

## *Public Administration Reforms in a Fragile Institutional Framework: The Case of Albania*

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The article analyses some specific issues of recent public administration development in Albania. Europeanization and transition are important circumstances for interplay between democratization, political stabilization and public administration reform. Key factors that influence public administration reform are identified and analyzed. There are several aspects of public administration that are analyzed: policy-making capacity and horizontal coordination at the central level, civil service system and the modernization of human potentials management, decentralization, and the rule of law in administrative procedures. The article argues that the problems of Albanian public administration are heavily influenced by historic legacy, especially from the communist period, and by the instability of political systems. The purpose of the analysis is to identify the priorities in reforming politico-administrative system in

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Albania and to propose a sequential reform pattern. This is because Albania lacks political, legal and administrative prerequisites to carry out a comprehensive reform of public institutions all at once.

*Key words:* public administration reform – Albania, Europeanization, civil service system, policy making, politicization, the rule of law – administrative procedures, decentralization

## 1. Introduction

Public sector reforms in the former communist countries have been explored from many perspectives and aspects. Sometimes, conclusions and prescriptions are drawn in a rather general manner.<sup>1</sup> Albanian history, culture and politics are substantially different from the other former communist countries, even those from the same region, although similarities and common patterns exist. Albania was somewhat neglected in comparative research of public administration reforms (PAR). It is sometimes analyzed sporadically, as part of a wider picture (South-Eastern Europe, Western Balkans or Central and Eastern European countries).

The paper tries to identify the main trajectories of PA reforms in Albania in the post-communist period. When these trajectories are analyzed, it will be possible to calculate the outcomes of the ongoing reforms and to identify their main obstacles, as well as focal points.

A starting hypothesis is that the Albanian public administration did not reach the objectives which all transition countries aspired to in reforming public administration: to be a politically impartial, legal, effective and responsive service to citizens. Is it really so and what circumstances were the most important ones? To what extent are public administration reforms impeded by instable political institutions? What is the state of affairs when it comes to the proclaimed and achieved objectives in Albanian PA reforms? These questions shape the analytical framework of the paper. The data are mostly compiled from Sigma reports and Albanian strategic

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<sup>1</sup> On the contrary, a comprehensive comparative study about public management reforms in CEE countries (Bouckaert et al., 2008) concluded that »there is no common model of public management reform in Central and Eastern Europe« (Nemec, 2008: 343).

documents, as well as from different scholars' papers. The analysis is qualitative; the main research questions will not be researched empirically.

## 2. Analytical Framework

The failure of the communist system is often associated with the failure of the communist type administration (Meyer-Sahling, 2009: 510). New political elites often underestimated the need of public administration modernization and were unwilling to deal with that issue continuously. Administrative reforms significantly lagged behind in comparison with political and economic reforms in transition countries (Musa, 2006: 403; Neshkova, Kostadinova, 2011: 2). Public administration in transition period has to be subjected to a large-scale reform in order to adapt to the new political and economic environment and to be able to serve as a basic tool for the management of wider social transformation issues. Public administration is responsible for drafting and implementing its own reforms, which poses problems of resistance, inertia and even sabotage.

The discrepancy between Western institutional prototypes and Eastern imitations clearly shows that the outcomes of the transition processes are not predetermined by external patterns (Eriksen, 2007: 336). External patterns can be seen as the contextual variables rather than decisive drivers of institutional development, because they establish opportunities and constraints for domestic reforms. According to Goetz, primary explanatory power for the reform outcomes is accorded to domestic actor constellations and the influence of the communist and pre-communist legacies (Goetz, 2001: 1034). These two groups of factors are conceptualized and elaborated in the article concerning Albanian context. External factors (institutional and policy models) are conceptualized through the process of accession to the European Union (EU) and other donor-funded reforms.

There is a rather broad consensus among scholars that modernization path of transition countries regarding their public administration systems should lead to the development of Weberian-type (or neo-Weberian) administration: a stable, impartial, law-abiding and predictable one (Bouckaert et al., 2008; Wollmann, Goetz, 2001; Goetz, 2001; Randma-Liiv, 2008; Marčetić, 2005; Drechsler, 2005). Politico-administrative relations are critical during this process. It is not enough simply to modernize the administration, meaning management practices, in order to avoid politici-

zation and to establish the rule of law, professionalism and impartiality in the administrative system. It is equally or more important to disseminate democratic values in the public sphere. The development of a stable interface between politics and administration is one of the key success-or-failure factors in any administrative development process (Verheijen, Rabrenović, 1999). Is it possible to make public administration stable enough to »make the state affairs moving« (Meyer-Sahling, 2000: 2) in politically instable environment (polarization, discontinuity, government reshuffles)? The Albanian case provides fruitful insight in attempting to answer these questions.<sup>2</sup>

Generally, there are two methods of downloading reform patterns and models: a) attractiveness and superiority of certain models makes them acceptable to transition countries, and b) conditionality method, according which to CEE countries accept solutions from the West in order to gain certain benefits: EU membership, donor subsidies or legitimacy.

The described analytical framework will be used to address the research questions along four important aspects of public administration: coordination and policy-making capacity of the centre; establishment and management of the civil service system; administrative proceedings; and local self-government system.<sup>3</sup> These were the most indicative issues in modernization reforms in transition countries (Koprić, 2012). Although these dimensions do not cover the entire public administration, they can indicate the administrative reform developments in Albania.

### 3. Public Administration in Transition

Historical legacy arguments are an inevitable part of the explanatory framework for public administration reforms in transition countries, although scholars do not always agree when evaluating the importance of

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<sup>2</sup> Numerous examples can be found in the literature. Many articles and reports emphasize the importance of 'political context' variable in assessing PAR processes (all Sigma reports; Bodgani, Loughlin, 2007; Tafili, 2007; Elbasani, 2009).

<sup>3</sup> These aspects are inspired by the framework developed in Koprić, 2012. He identified three aspects of PAR and governance in SEE as representative indicators of these processes: a) strengthening political legitimacy (introduction of directly elected mayors and other channels of citizens' participation), b) introduction of modern human resources management and human potentials development, and c) better legal protection of the citizens (mostly referring to administrative procedures and administrative disputes).

legacies to modern politico-administrative systems. Sometimes they overestimate or underestimate them. The communist period seems to be a critical (historic) determinant of the most recent administrative reforms in CEE countries (Meyer-Sahling, 2009: 511), often overshadowing previous historical patterns to the extent that the latter are referred to as irrelevant (Elezi, 1999: 44). Possibly the most precise statement would be that politico-administrative structures *are influenced*, but *not determined* by the historical institutional development and context (Eriksen, 2007: 344). The extent of such an influence varies from one country to another, each case being specific.

### 3.1. The legacy of the Communist Period (and beyond)

There are several historic trajectories that can explain later developments:

- a) For over 400 years (1481–1912) Albania was part of the Ottoman Empire, with its sultanate imperial system and legacy of patrimonial and personalistic rule;
- b) After a short period of liberation and rudimentary democracy following World War I, Albania became an authoritarian monarchy under King Zog's rule (Bogdani, Loughlin, 2007: 29).

Many scholars, when explaining pre-communist legacies in CEE countries, take into consideration the difference between the countries of Habsburg tradition (the rule of law, bourgeois society) and those of Ottoman tradition (Verheijen, Rebranović, 1999: 9; Mayer-Sahling, 2009: 521; Eriksen, 2007: 360-364). Albania was an integral part of the Ottoman Empire and thus not participating in the processes that were spreading across Europe: the Enlightenment, democracy, the rule of law, the development of fundamental rights and freedoms, etc. Patrimonial and autocratic rule of the Ottoman administration was perhaps the only model of government Albanians had ever experienced. Because of their mass conversion to Islam, a large number of Albanians were notable governors and administrators in the Ottoman Empire (Vickers, 1999: 14).

This helped to form a clientelistic approach to the state: those who were on the winning side could benefit from that, but those who were not, suffered. The religious division among Albanians speeded up their different attitude towards the rulers, forming a strong historical trajectory that is still visible in modern days. These developments certainly raise a ques-

tion whether another set of standards (aside from those imported from Western Europe) for a functioning politico-administrative system would be more suitable for modern Albania. Bearing in mind this dilemma, the paper primarily analyzes the trends in PA development according to the standards that are formally and explicitly agreed to be met by the Albanian policy-makers.

Communist regimes, although similar and with same ideological roots, were different in their practice. Marxist ideology and one-party system blended with different traditions and cultural heritages, creating several types of regimes. Kitschelt et al. distinguished them along two dimensions: the repressiveness of the regime towards its citizens and the degree of formal professional bureaucratization and corruption. Three types were identified: bureaucratic-authoritarian, national-accommodative, and patrimonial, which are characterized by high, intermediate and low levels of formal professional bureaucratization respectively (Mayer-Sahling, 2009: 516). Albanian communist regime could be classified as patrimonial. This type is characterized by the highest level of corruption and low levels of professionalism and impartiality. If administrative legacy matters for the outcomes of modern administrative reforms, it could be argued that the low degree of formal professional bureaucratization during the communist regime led to a lower degree of »Weberianess« today (Meyer-Sahling, 2009: 516).

Many similarities can be drawn between the Albanian type of communism and that of CEE countries. However, Albania is often considered an exception within the communist bloc. Bogdani and Loughlin gave two groups of explanations. Firstly, the country had suffered one of the toughest dictatorship regimes in the entire communist bloc, and was considered »Europe's most Stalinist country« (Bogdani, Loughlin, 2007: 23). The people of Albania faced widespread repression and violation of basic human rights and freedoms. Numerous negative consequences for Albanian society in general, especially for political, economic and cultural development, can be linked to this: economic breakdown, political passivity and non-existence of the intellectual elite capable of running future democratic changes that were to happen in the 1990s. At the end of the 1980s, Albania was the poorest country in Europe with »no economy and little infrastructure« (Tafili, 2008: 2–3).

The leading role of the Communist Party implied subordination of administrative rules to the party ideology; bending and breaking the rules for the sake of achieving political goals was everyday praxis (Meyer-Sahling,

2009: 514). Party members were appointed to all key positions along the administrative chain in order to secure the execution of political decisions. Many of these trajectories became vividly recognizable in the transition period.

### 3.2. Albanian Public Administration in Transition

Unlike in all the other former communist states, transformation to a multi-party system and constitutional democracy in Albania was not immediately followed by the adoption of a new, democratic constitution. Instead, the Parliament amended the Constitution of 1976. Constitutional amendments opted for semi-presidential system, although the president of the Republic was to be elected by the Parliament with 3/5 majority and not by popular vote. Although constitutionally a semi-presidential republic, Albania gradually developed a strong, authoritarian system of power. It was not the only transition country whose post-communist system evolved into corrupted autocracy, but it was the only country that nearly experienced a civil war resulting from such a situation. It happened at the end of 1996, when colossal investments into pyramidal financial schemes collapsed over night, leaving a vast number of citizens bankrupt. At the edge of institutional and economic collapse, new elections were held in 1997. The Socialist Party of Albania (SP) won with overwhelming majority. In November 1998, the new Constitution was adopted by the Parliament and in popular referendum. According to one of its provisions, a 3/5 majority of Assembly members is required for the approval of certain laws. The purpose was to strengthen dialogue and achieve compromise on a broad range of subjects, but this purpose was mostly ignored. Instead, it resulted in delaying or ignoring the necessary reforms. Many important laws could not be adopted because the required majority was impossible to obtain.

The creation of a professional and independent public administration was not among the priorities during regime change in Albania,<sup>4</sup> until the very

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<sup>4</sup> Like in many other transition countries, it has been forgotten that market economy and pluralistic political system do not function without a well-functioning state and its administration. Reminiscences of the omnipresent state from communist period impeded »dealing with the state and administration« in transition period and political elites often took a *laissez faire* approach to the public administration issues. PA reforms have clearly been a secondary topic for politicians in all CEE countries (Drechsler, 2005: 98–104; Randma-Liiv, 2008: 2).

end of the Democratic Party's first term in office (Elbasani, 2009: 10). Albania has not adopted a general law on organization and functioning of public administration. Each administrative body functions separately. This is one of the main reasons for policy incoherence and lack of coordination among different administrative bodies.

Being neglected and overshadowed by the continuous political crises, public administration simply followed patterns from the socialist period. Everyday decision-making was understood as a job of politicians, so public administration did not develop policy capacities, accountability and responsiveness to the citizens. The domination of political discretion over legal norms was as widespread as in the previous regime. Legal certainty was impossible without two main pillars of modern administration: a law regulating the civil service, and another one regulating general administrative procedure. When DP came to power in 1992, public administration personnel consisted mostly of PLA (Party of Labour Albania, former Communist Party) members, who were loyal to the old regime. The new government decided to lustrate the civil service, replacing officials from the previous regime with new cadre, mostly DP members. This affected all the civil service ranks, making an unfortunate precedent for subsequent governments.<sup>5</sup> New civil servants were not familiar with public administration, which left room for politicians to intervene whenever they wished. The first attempt to create a modern civil service happened in 1996, when the first Civil Service Law was passed. Until its adoption, the working status of all public employees had been regulated by the temporary revisions of the pre-transition Labour Act. Its provisions allowed directors of the institutions (who were political appointees) to fire employees under their control »whenever necessary to implement reform in the state sector« (Elbasani, 2009: 10). Another provision allowed recruitment without public competition in cases of urgency. Both became the rule, not the exception. In that way, public administration was staffed with politically loyal personnel. Because of the lack of political will and of necessary secondary legislation, the Civil Service Law of 1996 was never implemented properly.

The organization of Albanian public administration did not change considerably during the transition. In 1994, the Department of Public Administration (DPA), an administrative unit in charge of formulation and

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<sup>5</sup> Same thing happened in 1997 when SP came to power for the first time. It has been reported that during the first year of SP mandate, 15,000 public employees were dismissed and replaced by partisan appointees (Pashaj, 2010: 26).



implementation of PA reforms and human resources management was established (Selenica, 2006: 185). It was founded as a separate unit responding directly to the Prime Minister.

The crisis ensuing after the collapse of pyramidal investments was eye-opening for resetting priorities in the public sector. The need to develop strong public institutions was highlighted. International community helped substantially in designing and implementing recovery plans in which the strengthening of public administration became a focal point.<sup>6</sup> The EU has been financially assisting Albania since 1991, its aid amounting to €508 million for different purposes to date. After the 1997 crisis, EU's assistance program increasingly focused on support to PAR, primarily on developing modern civil service system (Hald Petersen: 32). Anchoring administrative activities in legal norms and making their implementation predictable were the most important goals of PAR strategies at the time. Albania took a step forward in PAR more as a consequence of the systemic foreign pressure (EU conditionality) than as an autonomous decision. PA development in the initial phase showed many similarities to the other CEE countries: the lack of strategic approach, instrumentalisation and politicization of public administration, and systemic avoidance of the enforcement of legislation. In Albanian case, all those characteristics were even more visible because of the constant political crisis.

## 4. Europeanization and Modernization: Recent Reform Steps and Achievements

### 4.1. Influence of the EU Accession Process on PA Reforms

Almost all CEE countries left behind the period of epochal, historic decisions and system-changing overhauls when the century ended. Beginning of the new century marked the point when politicians were meant to be put aside, and when day-to-day quiet administration should play a major role because all the important policy agendas were set and ready to be

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<sup>6</sup> In October 1997, two international donors' meetings in Rome and Brussels endorsed the *Reform and Recovery Programme* (RRP) based on a document entitled *Albania: Directions for Recovery and Growth*, prepared jointly by the World Bank (WB), the European Commission (EC), the European Bank for Reconstruction and Development (EBRD) and the International Monetary Fund (IMF).

implemented without big political debate or influence: EU orientation, market economy, and modernization of public administration.

Albania, however, did not get a chance to escape a period of historic political changes, since each parliamentary election was a kind of starting-over and included a complete reorganization of the state and its institutions. As Vickers (1999: 255) points out: »Leaders of whichever political party that holds office have attempted to discredit the previous regime. Such is the level of political tension that both democrats and socialists remain deeply suspicious of each other's motives for entering any form of dialogue«. Sigma noted a tendency of each incoming cabinet to place members of its inner circle in key state positions (Sigma, 2004: 37). This practice clearly showed that political domination over public administration was not the sole or even the main agenda of the political majority, but it was primarily a clientelistic strategy to benefit from the control of the state institutions and their budgets.

During recent years, Albania has remained highly dependent on foreign help and oversight. All significant reforms and documents have been initiated, financed, designed or agreed to by the community of foreign donors. Activities of the multitude of donors often result in non-harmonized legislation, inspired by different models, and inadequate for Albanian tradition or circumstances (Sigma, 2009: 2). The Department of Strategy and Donor Coordination was established in 2005 in order to harmonize foreign assistance with the strategic objectives laid down in main national documents. The EU has been proliferating as the main generator of administrative reforms, overshadowing the importance of the rest of the donor international community. As Elbasani (2009: 5) argues: »The EU not only crowded out the other sources of institutions and policies, but it also achieved rule adoption where other organizations have failed.« However, there are still policies and reforms that are funded by other donors. There are 32 countries and 20 international organizations still involved in different assistance programs. In fact, as of 2010, the EU funds made up only 15 per cent of the total committed funds provided by different donors, being second biggest individual donor after Germany (€480 million out of €3.3 billion in total for the period 2000-2010; Germany with €495 million).<sup>7</sup> The fact that official development assistance is about 5 per cent of Albanian GDP certainly explains why the EU activities have not completely crowded out other reform donors. Not all of them are involved

<sup>7</sup> <http://www.dsdcc.gov.al>

in PA reforms. Among those who are, the most important are the WB, the USAID, the UNDP and Soros Foundation (Mussari, Cepiku, 2007: 367).

EU-inspired policies and legislation are easily introduced, but the implementation remains a serious problem. Europeanization frequently influences only the political or high administrative level, while the lower levels within public administration remain intact. EU-inspired reforms mainly change the surface of public institutions, not their essence (Hoffman, 2005: 68). Leaning on the EU experts and consultants hampers the engagement of domestic experts and civil servants who do not share the enthusiasm for the implementation of the policies in whose formulation they have not been involved. The EU strategy is to condition benefits with certain standards that are to be met. Relations between Albania and the EU became formalized on Zagreb summit in 2000 when stabilization and association process began. The Stabilisation and Accession Agreement (SAA) was signed in 2006, but went into force on 1 April 2009. On 28 April 2009, Albania submitted its membership application.

Although the Law on the Organization and Functioning of Public Administration is being drafted by the DPA, it has still not been enacted. Public administration has continued to differentiate. There are no general rules on the categories of public institutions or on their relation to the ministries or to the Government (accountability, reporting, staffing, budgeting, etc). Each subordinate institution is established and regulated separately by a special law causing much incoherence and complexity in the public sector. Ministers have wide powers in regulating the organization and functioning of their ministries. The Draft opts for more horizontal communication and delegation of decision-making power across the administrative system (Sigma, 2010: 11).

All important strategic documents are approved by the Government without parliamentary debate and approval. This damages their acceptance and understanding by a wide range of societal and political actors. Parliamentary capacity to exercise its oversight function of the executive is very low: partly because of the inter-partisan discipline, partly because of the weak administrative support to parliamentary inquiry committees (Sigma, 2009: 2).

The most important national strategic document is the National Strategy for Development and Integration (NSDI). It was adopted in 2008, for the period 2007-2013, as a successor to the National Strategy for Socio-Economic Development (2001) which had been the main strategic document

until 2006. It incorporates 38 sectoral and cross cutting strategies prepared by the ministries for seven years. It harmonizes all state policies with the process of EU integration. It addresses PAR outlining the main strategic priorities for its modernization. It also deals with the issues of decentralization and strengthening of local self-government (NSDI: 38–40). Despite the fact that preparation process involved various stakeholders (local governments, civil society, business community, and academic community) its implementation is supervised by the Government and the Prime Minister.

#### 4.2. Policy-Making and Coordination at the Central Level

European administrative space as a concept is primarily influenced by the values and principles of good governance doctrine. Its requirements are related to strengthening the administrative capacities to design public policies in a coherent, transparent and strategic manner. The EU reports on Albania focused heavily on this issue. Governance in Albania was mostly characterized as a top-down process. During the 1990s, horizontal coordination was neglected, while hierarchical relations across line-ministries and their dependent organizations were favoured.

With substantial support of foreign donors, a comprehensive policy framework was developed. Integrated Planning System (IPS), adopted by the Government in 2005, is a set of operating principles to ensure that government policy planning and monitoring as a whole is as efficient and harmonized as possible. The IPS is the key national decision-making system for determining strategic direction and the allocation of resources. IPS process is managed and coordinated by the centre of government and overseen by ministerial group chaired by the Prime Minister. Sigma reports that there is a strong support for the process from top political level (Sigma, 2010: 112). IPS is primarily used for the implementation of two important strategic documents: the NSDI and the Medium-Term Budget Program (MTBP). These documents, together with high foreign pressure, whose primary source are the reports of the EC and Sigma, secured some improvement in policy-making and legislative drafting: improvements in inter-ministerial consultation on draft laws, and the development of a regulatory impact assessment (Sigma, 2010: 106).<sup>8</sup>

<sup>8</sup> Positive trends do not undermine the fact that »overall capacities remain weak and require further development«, that »quality of substantive law remains poor«, and that »the ability to provide for central coordination and policy advice is also constrained by limited

Although there is a positive trend of inter-ministerial policy coordination, certain problems exist. Inter-ministerial working groups consist of high-ranking civil servants who, even when formally authorized, are reluctant to decide without minister's consent. The centre of government is generally understaffed and organizationally fragmented. Coordination at that level matters only for procedural purposes, because the powers and the capacity of these departments are not sufficient for comprehensive coordination of all ministries and for having a quality input in the policy-making process. Furthermore, policy advisers are political appointees and change as often as the Prime Minister. This may cause lack of continuity and institutional memory within the centre of government.

Another weakness of the policy process pertains to the lack of access to the decision-making process for key local stakeholders. Parties are highly centralized, non-democratic and reluctant to engage in an inclusive and extensive dialogue with the public and the civil sector in general. This causes a great diversity (in occurrence and in quality) of established forms of public consultations and debates. Bogdani and Loughlin (2007: 169) characterize policy-making in Albania as predominantly elitist, meaning that political elite makes all key decisions unilaterally, while labour force, academic community, opposition, and other segments of civil society are either excluded or voluntarily reserved.

### 4.3. Civil Service System and Human Resources Management

The establishment and development of the civil service system (CSS) has been the most important PAR goal, at least according to the existing strategies, policy documents and international community engagement. Organizational, functional and operational reforms may always fail at the implementation phase, so the most important task is the establishment of the adequate civil service (Marčetić, 2005: 146; Cohen, 2010: 5). CSS in Albania should be analyzed in the framework of the merit system and integral approach to human resources management (HRM) and develop-

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capacity in terms of both the number of people employed and their length of service, and by the dependence on political advisers who are often engaged only for short period». Sigma, 2010: 106.

ment of human potentials within public administration (Marčetić, 2007: 107–117).<sup>9</sup>

Following the common Strategy for State Institution and Public Administration Reform adopted by the Government at the end of 1997, a new Civil Service Law (CSL) was adopted in 1999 and soon complemented by the necessary secondary legislation. The Law followed the European standards and principles. The main features of merit-based system were included: professionalism, independence, integrity, political neutrality, transparency, service to the public, career continuity, accountability and correctness in the application of the binding legislation (Elbasani, 2009: 12). The CSL defines the scope of the civil service as including »positions exercising public authority« or »directly involved in policy-making at central and local self-government levels«. Civil servants have to be university graduates. Regarding central state level, the Law does not apply to either subordinate institutions (i.e. autonomous agencies connected with the ministries or the Prime Minister's office) or to the deconcentrated administration. At the local level, communes are left out of the CSL scope while municipalities and regions are included. In fact, the implementation of the Law is restricted to a limited number of public employees (only about 6 per cent – around 5,000 people). Although reform strategies that were basis for the CSL mentioned gradual extension of the civil service rules to different categories of public employees, this has never happened. Other public officials are in the scope of the Labour Act, same as the employees in the private or voluntary sectors.

Civil servants are employed by the institution they work in, not by the State, although recruitment is organized centrally, by the DPA. The recruitment system formally follows the principles of merit and publicity, although with some problematic provisions. In reality, the recruitment system is far from being merit-based.<sup>10</sup> A formal decision on appointment is issued by the DPA, but in all cases, it just formalizes the choice of the head. There is a significant number of civil servants' positions filled on the basis of temporary contracting, avoiding public competition. Since

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<sup>9</sup> Marčetić describes four HRM models in public administration: political, administrative (Weberian), managerial, and integral model. These models differ mostly according to the value dimension.

<sup>10</sup> For each vacancy, a special ad-hoc committee is established, consisting of two employees of the respective institution, two experts in the field and a representative of the DPA. They select three best candidates while the head has discretionary power to choose any of the three.

temporary contracting on urgent basis is not allowed by the CSL, these contracts are concluded according to the Labour Act. This practice was tolerated by the DPA by 2004, when an initiative for reducing such contracts was launched. It was a partial success, but from 2005 onwards, temporary contracting has become more frequent again.<sup>11</sup>

The promotion system is a bit strange combination of exclusiveness and competition. According to the Sigma Report of 2009 (2009: 26), promotion and mobility rarely take place, since institutions do not encourage civil servants to compete. There are two ways of career development: lateral transfer and vertical promotion. Each of them requires an open and public competition. Lateral transfers should be predominant way of filling vacancies, but they are not. There is a formality that discourages civil servants from applying – they have to undergo the probationary period once more. This provision might seriously damage a sense of unity and inter-ministerial collaboration. It also impedes the development of the class of administrative generalists. Vertical promotion requires examinations and the competition of at least four candidates who are positioned immediately below the vacant position in hierarchy. This is a formality that often results in annulled competitions, which in turn encourages urgency-justified temporary contracting.

At the end of 2001, a new salary system was approved. In 2007, it was extended to the entire public administration except for the support staff (Sigma, 2009: 15–16). Salaries have been increasing and the salary system now in place is regarded as perhaps the only successful aspect of administrative reform (Pashaj, 2010: 20–21). The salary system leaves little room for discretion and arbitrariness in determining individual salaries. In Albanian circumstances, it might have a positive impact regarding the presence of corruption, political patronage and the absence of the rule of law. However, civil servants' motivation and dedication to the civil service and to their individual performance might be at risk.

The design and implementation of civil service policies and legal oversight are entrusted to two different bodies. The DPA is in charge of HRM for all central administrative bodies.<sup>12</sup> The Civil Service Commission (CSC) is an independent five-member administrative body that supervises the

<sup>11</sup> In 2004, temporary contracts were used to fill 2.2 per cent of civil servants' positions, but in 2006, they reached 11 per cent, slightly diminishing from 2006 onwards. There are doubts that this practice is even more frequently used because lots of contracts are concluded without reporting to the DPA. Sigma, 2009: 11

<sup>12</sup> HR units perform this task within independent central bodies.

legality of management decisions concerning the civil service and decides on the appeals of civil servants.<sup>13</sup> The DPA was founded within the Prime Minister's Office in order to have a general overview over the civil servants in all ministries. In 2005, it was transferred to the Ministry of the Interior (MoI), keeping all the prerogatives, but losing the oversight capacity and relevance. Since many aspects of the CSS are regulated by secondary legislation (salary scheme, performance appraisal) issued either by the Government or by ministers, the DPA, being far from the Prime Minister's everyday reach, lost its consultative role to the Prime Minister in the civil service issues. Both bodies lack political and legal authority towards other institutions. Sigma 2009 Report argues that there is not a single example of an institution enforcing CSC decision without passing through the court, which undermines the role and the legitimacy of CSC (Sigma, 2009: 20).

In-service training is recognized as a valuable HRM instrument. Legislation established the obligation of training for the civil servants during their probation period and in the case of a change in job description following functional review. As a part of the CSS rebuilding, the Government created the Training Institute for Public Administration (TIPA) in 2000, directly supervised by the DPA. TIPA, whose experts and lecturers are contracted out, delivers general and specific training programs. General programs are targeted at junior civil servants during their probation period and are mostly focused on administrative law and PA organization. Specific programs are becoming more popular, mostly in financial matters, EU-related topics and local government issues. The number of participants is constantly increasing (app. 5,000 as of 2010). The training system for civil servants is an important step forward, but there are several negative aspects. Public organizations have difficulties in identifying their training needs; partly because of constant changes regarding the scope of activities and reorganizations, and partly because there is a lack of knowledge of what an administrative generalist should know and what competences he/she should possess. Another, and even more important problem, is a high turnover of staff. Almost 20 per cent of civil servants leave the civil service every year, taking their qualifications and compe-

<sup>13</sup> CSC is a body with adjudicating powers. The Supreme Court defined, in one of its decisions, that CSC can be regarded as the first judicial instance. It is an independent institution that to the Parliament once a year reports.



tences to another sector and not contributing to the institution that has invested in their training.<sup>14</sup>

It seems that HRM has almost all the characteristics of a political model. In 2008, the Government adopted Inter-sectoral Strategy of Public Administration Reforms 2008-2013 that predominantly deals with the issues of civil service reform.<sup>15</sup> The Strategy establishes the creation of »professional, stable, effective and accountable civil service« as one of three strategic objectives. It is foreseen to enlarge the horizontal scope of the civil service; 20,000 civil servants being the targeted number. In 2010, Sigma prepared the Draft Concept paper on New Civil Service Law in Albania at the request of the DPA. Sigma experts identified almost all the problems in the civil service and developed 20 elaborated proposals for future legislation. They identified two possible choices when regulating the civil service: a) a framework law that defines the principles and general management standards of the civil service in accordance with the basic European principles or b) a civil service law that includes a considerable level of procedural and managerial detail. The Draft strongly advocates for the first option, which would theoretically be more flexible and adaptable to changing circumstances. It should also strengthen the sense of unity of the civil service, foster the development of general human capacities, and reduce the need of frequent amendments, thus avoiding politicization in political arena (Draft: 7–8). This concept is more desirable also because of the possibility to reach consensus in the Parliament between confronted political parties if the draft is general and abstract in nature. This option can be implemented only if supported by special legislation regulating specific conditions in certain branches of the civil service, or by secondary legislation regulating technical details regarding specific aspects (recruitment procedures, salary schemes, promotion procedures, etc).

The proposed concept is probably more suitable for a country with a long democratic tradition and institutionalized principle of the rule of law. A general law permits the improvement and diversification of HRM tools in specific areas, but managerial concept is not what Albanian public administration needs. The balance between legal certainty and managerial flexibility should probably be met by insisting on the former. A general

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<sup>14</sup> Civil servants are obliged to remain in service for at least two years. However, they may leave the service if they compensate the expenses of their training.

<sup>15</sup> It also briefly addresses the problems of PA functioning and organization, and administrative procedures (SPAIR: 10–16).

framework law would leave vast space for discretion in drafting special legislation, in solving individual cases, and in interpretation of the provisions of the law. All reports and findings prove that discretion often means corruption or politicization, or, in Albanian case, both. It seems more appropriate to draft a more detailed, but also general law, applicable to all PA institutions. It is necessary to develop a law-abiding culture even at the expense of managerial flexibility or adaptability. The CSL is defined by the Constitution as an organic law, which requires three-fifths majority in the Parliament to be adopted.<sup>16</sup> Since the governing coalition has slightly above 50 per cent majority, there is not a great chance for adoption of a new CSL in the near future. This is a direct evidence of public administration being a victim of political instability and polarization. Drafting a new CSL is a big opportunity to develop a consensual approach to policy-making, bringing all parties to the same table, at least for PA issues. It would be easy to reach a general consensus of the main parties on the CSL because both the SP and the DP strongly support EU accession and therefore should support a law that embeds some of the most important European principles. This would make their consensus a formal and extraordinary occurrence. The potential of CSL is strong enough to enhance political dialogue over more substantial issues that require a more detailed piece of legislation. This would perhaps make a long-term impact on the culture of political dialogue and reduce the staff turnover numbers according to political criteria.

Current position of the DPA in the MoI has disadvantages, although it provides significant political backup of a powerful ministry for DPA's policies and proposals; something that the DPA lacked while being part of the Prime Minister's Office (Draft: 15). Having in mind the need for expanding the CSL to the whole public administration and for strengthening the DPA's capacities, the DPA should be turned into the ministry of public administration. It would be equal or superior to other institutions and in better position to pursue reform policies. As a separate ministry, the DPA could finally become responsible for the whole public administration and all reform issues;<sup>17</sup> something that was intended when it was founded,

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<sup>16</sup> The DPA has tried twice to put forward amendments to the CSL, but without success.

<sup>17</sup> Now, different aspects of public administration reform are scattered to different ministries and agencies: general administrative law to the Ministry of Justice, e-government issues to the National Agency for Information Society, deregulation to the Ministry of Economy, etc. (Draft: 15).

but due to different reasons, its role was reduced mostly to civil service issues.

#### 4.4. Legal Protection of Citizens: Administrative Procedures and Administrative Justice

Modernization of administration and the introduction of new operating methods and management techniques can do more damage than benefit if public administration is not already incepted with the rule of law. The establishment of a public administration under the rule of law is a key part of the comprehensive modernization of post-communist countries (Goetz, 2001: 1033).

Albania went through the whole modern history with political voluntarism of the regime dominating over legal norms. Nevertheless, administrative law did exist during the communist period; however, as Ibrahimji describes (2009: 2), its »scope and its main technical features inevitably determined its main objective: legal achievement of state goals rather than the effective addressing of individual grievances«.

Albania codified administrative procedure by adopting Administrative Procedures Act (APA) in 1999. Before that, the procedures for implementing legal acts were scattered across a range of laws and regulations. Adoption of the APA was a big step forward for the rule of law in Albania<sup>18</sup> and for the protection of citizens' rights. It is a general remark that the APA is comprehensive and in line with minimum European standards (Sigma, 2010). Main scope of the Law is to regulate the way individual cases in public administration are decided.<sup>19</sup> It established the right to information and to hearing, the principles of legality, proportionality and expediency of administrative activities, rules for guaranteeing impartiality, rules for the resolution of conflict of competences, legal remedies, and some provisions on the execution of administrative acts.

Its implementation produced several shortcomings (more in Sigma, 2010), some of them substantial and technical drawbacks of the legal text itself, some of them the result of systemic legal and political circumstances. Al-

<sup>18</sup> Unlike most of the post-communist organic laws, the APA was mainly a product of domestic actors and experts, although predominantly inspired by the informal codifications of European standards and principles of good governance (Ibrahimji, 2009: 1).

<sup>19</sup> Issuing general regulations is out of the scope of the Law, although Article 1 abstractly advocates the implementation of this law for normative acts as well when possible.

though the APA explicitly obliges »all bodies of public administration« and although there are no provisions that allow special laws to derogate its provisions, almost every sectoral law regulates a special procedure. These special procedures undermine the very purpose of the APA: to make legal protection of citizens simple and clear, as well as to ease the duties of civil servants and to make their actions predictable. Some improvements have been made through the amendments to special legislation, mainly regarding registration and licensing procedures for the businesses. Two one-stop shops were established, first one in 2007 dealing with simultaneous registration for business, tax, social and health insurance and labour purposes (Law 9723/2007) and second in 2008 (Law 10081/2008) dealing with business licensing and permits. Although a relative success, these laws fostered particularization of administrative procedure. A new Draft Law on General Administrative Procedure is being prepared with the purpose to integrate and modernize the activities of public administration (SPAIR: 15).

The Constitution recognizes the principle of judicial control of public administration's activities. Albania, however, has not established a separate system of administrative courts, so the judicial review of individual administrative acts is entrusted to the ordinary court system.<sup>20</sup> Administrative disputes are not regulated by a separate law. The rules of procedure exist in a special chapter of Civil Procedure Act (CCA; Law 8116/1996 amended in 1998 and 2001). Being scarce, they are complemented by other provisions of CCA. The procedures are extremely slow, which damages the business and entrepreneurial ventures. The major problem derives from the fact that execution of the court's rulings is a competence of the Ministry of Justice. Voluntary execution of court's rulings by the administration is the exception rather than the rule (Sigma, 2008: 7).

Another way of protecting citizens' rights in administrative matters is through the institution of the Ombudsman, established in 1998, who reports directly to the Parliament. The Ombudsman receives about 4,500 complaints per year, which shows the familiarity of citizenry with the institution, as well as the number of violations of individual rights. On the basis of individual cases he handles, he recommends legislative changes, mostly through his annual reports. Until 2009, 150 recommendations for

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<sup>20</sup> There are 27 regional courts competent for first instance administrative judicial review, six appeal courts and the Supreme Court. Not all of the regional courts have a department specialized in administrative matters; this causes large differences in courts' expertise to deal with administrative matters and puts citizens into an unequal position.

legislative amendments were proposed and 75 per cent of them were accepted by the law-making bodies.

It would be prudent to establish a separate system of administrative courts to express the discontinuity with the corruptive and politicized judiciary and to emphasize the need for independence and different nature of administrative matters.

#### 4.5. Decentralization: Bringing Administration Closer to the People

The establishment of effective local-self government came as an inevitable part of democratization package in almost every transitional country (Marčetić, 2005: 112). Local units were often formally vested with a significant scope of competences. However, they were not more than territorially deconcentrated executive mechanisms of the ruling party and central state bodies. In Albania, they did not even have the legal personality, being *de iure* territorial units of the central government controlled by the Ministry of the Interior (Cepiku, Mititelu, 2010: 64).

The creation of local-self government started in 1992, but territorial division remained the same as in the regime: municipalities at the basic and districts at the second tier.<sup>21</sup> Both tiers had a self-government status, with their respective councils directly elected. Although the scope of local competences was stipulated by the general clause, its implementation was difficult, primarily because of weak local financial capacity and overlapping functions. In certain policy areas the state established executive directorates in districts completely subordinated to the line ministries. Financial capacity was very low, as local budgets amounted to only 4–5 per cent of total public budget. Fiscal discretion was even lower: only 5 per cent of local budgets came from their own revenues while the rest came from central grants, which were predominantly conditional and discretionally distributed. There was domination of the two main political parties at the local level. During the 1990s, the DP and the SP won 95 per cent of the mayoral positions and 85 per cent of the seats in local and district councils. Their members in local councils acted more as party representatives than as the representatives of constituencies because of

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<sup>21</sup> Albania inherited territorial division of 26 districts. In the beginning of transition that number rose to 36.

the internal party discipline and centralistic structures. This phase can be described as a period of politicization and centralization. Local self-government could not act as additional or alternative legitimacy source for the whole political system.

The decentralization process began in 1998 by ratification of the European Charter of Local Self-Government and by the adoption of the new Constitution. In 2000, the Government adopted the National Strategy for Decentralization and Local Autonomy prepared by the group of independent experts with the assistance of USAID (Hoxha, 2011: 10). Its implementation began by drafting and adopting a new Law on Local Self-Government and continued in the following few years mostly with reforming intergovernmental financial relations.

Territorial self-government consists of 374 municipalities, 65 of them being urban (*bashki*) and 309 rural (*komuna*);<sup>22</sup> and of 12 regions (*qarku*). Regions are subdivided into districts, without self-government status. Councils are elected on a three-year term. Regional councils consist of the representatives of municipal councils in proportion to the population of each municipality. Mayors/heads of communes are directly elected. They are *ex officio* members of the regional council. Regional board is the executive body at the regional level, and is elected by the Regional Council. The status of Tirana is regulated by the special law (Law no. 8684 of 31 July 2000). Territorial organization of state administration follows regional boundaries.<sup>23</sup> Prefect as a representative of the central government ensures the implementation of national policies at the local and regional levels.

The Law has defined three types of public functions that local units perform: they can be exclusive, shared or delegated. The scope of regional competences has not been defined precisely by the law. In reality, they act as subsidiary providers of local public services that municipalities cannot provide or as harmonizers of state policies at the regional level (Gjini, 2010: 10). Several laws have significantly improved fiscal decentralization and, indirectly, the overall importance of local self-government system. In 2005, local budgets reached the proportion of 10.2 per cent of total

<sup>22</sup> Local units have the average population of 8,200 inhabitants. All the communes have fewer than 10,000 inhabitants, and only 12 of them fewer than 1,000. The majority of urban municipalities are below 25,000 (55) and some of them (10) above, Tirana being the only town with a population of more than 100,000.

<sup>23</sup> Regions as second-tier self-government units were territorially created within the borders of the already existing prefectures.

public spending; and in 2009, they reached 12.5 per cent. Local revenues amounted to 50 per cent of local budgets. Because of these improvements, several public functions were decentralized, such as water supply and sewage.

The decentralization trends slowed down in 2006; the same year when the Recommendation 201(2006) on local and regional democracy in Albania was addressed to Albanian authorities by the Congress of Local and Regional Authorities of the Council of Europe. The Congress advocated for amalgamation of small communes or for stimulating their voluntary cooperation and for reduction of the number of regions. Recommendation mostly focused on the problems of local scope and their appropriate financing.

A clear separation of responsibilities among different territorial units should result in active civic participation and in easier monitoring of public affairs at the local level. Means of direct civic participation should be encouraged. Citizen representation should be made possible at all self-governmental levels. Regions and their role should be legitimized through the introduction of separate and direct election for the regional councils.<sup>24</sup>

Obviously, the political dimension of local self-government in Albania is more important than the problems of centralization, politicization or public sector corruption, or even those of efficiency and management improvements. Political and legal values such as representation, civic participation, democratic ambient, restriction of state supervision and institutional stabilization seem to be much more important at the moment.

## 5. Conclusion

External pressures and influences were the most important drivers of public sector reforms in Albania. Regarding polarization between the main political parties that shape the context of administrative development and the fact that PA reform is still a one-party agenda; the external influence could be assessed as positive. Since both main parties support EU accession, they might be keener on agreeing on the main reform issues that are

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<sup>24</sup> In 2008, the reform of national electoral system made the regions the electoral units as well. This is also a way of rationalizing territorial and administrative structure and of recognizing the regions as an integrative part of the politico-administrative system.

mostly the result of EU conditionality approach. Domestic actors developed a kind of clientelistic and pragmatic approach to reforms, regarding them as necessary and inevitable in the process of receiving foreign support. Current PA legislation is satisfactory and in accordance with the modern principles of good governance, at least on the surface. However, almost every report accentuates implementation problems; the reforms are not rooted enough in the minds of people implementing them. Institutionalization of the reforms is still embryonic.

Albania focused on PA reforms only at the beginning of the century, being a latecomer to the process of transition. However, it benefited from such a position: there is a greater unity in international community than before when it comes to the main objectives and values of administrative development for the transition and EU candidate countries. The development of neo-Weberian state is heavily recommended and is to be achieved through the principles of good governance.

Reform policies should be more open and transparent and should involve a broad range of actors and stakeholders. The Albanian experience teaches us that even the smallest door open for politicization and avoidance of legal standards will be abused. Slow, but constant, incremental improvements seem to be better than big overhauls and changes. The effects of several important pieces of legislation about to come are yet to be seen: the Law on the Organization and Functioning of the Central State Administration, the new Civil Service Law, the new Administrative Procedures Act and the possible Law on Administrative Disputes. It is more important to implement whatever those laws will contain. Legislation drafting will certainly be more coherent and inclusive if the implementation of the provisions is secured; if implementation is non-negotiable, everyone will tend to influence the drafting process. Stability, predictability, legal and organizational certainty seem to be more important than modernization and flexibility of individual management tools and practices.

Two main strategic documents (NSDI and SPAIR) do not provide any time limits for achieving proclaimed goals. They also lack numeric indicators and benchmarks. These shortcomings show that the attitude of the central government towards administrative reforms remains pragmatic and externally driven. However, the existing praxis of linking law- and policy-making to these strategic frameworks should be encouraged and widened.

Albania is a laggard among transition countries, but the situation is slowly improving. The aim of any future government should be to increase the



transparency and accountability. It is not the question of a certain piece of legislation, but of a continuous everyday administrative practice. However, it is hardly possible to have a democratic, responsible, responsive, lawful and stable public administration without reforming political institutions and changing public sector culture.

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PUBLIC ADMINISTRATION REFORMS IN A FRAGILE  
INSTITUTIONAL FRAMEWORK:  
THE CASE OF ALBANIA

*Summary*

*Certain specific issues in public administration development and reform during transition period in Albania are analysed. The analysis is theoretically rooted in historical institutionalism, as well as in the models of Europeanization and transition. The transition period was marked by neglect and instrumentalization of public administration, while political institutions were slowly adapting to multi-party system and market economy. Focusing on public administration reform was impeded by political instability and by polarization between two main parties. Formulation and implementation of the main reform strategies happened at the beginning of the new century with intensive involvement of international expert and donor community. Modern administrative reforms are mostly linked to the EU accession process and subjected to the EU conditionality policy. There are several aspects of public administration whose main features are specifically analysed: policy making capacity and horizontal coordination at the central level, civil service system and modernization of human potentials management, decentralization, and the rule of law in administrative procedures and administrative justice. Each aspect has been subjected to extensive reform measures. The main problems are politicization and centralization of public administration as well as incoherence between different reform models that are influenced by divergent donors' interests. Some improvements are noted in the areas of policy coordination and legislative process, but implementation and internalization of the proclaimed objectives among civil servants and wider range of societal actors remains the main problem. Conclusions are presented for each analysed aspect.*

*Key words: public administration reform – Albania, Europeanization, civil service system, policy making, politicization, rule of law, administrative procedures, decentralization*

REFORME JAVNE UPRAVE U KRHKOM  
INSTITUCIONALNOM OKVIRU:  
PRIMJER ALBANIJE

Sažetak

*Analiziraju se značajke razvoja i reforme javne uprave tijekom tranzicijskog razdoblja u Albaniji. Analiza je teorijski utemeljena na historijskom institucionalizmu te na teorijama tranzicije i europeizacije. Razdoblje tranzicije za javnu je upravu u Albaniji bilo period zanemarivanja i instrumentalizacije, dok su se političke institucije sporo prilagođavale demokratskom višestranačju i tržišnom gospodarstvu. Usredotočenje na reformu javne uprave bilo je onemogućeno polarizacijom između dvije najveće političke stranke i općom političkom nestabilnošću. Oblikovanje i provedba glavnih reformskih strateških dokumenata počelo je početkom 21. stoljeća, intenzivnim uplitanjem i sudjelovanjem međunarodne zajednice. Suvremene upravne reforme usko su povezane s pristupanjem Europskoj uniji i podložne europskoj politici uvjetovanja. Nekoliko je aspekata javne uprave čije su glavne razvojne značajke posebno obrađene: kapacitet za oblikovanje javnih politika i vodoravna koordinacija na središnjoj razini, službenički sustav i modernizacija upravljanja ljudskim potencijalima, decentralizacija te vladavina prava u upravnom postupanju. Svaki od njih je u novije vrijeme podvrgnut reformskim mjerama. Temeljni problemi s uspjehom reformi su politizacija, centralizacija i neusklađenost reformskih modela inspiriranih divergentnim interesima različitih pokrovitelja. Došlo je do određenih poboljšanja u pripremi javnih politika i propisa, no ostaju problemi provedbe i internalizacije proklamiranih ciljeva kod javnih službenika te drugih društvenih aktera. Zaključci su formulirani za svaki promatrani aspekt posebno.*

*Ključne riječi: reforma javne uprave – Albanija, Europeizacija, službenički sustav, formuliranje javnih politika, politizacija, vladavina prava, upravni postupci, decentralizacija*