



## POLITICIZATION RISKS IN ALBANIA'S CIVIL SERVICE: EXCLUSIONS FROM THE SCOPE OF THE CIVIL SERVICE LAW AND THE INTEGRITY OF THE SENIOR CIVIL SERVICE RECRUITMENT SYSTEM

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### INTRODUCTION

The professional integrity of the civil service remains a key challenge for the public administration reform effort in Albania. Integrity challenges have profound negative policy effects as they enable corruption by facilitating political patronage networks and policies that favour private interests by abusing the taxpayers' trust and money.

Such corrupt structures, which burden the state and inflict serious long-term damage to the country, are sustained through the politicisation of the country's public administration and – more specifically – its civil service. In this policy brief, the politicisation of the civil service is discussed in terms of the exemptions from the scope of the standing civil service legislation and the shortcomings of the senior civil servant recruitment and appointment system. The paper builds on the findings of the 2019/2020 PAR Monitor<sup>1</sup> report by expanding the examination of these two issues.

### BACKGROUND

The post-Communist relationships between the central government administration and political parties in Albania have been tainted by the Communist legacy. There was virtually no distinction between the Albanian state and the Albanian Labour Party during the Cold War. The country's central decision-making body was the Party's Central Committee, and the government would merely implement its decisions. Despite the democratic changes of the early 1990s, which severed the relationship between the Party and the government and allowed the establishment of other political parties, the tendency of governing parties to ensure state employment for their members and appoint some of them in key civil service positions has persisted.<sup>2</sup>

Political patronage has become a significant tool for corrupt politicians and public officials to pursue personal enrichment. The drive towards privatisation of government assets and services has presented opportunities for corruption and abuse of power.<sup>3</sup> These dynamics and the legacy of state-party relations have been difficult obstacles for a comprehensive reform of the civil service that would ensure its professionalism and integrity.

In 1996 Albania enacted its first civil service law, but it featured only basic provisions on the governance of the civil service. The law established the Civil Service Committee as the primary regulatory body for civil servant recruitment and promotion. The Committee members were appointed by the Council of Ministers and they would exercise their duties through sub-committees, which were selection committees established in each institution at the central and local level. The law did not feature clear provisions for open and meritocratic procedures to compete for a civil servant position, and included provisions that excluded competition requirements in when the Committee decided that certain positions would be filled through promotions. Conceptually, the law considered both political officials and civil

***Despite the improvements brought by the CSL of 2013, several loopholes and unclear provisions present significant political risks.***

servants as part of the civil service. The distinction between a political official and a civil servant was rather vague; furthermore, political party membership of civil servants – without any restrictions as to their position within the party hierarchy – was allowed.<sup>4</sup>

In 1999 the Civil Service Status<sup>5</sup> was approved. It established the Department of Public Administration (DoPA) as the responsible institution for civil service governance. DoPA was tasked to draft the regulations on civil service recruitment and promotion, as well as to develop, implement, and monitor civil service policy. The civil

service positions were divided into four categories, and a Civil Service Commission was also established to oversee civil service governance and policy implementation. Despite these important and substantial improvements, the members of the Commission and civil servants were allowed to be members of political parties.

The Civil Servant Law (CSL) of 2013<sup>6</sup> has substantially changed the selection process for civil servants. The legislation establishes clear criteria for civil service appointments, and provides sufficient legal protection from dismissals on political grounds. Important strides towards greater transparency, accountability, and professionalism in the selection process have also been made; however, several loopholes and unclear legal provisions present significant political risks that threaten those achievements.

## EXEMPTIONS FROM THE SCOPE OF CIVIL SERVICE LEGISLATION

Exemptions from the horizontal and vertical scopes of the civil service legislation undermine the integrity and professionalism of the civil service by enabling political appointments and facilitating political patronage schemes.<sup>7</sup> Exemptions from the horizontal scope give to the political leadership – prime minister and ministers – the power to appoint and dismiss public agency directors, whilst providing similar powers to the same directors to appoint or dismiss their employees in accordance with Labour Code provisions, which offers much less protection to employees than the CSL. Consequently, these institutions are exempt from civil service governance.

These exemptions have become commonplace for the central government administration. They cover an array of government institutions which are subordinate either to the Prime Minister's Office (PMO) or line ministries. According to the 2016 and 2017 SIGMA reports on Albania, the justifications for such exemptions are unclear, but they suggest they are due to a misinterpretation of the "delivery of public services" clause<sup>8</sup>. Exemptions from the vertical scope – i.e. political appointments of the leaders of institutions subordinate to the PMO or the line ministries that are otherwise subject to the CSL – are claimed to be the result of special laws.<sup>9</sup>

***Although various institutions are technically subject to the Civil Service Law, they have been effectively excluded from its horizontal and vertical scopes.***

Article 2 of the CSL outlines the scope of the law and includes the categories of public employees that are excluded. The article notes that "direct public service delivery unit personnel" are exempt. Article 4(dh) defines direct public service delivery units as administrative units that directly deliver public services in pre-university and university education, healthcare, culture, sports, arts, social assistance, and other social services. The service delivery personnel under this provision would include education professionals, healthcare professionals, artists and athletes, social workers, and other professionals who are employed in direct service delivery units. Nevertheless, the law does not define the meaning of "other social services", and this clause could be employed to justify the exclusion of – for example – the National Agency for Natural Resources (AKBN) by claiming that it provides a social service to the public, i.e. effective management of natural resources, although such claim would not be accurate.<sup>11</sup>

According to the Decision of Council of Minister no. 547, date 9.8.2006 "On the establishment of the National Agency for Natural Resources" (amended), one of the key tasks of the Agency is "to consult, propose, and cooperate with other government institutions to draft its policies on [the management] of minerals, hydrocarbons, and energy".<sup>10</sup> Although AKBN's role for the formulation and implementation of the country's policy for the exploitation of natural resources has been clearly outlined, this institution is completely exempt from the scope of the CSL: the head of the institution is appointed by the energy minister whilst the employment relations of its staff are regulated through the Labour Code.

A similar case is that of the National Agency for Information Society (AKSHI). AKSHI is responsible not only for the delivery of digitized government services, but crucially to (i) design strategies and action plans for the implementation of information and communication technologies policies and (ii) to develop policies and strategies for the information society.<sup>12</sup> The head of AKSHI is appointed by the prime minister whilst the employment relations of its staff are regulated through the Labour Code.<sup>13</sup>

For the General Directorate of Customs (GDC) and the General Directorate of Taxation (GDT), both general directors are appointed through

a decision of Council of Ministers. In both cases, the employee relations of their staff – excluding those engaged in support capacities – are regulated through civil service legislation. In the case of the GDC, the civil service legislation applies to the appointment of the deputy general directors and other staff, except for senior managers.<sup>14</sup> In the case of the GDT, Law no. 9920, date 19.5.2008 “On taxation procedures in the Republic of Albania” stipulates that the appointment of the deputy director general and of the staff is conducted in accordance with civil service legislation.<sup>15</sup> In both cases the specific laws establishing the two directorates have not been amended in accordance with CSL provisions.

Other notable exemptions include the Albanian Road Authority – whose director general is appointed by the prime minister – and the National Food Authority – whose director general is appointed through a decision of Council of Ministers. In the first case, employee relations of their staff are regulated through the Labour Code<sup>16</sup>; in the second case, they are regulated through the civil service legislation.<sup>17</sup>

These exemptions become even more peculiar since these institutions and other subordinate departments and agencies are considered subject to civil service legislation under Decision of Council of Ministers no. 142, date 12.03.2014, “For the description and classification of employee positions in the institutions of state administration and independent institutions”.<sup>18</sup> The inclusion of these institutions in DCM no. 142 whilst simultaneously excluding them from the horizontal and vertical scopes of the CSL suggests a misapplication of the law.

## SENIOR CIVIL SERVANT RECRUITMENT AND APPOINTMENT

In addition to the risks of politicization of the institutions exempt from scope of the CSL, several challenges in the senior civil servant recruitment and appointment system pose additional integrity risks for the top-management corps (TMC) positions.

Senior civil servants are prohibited from being members of political parties<sup>19</sup>; however, there are no regulations to verify their status. Both the Civil Servant Law and the bylaw<sup>20</sup> enacted to regulate the recruitment and appointment of senior civil servants do not include any requirements for TMC candidates to provide any documentation to verify their status. Conversely, there are actually clear requirements for

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***Political risks for top-management corps (TMC) positions include: (1) insufficient measures to ensure that TMC candidates are not affiliated to a political party; (2) lack of expertise-specific criteria; (3) no time limits for temporary assignments.***

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the external expert members of the National Selection Committee<sup>21</sup>, which is responsible for recruiting candidates for the TMC positions. They are required to provide a personal declaration affirming that they have not been part of a political party in the last three years, as well as an attestation issued by the Central Electoral Commission confirming that the candidate has not run for office in parliamentary or local elections in the last three years.<sup>22</sup> Requirements to provide such documentation are not included even in the vacancy announcements for TMC positions.<sup>23</sup> The lack of regulations to ensure the enforcement of this legal provision is particularly concerning since candidates outside of the civil service may also compete for TMC vacancies, thus effectively enabling politically-affiliated individuals to enter the highest civil service ranks.

The 2018 annual report published by the Commissioner for the Oversight of the Civil Service noted that out of the 17 selected candidates for the TMC vacancies during that year, 14 applied from outside the civil service.<sup>24</sup> It is important to note that although candidates outside of the civil service may apply, the Decision of Council of Ministers no. 118/2014 stipulates that 80% of the candidates accepted into the TMC must be civil servants and 20% may come outside of the civil service.<sup>25</sup>

Compounding the integrity issues is the lack of expertise-specific criteria for the recruitment of senior civil servants. TMC vacancy announcements do not include the specific positions and institutions associated to them.<sup>26</sup> Consequently, the recruitment criteria are general – i.e. not oriented towards the relevant policy area/s for which the institution is responsible. Not including criteria related to the required policy expertise presents an added political and policy risk, since senior civil servants could be appointed in any central government institution based on political connections regardless of their policy expertise or lack thereof.<sup>27</sup>

Another issue related to ensuring the integrity of the senior civil service is the lack of legal limitations for the duration for temporarily assigning other civil servants to a TMC vacancy. Articles 14 and 15 in the Law on the Organization and Functioning of the State Administration regulate the conditions under which such temporary assignments can be made. If the director general position is vacant, the most senior of the directors within the general directorate is temporarily assigned to the position. Similarly, if the secretary general position is vacant, one of the director generals is temporarily assigned. Since the law does not limit the duration of such temporary assignments, this procedure presents not only an opportunity for maintaining the vacancy until a politically suitable candidate is found, but it unnecessarily impairs the effectiveness of the administration by assigning to a civil servant additional duties for an indefinite period.

## CONCLUSION AND RECOMMENDATIONS

The integrity risks examined in this paper highlight some of the key areas where urgent intervention is needed as they affect the fundamental principles of meritocracy and professionalism. Attempts to politicise the civil service, or otherwise undermine its integrity, have detrimental consequences for the formulation and implementation of public policies. Some of the cases noted in this paper speak to the importance of professional and efficient executive agencies and directorates to ensure fair and efficient taxation, quality infrastructure, and the sustainable exploitation of natural resources.

They also highlight the opportunity that governing parties have to exploit loopholes in the civil service legislation to unduly influence the civil service recruitment and appointment process, and to arbitrarily apply the horizontal and vertical scopes of the Civil Servant Law. The exemption from the horizontal and vertical scopes of the CSL of government institutions that are both strategically important and extremely vulnerable to corruption is of grave concern. To address these challenges, institutional stakeholders may consider the following recommendations:

### **On the exemptions from the Civil Servant Law**

1. To clarify the exemptions from the CSL, the “other social services” clause should be either removed from the definition of public service delivery unit personnel, or such services be clearly outlined.
2. The Commissioner for the Oversight of the Civil Service needs to have a full mandate to litigate government decisions that violate the provisions of the Civil Service Law, e.g. those that enable arbitrary exclusions from the horizontal and vertical scope of the CSL. Currently, the Commissioner may fine public officials for violations of the administration of the law. It does not explicitly have the right to challenge decisions of Council of Ministers that set the regulations for the administration of the law.<sup>28</sup>

### **On senior civil service integrity**

3. The civil service legislation must include basic standards and regulations to ensure that TMC candidates are not members of a political party. To this end, the requirements for external expert members of the National Selection Committee to provide proof that they have not been a member of a political party in the last three years may be adopted also for TMC candidates. This requirement would signal to the lower ranks that political party membership is not necessary for career progress.
4. Access to senior civil service does not give due regard to policy expertise, i.e. expertise in the specific policy area for which the institution is responsible. Current senior civil service recruitment criteria need to be reviewed to require that TMC candidates have the necessary policy experience for the institution to which they are applying.
5. Temporary assignments in the senior civil service must be legally limited to an appropriate duration that does not adversely affect institutional effectiveness.

1. See Alban Dafa, *National PAR Monitor Albania 2019/2020* (Tirana: Institute for Democracy and Mediation, 2021), <https://bit.ly/3lrJCsJ>.
2. A salient example of this outlook is the use of public material and human resources for political campaigns by the political parties in power which have constantly featured in numerous OSCE/ODIHR reports on Albanian local and general elections. <https://www.osce.org/odihr/elections/albania>.
3. See for example Gjergji Vurmo, Rovena Sulstarova, and Alban Dafa, *Deconstructing State Capture in Albania: An Examination of Grand Corruption Cases and Tailor-Made Laws from 2008 to 2020* (Transparency International and Institute for Democracy and Mediation), <https://bit.ly/32GmyzN>.
4. Law no. 8095, date 21.3.1996 "On the civil service in the Republic of Albania", <http://80.78.70.231/pls/kuv/f?p=201:Ligj:8095:21.03.1996>.
5. Law no. 8549, date 11.11.1999 "Civil servant status", <https://qbz.gov.al/eli/ligj/1999/11/11/8549>.
6. Law no. 152/2013 "On the civil servant", <http://www.dap.gov.al/images/Legjislacionishc/Ligji%20152%20perditesuar.pdf>.
7. The horizontal scope of public service refers to the institutions subject to civil service law. The vertical scope refers to the classification/differentiation of political appointees, public servants, and support staff. See OECD, *The Principles of Public Administration* (Paris: OECD Publishing, 2017), 41, [http://sigmaweb.org/publications/Principles-of-Public-Administration\\_Edition-2017\\_ENG.pdf](http://sigmaweb.org/publications/Principles-of-Public-Administration_Edition-2017_ENG.pdf)
8. See OECD, *Monitoring Report: The Principles of Public Administration: Albania* (Paris: OECD Publishing, 2016), 9-10, <http://www.sigmaweb.org/publications/Monitoring-Report-2016-Albania.pdf>; OECD, *Monitoring Report: The Principles of Public Administration: Albania* (Paris: OECD Publishing, 2017), 64-65, <http://sigmaweb.org/publications/Monitoring-Report-2017-Albania.pdf>; OECD, *Monitoring Report: The Principles of Public Administration: Albania* (Paris: OECD Publishing, 2021), 72-73, <http://sigmaweb.org/publications/Monitoring-Report-2021-Albania.pdf>.
9. 2017 Monitoring Report, 65.
10. Point 3 of the Decision of Council of Ministers no. 547, date 9.8.2006 "On the establishment of the National Agency for Natural Resources" (amended), one of the key tasks of the Agency is "to consult, propose, and cooperate with other government institutions to draft its policies on [the management] of minerals, hydrocarbons, and energy", <https://qbz.gov.al/eli/vendim/2006/08/09/547>.
11. Points 7 and 8 of Decision of Council of Ministers no. 547, date 9.8.2006.
12. Point 5(a) and b) of Decision of Council of Ministers no. 73, date 22.11.2017 "On the reorganization of the National Agency for Information Society", <https://qbz.gov.al/eli/vendim/2017/11/22/673>.
13. Points 13 and 16 of Decision of Council of Ministers no. 73, date 22.11.2017.
14. Article 15, points 2 and 3(a) and b) of Law no. 102/2014 "The Customs Code of the Republic of Albania" (amended), <https://qbz.gov.al/eli/ligj/2014/07/31/102>.
15. Article 17, point 3 and Article 19, point 1 of Law no. 9920, date 19.5.2008 "On taxation procedures in the Republic of Albania" (amended), <https://qbz.gov.al/eli/ligj/2008/05/19/9920>.
16. See Law no. 10 164, date 15.10.2009 "On the Albanian Road Authority", <https://qbz.gov.al/eli/ligj/2009/10/15/10164>.
17. Article 61 of Law no. 9863, date 28.1.2008 "On food", <https://qbz.gov.al/eli/ligj/2008/01/28/9863>.
18. AKSHI was removed from the list of institutions annexed to Decision of Council of Ministers no. 142 date 12.03.2014, "For the description and classification of employee positions in the institutions of state administration and independent institutions" after it was amended by DCM no.3, date 29.10.2014. <https://qbz.gov.al/eli/vendim/2014/03/12/142>.
19. Article 37, Point 2 of Civil Servant Law.
20. Decision of Council of Ministers no. 118, date 05.03.2014 "For the procedures of appointment, recruitment, and termination of civil service relations for top-level management civil servants and members of the TMC", <https://qbz.gov.al/eli/vendim/2014/03/05/118>.
21. The National Selection Committee is a nine-member selection panel; six of the members ought to be renowned external experts, who have not been political party members for at least three years. Chapter II, Decision of Council of Ministers no. 118, date 05.03.2014.
22. DCM no. 118, date 05.03.2014, chapter II, paragraph 6, d and dh; paragraph 9, ç and dh.
23. See, for example, the TMC vacancy announcement for 2019, [http://dap.gov.al/images/Tnd/2019-04-20%20TND\\_shpallje%20final.pdf](http://dap.gov.al/images/Tnd/2019-04-20%20TND_shpallje%20final.pdf).
24. Commissioner for Civil Service Oversight, Annual Report 2018, 47, <http://www.kmshc.al/wp-content/uploads/2019/06/ANNUAL-REPORT-OF-CCSO-2018.pdf>.
25. Chapter IV, Decision of Council of Ministers no. 118, date 05.03.2014.
26. The TMC announcement for 2019 include only the recruitment criteria while the number of vacancies is included in the relevant decision of Council of Ministers. See "Announcement for direct acceptance in the top-management corps of the civil service," [http://dap.gov.al/images/Tnd/2019-04-20%20TND\\_shpallje%20final.pdf](http://dap.gov.al/images/Tnd/2019-04-20%20TND_shpallje%20final.pdf) and Decision of Council of Ministers no. 215, date 17.4.2019 "On the opening of the procedure of direct acceptance into the TMC, also for candidates outside the civil service, for the year 2019", <https://qbz.gov.al/eli/vendim/2019/04/17/215>.
27. Inclusion of criteria related to policy expertise would ensure that mid-level civil servants or an external candidates, who have built expertise on a particular policy area, are appointed in accordance with their expertise. Although the distribution of appointments in accordance to expertise may be done by the National Selection Committee through their judgment, there are presently no legal or sub-legal provisions, which require them to do so. Therefore, hypothetically, a successful candidate with expertise on energy policy can be appointed to a TMC vacancy in the Ministry of Education.
28. CSL, articles 14 and 15.

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