. The second option increases the protection of the civil servant due to the fact that collegial decision-making is usually more objective than an individual decision especially in small organizational structures such as is the case. It would further contribute to ensure the implementation of equal disciplinary standards across the civil service and respectively a better representation of the collective interest of civil servants due to the participation of DoPA and trade union representatives. Related to the discipline of the TM corps members (if the proposal is accepted), the disciplinary body should be a permanent disciplinary body constituted in similar way as the National Selection Committee.
- The statute of limitations should be extended to one or two years depending on the seriousness of the infraction.
- Regarding the extent of the discipline-related provision in the new civil service law on the procedure before the disciplinary committees, it should include the fundamentals as defined by point 165/a-d above, while the technical details should be covered by secondary legislation.

Proposal 16: The system for the disciplinary procedure should be upgraded. The initiation of the disciplinary procedure should be an official duty for the direct superior; the catalogue of the disciplinary sanctions should be improved and extended in order to allow for proportionality between the misconduct and the respective sanction; the disciplinary decision should be the responsibility of a collegial disciplinary committee, where DoPA is represented. The statute of limitations should be long.

14 RESTRUCTURING AND THE ABOLITION OF ADMINISTRATIVE BODIES

14.1 Situation and problems

The CCSA (art. 23) addresses the consequences of abolishing and restructuring an institution on the status of the civil servants affected by these measures. In case of a complete abolishment of an institution, the civil servants are declared redundant and the civil service employment is terminated automatically. In case of restructuring, there is an obligation to offer the employee whose position is declared redundant another position of the same rank (category) within the institution or another institution and, in cases where this is impossible, to offer him/her a lower rank (category). In case where this cannot be done, as a last resort, the civil servant is assigned to stand-by on a waiting list. Where an employee is placed on the waiting list, it is the DoPA which, after receiving the request to announce a vacancy with similar job requirements that are met by one or some of the employees on the waiting list, will appoint the employee to the position or will provide the superior of the position in question with the opportunity to select among candidates in the list.

The civil servant will continue to enjoy the rights of his previous position until he is offered another position (same/lower rank) but for no longer than one year. If he declines to accept the offered position, he shall relinquish his rights as a civil servant.

Various assessments⁵¹ have confirmed three important findings: a- there has been very frequent restructuring in central administration institutions; b- there is a widespread and partly valid opinion that restructuring is used for unjustly removing people from their positions; and c- direct reassignments from the waiting list by the DoPA have met with strong resistance from institutions and the DoPA has managed to accommodate only a limited number of employees from the waiting list which constitute only a small fraction of the total number of employees on the waiting list.

14.2 Objective

The SNRAP recognizes that *“ministries have no clear concept of what they were aiming to achieve when they proposed the structural change.....and the aforementioned resulted in a frequent structural change at very short intervals between these changes, thus creating structural instability, which was reflected afterwards also in the adaptation with the new assignments of the civil servants, and in the practical decrease of the volume and quality level of work...”*

The Albanian public administration is undergoing important functional reforms which are associated with the establishment of new institutions as well as the abolishment, mergers and partial restructuring of the main institutions. These institutional changes have an impact on the status of the respective civil servants. The objective in this situation must be two fold: firstly to set clear rules and standards for the organization and restructuring of institutions, and the relevant procedures to ensure that such institutional changes are based on sound choices and reflect a long-term vision of institutional development and secondly to establish clear rules, procedures and institutional responsibilities to ensure that the assignment of personnel to the waiting list and termination of employment should in fact be used only as a last resort in order to preserve the institutional knowledge of the respective civil servant and to sustain the investments made for this civil servant. The first objective should be pursued through the new legal framework on the organization of administration⁵², whilst the second through the provisions of the new civil service law.

14.1 Discussion and possible solutions

Abolition and restructuring of institutions require a sound procedure and fair criteria on how to deal with the civil servants affected by these measures. The principles of the procedure should be recognized by the law whilst the implementing provisions should be detailed by secondary legislation. The proposed changes should focus on the rights to reassignment rather than dismissal in case of abolishment as well as on the development of well-defined procedures and criteria for decisions and reassignment from the waiting list.

The new civil service law provisions should recognize the right of the civil servant (and accordingly the obligation of the state) to be reassigned or moved to the waiting list in cases of the abolishment of the institution (the same as in the case of restructuring). In case of abolishing an institution the options of reassignment should be as follows: 1) in case of the full integration of one institution or of specific parts of

⁵¹ World Bank, SIGMA annual assessment on civil service 2006, 2007, 2008. 2009

⁵² Already being dealt with by above mentioned EU/GTZ projected assisting DoPA

it into another one, the civil servants concerned should become **staff of the receiving institution** by virtue of the law; b) in case of the integration of all or of specific parts of one or more authorities into several other authorities, an option for the civil servants concerned could be the **proportional distribution** to the other institutions on the basis of an integration plan; c) an **analogous procedure** could be applied if one or more institutions are merged into a new authority, if one or more new institutions are formed out of an institution (or parts of it) or if the responsibilities of one authority are transferred fully or partially to one or more other authorities; d) the legal provision that determines the abolishment, merger, etc, should explicitly affirm the use of one of the options and a joint committee consisting of the DoPA and the concerned institution should be established to deal with the reassignments.

Criteria and condition: the condition and criteria for the reassignment should be clarified as follows:

- redundant civil servants should be reassigned to a position with responsibilities comparable to their former responsibilities and of the **same category** and if possible class (general administrators/special services) by the new or receiving institution; if reassignment to a comparable position is impossible the civil servant concerned could be appointed to a position of the lower class (but within the same category) without his/her consent.
- in case of reassignment to a position of a lower class civil servants should be entitled to the payment of the old salary that could be continued for one year (the same as the duration of the waiting list) and should have priority within the institution to be reassigned to a position of the same class in case of a vacancy;
- only as a last resort in cases where the reassignment is not possible should the civil servants be moved to the waiting list.
- the secondary legislation should determine the detailed criteria upon which the decision on reassignment or assignment to the waiting list, including the distinguishing criteria for the decision on more than one civil servant in comparable situations (for instance: age, gender, children, job performance, etc) in order to make the decision-making more objective and transparent.

Procedure: for reassignment or assignment to the waiting list, procedural rules should be established as follows: 1) the responsibility for the decision of reassignment or move to the waiting list should not belong to the institutional manager only, but should rather belong to a committee that should include, the institutions involved, the DoPA and mandated representatives of trade unions or association; 2) in cases of the full or partial integration or transfer of functions to another institution the reassignment should be based on an integration plan approved by a committee; 3) each individual decision of reassignment or move to the waiting list should be the result of an administrative proceeding with all the guarantees offered by such procedure in accordance with the general law on administrative procedures; 4) the detailed procedure, detailed composition and decision-making in the committee should be regulated by secondary legislation.

Proposal 17: Civil servants becoming redundant because of restructuring or the abolition of their institution should as a rule be reassigned to another position of the same category in the civil service. The waiting list should be an exception. Well-detailed procedures for the procedure for making a decision concerning reassignment or waiting list should be detailed in secondary legislation.

15 PERFORMANCE APPRAISAL

15.1 Situation

The CCSA (art. 16) sets the obligation of institutions to appraise their civil servants annually as a rule (after six months in case of change of job description). The performance appraisal has important consequences for a civil servant: a) the confirmation of the civil servant, at the end of the probationary period, and, determining whether the incumbent civil servant is “suitable” in case of a change in the job description, depends on the performance appraisal results; b) two consecutive negative appraisals may lead to the termination of the employment relationship; c) an annual performance-related bonus has been established (the civil servant appraised with the mark of 1-excellent - receives an annual bonus of one month’s salary, whilst one appraised with marks 2-good and 3-sufficient respectively receive 70% and 50% of one month’s salary); and d) a positive appraisal is a factor favoring promotion or lateral transfer and influencing to a certain extent the decision on redundancy (when there is a need to make a choice between two civil servants in otherwise equal conditions, the positive appraisal during the two last years might be the determining factor in deciding which civil servant will be reassigned).

In practice, however, the performance appraisal scheme has not achieved any of the expected results. The process is carried out only formally and remains very subjective: the personal relationship between the civil servant and the direct superior predominates as an appraisal criterion. The data shows that a high percentage of civil servants, over 90 %, continue to be rated (each year) in the two best categories of performance (excellent and good). Because of budgetary constraints, the bonus has been rarely distributed in accordance with the performance appraisal results.

15.2 Objective

Reform efforts in many other countries show that success has been limited and expectations with regard to an appraisal system should not be exaggerated. However, the objective should be **a gradual improvement of the system, in order to make it objective, measurable and credible**. In the long term the possibility to link the performance appraisal with other elements of HRM in the civil service should be explored.

15.3 Possible solutions

Reform attempts could not and should not replace the current appraisal system with a new one, but should aim at upgrading this system because considerable effort has been invested in introducing this approach. Indeed the organization of the appraisal system is a matter of secondary legislation. The new civil service law should be limited to explicitly mentioning that the results of the performance appraisal should provide (along with other factors) a basis for decisions in respect of personnel matters of the civil servants concerned (promotion, mobility, etc). The termination of employment after two consecutive negative performance appraisal results should be preserved. Details on the “weight” of the performance appraisal on decisions in personnel matters should be regulated by respective secondary legislation. Improvements in the secondary legislation should mainly aim at: 1) the creation of a link between the performance of the institution and the individual performance appraisal. The link should be two-fold: firstly, the overall performance of the institution should influence the setting of the work objectives (which later shall form the basis for the appraisal) and secondly, the funds dedicated to the reward of good performance; 2) guidelines for setting objectives and carrying out the interviews in the performance appraisal should aim to enhance an informal appraisal dialogue as a means to engage more the civil servants with the objectives of the institution.

The performance appraisal should be made by the immediate superior, it should be screened (a plausibility check) by the HRM Unit and countersigned by the direct superior (this option is very similar to the current system).

Proposal 18: The appraisal-related provisions under the current legislation are in line with general practices. The secondary legislation should be upgraded following the line set out in 16.3.

16 PERSONNEL FILES AND CENTRAL SERVICE REGISTER

16.1 Situation and problems

CCSA (art. 26) regulates the “personnel files”, which should contain relevant professional and career data on civil servants. The same article establishes also the “central personnel registry”. In fact, the latter provisions refer to two different types of registers: the central personal register administered by the DoPA and the “personnel registry” administered by each independent institution. Since 2001 the DoPA has been trying to establish the central registry - human resource management & information and system (HRMIS), but with limited success especially in relation to the population and update with relevant data fed in from the institutions.

16.2 Objective

The central register (HRMIS) should serve not only as an instrument through which the central policy and management unit of the Albanian government (the DoPA) receives feedback and bases its analyses for the purpose of policy improvement, but at the same time, it should be a “friendly” instrument through which the DoPA (for the central administration civil service) and the CSC (for the overall the civil service) could access accurate information to exercise their supervisory and monitoring functions.

16.3 Discussion and possible solutions

Certainly the greatest part of the provisions concerning the content and administration of personnel files and HRMIS should belong to secondary legislation. The new civil service law, in addition to the obligation of the institutions to keep and update personnel paper files, should make clear the following principles: 1) the central personnel register (HRMIS) is a unique instrument for overall public employment purposes, which consists of the personnel registers of all the institutions (including the independent institutions, local self-government units and any other institution or service even outside of the scope of civil service; 2) the DoPA should be responsible for establishing and managing the central register, whereas each institution manages its own personnel register (which is virtually part of the central register); 3) the central personnel register should contain relevant data (all management decisions related to civil servants: recruitment, appointment, promotion, disciplinary procedure, etc - to be established by secondary legislation) that would enable the DoPA (for the central administration of the civil service) and the CSC (for the entirety of the civil service) to exercise their supervisory and monitoring functions; 4) the update of the institution register is mandatory (each institution, including independent institutions and local self-governments should enter the respective mandatory data to their part of the central register); 5) the central register should include the payroll reporting system and be linked with the treasury system; 6) the CSC should be entitled to impose fines upon the persons responsible for improper observance of the registry keeping obligations; 7) the personnel file as well as the central register should be confidential and should be used only for human resources management purposes of the state administration. The civil

servant concerned should have the right to consult his file and to access his entries in the central register. For third parties, the content should be disclosed only with the consent of the civil servant concerned or by judicial request; 8) details with regard to the documents and to the information to be included in the personnel file and in the central register and the administration issues should be set out in **secondary legislation**.

Proposal 19: The new civil service law should provide for a single central personnel register to contain all relevant professional data on civil servants including the management decisions related to the civil servants and should serve also as a reporting instrument to DoPA and CSC. The details should be developed by secondary legislation.

17 TRANSITIONAL PROVISIONS

The approval of a new law, particularly one of such a nature as the civil service one, poses significant questions related to the transition from the previous regime to the new one. The aim of these provisions should be **to protect incumbents on the one side without compromising the reform objectives on the other side**. The main problems relate to the following aspects and should be treated as follows.

The status of on-going procedures (such as recruitment, promotion, discipline or appeals): In this regard, in principle, all procedural provisions of the new law should become effective upon its entry into force. In some cases, however, some **exceptions are necessary** (e.g. new recruitment, assessment, making transitional provisions for all procedures initiated after the legal change has become effective while on-going recruitment procedures shall follow the “old” procedures). The consequence of this approach would be that to a certain limited extent the old law would be still applied in parallel with the new law during the transition time-span.

Transition of incumbent public employees covered by labor law or special legislation under the current system (which needs the protection of acquired rights and with regard to retroactivity) to the new regime should be automatic. The incumbent employees should be converted to civil servant status without being required to pass any additional examinations. A committee consisting of representatives of the concerned institutions and the DoPA should be constituted to screen and decide on the title and category/class of the positions in which the civil servant is converted to. The advantage of this solution is that only one law will be applicable to all employment relations within a short period after the new law has become effective.

Transition from current high-management level civil servants towards the new regime of the TM Corps: The provisions dealing with the top-level civil servants (recruitment, management) would apply immediately to all civil servants entering the corps for the first time once the new law is in force. Incumbent high level managers, recruited through the normal civil service law procedures, shall be included in the new regime without being obliged to pass through the newly introduced and upgraded selection process (the national concours). Where the pool is to be extended to the equivalent positions in the subordinated institutions, the new procedures shall be used only after the position becomes vacant. This implies that the old regime will be applied in parallel to the new law in some cases.

Proposal 20: Transitional provisions should aim at protecting incumbents on the one side without compromising the reform objectives on the other side.