



REPORT

On the activity of the Commissioner for Civil Service Oversight

Tirana, February 2018

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Tirana, February 2018



Commissioner for Civil Service Oversight

*Honorable Mr. Chairman of the Albanian Parliament,
Honorable Ladies and Gentlemen Deputies,*

In fulfillment of the obligation of the Commissioner for Civil Service Oversight defined in Law No. 152/2013, "On the civil servant", amended, article 11, paragraph 5, I have the honor and the pleasure to present to You the report on the activity of the institution I lead for 2017.

This report is a good opportunity to get acquainted with the civil service situation in Albania, the issues encountered during its administration, the impact brought by the legal changes, in the creation of a sustainable, professional civil service, based on merit, moral integrity and political impartiality, the achievements of the Commissioner in this regard and the institutional challenges for 2018.

With the confidence that we have worked with dedication and determination to fulfill the duties assigned to us by the law, we once again express our firm willpower to contribute with all our possibilities for achieving the standards set out in the acquis communautaire.

Thanking You in advance for Your understanding,

Respectfully,

THE COMMISSIONER

Pranvera STRAKOSHA

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CHAPTER I

OVERSIGHT OF THE CIVIL SERVICE ADMINISTRATION – THE PROCESS THAT CHECKS THE LEVEL OF LAW ENFORCEMENT

1. Executive summary of the activity of the institution in the field of inspection and supervision, for the year 2017

The Commissioner for Civil Service Oversight (CCSO) has continued his activity based on competencies stipulated by law no. 152/2013 “*On the civil servant*”, amended, related to the oversight of civil service administration and based on developments that have been noted during this year in the field of public administration, namely:

- ✓ monitoring the civil servants’ conduct during the process of political elections for the Albanian Assembly in June 2017, which resulted in the reorganization of the state administration by drafting a special report reflecting the findings and recommendations for this specific situation; as well as
- ✓ in terms of structuring the organizational units of the local administration, as a process that takes place at the beginning of the calendar year, especially during this year when the final organizational structures of the local self-government units should be drafted, marking the termination of a transitional situation in these institutions.

At parallel with these priorities, the activity of the Commissioner is also guided by the content and duties set out in the Assembly Resolution for the assessment of the activity of the institution for year 2016 in terms of effective planning of oversight; continuation of orientation supervision over recruitment, with DPA and local administration; administrative investigation of the information received by CCSO or received in other ways; technical assistance supporting human resources units; increasing the role of the Commissioner in assisting local institutions in consolidating the building of institutions that have emerged from administrative-territorial reform, and in other aspects related to the Commissioner’s competence in overseeing the civil service administration.

The annual work plan of the institution was approved at the beginning of the year, with Decision no. 2, dated 13.01.2017, of the Commissioner, “*On the approval of the annual work plan of the institution*”. This act is specified further, with the relevant oversight programs for each subject involved in this process.

The analysis to be carried out through the content of this material, is based on the data and issues evidenced in supervised institutions, including **12** central state administration institutions, of which **11** line ministries and the Prime Ministry; **39** municipalities and **220** former municipalities, now Administrative Units, part of the municipal structure, **1** County Council; as well as **25** subordinate institutions, among which **9** Regional Education Departments (and **17** Educational Offices); **5** Agriculture Departments, **6** County Prefectures and **5** subordinate institutions.

During this process, employment relations were searched for **2803** civil service positions, out of which **1964** cases of appointments based on legal requirements and **839** cases of illegal appointments, carried out in disregard of recruitment procedures.

For all these cases, the responsible persons were ordered to regulate illegitimacy consequences, starting with the immediate termination of the employment relationship and continuing with the proclamation of vacancies and recruitment development based on the law; as well as a rapid and positive response from the subjects charged with concrete tasks to regulate the situation in the Commissioner's warning.

The mobility trend within the civil service system through parallel movement and promotion in the state administration is found to be increasing, which can be an indicator of the increasing confidence of civil servants in the career system within the civil service. On the other hand, in the local administration it is concluded that low, medium and senior management positions have been filled with candidates outside the civil service, surpassing in some cases the 20% limit appointed by law.

The institute of civil service discipline has been applied in **33** disciplinary measures, out of which **3** cases imposed a measure of dismissal from the civil service for very serious violations, **18** cases for serious violations, "*1/3 of salary detention for 6 months*" and "*waivering promotion rights to for two years*", mainly after the proposal of the Supreme State Audit, due to irregularities in the performance of duty, and in **12** cases for minor disciplinary violations, imposing disciplinary measures and remarks.

Examining practices granting the enforcement of procedures, there is evidence of cases when legal requirements have not been applied, which indicates that there is still lack of full enforcement of mechanisms established by law concerning this institution, namely Disciplinary Commissions. In order to regulate the situation, oversight reports guide institutions through the procedure to be followed during a disciplinary course.

Concerning the termination of the relationship with the civil service, there were **127** cases found in this regard, out of which **86** cases of resignation and **29** cases of reaching retirement age. There is a downward trend in the number of employees dismissed from civil service for restructuring purposes (**12** cases).

Regarding the performance evaluation at work, it was found that in **446** overseen cases, **414** of them were evaluated with high and medium scores and **32** cases with other evaluation levels, which means that more law enforcement officials need to work on this process to guide it towards objective and realistic evaluations, in order to increase the performance of employees and the institution, in order to ensure quality service to citizens.

An innovation in the activity of the Commissioner during this year is the monitoring of law enforcement for civil servants during the development of several administrative and legal processes related to:

- ✓ restructuring of the institutions, in the **11** line ministries and the Prime Ministry, a process conceived to help the human resources units and the Department of Public Administration to properly implement the law on the civil servant, as well as to guarantee the rights of civil servants;
- ✓ the conduct of civil servants, in the case of elections for the Assembly of the Republic of Albania, oversight involving **285** institutions of different, local, central and independent levels and **12302** civil servants with a view to implementing the principle of political impartiality of the civil service, but at the same time respecting rights of the civil servant;
- ✓ functioning of the civil service scheme during the creation of local administration institutions, including the **61** country municipalities ensuring the cooperation between the local government units with the Municipal Councils; the Prefects of **12** country districts; the Department of Public Administration; the Ministry of Interior and the Agency for the Support of Local Self-Government, to draft and adopt sustainable, efficient and accountable organizational structures for carrying out the mission of the institution;
- ✓ the completion of **503** job positions through group recruitment, parallel movement and promotion in the public administration through **481** contests conducted by the the Department of Public Administration, which the Commissioner has overseen in order to prevent legal violations and to ensure a a fair and transparent competition process.

During this year, **19** general oversight and **27** thematic inspections were concluded. For 2018, there were carried out **18** general oversights and **13** thematic inspections, starting in the last quarter of the year and are currently in their final phase, namely in the endorsement of the final report and warning decision.

The oversight competence is assessed as closely related to the verification of **91**

information / complaints received by this institution, denouncing different aspects of the erroneous implementation of the law on the civil servant, in some cases serving as an index to initiate supervision or inspection at relevant institutions. These cases are all included in a preliminary verification process and are dealt with in various ways, as will be set out in the follow-up to this report.

Their object is identified with a wide range of issues, which include almost all law institutes for civil servants, as will be further analyzed in the content of the report. In most of the cases, the administrative investigation started with written complaints from civil servants, but there are cases of information received by the media, or in other ways.

Particular importance has been given to the ongoing oversight process, which is related to the ongoing follow-up of the Commissioner's warning enforcement process, which has emerged during the period of January-December 2017, for which the notice deadline has expired. This process was conducted through on-site verifications in **68** institutions involved in oversight, of which **31** belong to the state administration (*12 county prefectures, 12 agriculture departments, 7 other subordinate institutions*) and **37** local government units (*5 county councils and 32 municipalities*).

At the end of the verification, the process was concluded with a decision of the Commissioner in **66** cases or **97%** of them, considering that the obligations set out in the enacting clause of the decision were fulfilled, and in **2** cases or **3%**, the process is ongoing in its various phases under the supervision of the Commissioner (*in 2 municipalities*).

Regarding the level of execution of the Commissioners' decisions, it appears that in institutions completing the process of confirming the implementation of the warning decision, **58** cases or **88%** have fully enforced Commissioner's recommendations (*29 cases or 50% in public administration institutions and 29 cases or 50% in local government units*), while **8** cases or **12%** have partially enforced them (*2 or 25% in public administration institutions and 6 cases or 75% in local government units (municipalities)*).

Regarding failure to execute decisions (*namely 8 cases*), such cases are mainly found in the local administration and relate to the cancellation of illegal appointment acts. This situation has arisen as a result of the inability to immediately apply in competition procedures due to the legal deadline; and likewise, in some cases, recruitment procedures have been repeated, due to lack of candidates or failure to meet the criteria required by their job position. These cases are being followed on a regular basis by the Commissioner through guiding human resource management units to properly enforce legal procedures during the recruitment process.

The same trend is followed in the level of implementation of Commissioner's decisions for **22** cases treated on the basis of individual complaints. **17** cases or **77%** of decisions are

voluntarily implemented, while in 5 cases, or 23% of them, the verification process is being followed by the Commissioner, according to the phases adopted in the warning decisions.

For these reasons, the Commissioner did not consider it necessary to impose fines on civil servants who did not enforce these measures, as provided for in Article 15 of law no. 152/2013, "On the civil servant", amended.

The list of institutions overseen during 2017 will be presented in the Annex of this report.

In the following material we will present the administrative developments in the civil service system by analyzing in detail different aspects of enforcement of law institutes for civil servants, as well as Commissioner's ongoing efforts and achievements to achieve the purpose of the law for a sustainable, professional civil service with an ever-increasing quality level in line with the best standards in terms of public service.

2. Monitoring specific aspects of civil service administration. The active role of the Commissioner to ensure the proper and unified application of the law on the civil servant

During this year, attention was focused on the orientation of the responsible units towards fair and unified enforcement of legal procedures:

- ✓ In cases when the institutions have received requests for legal interpretation;
- ✓ in cases where the problem is found during the oversight; and
- ✓ in cases when specific aspects of civil service administration are monitored by the Commissioner.

This method has been assessed as necessary and has been mainly applied considering the fact that the current law on the civil servant has been applied for a relatively short time, and consequently no unified practice has yet been established to determine the best models needed to guide its implementation. The unification of practice comes to the assistance of human resource management units, so that they understand and apply correctly the provisions of the law in question.

In this section of the report we are presenting more specific cases that identify this aspect of the Commissioner's activity by analyzing guidelines that have come up with the features of a normative act, mandatory to be implemented by all institutions involved in the scope of the law on the civil servant.

These acts were recognized by other public administration institutions, which establish and control rules in different areas of state administration and which have been asked for cooperation to help improve the particular aspects of the civil service performance, through

the activity they exercise in the framework of the legal competences, as we will further discuss in the case of the standardization of institutional building in the local self-government units.

Likewise, we will also present cases where the Commissioner, due to special circumstances, has included in the monitoring process various aspects of civil service administration in a wide range of subjects in order to prevent irregularities during the law enforcement.

2/1. INSTRUCTION ON THE FUNCTIONING OF THE CIVIL SERVICE SCHEME IN THE LOCAL SELF-GOVERNMENT UNITS. MONITORING ITS APPLICATION DURING THE PROCESS OF DRAFTING AND APPROVING THE ORGANIZATIONAL STRUCTURE IN THESE INSTITUTIONS

Based on the legal competence of the oversight of civil service administration, as defined in articles 11, 14 and 15 of law no. 152/2013, "*On the civil servant*", amended, the Commissioner for Civil Service Oversight, has carried out the ongoing oversight process for the institutions included in the scope of this law, giving an important place to local government institutions, reflecting this focus also in the work plan adopted annually.

According to the provisions of the law on the civil servant provided for in Article 4, under the heading "*Definitions*" (point 1, letter "f"), as well as in Article 10, "*Human Resources Units of the Institution*", local government units are responsible for the administration of the civil service through the human resources units created at each institution.

In these circumstances, there is no separate institution charged by the law to manage the civil service administration in these institutions, a position held by the legislator in the framework of maintaining their independence, while for the state administration institutions, this task is performed by the Department of Public Administration.

For this reason, CCSO has been working close to these institutions and providing ongoing technical assistance, which is carried out through authorized contact persons, in order to prevent legal violations and to ensure an efficient civil service administration, even by taking cooperation initiatives between various public institutions and taking the coordinator role.

One of the most important aspects of this year's cooperation has been providing support to the activity of responsible units in all municipalities of the country, during the process of drafting and approving the organizational structure of the institution for employment included in the law on the civil servant.

This cooperation has worked well before and is currently achieved at a satisfactory level between the Commissioner and the civil service subjects in the local administration. Anyhow, considering the high level of irregularities found during the oversight and the circumstances of the occurring changes, on the one hand due to the territorial administrative reform and on the other due to state administration restructuring, a process dealing with local administration issues as well as the Agency operating in this area under competencies of the Ministry of Interior (*previously under the competencies of the Council of Ministers*), the Commissioner considered that this cooperation should be extended to other institutions, including the City Council, the District Prefect, the Department of Public Administration, the Ministry of Interior and the Agency for Support of Local Self-Government. This interaction is already conditioned by the fact that these institutions and bodies operating in different areas of public administration, based on the competences they exercise, have the opportunity to help to fix the problematic situation ascertained during the creation of local self-government institutions and specifically:

- ***The Municipal Council***, as the institution that has the right to make decisions regarding the practical implementation of the law on the civil servant, in terms of financial support made possible by the adoption of the budget by this decision-making mechanism and its competence to approve the maximum number of employees in the municipality.

After the reorganization of local government bodies, with the enforcement of law no. 139/2015, “*On Local Self-Government*”, even legal powers of institutions operating in the field of local administration have been reorganized.

In the concrete case, article 54 of the law, which provides for the tasks and powers of the municipal council, in its point “*dh*” stipulates that: the municipal council approves the budget and the maximum number of municipal employees, as well as budgetary units and institutions depending on the municipality.

- ***The Mayor*** has the right to approve the structure of the institution, based on article 64 of the same law, which foresees the tasks and competencies of the Mayor, and specifically in point “*j*” is defined as: *adopting the structure, the organisation and the categories of salaries for each civil service position as well as basic regulations of the municipal administration and subordinate units and institutions in accordance with current legislation*.

- ***The responsible unit of the institution***, as the unit charged by the law on human resource management in the municipality, has the obligation to draft the structure, the organization and the salary classes for each civil service position, and submit it to the Mayor for approval (*article 10, law no. 152 / 2013, “On the civil servant”, amended*).

- ***The County Prefect*** is the institution that should operate for enforcing the law on the

civil servant under the conditions that, based on the law regulating its operations, this institution coordinates the activity of central institutions at a local level, as well as with local self-government bodies in the municipality and district and is the only administrative institution that verifies the legitimacy of the acts enforced by local government bodies.

- **The Ministry of Interior** is part of the institutions that should cooperate based on the definitions of Decision no. 502 of the Council of Ministers, dated 13.9.2017, “*On defining the scope of state responsibility of the Ministry of Interior*”. In points 2 and 3 of this sub-legal act, it is stipulated that:

“ ..., *The Ministry of Interior is the institution responsible for the implementation of the internal affairs policy in the Republic of Albania and the organizational and professional body that serves the public interest by impartially implementing current legislation, performing public services and drafting and implementing general state policies in matters of internal affairs.*

... *The Ministry of Interior exercises its activity based on the relevant legislation, mainly but not only in the fields of state responsibility listed below, as well as in any other areas of responsibility assigned by law or acts of the Council of Ministers:*

...

b) *activity of the County Prefect;*

c) *co-ordination with local government units and associations of locally-elected representatives;*

ç) *civil registry services;...*”

Currently, on the basis of these legal obligations, in the structure of the Ministry of Interior, the pursuit of aspects related to local issues is the duty of the General Department of Public Order, Public Safety and Domestic Affairs, as well as the Agency for the Support of Self-Government Local Government, which operates on the basis of Decision no. 83 of the Council of Ministers, dated 28.01.2015, “*On the establishment and functioning of the Agency for the implementation of territorial reform*”.

- **The Local Self-Government Support Agency**, which is subordinate to the Ministry of Interior and aims to enforce the administrative-territorial reform through the coordination of all measures, processes and administrative support, reaching full functionality of the 61 new municipalities (*points 2, 3 and 4 of Decision no. 83, dated 28.1.2015, "On the establishment and functioning of the Agency for the Implementation of Territorial Reform"*).

- **The Department of Public Administration**, as the institution drafting policies in the civil service and based on current legislation, develops and cooperates on the salary structure for civil servants and employees of public, central and local administration (*Article 7, point 2, letter “h”, law no. 152/2013, “On the civil servant”, amended*).

- **The Commissioner for Civil Service Oversight**, as the institution overseeing the implementation of the law no. 152/2013, “*On the civil servant*”, amended, in all its institutes, including the categorization of civil service positions, based on Article 19 which regulates the civil service operation scheme. The Commissioner is legitimized for intervention, as the administrative act approving the organizational structure of the institution creates the administrative hierarchy in the civil service system. The Commissioner's active role in this aspect of civil service administration is particularly oriented towards local self-government units, since oversight identified their need for technical assistance in this regard.

Regarding the level of law enforcement for the civil servant, during the process of drafting and approving the institution structure, *the situation is evaluated by the Commissioner as chaotic, as various approaches to the development of organic and ungrounded structures are ascertained*. The structuring of the basic units on which the civil service radically differs for different local government institutions, although they are institutions included in the civil service and are regulated by the same law, conditions of the laws based on which they perform are the same. These local government units, being part of the civil service, have the obligation to implement in a unified way the law on the civil servant and the by-laws that have emerged upon its implementation. Anyhow, during the 3-year supervision conducted in more than 80% of the country's municipalities, this law turns out not to be enforced, as will be analyzed in the follow-up to this report.

During this year, **7561** job positions were analyzed, distributed in the structure of various local government institutions involved in the oversight, out of which **3179** are positions included in the civil service, according to the table below:

Table 1. Employment positions analyzed according to the organic structure of supervised institutions

The classification of employment positions by division:	Number of local administration positions	Number of central administration positions	Number of employment positions in Total
Political Officer	214	2	216
Administrative Employee	4130	36	4166
Civil service positions	2363	816	3179
Employment positions in Total	6707	854	7561

Through the study of the composition of structures and the supervision of their operation, it has been concluded that in drafting structures, there has been *lack of enforcement of the civil service functioning scheme, provided for in article 19 of the law on the civil servant*, which envisions the inclusion of employment positions based on civil service categories, as General Secretary, General Director, Head of Department, Head of Sector, as well as Executive Category Officer at Specialist level. On the other hand, the same situation is

observed in appointment of job titles against requirements and legal terminology, regulated by the the same provision of law on civil the servant.

This situation prevents the enforcement of the most important procedures that must be respected during the implementation of various institutes of the law in question, since civil servants of all categories and civil service classes are part of procedural mechanisms, such as:

- ✓ Competition Commission for various civil service categories;
- ✓ Disciplinary Commission;
- ✓ Restructuring Commission;
- ✓ officers who draft and evaluate job descriptions in the capacity of job analyst, direct supervisor, General Secretary, etc;
- ✓ civil servants assessing the performance of the civil servant in the role of the Reporting Officer, Confirmation Officer and Authorizing Officer.

The absence of one of the important links in the structure of the institutions concerned, according to the provisions of the legal provision analyzed above, results in the absolute invalidity of the administrative actions that are carried out in the enforcement of the law on the civil servant, which is a reality faced quite often by country's municipalities.

For all these reasons, the Commissioner has requested these institutions to enforce their legal obligations and to increase the cooperation level between them and with the Commissioner, in order to provide the necessary support to enforce the law on the civil servant.

If we further analyze problems found in restructuring these subjects, *inter alia* we consider to analyze:

- i. The structure organization with "Agencies", without justifying this need and not specifying the legal basis of this action.

In some municipalities in the country, such as those of *Kukës, Memaliaj, Këlcyrë, Gjirokastrër, Finiq, Devoll, Gramsh*, etc., from the denomination analysis of units constituting the structure of the institution, a mechanical division was found between structural units (*Departments or Sectors*), nominating some of them "Agencies", even though they are part of the institution's mission, and with this argument, human resources have not been addressed by the responsible unit, as defined in the law on the civil servant.

If we evaluate functional duties and administrative hierarchy of the "Agency" staff applied in this case, we conclude that they actually carry out the functions of a department or sector, which is part of the institution's structure.

Under these conditions, by not presenting any legal argument, employment positions that make up these units are identified as “employees” against the legal denomination in the law on the civil servant and consequently, employees in these positions have not been managed according based on provisions of the law on the civil servant.

The concept of “autonomous agency” is found in law no. 90/2012, “On the organization and functioning of the state administration”. Although it provides the state administration organization structure, at the same time sets some basic standards for the organization and operations of the entire public administration. Article 10 of this legal act sets out some criteria for the creation of autonomous agencies, among which we mention:

“1. Autonomous agencies are created and closed by law.

They enjoy legal and public personalities for their functions in relations with third parties as defined by law.

2. The autonomous agency carries out defined administrative functions, the performance of which meets these criteria:

a) it has no need for ongoing and direct supervision;

b) requires thorough specialization in management;

c) is partly or wholly funded by other legitimate means, but different from those of the General State Budget.

3. The autonomous agency shall be established only if the administrative functions provided for in paragraph 2 of this Article are best achieved by this form of organization, ...in accordance with the principle of economy, efficiency and effectiveness.

.....

4. The law on the creation of an autonomous agency shall also determine the legal regime applicable for: a) the personnel, in accordance with the principles of civil service administration; b) financing and expenditures; c) asset management; ç) tariff approval procedures for services, if applicable.

5. The explanatory statement accompanying the proposal of a law for the creation of an autonomous agency, includes the motivation for compliance with the criteria set out in paragraph 2 of this article and an estimate based on cost-benefit analysis or other modern techniques which justify the creation of an autonomous agency, according to point 3 of this article.

Thus, as we argued above, “autonomous agencies” which are constructed as such, should meet certain criteria to justify their functioning, and to determine by a special legal act the manner of organization of human resources, under the conditions when in the municipality operates the law on the civil servant, which has specified cases of exclusion from the scope of its action.

In some supervised entities, it turns out that none of the criteria for creating an agency is

met, and no special regulation is established to determine their functioning.

Under these circumstances, the Commissioner has estimated that this structural division has been applied to avoid obligations imposed by the law on the civil servant in the process of human resources administration in the local administration, and categorized these cases as inconsistent actions with the law in question. At the same time, in these cases, he has ordered that the human resources included in these units named “Agencies”, be assessed on the basis of the criteria set out in the law on the civil servant.

The units named “Agencies” are in these cases part of the municipality structure and as such, they should be reorganized and treated as functions of Departments or Sectors, based on the law on the civil servant.

ii) Exclusion of administrative units from the civil service administration scheme, at the moment of approval of the institution structure.

In some local government units, among which, for example, the municipalities of Pogradec, Këlcyrë, Memaliaj, positions in administrative units that meet the criteria to be treated as part of the civil service were not evaluated as such, without being able to justify or support it by any legal basis.

The Commissioner considers that, when administrative units are already part of the municipal structure, there are no legal reasons to exclude from civil service the job positions that are part of them.

The categorization of job positions, whether part of the civil service or not, is applied in this case by the definition of Article 4 in the law on the civil servant, which defines the characteristics of civil servants and not the nominations used to identify the constituent units of the structure or job positions, subjectively in the institution structure.

The Commissioner has asked to put this situation into legal frameworks, clearly defining job positions that are part of the civil service, from the moment of approval of the structure of the institution, which creates conditions for the administration of the civil service on a continuous basis according to the law.

iii) In the institution structure, legal terminology is not used in the appointment of civil service positions.

From the review of the administrative act approving the structure of the institution and beyond, during the verification of appointments, especially in functions of the executive category, it was found for different subjects that the terminology defined by law and bylaws regulating this aspect was not respected, but these positions appear in the structure with the

profession nomination, such as “Lawyer” or “Architect”, “Hydro Engineer”; “Geosea Engineer”; “Topographic Engineer”; “Topographic”; “Agronomist”; “Veterinary Physician”, etc.

In these cases, the Commissioner has referred to the responsible unit the legal basis that regulates this aspect and has requested the proposal of their equivalence according to the “Specialist” designation provided for in article 19, point 7 of law no. 152/2013, “On the civil servant”, amended; point 5, chapter II of decision no. 142 by the Council of Ministers, dated 12.3.2014, “On the description and classification of employment positions in the state administration institutions and independent institutions”, amended, with the title “Category IV - Civil servants of the executive category”; as well as the subordinate legal act regulating wages in local government units.

Regarding the above-mentioned irregularities and problems, the Commissioner has asked the institutions to regulate the situation, orienting them to act this way:

Firstly, within the structure of the institution there should be a separation between civil service positions and those of an administrative aid character, in order to not allow subjectivism in the treatment of employees occupying different job positions, part of the structure of the institution.

To achieve this goal, it was required that at a particular point of the decision on the approval of the structure, the number of job positions included in the civil service and the division between the group of civil servants and the support services be identified.

Secondly, when local self-government units are grouped for salary effects at different levels of the structure, where the basic criterion in the civil servant treatment is identified to be the number of residents, ***the organizational structures and salary levels in these institutions, should be guided through the application of requirements of specific links that are part of Decision no. 165 by the Council of Ministers, dated 02.03.2016, “On the grouping of local self-government units, for the effect of salaries and setting salary limits of elected and appointed officials, civil servants and administrative employees of the local self-government units”***, amended.

In this sub-legal act were considered the categories of civil servants provided for in article 19 of the law on the civil servant for all municipalities, according to its relevant links, where it includes the top management category, General Secretary, middle management, low executive and executive category, corresponding to the positions of “Head of Department”, “Head of Sector” and “Specialist / Inspector”.

The Commissioner estimates that this sub-legal act has foreseen, depending on the number of residents in the local unit, the constituent units of the institution’s structure linked to the

civil service, as well as categories of civil service positions linked to salary classes and categories, for all civil service categories, meaning that there is no legal obstacle to implementing the civil service administration scheme, including the senior management category up to the executive level.

Assessing the Mayor's competence to approve the structure of the institution for the following year, the Commissioner has requested the responsible unit to present jointly with the draft-structure a clarification link to identify the legal obligation the municipality has to respect the civil service operation scheme.

Likewise, part of the report should include *job description manuals for all categories of civil servants of the institution, including requirements for the appointment of a civil service position and the duties and functions performed by this position*, based on law no. 152/2013, "On the civil servant", amended, and the sub-legal act regulating this aspect, as well as the laws governing each sector of the municipality's activity, including legislation in the field of budgeting and financial management, auditing, etc.

Thirdly, the Commissioner has also defined ways in which institutions will interact to support the institution building process in accordance with the requirements of the civil service law:

- ✓ Under the terms of approval of the organizational structure for year 2018, the responsible unit shall submit to the Mayor the organizational structure of civil service positions, which is to be finalized through a functional analysis of the institution. The structure shall be associated with the relevant report, as well as with the approved job descriptions based on the law, nominating its constituent units as general department, department or sector, depending on their function, and taking into account guidance by the Commissioner.
- ✓ Given the specific role of the unit in charge of local self-government institutions, it should be organized at a Department level, given the fact that the law on the civil servant defines it as a decision-making mechanism in all aspects of civil service administration in the institution (*recruitment, restructuring, disciplinary performance, training, job evaluation, job descriptions, etc.*), competence that cannot be developed by a low level or executive officer, as provided for by the sub-legal act regulating this aspect of the law.
- ✓ **The responsible unit** shall inform the Commissioner in writing of any action to be taken in this regard, as this process will be followed up and assisted by the Secretariat of the Commissioner, in order to support and direct the unit responsible for reviewing and standardizing the structure of civil service positions, in order to

enable the unification of law enforcement and the mobility of civil servants of local government institutions throughout the civil service.

A very important aspect that will help implement the best standards in this regard is the extension of the Human Resources Management Information System (*HRMIS*) to all state administration institutions part of the civil service, independent institutions and units of local government, which is another topic where the attention of the responsible unit should be focused.

During this year, the Commissioner has found better performance in the process of data collection in the local administration institutions, after this obligation was included in the work program and monitored in all supervised institutions.

- ✓ **The Mayor**, during the approval of the structure, should support the human resources unit on proposals to respect requirements provided for by the law on the civil servant, according to Commissioner's guidelines.
- ✓ **The District Prefect** should communicate with the Commissioner at the time of submitting the municipal structure, to confirm legitimacy and to ensure enforcement of the law on the civil servant. Likewise, this institution acting as a part of the state administration, at this moment should also cooperate with the Department of Public Administration in order to provide a specialized technical expertise, under the condition that DPA is also the institution that prepares and supervises the enforcement of state policies in the civil service, supports and provides the institution's civil service counseling in the implementation of the law on the civil servant, based on current legislation, and designs and cooperates the salary structure for civil servants and employees of public, central and local administration.
- ✓ **The General Secretary** of the Ministry of Interior and the **Agency for Local Self-Government Support**, as an institution under the Ministry with the legal competence to provide legal and technical advice to the local self-government units, communicate with the Commissioner, informing him for any identified problems in the implementation of the law on the civil servant in the local administration, and specifically coordinate the activity to support the Commissioner in the process of unification of enforcement of the law on the civil servant during its application in the structure of the civil service scheme of these units.

Currently the cooperation of the institutions listed above is functioning normally, according to the Commissioner's forecasts. The institutions have responded to the invitation for cooperation and currently some satisfactory results were reached. Human resources units have begun to cooperate with the Commissioner, and we can mention some cases where progress has been made in this regard, among which in the *municipalities of Prrenjas, Libohovë, Belsh, Cërrik, Devoll, Korçë, Krujë, Peqin* etc.

In the circumstances outlined above, the Commissioner is in constant challenge to regulate these aspects of the civil service administration in local administration institutions. This challenge started at the moment of creation of this institution, and its confrontation will continue at the same pace, despite different difficulties encountered in this regard. Objective problems, among which the lack of human and financial capacities in some of these units, mainly those with less than 20,000 inhabitants (such as the municipalities of *Këlcyra, Pustec* (about 5,000 inhabitants), *Finiq, Konispol, Dropull, etc.*), are handled by the law on the civil servant under the same conditions as in other institutions and with better skills in. Subjective problems are characterized in some cases by the lack of willingness from leaders of these units to act in the right way.

In order to achieve this goal, the Commissioner will not hesitate to present the situation, to repeat the problems of the unresolved cases, and to find new ways of cooperation and interaction, combined with the legal remedies provided by the law on the civil servant, until local self-government units are consolidated and comply with the law on the civil servant to offer a good standard of service to the citizen.

Considering that year 2018 is the legal deadline that will mark the end of transitional structures for local self-government units, in order to move towards sustainable and functional structures, trainings are planned with the participation of responsible units of these institutions as well as other actors in the process. This is further enabled by the new premises where the Commissioner is currently operating, which are equipped with rooms with optimum capacities as well as logistical means enabling this activity at his headquarters.

Likewise, in this regard, the Commissioner is cooperating with the Council of Europe, in the framework of the project “*Strengthening Local Government Structures in Albania - Phase III*”, to assist in the implementation of the Territorial and Administrative Reform (TAR) towards strengthening the capacities of human resources in local self-government units, focusing on the activities of this project and its product to address the identified concrete problems. This position applies to the case of structuring of institutions and standardization of job descriptions, which we have analyzed in this section of the report, as well as other aspects of civil service administration indicating irregularities ascertained during the oversight process, aiming at the harmonization of human resource management processes at different levels of public administration in Albania.

Likewise, within the implementation framework of the Cross-cutting Strategy for Public Administration Reform (CSPAR) 2015-2020, the Commissioner has been assigned an active role in the progress of the civil service throughout the field of the rule of law, but attention is specifically directed to the local administration, setting concrete indicators to measure the performance of civil service administration in these institutions.

2/2. GUIDELINES ON THE ADMINISTRATION OF THE TRAINING PROCESS FOR MIDDLE AND LOW-LEVEL MANAGEMENT EMPLOYEES, APPOINTED BY CANDIDATES WHO DO NOT COME FROM THE CIVIL SERVICE SYSTEM

The reason for maintaining a unified stand in this case has been the request of the responsible unit in Shkodra Municipality, where clarifications were requested regarding the training of the employees appointed in the “*head of sector*” and “*director*” positions and the promotion procedure, which is applied and open to other candidates who do not come from the civil service system, but meet conditions and requirements of job vacancies.

This procedure is legitimated pursuant to article 26, point 4, of law no. 152/2013 “*On the civil servant*”, amended, and point 43 of chapter III, decision no. 242, of the Council of Ministers, dated 18.3.2014, “*On the filling of vacancies in the lower and middle management category*”, where this recruitment procedure is foreseen as an exceptional case, which can be implemented up to the limit of 20% of the number total vacancies in each calendar year.

This problem is solved by the responsible unit in this case, as this provision of the law does not expressly provide for compulsory training at the Albanian School of Public Administration (ASPA), as provided for in article 24, point 1 and 2 of the law in question, which states that: “*An official appointed for the first time in the civil service, shall be subject to a probation period of one year from the date of the appointment act. During the probation period, the civil servant has to complete the obligatory training cycle at ASPA...*”. Likewise, in the case of Senior Management Level Positions (SMLP), mandatory training is stipulated at ASPA.

In order to dissolve the obligation to attend compulsory training by concerned employees, which not expressly provided for in the law, the Commissioner assessed the legal arrangements foreseen for some other categories of recruitment developed under the same procedure, among which the admission to the executive category and SMLP.

- a) For civil servants who were recruited outside the civil service through the procedure of admission in the executive category with open competition, completion of compulsory training during the probation period is provided. The successful completion of this training is one of the conditions under which the direct supervisor bases the decision on the confirmation at the end of the probation period. Specifically, point 2 of article 24 of the law on the civil servant, provides that: “*During the probation period, the employee should complete the mandatory training cycle at ASPA ...*”. Further, point 6/a of chapter VI of decision no. 243 of the Council of Ministers, dated 18.3.2015, “*On acceptance, parallel movement, probation period and appointment in the executive category*”, provides that: “*The decision at the end of*

the probation period is based on: a) the outcome of the test at the end of the compulsory training cycle at ASPA; ...”.

b) For employees admitted as SMLP members with direct admission procedure for candidates not coming from the civil service system based on point 1, article 29 in the law on the civil servant, point 3, chapter V, and point 4, chapter VI of decision no. 118 of the Council of Ministers, dated 5.3.2014, “On the procedures for the appointment, recruitment, management and termination of civil service relations, high-level management officials and SMLP members”, expressly provides for the obligation to attending the in-depth training program for SMLP members, organized by ASPA.

Based on the law on the civil servant and its bylaws, civil service positions are filled out by persons who do not come from the civil service system, in these circumstances:

- ✓ if the procedure for admission to the civil service in the executive category is applied;
- ✓ in the case when, by a decision of the Council of Ministers for the state administration and the competent body for the local and independent administration institutions, the promotion procedure is enforced in the lower or middle management category with competitors who do not come from the civil service system, up to 20% of vacancies opening each year;
- ✓ in the case when, by decision of the Council of Ministers, there is admission of persons who do not come from the civil service system in the senior management category, as SMLP members and through ASPA, with up to 20% of admissions.
- ✓ in the case where by decision of the decision-maker / decision-making body of independent institutions and local government units, it is determined that the job position at the senior management level is completed with candidates who do not come from the civil service system, but that number cannot exceed 15% of the total number of members of the senior management category.

Based on this analysis, it results that for civil servants appointed for the first time in the executive category and for admissions in the senior management category, as members of the SMLP and through ASPA from outside the civil service, there is a clear expression of the obligation to attend the ASPA training program.

Whereas, for civil servants who are appointed for the first time to the low- or middle-level management category in the civil service who are competing with persons who do not come from the civil service system, there is no expressed obligation to follow the training at ASPA.

The Commissioner has assessed this fact as an “*omission*” of the law, as one of the principles of civil service management set forth in article 5 of the law on the civil servant,

is the professionalism of civil servants. For this purpose, the School of Public Administration (ASPA) is created and operates as the institution aiming to improve their professional skills.

From this perspective, in order to upgrade the professional level of civil servants who have not developed a career system within the civil service in one of the ways provided by law, either through parallel movement or promotion (*including here the category of head of sector and director*), the Commissioner has estimated that the concerned category of civil servants should be included in the compulsory vocational training programs offered by ASPA.

This was concluded considering that the officers of this category have not previously been part of the civil service but have entered the system as a case of legal exclusion, and therefore could not be trained in the Albanian School of Public Administration in terms of in-depth and continuous vocational training, which is a legal obligation for employees recruited in accordance with the admission requirements to the civil service who start their career from the executive level.

Under these conditions, in order to familiarize the candidates with the nature of the civil service, the rules and obligations they must apply during the performance of their duty, as well as the work they must perform (*since they have not previously been part of the civil service*), the Commissioner considers necessary to include them in compulsory professional training programs in the Albanian School of Public Administration.

2/3. INSTRUCTION ON THE RESTRUCTURING PROCESS OF THE STATE ADMINISTRATION INSTITUTIONS, AND MONITORING THE IMPLEMENTATION OF LEGAL PROCEDURES DURING ITS APPLICATION

In the enforcement of the legal competence of civil service administration oversight, assessing specific conditions due to the approval of the structure of the Council of Ministers by the Albanian Assembly, and due to the involvement of central or subordinate state administration institutions in a radical reformation, the Commissioner considered necessary his intervention in guiding the responsible unit, in this case the Department of Public Administration and the General Secretaries in Line Ministries as the main actors in the restructuring process, regarding the legal stance to be maintained during mandatory procedures in the restructuring of current institutions or creation of new institutions, in order to prevent legal violations and respect the rights of civil servants.

The restructuring process is an administrative action, carried out by the Department of Public Administration, human resource management units in institutions, as well as some civil servants with specific roles in the Restructuring Commission, set up to manage civil

servants.

Each of the above-mentioned actors has concretely defined tasks in the law and sub-legal acts to be enforced during the restructuring. Law enforcement and keeping specific standards during the restructuring were also the focus of the Commissioner's instructions in this case.

This material was created based on legal provisions provided for in articles 50 and 66, item 4/a, of law no. 152/2013, "*On the civil servant*", amended; in sub-legal acts, among which in decision no. 125 of the Council of Ministers, dated 17.2.2016, "*On temporary and permanent transfer of civil servants*", chapter II, "*Transfer due to closure and restructuring of the institution*"; decision no. 142 of the Council of Ministers, dated 12.03.2014, "*On the description and classification of positions in state administration institutions and independent institutions*". Likewise, an important act that supports the restructuring of the case in question is also instruction no. 1 of the Department of Public Administration, dated 01.03.2016, "*On the establishment, functioning and competencies of the restructuring commission due to the closure or restructuring of the institution*", which has changed during 2017, preceding this important process through determining detailed procedures related to the restructuring commission's work in any recently-established circumstances.

Based on this legal framework, the Commissioner has requested that after the Prime Minister approves the structure, the responsible unit must lead the restructuring process in cooperation with all other subjects appointed by law, following this order:

- Regarding the procedures to be carried out in the case of transfer due to restructuring the institution:
 - a) Employees of the institution to be restructured or closed need to be individually notified, as defined in article 50/7, of the law and point 12 of the sub-legal act regulating the transfer due to restructuring or closing the institution;
 - b) Establish the Restructuring Commission (*made of 3 members*) according to the provisions of article 50/3 of the law and point 12 of the sub-legal act regulating the transfer due to restructuring or closing the institution, taking care of the compliance with instruction no. 1 of the Department of Public Administration, dated 01.03.2016, amended "*On the establishment, functioning and competency of the restructuring commission due to closing or restructuring the institution*", which clearly defines the general rules for the establishment and functioning of this mechanism according to the case of the institution's reorganization, the procedure to follow, as well as the evaluation methodology and the pointing system on which this commission's decision will be based.

c) The restructuring commission should respect the 15 day deadline from the restructuring date, to present the report with relevant proposals to the responsible entity, dealing with:

- ✓ the transfer of the civil servant according to the priority defined in point 2, article 50 of law no. 152/2013, “*On the civil servant*”, amended;
- ✓ termination of civil service relationship (*dismissal from civil service*) for the reasons provided for in paragraph 6, article 50 of the law in question;
- ✓ the financial treatment (*remuneration*) for all employees who will leave due to restructuring and recognizing the right to apply as civil servants for procedures of parallel movement or promotion for a period of 2 years after the termination of the civil service relation due to restructuring (articles 25 and 26 of the law), and to be temporarily appointed by the responsible unit in civil service positions, with their consent.

The work of the Restructuring Commission should be focused on the analysis of civil servants’ data and the specific requirements of their job position, in case of employees who have worked in a position that no longer exists, comparing them with job descriptions and specific requirements for already-opened vacancies or new ones created after the restructuring, as well as in all other aspects as provided for in the above-mentioned guidelines of the Department of Public Administration.

d) The Restructuring Commission, in its decision to terminate the civil service relation with civil servants due to closing or restructuring the institution, in order to respect the principles of civil service administration related to professionalism and the merit of being part of the system, as well as to guarantee the stability of duty and the continuity of the civil service, should be based on the following criteria: a) The seniority of the civil servant in the civil service; b) Evaluation of the job performance of civil servants; c) The last assessment the employee had in the test for gaining and updating additional knowledge.

e) The responsible unit should respect the deadline for the transfer of the civil servant within 10 days from the date of the proposal receipt by the Restructuring Commission and notify the civil servant of the decision, to take his opinion in writing within 5 days from the notification receipt.

f) To be respected the hearing procedure by the responsible unit in case of refusal of the transfer decision by the employee, verifying reasons for the refusal and justifying the decision-making in each case.

- Regarding the process of employment descriptions for positions in the civil service before and after restructuring.

This aspect has been brought to the attention of DPA and the Human Resources Unit, estimating that during the oversight conducted in the state administration institutions, it resulted that the Department of Public Administration had not yet completed the approval of the job description form, which has also been one of its main tasks in the Commissioner's warning decisions.

This process, aside from being a legal obligation regulating the activity of the administration, increases efficiency and prevents overlapping of duties, and is currently of particular importance due to the fact that the existence of job descriptions compiled according to the law is a condition without which the civil servants permanent transfer or release from the civil service cannot be carried out after the restructure.

This happens because the activity of the Restructuring Commission is closely related to the examination of the arrangements for the placement of each civil servant in the existing vacancies, and with the proposal to transfer the civil servant to a vacant position of the same category or the termination of the relationship with the civil service, which cannot be achieved if job descriptions are lacking, based on the structure of the institution before and after its restructure, identifying specific knowledge requirements from the employee who will be appointed after the restructure.

Another reason is the fact that the absence of such important acts (*job description forms*) hampers the activity of oversight institutions, such as the Commissioner for Civil Service Oversight which oversees the restructuring process, or the Administrative Court, during the trial of civil servant cases to be transferred in institutions that will be created after the restructuring process.

○ *Launching the monitoring process due to the reorganization of state administration institutions (first phase, line ministries and the Prime Minister's Office)*

After sending this guide to all line ministries and the Department of Public Administration, and completing the constitution process of the Council of Ministers, the Commissioner has started the monitoring the restructuring process through Order no. 85, dated 09.10.2017, "*On the initiation of monitoring of law no. 152 of 2013*", amended, and its by-laws, during procedures of reorganization in state administration institutions (closure and restructure), after the Council of Ministers has approved its composition".

The Commissioner has decided to follow this process in real time, evaluating its importance for state administration institutions and consequently for a considerable number of civil servants who carry out their activity there, in order to prevent legal violations and to unify the practice of restructuring in all the institutions involved in this process.

Through this act, the activity of the Secretariat of the Commissioner was organized, divided into **6** working groups, covering **11** line ministries and the Prime Ministry. Likewise, the scope of their activity was identified, including monitoring the function of mechanisms trusted with specific tasks during the restructuring process through real-time monitoring of the activity of the restructuring committees, and the administration of acts materializing the creation, functioning and exercise of their competences.

In the composition of the working groups, there were **12** inspectors of the General Department of Inspection and Supervision, as well as directors of the structures comprising this department who started monitoring the process, with the entry into force of the act that approved the closure or restructuring of the institution (organizational structure).

Currently, this process has entered its final phase, as the proposals of the restructuring committees in the line ministries have been administered, regarding the employee placement in the remaining or newly created positions, and also the final decisions of the responsible unit, the Department of the Public Administration, for their final appointment or dismissal from civil service.

At the end of the monitoring process, as part of the Commissioner's work practice, the final report will be sent to the Assembly so that the latter will be acquainted with the situation and tasks that institutions have to apply to regulate their legitimacy.

We take the opportunity to mention in this report an approach towards a new model in the organization of the state administration, applied by the Department of Public Administration during the restructuring process, by building a subordinate body to the General Secretary, part of the civil service system, with three main pillars:

- ✓ sector policy and development under the responsibility area;
- ✓ regulatory and compliance aspects in the covered sectors, and
- ✓ economic aspect and support services,

to which three units in the level of General Department respond, namely:

- ✓ General Administration of Policies and Development (*includes policies, strategies, programs and projects*);
- ✓ General Regulatory and Compliance Administration;
- ✓ General Administration of Economic and Support Services.

Further, each Executive General Administration, under the General Secretary, is divided into three main departments with clearly different roles.

This model has aimed to unify the operation mode of the executive body in order to

simplify and facilitate the structure, not allowing mechanical coupling between various ministries, avoid repetitive functions; identify structures that should emerge as independent bodies, agencies or affiliated institutions, and should not be part of the ministries.

The conceptual changes resulting from this structure model lie in the functional restructuring based on the ministry's role as leader rather than on a field basis; in highlighting priority functions, also required by the Council of Ministers, such as programming, project design, de-regulation, drafting legislation, etc.; in facilitation of administrations, introducing the concept of function distribution, partially passed to the Cabinet and a partially to the subordinate Agency. Moreover, an innovation in this model is the dismantling of ICT structures by the ministries and their concentration in the National Agency of Information Society (NAIS).

As noted in the above analysis of this important development, *a new standard of functional organization of structures under the General Secretary has been introduced* with conceptual changes, while the type of constituent structures of the functional organization of the ministry (*civil service functioning scheme*) has continued to be the same, including the General Secretary, General Administration, Administrations and Sectors.

This model was introduced by the Commissioner to local self-government units in order to familiarize them with the best practices applied in creating an institution, supporting them in designing structures based on a functional scientific basis, which are long-lasting, responsive to timely demands, and enable the mobility of civil servants within the system, in all institutions included in the operational area of the law on the civil servant.

2/4. MONITORING OF THE RECRUITMENT PROCESS IN THE STATE ADMINISTRATION

Through Decision no. 70, dated 04.04.2017, "*On initiating oversight oriented in law enforcement in civil service administration, during competitions planned by the Department of Public Administration during 2017, with admission procedures of civil service executive level, parallel movement, promotion and admission to the senior civil servants body (SMLP)*", the Commissioner has ordered the start of the oversight for law enforcement in the civil service administration, during competition procedures conducted by the Department of Public Administration during 2017.

In order to collect information on the recruitment process in state administration institutions, during 2017, a monitoring group was set up, following the competition procedures for admission to civil service at the executive level, parallel movement, promotion and admission for those who do not come from the civil service system, being present in the implemented processes as well as administering ongoing information in the "Vacancies" section of the official web page of the Department of Public Administration.

The process has been developed in close cooperation with the officials entitled by the Department of Public Administration for organizing and conducting contests as an object of supervision, through continuous verbal, telephone, written and electronic communications via the official e-mail address. For specific cases, the responsible unit (*DPA*) was required to provide the necessary information for carrying out the oversight and providing documentation to carry out the administrative investigation.

1. General aspects and statistics regarding the recruitment process

During the enforcement of provisions of article 18, law no. 152/2013 “*On the civil servant*”, amended, Decision no. 69, dated 03.02.2017, was issued, “*On the annual admission plan for 2017, in state administration institutions included in the civil service system*”, based on which the entire recruitment process is administered.

This plan is built on needs sent by human resource management units to the Prime Minister and every line ministry, which have previously drafted a consolidated plan for recruitment needs for the entire system including the central administration body of the institution and subordinate institutions.

It is noted that within November, the General Secretary of the Prime Ministry and every ministry has sent to the Department of Public Administration a consolidated plan of admission needs for the entire relevant system and further. The Department has composed the draft annual admission planning for the state administration, proposed to the Council of Ministers by the Minister of State for Innovation and Public Administration.

On this basis, the Council of Ministers, by Decision no. 69, dated 03.02.2017, “*On the annual admission plan for 2017 in state administration institutions included in the civil service system*”, planned to fill during 2017 a total of **1082 vacancies** divided by the following categories:

- For senior civil servants (*SMLP*): **10 positions;**
- For the middle management category: **85 positions;**
- For the low management category: **312 positions;**
- For the executive category: **675 positions.**

The Department of Public Administration (*hereinafter, the responsible unit*), based on articles 22, 25, 26, 27, 28 and 29 of law no. 152/2013, “*On the civil servant*”, amended, and point 4 of Decision no. 144 of the Council of Ministers, dated 24.02.2016, is tasked with organizing contests to fill vacancies in all state administration institutions through parallel movement procedures, admission of people not coming from the civil service system for

the executive category, promotion and admission into the senior civil servants body (SMLP).

Given the 2017 elections for the Assembly of the Republic of Albania, in order to guarantee the impartiality of the electoral process, and based on the Electoral Code of Republic of Albania, the Department of Public Administration decided to suspend the competition procedures in end of May, until the end of the electoral process.

Further, after the end of the electoral process and the constitution of the Council of Ministers, the entire state administration was reorganized, and 8 former ministries were merged due to this process, with functions merged into the remaining 11 line ministries. Moreover, 2 new ministries were added due to this process, reducing the number from 19 ministries existing before the elections, to 13 ministries. This process was followed by a general cut in the number of civil service employment positions across the state administration. As a consequence, all ministries went through the restructuring process, and therefore the responsible unit (*DPA*) suspended the 2017 competition procedures again.

Under these conditions, until the end of 2017 the responsible unit developed only a few competition procedures in the body of institutions subordinate to the line ministries, which were considered important to be filled for the normal functioning of institutions where these vacancies were opened.

Likewise, for the same reasons, the Council of Ministers which, based on article 29 of the law on the civil servant, launched admission procedures for Senior Management Level Positions in the civil service (*SMLP*), in 2017 did not come up with any decision to start these procedures. Consequently, in 2017, there were no admission procedures for **10** positions in the Senior Management Level Positions in the civil service (*SMLP*), meant to be completed according to the plan approved by the Council of Ministers before the elections.

Under these circumstances, the responsible unit from **1072** executive, middle and lower management positions planned to be completed according to the decision “*On the annual admission plan for 2017 in state administration institutions included in the civil service system*”, managed to organize periodically **198 open competition procedures** in order to complete **481 job positions**. These competitions correspond with the proclamations starting from number 1342 to number 1583 (*this proclamation closed the contests for 2017*). Meanwhile, competition procedures for **591** vacancies according to the approved plan remained closed.

In the context of overseeing the contest process administration, the Commissioner has dealt with all complaints received by him, by employees or candidates who participated in a competition procedure organized by the responsible unit (*DPA*) for 2017, who alleged that

irregularities were committed or allowed during the contest.

2. Performance of the 2017 competitions

Based on chapter IV and V of law no. 152/2013, “*On the civil servant*”, amended, vacant positions in the civil service are filled only through competition procedures. From the information gathered about competitions held in 2017, the following results were reached for executive, lower and middle management vacant positions:

Table no.2 Competition statistics for year 2017

Competitions held in year 2017 (announced 1324 – 1583)				
Number of competitions	Number of positions to be filled in these competitions	Number of winning candidates from the first phase “ <i>Parallel Movement</i> ”	Number of winning candidates from the second phase “ <i>Acceptance in the Executive Category and Promotion</i> ”	Number of remaining vacant positions
198	481	108	329	44

For the purpose of analyzing the process, we are grouping the competitions as follows:

- a) *Acceptance in the Executive Category;*
- b) *Promotion.*

A. *Acceptance in the Executive Category*

The competition procedural rules for filling vacancies in executive positions (*including the parallel movement in this category*) are provided in articles 22, 23 and 25 of law no. 152/2013, “*On the civil servant*”, amended, as well as in Decision no. 243 of the Council of Ministers, dated 18.03.2015, “*On the acceptance, parallel movement, probation period and appointment in the executive category*”.

According to legal definitions above, filling vacancies in the executive category is initially done with civil servants of the same category through the parallel movement procedure. Depending on whether the vacancy positions in a competition procedure in the executive category are met by the parallel movement procedure, the responsible unit (*DPA*) announces the competition as closed. Whereas, in case positions remain vacant after the application of the parallel movement procedure, the responsible unit fills them through admission procedures in the executive category.

In conclusion, from the collection of data during the monitoring of the accession process in the executive category, including the parallel movement in this category, the below results were reached:

Table no. 3 Data on the admission procedure in the executive category

Number of competitions	Number of positions to be completed through competitions	Number of winning candidates from the first phase "Parallel Movement"	Number of winning candidates from the second phase "Acceptance in the Executive Category"	Number of remaining vacant positions
95	360	86	264	10

Given the above data, the Commissioner found that the Responsible Unit (DPA), considering the limited time available due to the suspension of competition procedures during 2017, succeeded in successfully filling a considerable number of the vacant positions in the executive category.

B. Promotion

The competitions' procedural rules for filling employment positions in the lower and middle management level, followed by promotion procedures (*including the parallel movement in this category*), are provided for in articles 25 and 26 of law no. 152/2013, "On the civil servant", amended, and Decision no. 242 of the Council of Ministers, dated 18.03.2015, "On filling vacancies in the lower and middle management category".

According to the legal definitions above, even for this procedure, filling vacancies in the lower and middle management category is done initially with civil servants of the same category through the parallel movement procedure. If vacancies are not filled through this procedure, the procedure for filling vacancies in the lower and middle management category is followed.

In conclusion, from the collection of data during the monitoring of the admission process in the lower and middle management category, including the parallel movement in this category, the below results were reached:

Table no.4 Data on the procedure for filling vacancies in the lower and middle management category

Number of competitions	Number of positions to be completed by these competitions	Number of winning candidates from the first phase "Parallel Movement"	Number of winning candidates from the second phase "Promotion"	Number of remaining vacant positions
103	121	22	65	34

In these competitions, the Commissioner found that in **8** procedures, of which **2** of the low management category and **6** to fill positions of the middle management level, no candidate was presented, and consequently the unit has decided to close of the procedure. These are

the procedures with proclamation numbers 1436 and 1440 of the low management category and the procedures with proclamation numbers 1459, 1487, 1488, 1491, 1516 and 1548 of the middle management level category.

For job positions pertaining to the above proclamations, because no candidate from civil servants who enjoy the status of the civil servant was presented to compete for the parallel movement or promotion, the Commissioner has recommended the responsible unit (*DPA*) to evaluate the possibility of completing the positions in question through the open procedure for other candidates from outside the civil service who meet the conditions and requirements for the vacancy, according to the provisions of point 4, article 26, of the law on the civil servant.

3. Monitoring competitions with the electronic system

The obligation to publish the act of announcing the competition, the preliminary and final verdict act and the publication of the final list of winning candidates, is a procedural condition set out in the provisions of law no. 152/2013 “*On the civil servant*”, amended, and Decision no. 242 of the Council of Ministers, dated 18.03.2015, “*On filling vacancies in the low and middle management category*”, Decision no. 243 of the Council of Ministers, dated 18.03.2015, “*On acceptance, parallel movement, probation period and appointment in executive category*”, as well as Instruction no. 2, dated 27.03.2015, “*On the process of filling vacancies in the civil service through the parallel movement procedure, promotion for the middle and low management category, and admission to the civil service in the executive category through open competition*”, of the Department of Public Administration.

Following this procedure is a real indicator of the competitions’ transparency, as it enables candidates or any interested citizen to become acquainted with the vacancy proclamation in the public administration, to be acquainted with the candidates who will participate in the competition, and with the winning candidates of this process. In addition, following this procedure guarantees the implementation of the principles of equal opportunities and transparency, as defined in article 5 of law no. 152/2013 “*On the civil servant*”, amended.

To oversee this process, **481** competitions were monitored with proclamation numbers from 1342 to 1583, on the official website of the Department of Public Administration, to verify whether the procedures set out in this case are respected by the responsible unit (*DPA*).

A. Publication of the competition notice, the preliminary and final verifying act, as well as the final list of winning candidates

The obligation to publish the act of announcing the competition is defined in the provisions of the law on the civil servant, and the by-laws issued for the purpose of its implementation.

The transition from the quality of the “*Applicant*” to the “*Qualified Candidate*” is carried out at the preliminary verification stage, which is a pre-election stage, which is carried out by the Department of Public Administration within 10 days from the end of the submission deadline (*term specified in the proclamation*).

Further, qualified candidates are subject to evaluation by the relevant Commissions, including the CV assessment, written assessment, and structured oral interview. The procedure for evaluating the candidates is done by the respective Committees. Based on article 22/5 of law no. 152/2013 “*For the civil servant*”, amended, the winning candidates evaluated with over 70% of the total score from the Evaluation Commission are ranked according to the scores obtained on the successful candidates list (*following with the winners’ list*).

For all the above procedures, the legislator has provided for these processes to be transparent and to be published, and therefore there was continuous monitoring of the following of legal requirements as well as the documentation that the responsible unit (*DPA*) is obliged to publish in its official website, as follows:

- ✓ Publication of the proclamation document for the opening of procedures for filling a vacant position;
- ✓ Publication of a list of candidates qualified by prior verification and final list, which meet the general and specific criteria set forth in the proclamation act;
- ✓ Publication of the preliminary and final list of the winning candidates by the respective Commission.

Following the continuous monitoring, in **481** cases of national competitions with a registration numbers from 1342 to 1583, it resulted that:

- a) The responsible unit has, in all cases, published them on its official portal in the “*vacancies*” section, making sure that this document contains all the information provided for by the specific legislation that regulates this aspect, such as the main field on which the competition will be based, as well as the abilities and qualities to be evaluated in the competition, the phases through which the competition will pass, in writing and verbally, the number of planned positions for which the admission will take place, the general requirements in accordance with article 21 of law no. 152/2013, “*For the civil servant*”, amended, the general job description for which the competition will take place, the documents to be submitted and the manner of their submission, the deadline for submission determined on a correct calendar date, the result date for the candidate’s preliminary assessment phase, the candidate’s assessment method at the preliminary verification stage, as well as the candidate evaluation stage and the manner of announcing and communicating with the candidates.

- b) At the end of the preliminary verification phase, in all cases, the responsible unit has published in the “*vacancies*” section of its official portal the list of candidates meeting these criteria (*the list of winning candidates from the preliminary verification and the final list of qualified candidates after the complaint*), listing them in alphabetical order, in accordance with the specific legislation governing this aspect;
- c) At the end of the evaluation phase of the candidates from the respective committees, in all cases, the responsible unit has published in the “*vacancies*” section of its official portal the list of winning candidates (*the list of winning candidates at the end of the competition and the final list of winning candidates after the complaint*), listing them according to the points, in accordance with the specific legislation governing this aspect.

Thus, regarding the procedural aspect, it turns out that all legal requirements have been respected. The Commissioner has identified several problems related to the correct classification of the job positions category, in the sense of article 19, law no. 152/2013, “*On the civil servant*”, amended.

Concretely, it is about competitions with proclamation no. 1485 (*job position with the title “Regional Branch Titular”, as per proclamation*), 1505, 1519, and 1539 (*these three positions are named “Head of Sector”, as per proclamation*). These positions, based on the “*Head of Sector*” title, are considered as low-level managerial positions, while the unit responsible for meeting them has used the admission procedure in the executive category.

Based on article 19 of law no. 152/2013, “*On the civil servant*”, amended, these positions are categorized as low-level management positions, and consequently for their completion should be applied the procedure for filling vacancies in the lower and middle management category, provided for in article 26 of law no. 152/2013, “*On the civil servant*”, amended, and in Decision no. 242 of the Council of Ministers, dated 18.03.2015, “*On the filling of vacancies in the lower and middle management category*”.

Given the fact that from the monitoring results that no winners were announced in these competitions, the Commissioner recommends that before launching the competition procedures, the responsible unit should correctly categorize the job positions for which the competition will take place, within the meaning of article 19 of law no. 152/2013, “*On the civil servant*”, amended, and then apply the procedure for their completion based on the position category under the specific legislation governing these procedures.

B. Data administered during the monitoring of the preliminary verification process and the final list (following the complaint) of competitions for year 2017

Given the legal provisions and the specific rules set out in sub-legal acts, it results that the

preliminary verification phase of the competitors who applied for participation in the competition procedures to fill vacancies for 2017, was implemented according to the law of the Department of Public Administration.

The preliminary verification is a process that is finalized with the final list, which relates to a procedure for re-examining the files of applicants that are not qualified, in case of a complaint to the DPA, within 5 days from the proclamation in the portal of the qualified candidate list.

From the oversight it was ascertained that the Department of Public Administration has reviewed all complaints at this stage, and in all cases the candidates are included in the final list with the right to apply.

From the monitoring of the official website administered by the responsible unit (DPA), during the ongoing supervision in this regard, these data came out:

Table no.5 Data administered during the monitoring of the proclamation process of the qualified candidate list by prior and final verification (after the complaint)

Procedure:	Number of citizens who have applied	Number of winning candidates from preliminary verification	Number of winning candidates from final verification (after the complaint)
Acceptance in the executive category	3336	3258	3561
Filling the vacancies in the lower and middle management category	175	121	157
Total	3511	3379	3718

Note: The number of citizens in the column of winning candidates is higher than the number of citizens who have applied, because in some cases one applicant has applied and has been declared valid in more than one contest.

From the data presented above, the Commissioner estimates that the preliminary verification phase was carried out in accordance with the law by the responsible unit (DPA). This conclusion is based on the data monitoring published on the DPA official website, from which it turns out that the complaints are taken into account, which is reflected in the increase of competitor numbers of after this phase, at the admission at each level.

If we are to group the table data above, it turns out that out of **3379** qualified candidates at the preliminary verification stage, at the time of recruitment for executive level and promotion, there are **3718** candidates in the final list qualified to participate in the competition. Thus, the list was extended with **339** candidates, who had exercised their right to participate in the competition through the complaint.

C. Data administered during the monitoring of the preliminary and final list of winning candidates

Winning candidates who receive over 70% of the total marks at the end of the assessment, which includes the promotion and admission procedure in the executive category: a) CV assessment (*education type and level assessment, experience and training related to the field*), b) evaluation of the written test and c) evaluation of the structured oral interview, while regarding the parallel movement: a) CV assessment; and b) evaluation of the structured oral interview, which is ranked by the respective committee according to the scores received on the list of successful candidates (*following with the winners' list*).

On the other hand, candidates who have not been declared winners have the right to appeal to the Department of Public Administration, which within 5 days reviews the complaints and announces the final winners list.

From the oversight it was ascertained that the Department of Public Administration has reviewed the complaints at this stage, and in all cases the candidates are included in the final list with the right to apply.

By monitoring the official website of the responsible unit (*DPA*), during the ongoing supervision, these data came out:

Table no.6 Data administered during the monitoring of the process of announcing the winners' list and the final winners (after the complaint)

Procedure:	Number of citizens who have applied	Number of winning candidates from preliminary verification	Number of winning candidates from final verification (<i>after the complaint</i>)
Acceptance in the executive category	3336	255	264
Filling the vacancies in the lower and middle management category	175	65	65
Total	3511	320	329

From the data presented above, the Commissioner estimates that the screening phase of complaints has been carried out in accordance with the law by the responsible unit (*DPA*). This conclusion is based on the data monitoring published on the *DPA* official website, from which it turns out that complaints have been taken into account, which is reflected in the increase in the number of candidates after this phase.

If we are to group the table data shown above, it turns out that out of **320** candidates proclaimed as winners in the preliminary list, **329** candidates were proclaimed as winners in the final list. Thus, the list was extended with **9** candidates who had exercised their right for

complaint to re-evaluate the answers given in the written test or the oral interview.

4. **Nomination in the civil service**

The Commissioner considers that in this report should be given a special place also to the analysis of the manner of administration of the nomination process in the civil service.

Based on article 22/5 of law no. 152/2013 “*On the civil servant*”, amended, the winning candidates who receive over **70** percent of the total score at the end of the assessment, which includes a) CV assessment (*education type and assessment level, experience and training related to the field*), b) evaluation of the written test and c) evaluation of the structured oral interview, which is ranked by the respective committee according to the scores received on the list of successful candidates (*followed by the winners’ list*).

The list discussed above contains the names of the winning candidates, who are ranked starting with those who have received the most points (*they may also have received equal points*), and who have the right to choose to be nominated in any position in the group for which the contest has been developed for, and the responsible unit (*DPA*) has the obligation to nominate the candidate in the chosen position.

The law specifically resolves the case when the respective Commissions declare more winners in a competition than there are vacant positions. If confronted with this situation, the responsible unit (*DPA*), following regulation set out in point 3, article 23 of law no. 152/2013 “*For the civil servant*”, amended, lists winning candidates who have not been nominated due to shortage of vacancies or because of a refusal, on a list of two-year terms. If during this deadline a competition procedure for the same group is held, the winning candidates, still un-nominated, are relocated to the winners’ list based on the final result.

Meanwhile, as we mentioned above, the competition procedures for **591** vacancies following the approved plan remained closed, while some of them were supplemented by other alternative procedures, such as: nominations from the list of winners from previous competitions, where it was not possible to nominate a winning candidate, nominations from permanent transfers at the end of the suspension, and nominations following court decisions.

In conclusion, after monitoring competitions and information administered by the Department of Public Administration, resulted that from **1072** vacancies planned for 2017, the responsible unit (*DPA*) was able to fill in **503** vacancies.

Based on the applied procedure, these positions are completed according to the table below:

Table no.7

Nominations for vacant positions following the applied procedure

Applied procedure			
Nominations from the winners' lists of current competitions	Nominations from the winners' lists of previous competitions	Nominations by court decisions	Nominations by permanent transfers at the end of the suspension period
351	82	46	24
Total: 503 filled positions			

Note: Out of 437 candidates who were declared as winners by the commission, 351 of them were appointed to civil service positions, with priority points, and 86 of them were added to the 2-year waiting list of successful candidates.

In this way, the obligation of the Department of Public Administration to fill in vacancies by issuing nomination acts for the winning candidates, is considered fulfilled.

The figure of **351** candidates who have been nominated from the winning list of contests held in 2017, taking into account the level of civil servants, according to article 19 of the law on the civil servant, is distributed in this way:

Table no.8 Categorization of candidates nominated under article 19

Number of civil servants nominated by civil service categories		
Nominated in the executive category	Nominated in the middle management category	Nominated in the low management category
250	19	82
Total: 351 filled positions		

In this respect, in order to fulfill its legal obligations for the administration of civil service, the Department of Public Administration should take care to manage the winning candidates which are not yet nominated, based on definitions of point 3, article 23 of law no. 152/2013 “*On the civil servant*”, amended, listing again successful candidates on the winning list of the same group, for 2018 competitions.

The Commissioner ascertained these circumstances during the oversight process regarding the recruitment process in state administration institutions during 2017.

The Commissioner estimates that the recruitment process applied by the Department of Public Administration, was carried out according to legal requirements. Irregularities observed during monitoring recruitments during 2017 were formal and not of such nature as to affect the essence of the recruitment process. Anyhow, they should be taken into account by the responsible unit (DPA) in the future, in order not to be repeated in 2018 competitions.

The same trend is followed by the complaints received by the Commissioner’s Office, with the object of recruitment in the state administration. For year 2017, a total of **8 cases** dealing with disputes has been found during competition procedures. After their review, **1**

case ended with a decision to terminate the investigation, as no irregularities were found, while in 7 cases, after the preliminary verification, it was found that the complainants did not know the procedures performed during the competition, and therefore addressed the Commissioner by claiming irregularities. In these cases, in order to guide the complainant, in the response the specific procedure was clarified, according to the legal institute related to the object of complaint.

Thus, in the implementation of this difficult and complex process, the Department of Public Administration should be oriented towards enhancing the quality of the recruited civil servants through interaction with citizens in order to increase the number of competitors. This should be reached by publishing on the web application portal information, serving to understand recruitment procedures and to raise awareness of the importance of increasing participation level in these procedures, as well as examples of good practices in this regard.

Likewise, in the work of the Department of Public Administration, a real challenge is to ensure the confidence of citizens interested in participating in these procedures in merit-based employment, which is achieved through a transparent and fair competition process, as well as through the creation of mechanisms that realize this process (*recruitment commissions*) with participants of high professional skills, who are impartial and have integrity.

2/5. Monitoring the conduct of civil servants during the political elections for the Assembly of the Republic of Albania

Monitoring the conduct of civil servants during the electoral process was one of the most important activities of the Commissioner during this year, which included almost all subjects in which the law on the civil servant (285 institutions) operates for a period longer than 2 months.

The progress of the process and the established situation regarding the supervision of civil service administration and monitoring of civil servant conduct in terms of the political elections for the Assembly of Albania for the period 5 May - 30 June 2017 was forwarded to the Parliament of Albania, shortly after the end of the election, through a report sent by letter no. 1348, dated 30.06.2017, by the Commissioner.

It is worth noting that this practice was executed for the first time in the field of public administration as a whole and of the civil service in particular, and therefore being a new experience, there is always room for analysis, completion and improvement. But, on the other hand, the Commissioner evaluates this case as a good practice bringing considerable positive results, while in these elections the conduct of civil servants within the official working hours and beyond was balanced, oriented toward the completion of functional duties, and apart from electoral campaign developments, while respecting the principle of

political impartiality, as an essential requirement of the law on the civil servant.

For this reason, this experience will continue in the future for similar situations, since it is the only institution that can monitor civil service in institutions with different typologies, independent institutions, units of local self-government and those of state administration, and coordinate their activity in various aspects of civil service administration.

The Commissioner was involved in this process, praising the fact that various law institutes for civil servants would become effective during the election campaign, such as civil service suspension, disciplinary measures, and the execution of external civil servants' activities, (*in the context of their participation in the electoral administration*), in order to:

- ✓ correctly direct the responsible units charged with human resource management in managing the situation created due to the specific circumstances dictated by an election experience assessed by the Commissioner with a high level of risk, which could result in lower efficiency, or the involvement of civil servants in the electoral campaign on account of various political forces, which is contrary to the principle of political impartiality on which civil service administration is based (*article 5, chapter II of the law in question*);
- ✓ ensure law implementation towards the respect of the political rights of the civil servant, and at the same time of the limitations set forth in the provision represented by article 37 of the law in question, which *inter alia*, forbids his participation in political activities during official working hours, as well as public expression of political beliefs or preferences;
- ✓ ensure normal continuity and without influence from the election campaign, for the civil servants' activity in serving the state and the citizens.

In these circumstances, the Commissioner requested from all institutions to employ civil servants to take immediate measures to establish control over the activity and conduct of civil servants, in accordance with the law for this specific situation.

In support of the monitoring process, through internal order *no. 44, dated 05.05.2017*, "*On the establishment of an ad-hoc group, with object of its activity to monitor the conduct of civil servants during the election campaign*", the structure of the *ad-hoc* group was established, comprising all members of the Commissioner's Secretariat.

The cooperation with entities has initially been started with a Guide, through which the Commissioner has addressed a certain type of institutions employing civil servants, by selecting them based on the level of risk to create problems in the activity of the administration as a whole and of the civil service in particular, in this specific situation, mainly using as indicators for their inclusion the number of employees (*institutions with a*

relatively high number of employees), their wide territorial scope, and their level of influence in public administration.

This category includes the Prime Minister's Office, the line Ministries, the subordinate institutions (*state administration*), and the local government units (*Municipalities and District Councils*), which were acquainted with the content of this guide and were oriented towards the procedure to be followed for ensuring the progress and efficiency of the monitoring process.

The Monitoring Groups set up in each institution, were oriented starting with their internal regulation to define the scope of activity as the detailed rules to be followed by civil servants during the electoral campaign period, which were after that the control object of the *ad-hoc* group, created in this case.

The work for the successful realization of the objective of these mechanisms was directed by the Commissioner in several respects, which were defined as mandatory for implementation by all civil servants of the institution:

- ✓ in a special register for entrances and exits in the institution, destination, and the supervisor who has approved the permit to leave the work place, starting from hh 08.00 to 16.00, or in accordance with the official working schedule of the institution.
- ✓ Identifying from the start the official working hours of employees working outside the institution, the working destination as well as the administrative act through which the leave is authorized.
- ✓ the daily attendance list of civil servants would be signed by the Monitoring Group and will be part of the documentation that would materialize its activity.
- ✓ employees' willingness to report their location during surveys conducted by the Monitoring Group.
- ✓ direct supervisors should have information about their subordinate staff, otherwise, lack of knowledge of staff absences will be considered as non-fulfillment of their functional duties.
- ✓ during official working hours from 8 am to 4 pm (*or official working schedules set by some institutions due to their specifics, other than the classical schedule.*), civil servants should not participate in any political activity or organization, such as rallies or any similar activities, on behalf of various political forces participating in the elections.

Moreover, the Monitoring Groups were guided to monitor the situation in real time, reporting daily to the contact person, part of the *ad-hoc* group set up by the Commissioner, and to immediately refer this institution's guidance, in order to monitor the situation as objectively as possible and solve problems arising during the monitoring process. Likewise,

the Monitoring Team was tasked to attentively follow media broadcasting to identify any case of illegal conduct of civil servants.

Following this intervention by the Commissioner, an immediate response of the institutions resulted in the establishment of **166** Monitoring Groups, who have been correctly communicating with the Commissioner throughout the election period through the coordinator appointed by the head of the institution. These groups were composed of 584 civil servants (265 from the local government units and 319 from the state administration).

Given the need that emerged during the electoral process to clarify the situation of civil servants in relation to their participation in electoral activities of electoral subjects and the legitimacy of their participation in the electoral administration, the Commissioner has clarified certain aspects, among which:

- a. clarification and interpretation of the content of article 37, entitled “*Political rights*”, of law no. 152/2013, “*On the civil servant*”, informing him of the position held in this case through an official letter sent to all institutions, in order to unify the practice in resolving similar cases that could be presented to any institution during this specific period.

In interpreting this legal provision, which regulates the political rights of civil servants, the Commissioner concluded that civil servants have no legal impediment to participate in electoral organizations of different electoral subjects, but always outside the official working schedule and taking care to exercise self-control concerning public manifestation of political views and loyalty to a political force in private life.

The position of the Commissioner in this case was notified to all the institutions involved in the process, through letter no. 805 prot, dated 26.05.2017, “*With respect to clarifying the content of article 37 of law no. 152/2013, “On the civil servant”, amended*”.

- b. the unification of the position regarding the legitimacy of the participation of civil servants in the electoral administration institutions (*such as the Electoral Administration Area Commission (EAAC), the Voting Centre Commission (VCC), and the Vote Counting Group (VCG)*) to solve this problem raised for interpretation by a considerable number of institutions.

In this case, evaluating the fact that the establishment of the electoral administration is a process set out in the Electoral Code with the mission to prepare and administer elections, and by analyzing the concrete tasks that the employees carry out during their activity in these mechanisms, as well as the procedures applied during the electoral process, the Commissioner assessed that the electoral institutions have features of public administration institutions, regulated by a special law, which have nothing to do with the politicized aspect of the election campaign development by the electoral subjects, although due to the nature

of the process, proposals for their members come from political subjects. For this reason, civil servants have no legal impediment to participate in the electoral administration.

The position of the Commissioner in this case was notified to all the institutions involved in the process, through letter no. 716 Prot, dated 26.05.2017, “*Concerning the participation of civil servants in the institutions tasked with the election process administration*”.

As it appears from the abovementioned documents, the Commissioner has taken care to respond immediately with the resolution of problems that have arisen during the process (26.05.2017), in order to ensure the implementation of the law and not to allow its erroneous interpretations, which would bring negative consequences during the electoral process.

Moreover, all Commissioner’s attitudes related to the administration of civil service during the election campaign have been notified to the institutions in real time, even through publication on the official web site, as well as through direct communication of the inspector in charge of oversight of the institution with the subject coordinator.

- *Supporting the activity of Monitoring Teams during the electoral process, the situation ascertained through their reporting to the Commissioner, as well as inspections of the subject*

Following the process started on 05.05.2017, immediately after being given legal force to the Monitoring Groups through their establishment by order of the head of the institution and beyond, after having adopted their internal rules of operation, these groups started activities on 25.05.2017, with the official start of the election campaign.

On the Commissioner’s side, it was requested that the Monitoring Groups report daily data, electronically or via official mail, to the staff in charge of following the progress of the process, through an observation act where the situation of employees’ presence in the workplace would be presented.

In order to unify the reporting and to easily generalize the issues, a document (observation act) was drafted by the Commissioner, informing all the institutions involved in the process and setting out the indicators and the special sections to be completed, resulting in correct responses from the subjects.

As noted above, and after the completion of the legal and procedural framework of the process of setting up monitoring groups and drafting internal regulations of their activity, the Commissioner moved to the next phase of the monitoring process, communicating periodically with the monitoring groups and supervising the institutions on daily basis through the group’s inspectors.

It turned out that the monitoring groups acted by administering the special employee attendance register, according to the model sent by the Commissioner, with **4** polls per day for employee attendance, two of which reflected the start and end of the official working time, and two others were carried out at different times, during the official working time.

At the end of the electoral process, the Commissioner reports that **285** institutions were involved in the oversight process, according to this type:

- **212 Public administration institutions:**
 - a. Prime Ministry
 - b. **16** Ministries
 - c. **183** Subordinate institutions
 - d. **12** Prefectures

- **73 Local Government Units (LGU):**
 - a. **61** Municipalities
 - b. **12** County Councils

According to statistics compiled by the Commissioner’s Secretariat, it results that the oversight included **12.302** civil servants (*out of about 16,000 that is the total number of civil servants in the entire civil service system*), divided according to the type of institutions, according to the table below:

Table no.9 Number of employees in monitored institutions

(1) State Administration <i>(Prime Ministry +Ministries + County Prefect + Subordinate institutions)</i>	(2) Local Government Units <i>(61 Local municipalities + 12 County Councils)</i>	(3) Total <i>(Supervised civil servants) Sum 1+2</i>
7769	4536	12302

The specific process of monitoring civil service administration, and specifically the conduct and activities of civil servants during the election campaign, was started by the Commissioner on 05.05.2017. At the end of the electoral process, the Commissioner’s Secretariat has elaborated voluminous information about various aspects of this process, such as presence at work during the official working time, the participation of civil servants in the election administration, or their registration as candidates for deputies. The information has been coming from institutions on a daily basis, starting from date

29.05.2017, which coincides with the start of the election campaign, and ending on 23.06.2017. This period consists of 26 calendar days, or 20 working days.

We are analyzing below the aspects in which the work of the Commissioner has focused on during this process to reach a clear conclusion regarding the conduct and activity of the civil servant during this election campaign, as well as the respect of their political rights.

1. Presence at work:

As analyzed above, monitoring groups reported daily to the Commissioner’s Secretariat, concluding that in this process **12302** civil servants were involved, who carry out their functions in **285** institutions.

We must first explain that the presented statistics will be reported for each working day, (*20 working days*), which means that the percentage of absences will be found in relation to the number of working days for all civil servants, for the whole period the process covers.

Concretely, for **12302** civil servants during 20 working days, **246,040** working days per employee were monitored.

Below we are presenting results that have emerged from data processing, specifying in the table the number of monitored civil servants, divided by the type of the institutions, justified absences and their justification, as well as unjustified absences.

Table no.10 The situation of work presence for the period 29.05.2017 to 23.06.2017

Monitoring institutions	Unjustified absences	Justified absences		Total civil servants
		Absence	Justification	
Local Government Units <i>(61 Local municipalities + 12 Country Councils)</i> 73	87	6336	362 – annual leaves 306 – medical reports 195 – maternity leaves 1475 – cases conditioned by the nature of work, justified by the authorization for services inside and outside the country 526 – professional trainings 3472 – movements during the day for work reasons outside the institution, justified by the supervisor according to the nature of the work	4536

State Administration				
(Prime Ministry + Ministries + County Prefect + Subordinate institutions)	183	9531	456 – annual leaves	
			1148 – medical reports	
			412 – maternity leaves	7769
(1+16+183+12)			4029 – cases conditioned by the nature of work, justified by the authorization for services inside and outside the country	
212			656 - trainings	
			2830 - movements during the day for work reasons outside the institution, justified by the supervisor according to the nature of the work	
			818 - annual leaves	
			1454 - medical reports	
			607 - maternity leaves	12302
TOTAL	270	15867	5504-cases conditioned by the nature of work, justified by the authorization for services inside and outside the country	
285			1182 – professional trainings	
			6302- movements during the day for work reasons outside the institution, justified by the supervisor according to the nature of the work	

From the above, it turns out that during the monitoring period there were:

- a- **15,867** or **0,07%** *justified absences*, of which: **9,565** absences throughout the day, corresponding to **0.04%** of total working days, and the remaining **6,302** absences throughout the day (partial) corresponding to **0.03%** of total working days;
- b- **270** *unjustified absences*, or **0.001%** of total working days.

1/a. Cases of justified absence at work

From the analysis of the data reflected above, it results that it was reported a total of **15,867** justified absences for **20** working days for **12,302** civil servants, of which:

- ✓ **9565** absences noticed throughout the day;
- ✓ **6302** absences noticed throughout the day, with employees present in the institution at the beginning and at the end of the official working time.

According to the type of justification presented by the subjects in this case, it turns out that:

- in **818** cases, the absences are due to annual leave;
- in **1454** cases, the absences are justified by a medical report;
- in **607** cases, absences are justified because of maternity leave;
- in **5504** cases, the absences are conditioned by the nature of the work, justified with an authorization for services at home and abroad;
- in **1182** cases, absences are due to the involvement of employees in vocational training;
- in **6302** cases, the absences were found to be partial throughout the day, for work reasons outside the institution, justified by the supervisor according to the nature of the work.

From what we analyzed above, the Commissioner considers that this is a normal figure, justified with the distribution of annual leaves, training processes or the way of functioning of institutions related to audit and oversight. In this case, the Commissioner was informed about the monitoring gaps for the reasons for the absences, by sending the acts of justification for the reported deficiencies.

1/b. Cases of unjustified absences at work

On the other hand, regarding unjustified absences, it results that monitoring groups have reported **270** such cases, or **0.001%** of total working days.

As it appears from the data, this figure appears insignificant in the normality of the daily administration work, and in some cases, it was later reported that the absence was justified, but for various reasons was not properly reflected in the observation act.

There is a similar situation when monitoring institutions by the Commissioner's inspection teams. This conclusion is based on the data administered during the surveys conducted for **77** subjects, with a total of **4217** civil servants, where apart from the monitoring team inspectors of the Commissioner were also present. In the conclusion was ascertained the situation presented in the tabular form below:

Table no.11 Situation of work presence during the Commissioner's monitoring on the subject

Monitored institutions	Unjustified absences	Justified absences		Total civil servants
		Absences	Justification	
Local Government Units <i>(24 Local municipalities)</i>	0	244	22 – annual leaves 15 – medical reports 13 – maternity leaves 109 - cases conditioned by the nature of work, justified by the	1823

+ 8 County Councils)			authorization for services inside and outside the country	
32			25 - professional trainings	
State Administration			60 - movements during the day for work reasons outside the institution, justified by the supervisor according to the nature of the work	
(Prime Ministry + Ministries + County Prefect + Subordinate institutions)	6	484	33 - annual leaves	
(12 Ministries +28 subordinate institutions +5 County Prefects)			55 – medical reports	
45			21 - maternity leaves	2394
TOTAL	6	728	303 - cases conditioned by the nature of work, justified by the authorization for services inside and outside the country	
77			24 - trainings	
			48 - movements during the day for work reasons outside the institution, justified by the supervisor according to the nature of the work	
			55 - annual leaves	
			70 – medical reports	
			34 - maternity leaves	4217
			412 - cases conditioned by the nature of work, justified by the authorization for services inside and outside the country	
			49 – professional trainings	
			108 - movements during the day for work reasons outside the institution, justified by the supervisor according to the nature of the work	

As is apparent from this overview, only **6** cases of unjustified absences and **728** cases of justified absences have been ascertained in 1 working day for **4217** civil servants.

The Commissioner has been particularly careful in collecting detailed information related to this monitoring process, which he also summarized in this report, in order to discuss about the civil servants’ conduct during the electoral campaign based on concrete facts and not on perceptions or assumptions.

In these circumstances, according to the data reported above and based on the whole process of monitoring this aspect, the Commissioner estimates that the civil servants body, unlike any other electoral campaign previously carried out, was on duty during official working hours, exercising its legal functions and manifesting maturity and accountability, which is reflected in the respect of the obligations set forth in the law on the civil servant, during all stages of electoral process implementation.

Regarding assessed aspects of disciplinary violations in terms of disrespecting work discipline, unjustified absences were investigated case by case. After that, disciplinary

action was developed through disciplinary bodies, according to the importance of the violation and to references of the law, which consider the absence of up to 3 working days as a slight offense and that of more than 3 days as serious and very serious disciplinary offense, to be further assessed by the Disciplinary Commission.

In other cases where the issues were not of the nature of disciplinary violations, such as when the signature was “omitted”, or when the justification was not signed in the relevant register while the employee was on leave or on duty outside the institution, they are solved by counseling of the responsible person from the Commissioner’s Secretariat.

- *Respect for the right to take part in elections with the status of candidate for deputy and to participate in the electoral administration*

In this regard, on 06.06.2017, through a letter sent to all the monitored institutions, the Commissioner has requested and further administrated from them data which reflect cases when civil servants have requested to be part of the electoral administration, including Electoral Administration Area Commissions (EAAC), Voting Centre Commissions (VCC), and Vote Counting Groups (VCG). This participation is assessed as a civil servants external activity, as it is not included in his functional duties according to the job description. For this reason, in support of the law on the civil servant, which provides for the obligation to declare interests and property, it is required that this activity be authorized by a special act from the head of the institution, as foreseen by this legal provision.

On the other hand, the Commissioner, in order to support employees and to help the electoral activity of the Central Election Commission, has asked the institutions not to become an obstacle to issuing these permits. It turns out that in all cases of civil servants’ participation in these mechanisms, their requests have been approved and respective authorizations given.

It turns out that no complaints have been filed by civil servants and no other information has been sent to show that their right was denied in any case.

Similarly, the respect of the civil servant right to participate in elections as a candidate for deputy was monitored, as well as the institution’s obligation to ascertain the conditions for the civil servant’s suspension in this case.

This is due to the fact that, pursuant to article 54/1 / d of the law on the civil servant, this case is foreseen as one of the conditions when the human resources unit of the institution where the employee is appointed must notice the suspension and issue the relevant act which suspends the civil servant from his duty.

Specifically, from the data obtained from **122** institutions, there were **37** cases of civil

servants registered as deputy candidates and **515** cases of civil servants who participated in the electoral administration, of whom **133** cases of civil servant appointed members of the EAACs, **344** cases of civil servants appointed members of CEC, and **38** cases of civil servants appointed members of the VCGs, divided by the type of institutions in the table below:

Table no.12 Statistics on the participation of civil servants as deputy candidates and in the electoral administration

Nr.	Institutions sending the data		Deputy candidates	Participation in the electoral administration		
				CEC	VCC	VCG
1	Prime Ministry	1	0	0	2	1
2	Subordinate institutions	7	1	1	2	1
3	Ministries	12	4	7	10	2
4	Subordinate institutions	42	15	56	58	22
5	Municipalities	41	17	61	262	10
6	Prefectures	10	0	6	7	2
7	County Councils	9	0	2	3	0
Total		122	37	133	344	38

As it appears in this table, the civil servants body has made a significant contribution in the administration of the electoral process, increasing the technical level of the electoral administration, and consequently consolidating election standards towards the best in the European space.

The execution of the monitoring process of the conduct of civil servants during the election campaign, in addition to the aim of ensuring the political impartiality principle in the civil service, was also conceived by the Commissioner as a support of human resource management units to carry out their functional tasks deriving from the implementation of the law on the civil servant. These tasks often pose difficulties also because of the nature of their control, and consequently from the persistent resistance of employees of all levels to avoid clear rules of work discipline, as well as specific procedures requiring application of the above-mentioned law.

We assess that the process of monitoring civil servants' conduct has helped: a) towards strengthening the work discipline in the public administration; b) in the implementation of the principle of political impartiality in the civil service administration; as well as c) **in terms of strengthening the role of human resource management units in these institutions**, which so far have not been considered to have the importance of difficult functional tasks they have to fulfill under the law on the civil servant, since they are often charged with assignments to help the activity of other units in the institution structure.

The Commissioner reaches this conclusion based on the content of the observation acts, showing the discipline of the civil servant body, but also from communication with staff from personnel units who feel supported, evaluated and liberated to carry out their functional duties, both by their superiors and by the civil servants of the institution. They report high levels of work discipline respect, even outside electoral periods.

○ Confirming the information received from the media and citizen reports

The Commissioner has paid particular attention to confirming information regarding allegations of irregularities in the conduct of civil servants during the electoral process. Information sources were media, citizens and civil servants, each case taken into consideration by the Commissioner. We are analyzing these cases in detail below, presenting conclusions reached after their review.

✓ *Denouncing the Director of the Regional Taxation Administration, Kukës*

Through a letter sent on 05.06.2017 to the electronic postal address of the Commissioner for Civil Service Oversight, a citizen (*who has requested to remain anonymous*) has denounced the participation of the civil servant AH in political activities, thus violating the law. The denunciator accompanied this claim by several photographs where the denounced civil servant appeared in an electoral meeting organized by an electoral entity. Based on this information, by the act no. 943 prot., dated 06.06.2017, the Commissioner ordered the beginning of the verification of this case by sending the inspection group to the entity, the Regional Tax Administration of Kukës. From preliminary verification, it turned out that the concerned employee was appointed as “Director” of the Regional Tax Administration of Kukës, following competition procedures for job promotion, as set forth in law no. 152/2013 “On the civil servant”, amended. Following an in-depth investigation of the case, the Commissioner concluded that the officer in question had participated in political activities conducted by a political entity outside the official working hours, and during that activity had not expressed his political convictions at any time. This means that the employee acted in accordance with article 37/1 of the law on the civil servant, which identifies political rights and restrictions due to the civil servant status. In this case an administrative investigation was completed with the decision of the Commissioner, as there were no circumstances to prove the disciplinary violation by the concerned employee.

✓ *Denouncing in the media the case of participation of civil servants in a campaign in the Berat Municipality*

In this case, denunciation has been claimed for two civil servants in Berat Municipality participating in political activities during official working hours.

From the verification made to clarify circumstances of the case, it turned out that on one occasion the employee performed public functions in the position of “*administrator of the city administrative unit*”, which is a job position not included in the civil service, and for that reason his employment relationship is regulated by the Labor Code and not by the law on the civil servant.

Meanwhile, in the other case, the employee was declared as civil servant in the position of “*youth center management specialist*” in Berat Municipality. The investigation proved that this is not the case of unlawful actions, as the employee was registered in the list of deputy candidates for the Albanian Assembly in these elections, and therefore, by administrative act no. 481 dated 03.05.2017, she was suspended from civil service, according to the requirements of the law on the civil servant, until the announcement of the final result or termination of the mandate in case of election as a deputy of the Albanian Assembly.

○ *Cases of the application of the institution of suspension, disciplinary measures and the way procedures were applied during their application*

✓ *Suspension from civil service*

Following the process of overseeing the implementation of the law on the civil servant, with regard to procedural aspects during the application of the institution of civil service suspension, in cases of running civil servants, on lists of electoral subjects or in other cases provided for in the law, the Commissioner has found several cases when the suspension from the civil service for some employees was ordered by the head of the institution, with a clear overrun of legal powers. The cases will be analyzed by highlighting the problems identified in each of them.

The Commissioner has been aware of these illegal actions through information sent by civil servants who have been affected by this phenomenon (*as it has been frequently noted by some ministers and heads of institutions during this election period*), or during the monitoring process, for the following cases:

- Suspension from the civil service of the General Secretary of the Ministry of Justice, with order no. 3817, dated 08.06.2017, of the *Minister of Justice*, “*On the suspension from duty of the General Secretary of the Ministry of Justice and taking measures for the release of duty*”.
- Suspension from civil service of the Director of the Regional Education Administration of Vlora, with order no. 327 *of the Minister of Education and Sports*, dated 9.6.2017, “*On the suspension from duty of the Director of the Regional Education Administration of Vlora*”.

- Suspension from the Civil Service of the General Secretary at the Ministry of Education and Sports, with order no. 7 / extra of the Minister of Education and Sports, dated 13.06.2017, “*On the suspension from office of the General Secretariat the Ministry of Education and Sports*”.
- Suspension from the civil service of the General Director of Support Services at the Ministry of Education and Sports, with order no. 335 of the Minister of Education and Sports, dated 16.06.2017, “*On the suspension from the position of General Director of Support Services at the Ministry of Education and Sports*”.
- Suspension from civil service of the Director of Technology, Information and Communication Department at the Ministry of Education and Sports, with order no. 342 of the Minister of Education and Sports, dated 19.6.2017, “*On the suspension from duty of the Director of the Technology, Information and Communication Department at the Ministry of Education and Sports*”.
- Suspension from civil service of the Specialist of the Human Resources Sector at the General Prison Administration, with order no. 5515 of the General Director of Prisons, dated 20.06.2017.
- Suspension from the civil service of the Head of the Protocol-Archives Sector, at the General Prison Administration, by order no. 5507 of the General Director of Prisons, dated 20.06.2017.

The above employees (7 cases), who are ordered to be suspended from duty, belong to different civil service categories, among which:

- in 3 cases, the senior management level and members of the senior management body, SMLP, as they perform their functions in state administration institutions;
- 1 case from the middle management level;
- 1 case from the low management level;
- 2 cases from the executive level.

Under these circumstances, the administrative acts that have been issued for their suspension have been evaluated by the Commissioner as absolutely invalid acts, in violation of the law no. 152/2013 “*On the civil servant*”, amended, which in articles 53 to 56 requires that the observation of the suspension from the civil service be done by the human resources unit of the institution where the civil servant is appointed, or by DPA for members of the SMLP; an adjustment not taken into account by heads of these institutions. The suspension of civil servants part of the SMLP in the case we are analyzing, should be ascertained by the Department of Public Administration, while for other cases, the suspension should be ascertained by the human resources unit where the employee is

appointed.

The above-mentioned acts of suspension from civil service that have emerged from the heads of the respective institutions are absolutely invalid administrative acts according to article 108, subheading “*Absolutely invalid administrative act*” of the Administrative Procedures Code.

The Institution of the Minister as a political position cannot be involved in the civil service administration processes, as in the present case, except when the law on civil service includes it as its subject. Likewise, heads of subordinate institutions do not have this legal competence. Civil service administration is carried out through the responsible unit, which is the Department of Public Administration, through state administration institutions, or human resource departments in local government units and independent institutions.

This is the novelty brought by legal changes in the civil service administration field, which separated this aspect from the political influence, starting from the moment of appointment by the Department of Public Administration in the state administration, followed by the administration of various aspects of civil service, such as work assessment and career development carried out by special subjects within the civil service entrusted by this law, to the determination of the detailed procedures implemented by a commission appointed by the law for the suspension from civil service.

In this respect, ministers have the legal obligation to immediately ascertain these administrative acts as absolutely invalid, considering nil and with no legal effects all the other acts originating from them and their implementation, and allowing civil servants to carry out their functional duties, taking into account the provisions of articles 110 and 111 of the Administrative Procedures Code.

This also reflects the position of the Commissioner in the reasoning and the enactment of the decisions he has taken to regulate the ascertained illegitimacy. By decisions no. 129, dated 09.06.2017; no. 132, dated 13.06.2017; no. 134, dated 14.06.2017, no. 136, dated 22.06.2017 and no. 137, dated 22.06.2017, he has decided to require from the Minister of Justice and the Minister of Education and Sports the absolute invalidity of the administrative acts having suspended from duty the employees mentioned above, annulling any other issued act originating from them and their implementation.

Meanwhile, we have to point out that after communicating with the coordinator of the monitoring team established at the institution of the General Prison Administration, who was advised that the legal action of the suspension had produced absolutely invalid acts, since it came out with flagrant objection to the procedure and overcame competencies, the institution responded positively and re-hired the two suspended employees.

✓ *Disciplinary measures*

a. *The case of the General Secretary of the Ministry of Education and Sports*

Following the measure of suspension from duty of the General Secretary of the Ministry of Education and Sports received by the minister through information sent by the Department of Public Administration, with letter no. 3976/1, dated 14.06.2017, “*Response*”, the Commissioner has become aware of the fact that the General Secretary of this ministry has referred to the National Election Commission for the High Level Steering Committee, which also carries out the function of the Disciplinary Commission for SMLP, for initiating disciplinary action against it.

It turns out that after reviewing this case by the KKP, through the administrative act no. 35, dated 14.06.2017, it was concluded that the Minister’s request was not presented in the form required by the law and was ungrounded in law and evidence, and therefore not taken into consideration. From the content of this act, it turns out that no evidence was presented by the minister to support the request for disciplinary proceeding in this case, which, being fully assessed by the absolutely invalid act of suspension issued by the Minister for this employee, gives the impression of a hasty action, unsupported on facts and evidence.

This case has also been verified by the Commissioner, based on the claims of the Minister of Education and Sports for irregularities of conduct and activity of the General Secretary of the institution, raised during the development of the Task Force meeting (*which the Commissioner has regularly attended as a guest*) as a body designed to monitor the electoral process. The process has started with the act no. 1120/28 prot., dated 19.06.2017 “*Verification initiation notice*” to the Minister of Education and Sports, and after analyzing the administered documentation, it resulted that the allegations of disciplinary violations attributed by the Minister to the General Secretary of the institution, were not based on evidence and on the law. For this reason, the verification was concluded with the argument that no elements of the disciplinary offense attributed to the General Secretary were sufficient to refer the case to the National Selection Commission to initiate disciplinary proceedings.

b. *The case of the Director of the Forensic Medicine Institute*

Regarding the initiation of disciplinary proceedings against the Director of the Forensic Medicine Institute, the Commissioner has been informed through a note the employee has sent to the Commissioner, through letter no. 1327 prot., dated 27.6.2017, on the content of which were reported irregularities in respecting the procedure by the Disciplinary Commission of the Ministry of Justice, as a subordinate institution from the Forensic Medicine Institute (FMI).

In this case, considering the accompanying documentation of the notification, there were reasonable doubts about irregularities in respect of legal competencies and procedural nature, and therefore the Commissioner decided to initiate the verification and circumstances of the case.

From the administrative investigation, the Commissioner *first* noted: the fact that the Minister of Justice had exceeded his powers when delegating the functions of the General Secretary in office to the other two general directors of the institution.

This is due to the fact that in this case, the civil servant's transfer procedure to another position is a competency of the Department of Public Administration, as the General Director and the General Secretary are two employment positions included in the SMLP. Therefore, a specific procedure applies, other than that of lower level civil servants in the civil service hierarchy.

For this reason, the employee appointed as the head of the Disciplinary Commission, under the position of General Secretary, has acted in flagrant violation of the law, exceeding the competency prescribed by law for the functioning of the job position he was regularly appointed at the level of the General Director.

In this respect, all other legal actions that have been carried out by the Disciplinary Commission are found to be absolutely invalid, as consequently the administrative act that has decided to dismiss him from duty.

Under these conditions, the Commissioner requested the Minister of Justice to immediately ascertain as absolutely invalid the order to delegate the powers of the General Secretary in office to other employees of the institution, as well as the order for the establishment of the Disciplinary Commission. Likewise, the Commissioner has requested the Disciplinary Commission to ascertain as absolutely invalid all legal action materialized with the act of dismissal from civil service of the Forensic Medicine Institute (FMI) director and repeating the whole process by properly respecting all legal procedures established in this case for taking a disciplinary measure, as well as the civil servant's rights to become aware of the alleged violation, to be heard and to defend himself / herself or with a lawyer.

- ✓ *The evaluation of the level of cooperation with the institutions at home and abroad during the process of monitoring the electoral situation regarding the civil service*

In this regard, the Commissioner appreciates a high level of cooperation and understanding with all civil service institutions involved in this monitoring process as well as all the mechanisms that were created in this case with the participation of civil servants.

In order to coordinate the work among the institutions that acted in different aspects of the

electoral process, the Commissioner has continuously informed the Albanian Parliament, as well as the General Secretary of the Prime Minister and the Task Force, as a mechanism established through decision no. 473 of the Council of Ministers, dated 1.06.2017, “*On taking measures and monitoring the activity, conduct or use of human, financial and logistical resources of the state administration during the electoral process of the Albanian Assembly for year 2017*”, under the guidance of the Deputy Prime Minister.

Pursuant to point 23 of this sub-legal act, the Commissioner has participated as a guest in Task Force meetings, helping to unify the practice in cases of application of the law on the civil servant.

The Commissioner also appreciates the cooperation with international institutions operating in our country to assist the monitoring process of conduct of civil servants during the electoral process, among which the Ambassador of the United States of America, the Ambassador of the Federal Republic of Germany, the Ambassador of the Delegation of the European Union to Albania, the Head of the Office of the Council of Europe, the Advisor for Policy Development and Coordination at SIGMA, the Head of the OSCE Presence in Albania, and the Head of the OSCE-ODIHR Mission in Albania, to seek their support during this process.

For their part, they have appreciated and supported the Commissioner’s initiative to contribute to changing conduct in the public administration during the electoral process towards European standards, in accordance with the principles of civil service administration, helping the administration to be guided towards the implementation of functional tasks in the service of the state and the public, and not in the assistance of electoral subjects.

The Commissioner for Civil Service Oversight hosted in a meeting Ambassador Peter Taylor, Chief of Mission of the OSCE-ODIHR observers, along with other representatives of this mission.

At this meeting, the Commissioner informed Ambassador Taylor about the action plan on monitoring the conduct of civil servants during the election campaign.

For his part, the Chief of Mission of the OSCE-ODIHR observers, Mr. Peter Taylor, presented working objectives, the observers’ role in the monitoring and reporting process, as well as exchanged thoughts and opinions on the public administration involvement in the electoral process.

During this meeting there were also discussions about special provisions of the Electoral Code, where there was lack of clear definition of the categories of administration officials who should submit their resignation before they run for elections. The Commissioner

considers that this Electoral Code provision should be revised based on the law on the civil servant, which has already recognized the right of suspension from the civil service in case the civil servant of each category decides to participate as a candidate in political or local elections.

Likewise, the Ambassador of the Delegation of the European Union to Albania, Ms. Romana Vlahutin, in response to the received information praised the Commissioner's commitment in this particularly important period and thanked the Commissioner for trying to share the information with the European Union representation in our country.

In the letter sent to the Commissioner, Ms. Vlahutin states:

“Your inspection work and your guidance to the authorities regarding legal interpretation and structure establishment are very important. It is critical that during elections the public administration maintains the highest legal and ethical standards of conduct, ensuring that electoral preparations continue smoothly and all citizens enjoy their political rights freely.

For the European Union, public administration is one of the key areas of reform in Albania and is thus considered a key priority in the enlargement process. As part of our substantial support for the Albanian Public Administration Reform, we will continue to support and monitor your institution's efforts.”

Moreover, the Commissioner hosted in a working meeting the Head of the Council of Europe Office in our country, Mr. Claus Neukirch, who praised the Commissioner's efforts regarding this concrete initiative and stressed the need for close cooperation in the future.

These appraisals encourage the Commissioner in his efforts and motivate him to undertake important actions, despite the difficulties encountered, to implement important principles of civil service administration such as equal opportunities, non-discrimination, merit, transparency, professionalism and political impartiality, as well as to guarantee the sustainability of civil servants and the continuity of the civil service.

Finally, the monitoring process was concluded with some conclusions and recommendations that will be taken into account by both institutions and bodies involved and by the Commissioner in the course of similar processes in the future towards better organization, to ensure the increase of quality level and their positive impact, in terms of discipline and democratization of the public administration activity.

Below we are highlighting the conclusions and recommendations:

- Based on the analysis of daily data sent to the Monitoring Groups from the institutions employing civil servants, further elaborated by the Secretariat of the Commissioner

and taking into account the situation observed during the monitoring of the civil servants' activity and conduct during this electoral campaign for political elections in our country, the Commissioner generally assesses a correct conduct of civil servants, having respected the principles, requirements and procedures required by the law on the civil servant.

- Human resources units for the first time faced a difficult organizational and functional challenge, but managed to cope successfully. These structures emerged stronger after the execution of this process and for this reason, work should continue to ensure correct discipline even in the situation after the elections.
- Given the analysis of the provisions regulating electoral subjects in the Electoral Code, which mainly relate to the definition of high functions in the administration, the Commissioner considers that they should be revised and aligned in accordance with the law on the civil servant, which recognizes the civil servant running for office, regardless of his level in the civil service hierarchy, the right of suspension from the civil service and does not force him to resign.
- In the case of application of the institution of suspension due to participation as a candidate for deputy in these political elections, we evaluate that the human resources unit of the institution where the civil servant is appointed has respected the legal requirement for the suspension of the civil servant status due to participation as a candidate in these elections.
- In the case of external activities of the civil servants, the Commissioner has determined that following the request of the civil servant, the head of the institution has applied legal requirements to allow activities such as the participation in the electoral administration of EAACs, VCCs and VCGs, through respective authorization.
- The Commissioner estimates that the Monitoring Groups have correctly conducted the verification of reported cases and have further continued the legal procedure for prosecuting cases when disciplinary violations were found.
- In the case of verifications carried out by the Commissioner after denunciations received by the media or sent by citizens, no legal violations were found by the reported subject (*civil servant*). Political activities have been conducted after official hours or during free days, and employees have not committed actions violating legal restrictions to be protagonists or express personal political beliefs.
- The Commissioner has not received any notification regarding the use of institutional means or human resources during the election campaign, and has not ascertained such a fact during the continuous monitoring of the campaign.

- Assessing the progress of the monitoring process and the impact it has on the administration's discipline, the Commissioner considers that this process should continue in cases of future electoral processes.
- Human resource management units should continue communicating with the Commissioner after this successful cooperation experience to increase the level of law enforcement for civil servants in all of its aspects.
- Human resource management units should continue to monitor compliance with formal working discipline, as this will increase efficiency and effectiveness at work.
- Support of human resource units from the heads of institutions, with both staffing and assessing their role in the civil service administration.
- The Commissioner assesses that by supporting an electoral process in accordance with the law, has helped to ensure a better electoral process in our country, towards highest standards of the European Space.
- In conclusion, the Commissioner appreciates that the institutions responded promptly to meet the requirements of the monitoring process, thus helping raise the civil service to a higher level, towards highest European standards.
- Civil servants, conscious of the important task they have in the state pyramid, should be the forerunners of radical reformation of the administration mentality in our country toward work mentality, political impartiality and meritocracy.
- The Commissioner gives highest praises to civil servants who, in this election process, prepared for the challenges faced by the country's EU integration, have radically changed their conduct in the area of law enforcement and their role in the development of the country.
- Civil servants understood the monitoring process, not making any resistance and respecting some new rules regarding work discipline.
- The Commissioner praises the role of civil servants in the electoral administration, who guided the election process towards new standards of order and professionalism.
- The Commissioner appreciates the assistance provided during this important as well as delicate process, and is specifically thankful to international institutions, among which the Ambassador of the United States of America, the Ambassador of the Federal Republic of Germany, the Ambassador of the Delegation of the European Union to

Albania, the Head of the Council of Europe Office, the Policy Development and Coordination Advisor at SIGMA, the Head of the OSCE Presence in Albania, and the OSCE-ODIHR Head of Mission in Albania, also seeking their support in the future for facing the challenges of the public administration reform.

CHAPTER II

INFORMATION MANAGEMENT AND ADDRESSING PROBLEMS REPORTED THROUGH COMPLAINTS

1. Analysis of information/appeals coming from different sources and the way they have been handled

The Commissioner continued to analyze regularly all information received during 2017, paying particular attention to the preliminary verification of each case.

Complaints considered having indications for investigating the case more closely, are recorded as inspection processes, further carrying out all procedural actions for their final resolution, with a concrete warning decision.

In some cases, complaints have served as indicators to initiate an oversight process since they have reported irregularity aspects in the activity of various subjects appointed by law to perform duties at its particular institutions, such as the Civil Aviation Authority and National Food Authority. These complaints have been merged with the oversight process and were resolved with the completion of this process, as shown in the concrete analysis following this section. This situation is presented in the table below:

Table no.13 Reasons for initiating the administrative investigation

Reasons for initiating the administrative investigation	Number of investigated cases
Initiated from information of law violation, sent to the Commissioner's address	89
Initiated primarily by the Commissioner	2
Total	91

- Regarding the progress of the inspection process, this situation is presented:

Table no.14 The progress of the inspection process started in 2017

The progress of the inspection process started in 2017	Number of inspections initiated ex officio	Number of inspections initiated by request	Total number of inspections
Number of inspections completed during 2017	2	83	85
Number of inspections in process (carried forward in 2018)	0	6	6
Total	2	89	91

During 2017, the total number of inspections was **91**, out of which the process was completed in **85** cases, and **6** cases were carried forward in 2018.

- Regarding the type of institutions which the information came for, the situation is presented below:

Table no.15 *Type of inspected institutions*

Type of inspected institutions		Number of inspections initiated ex officio	Number of inspections initiated by request	Total number of inspections
A.	Central Government Institutions Total	2	69	71
	Subordinate institutions	1	53	54
	Ministries	1	16	17
B.	Local Government Institutions Total	0	17	17
	County Councils	0	5	5
	Municipalities	0	12	12
C.	Independent institutions	0	3	3
	Total (A + B + C)	2	89	91

Following the data presented in the table above, it turns out that:

- **71** or **78%** of cases were found in the state administration (*including central administration and subordinate institutions*);
- **17** or **20%** of cases were found in the local administration;
- Only **3** or **2%** of cases were found in independent institutions.

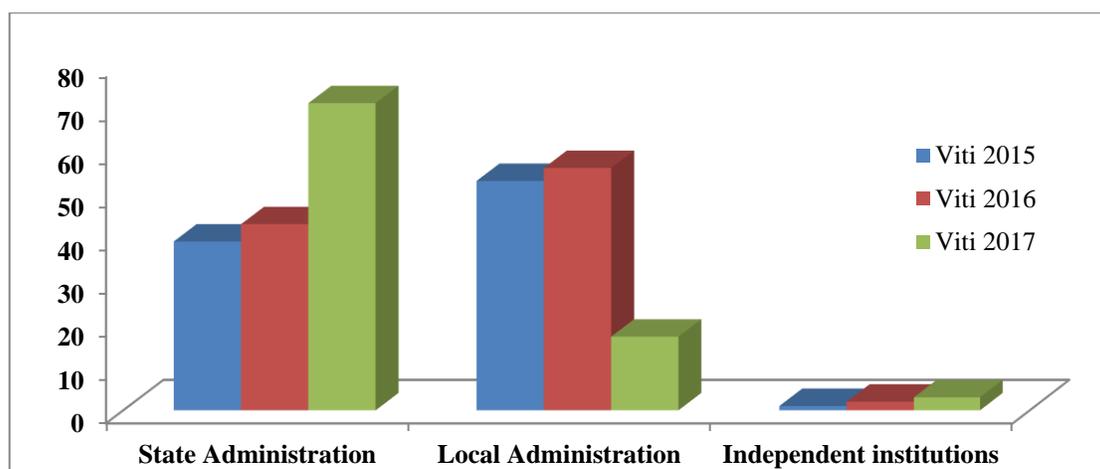
If we compare the current situation with that of two years ago, it is presented as follows:

Table no.16 *Information according to the administration level they originated from and a comparison with the situation of 2015 and 2016*

<i>Administration level</i>	<i>State administration</i>	<i>Local administration</i>	<i>Independent institutions</i>
<i>Total registered cases</i>			

<i>In 2017</i> 91 cases	71	17	3
<i>In 2016</i> 101 cases	43	56	2
<i>In 2015</i> 93 cases	39	53	1

Graph no.1 Dissemination of information by institution level 2015-2017



Given the values presented at the table, generally the flow of information continues to be at the same level, as the number of complaints appears almost constant over three years. On the other hand, in contrast to the previous year, the number of complaints received by the local administration has decreased, while the number of complaints from the state administration has increased. This is explained as the impact of specific circumstances such as the restructuring process of the state administration as well as due to some disciplinary measures taken during the electoral period, as we have analyzed in detail in this report, in the sections dealing with the restructuring of state administration institutions and monitoring the conduct of civil servants during the election campaign.

Meanwhile, complaints from independent institutions maintain the same trend and appear in relatively small numbers.

If we were to briefly summarize the way of managing the information received or collected by the Commissioner, the situation would appear as follows:

Table no.17 The way of managing information collected during 2017

The way of concluding the administrative procedure after the examination of the case	Number of cases initiated <i>ex</i>	Number of cases initiated by request	Number of cases total
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	<i>officio</i>		
Decision to improve the illegitimacy situation	0	17	17
Decision to close the procedure for lack of irregularities	2	3	5
Merged and handled with general oversight at the institution where the irregularity is claimed	0	14	14
Decision on the completion of the administrative process, after the case was appealed in court	0	3	3
Responding to the applicant through the administrative route	0	41	41
Suspended		5	5
Carried forward in 2018		6	6
Total	2	89	91

According to this table, the Commissioner has conducted preliminary investigations and in-depth administrative investigations, solving all complaints reaching his address, also when the investigation has been initiated *ex officio* (2 cases), resulting in special decisions in **85** cases, of which:

- ✓ irregularities were found in **17** cases, and the institution was notified to regulate legitimacy;
- ✓ there were reasonable suspicions of non-compliance with the law in **5** cases, but during the administrative investigation there were no actions in contradiction with the law, therefore the case was terminated, informing the parties in the process;
- ✓ **14** of the incoming notifications have been merged and handled by decision within the framework of the institution's oversight (*in those cases when the working teams were on the ground*);
- ✓ in **44** cases the process was completed by filing information, due to the conditions provided for in articles 66, 67, 68, "*Preliminary issues*" of law no. 44/2015, "*Administrative Procedures Code of the Republic of Albania*" and article 16 of the Commissioner's Regulation "*On the Supervision / Inspection Procedures*", or when no irregularities were found during the preliminary investigation. In this case, the complainant received a response through the administrative route, explaining in detail the handling of the case and the way in which the case should continue to be handled;
- ✓ **5** issues have been suspended for legal reasons.

It turns out that **6** cases were carried forward in 2018.

- Referring to the claim / complaint type, the situation is presented in these indicators:

Table no.18 The request / complaint / information type sent to the Commissioner

The request / complaint / information type sent to the Commissioner	Number of requests
Request / information for administrative disputes (personal)	75
Request / information for administrative disputes of third parties	4
Request / information on irregularities in the administration of any civil service procedure by a specific legal entity (<i>responsible for any procedure it needs to carry out as a requirement by the law</i>)	10
Total	89

Thus, the majority is made of individual complaints of civil servants, representing about **83%** of the registered complaints.

2. Classification of the verified information for 2017, according to their object

By classifying the types of administrative disputes handled *ex officio* case by case for 2017, the situation is presented in the table below:

Table no.19 *Administrative disputes, classified according to their object*

Institution where the irregularity according to the request / information is presumed	Number of cases
Disciplinary procedure	14
Procedure of dismissal from civil service	9
Transfer procedure (<i>temporary or permanent, for restructuring purposes</i>)	19
Confirmation procedure at the end of the probation period	5
Failure to comply with the DPA decision	3
Failure to comply with a final court decision (article 66/1)	2
Competition procedure	8
Dismissal procedure	7
Other	22
Total	89

Based on data presented in the table, the largest number of complaints filed in the Commissioner's Office belongs to the institution of release from civil service and provisional and permanent transfer, with **28** cases.

We estimate that this situation is due to the involvement of the state administration in the process of reorganization, which is accompanied by cases of transfer or release from civil service. This process is being pursued under a thematic inspection, as discussed above in this report, and will end with an assessment material on the circumstances and compliance with legal requirements during its development.

Likewise, the institute of civil service discipline presents large amounts of information. **14** cases have been found to object the disciplinary procedure against the civil servant. This

moment is also linked to the electoral process where some disciplinary measures were taken, which legitimacy was dealt with in this report, in the section of monitoring the conduct of civil servants during the electoral process.

From the administrative investigation conducted in these cases, there have been problems with the implementation of the legal procedure, since the acts have often surpassed legal competences of subjects that have released the measure.

Even for 2017, it is obvious that officials are addressing their problems to the Commissioner, regardless of the legal regulation that entitles them to court, regarding labor disputes or different elements of the relationship in the civil service, in cases where the employer is a public administration body, according to article 7, letter “ç” of the law no. 49/2012, “*On the organization and functioning of administrative courts and the adjudication of administrative disputes*”, thus encompassing these issues in judicial jurisdiction.

This information is of particular importance to the Commissioner who examines them in the light of his competencies, verifying the procedure followed by the actors and legal mechanisms assigned with implementing the law on the civil servant, among which the Commissions created during the recruitment process, the Permanent Disciplinary Commission or the direct supervisor, identifying in each case the support from law and evidence of various administrative actions or acts affecting in one way or another the relationship to the civil service or its elements.

The Commissioner’s intervention was effective in cases he handled, and in the closure of each case his decisions have been appreciated and generally voluntarily implemented by the institutions.

By addressing specific cases, the Commissioner has taken special care to unify law enforcement and at the same time to establish a good practice of resolved cases, which are published on the official website, so that the human resources administration unit of every institution that is part of the civil service is directly oriented in solving problems arising from the practical implementation of the law on the civil servant.

The pursuit of real-time developments in the civil service, addressing information timely and objectively, as well as deep administrative investigation, will continue to be prioritized by the Commissioner in order to prevent wrong implementation of the law, but also to increase the confidence of civil servants and the public in this important institution for the implementation oversight of the law on the civil servant.

CHAPTER III

PLANNED SUPERVISION, THEMATIC INSPECTIONS AND PROBLEMS ASCERTAINED IN RELATION TO LAW ENFORCEMENT

c. Summary of the process

During this year, the Commissioner continued to exercise oversight activities, according to the regulation “*On supervision / inspection procedures*”, approved by decision no. 17, dated 11.03.2015, by applying the methodology set out in the types of supervision provided for in the procedure rules.

In this process, quantitative and qualitative indicators have been developed, related to the level of implementation of legal procedures and the fulfillment of the criteria for being civil servants, among which the recruitment method and the appointment act, detailed data on the the testing and selection process, meeting job requirements, age, education, verification of legal status, medical report, and other aspects including acts administered in the personnel file.

During this year, 77 subjects from the civil service were involved in the oversight and inspection process, out of which 40 subjects from the local administration (39 municipalities and 220 administrative units as part of their structure, and 1 county council) and 37 subjects from the state administration, of which 12 central government units (11 line ministries and the Prime Ministry), and 25 subordinate institutions.

The oversight focus in these institutions was the implementation of the law on the civil servant in all its institutions for cases of general oversight developed in 37 institutions, oversight on employments against the law for civil service positions, involving 28 subjects, and the monitoring of the restructuring process involving 12 institutions.

The data administered during the oversight are based on detailed records included in the

oversight materials as annex reports and have been used to assess the situation, to determine issues and reach correct conclusions, in order to finalize the oversight process with an effective, concrete and easily enforceable act by the institution to which it is addressed.

Meanwhile, during 2017, one of the institutions involved in the thematic inspection was the Municipality of Tirana, where subject of oversight was a special aspect of the law considered of a specific importance, namely on the employment process in the civil service for the period between 2015-2017. This process, due to the voluminous documentation to be verified, has not been concluded by a warning decision within 2017, but is carried forward in 2018 and is currently in the final processing phase.

Below we present the progress of the Commissioner’s decision-making and ongoing processes.

Table no.20 General oversight and thematic inspections, reflected by the administration level

Nr.	Institution	Process completed with Commissioner’s decision		In process	
		General oversights	Thematic inspections	General oversights	Thematic inspections
1.	<i>State Administration</i>	10	15	0	12
2.	<i>Local Administration Units</i>	9	12	18	1
Total 77 processes (including 77 institutions and 220 administrative units)		19	27	18	13

1.a General oversight, carried out in local government units

This process was carried out in **27** municipalities of the country, according to the list presented in annex 1 of the report, including *Lezha Municipality*, *Kukës Municipality*, *Lushnja Municipality*, *Prrenjas Municipality*, *Saranda Municipality*, *Konispol Municipality*, *Pogradec Municipality*, *Cërrik Municipality*, etc., as well as the employment relationships of civil servants in **137** administrative units currently in their structure and previously organized as communes.

The oversight scope in this case was general and included all law institutes, among which the declaration of employment status, recruitment, transfer and restructuring, disciplinary performance, evaluation and job description, as well as personnel file and register. These aspects will be handled in detail in the following report with statistics on all institutes of the law, as well as in the “*Ongoing Oversight*” chapter, with an analysis of the Commissioner’s attitude towards violations identified in these subjects.

In this section we will present the problems identified in the local self-government units

regarding the administration of the civil service, which is actually presented in the same directions as institutions supervised the previous year:

- ✓ There are cases when employees do not meet education level criteria for being civil servants, and for whom there has not been a declaration of employment status according to article 67 of law no. 152/2013, “*On the civil servant*”, amended (*Lezha Municipality, Lushnja Municipality, Saranda Municipality, Librazhd Municipality, Kukës Municipality, etc.*).
 - In these cases, the responsible unit has been ordered to issue the act of rejection of civil servant status and to decide on the termination of the employment relationship for these employees, highlighting the fact that they do not meet educational level criteria to be civil servants according to requirements of law no. 152/2013, “*On the civil servant*”, amended.
 - Employment positions should be declared vacant, to be further filled in according to the law on the civil servant, according to the current structure and needs of the institution.
- ✓ The legal procedures governing the restructuring process have not been respected. We might mention, for example, the *Municipalities of Prrenjas, Librazhd, Lezha, Lushnje*, which in all cases of structural changes, did not carry out the restructuring procedures.
 - In these cases, the responsible unit has been ordered to guide the process for carrying out respective actions for the revocation of all the administrative acts related to the restructuring violating the law, and start the process from scratch, following this working order:
 - Establishment of the Restructuring Commission.
 - The Restructuring Commission shall submit to the responsible entity proposals for the release of civil servants whose position has been dismissed or reorganized.
 - Complete the process with the relevant decision of release from civil service or resettlement to same-category positions, according to law provisions.
 - Work descriptions should be drafted and completed for all positions that are part of the civil service as provided for by law, since employee resettlement cannot be applied without this requirement by the Resettlement Commission.
 - Respecting the rights of employees affected by restructuring, based on the law, such as the right to compensation based on seniority at work and the possibility to compete for parallel movement and promotion procedures within a 2-year period, as well as the possibility to be temporarily appointed by the responsible unit to job positions part of the civil service, with their consent.

- ✓ The unjustly-appointed job position is not considered as part of the civil service. We can mention examples such as *Prrenjas Municipality* with **15** cases, *Librazhd Municipality* with 20 cases, *Kuçovë Municipality* with 12 cases, etc.
 - In these circumstances, the responsible unit is ordered to regulate the situation by carrying out the verification process whether these employees meet the specific job requirements and declare their employment status.

- ✓ Appointments to civil service positions through temporary contracts, without previously conducting an external competition for the executive level or appointments without first carrying out parallel movement and promotion procedures. We can mention as an example *Kukës Municipality* with **102** identified cases of contracted appointments; *Lushnja Municipality* with **68** identified cases of contracted appointments; *Skrapar Municipality* with **47** cases of contract appointments; *Lezha Municipality* with **188** cases (*about 87% of the total number of civil servants*); *Divjaka Municipality* with **30** cases (*about 50% of positions in the civil service*); *Kuçova* and *Patos Municipality* with **20** cases per institution, etc.
 - Under these conditions, the responsible persons who are heads of institutions and who have committed administrative actions violating the law, have been asked to immediately ascertain the absolute invalidity of the appointment act and terminate the employment relationship for the employees appointed against law requirements. The responsible unit is guided to declare vacant the positions that will remain free and to fill them according to the law.

- ✓ Procedures have not been applied during a disciplinary course.
 - In these cases, the entity acting against legal procedures was required to ascertain the absolute invalidity of the disciplinary measure act, and the responsible unit to remove the act from the personnel file, while there were instructions given on procedures to be followed in this case.
 - To regulate legitimacy, institutions have been set up to establish a Disciplinary Commission, according the composition provided for by the law on the civil servant.

These problems persist especially in local administration subjects. In order to manage their legitimacy, the Commissioner, alongside the application of the legal measure that is the obligation of law enforcement through warning decisions, is also supporting with technical assistance in order to initially make subjects assigned with their implementation understand the procedures, for the establishment of the civil service administration in legal frameworks.

1.b General oversight programmed in the Regional Educational Departments and

Education Offices

During 2017, the Commissioner has conducted general oversight in **9** subordinate institutions of the Ministry of Education, Sports and Youth, including **9** Regional Education Departments and **17** Education Offices. In these institutions, the civil service administration was verified for **319** civil servants.

Irregularities were identified in these subjects of civil service administration, as will be further analyzed in this material, meaning that the Department of Public Administration should focus their attention on these institutions, also considering that their experience in the civil service administration has just started.

These subjects were included in the civil service scheme for the first time, according to the law no. 152/2013, "*On the civil servant*", amended. The inclusion of education departments in the "*List of state administration institutions*" is provided in Link no. 1, part of Decision no. 142, dated 12.03.2014, by the Council of Ministers, "*On the description and classification of positions in state administration and independent institutions*", amended.

The oversight scope in this case has been general and has included all institutes of the law on the civil servant, such as highlighting positions with civil service functions; declaration of employment status for every employee of the institution at the initiation of legal effects of law no. 152/2013, "*On the civil servant*", amended; respecting general requirements for admission in the civil service; drafting the job description form; approving the annual admission plan in the civil service; recruiting through parallel movement and promotion procedure after the initiation of legal effects of law no. 152/2013, "*On the civil servant*", amended; temporary and permanent transfer; suspension from civil service; carrying out work assessments for civil servants; performing compulsory training for civil servants during the probation period, etc.

We are further addressing the civil service situation during the application of various law institutes for civil servants, irregularities found in these subjects, and the Commissioner's position for resolving problematic cases.

Regional Education Departments and Education Offices are structures functioning according to Decision no. 66, dated 03.02.2010, by the Council of Ministers, "*On the reorganization of Regional Departments and Education Offices*", where in point 7 thereof, it is stipulated that: "*The Minister of Education approves the internal functioning regulations of the Regional Education Departments and Education Offices*".

Pursuing this definition, the minister has approved the regulation model no. 311/1 prot., dated 18.01.2011, "*Operational regulation of the Regional Education Department and the*

Education Office”, which was sent to the respective institutions through the Guideline no. 3, dated 18.1.2011, by the Minister, “*On the operational regulation of the Regional Education Department and the Education Office*”.

Article 26 of this regulatory act expressly states: “*The head of RED shall adopt the RED and respective EO internal regulation*”.

On this basis, the internal regulation was drafted and approved by the head of the supervised institution, where the main duties and responsibilities for *each sector* were identified according to the institutional structure and organization and according to its mission and objectives.

Regional Education Departments and Education Offices currently operate based on the structure and organization approved by Order no. 199, dated 01.12.2010, by the Prime Minister, “*On the approval of the structure and organization of Regional Educational Departments and Education Offices*”, which was in effect at the start of legal effects of law no. 152/2013, “*On the civil servant*”, amended, (dated 26.2.2014) and has not changed until the moment of implementation of this oversight.

One aspect that can be generalized in all supervised institutions is the inability to divide positions in civil service categories, as the activity of these institutions is still based on legal acts and bylaws that were in effect long before the institution became part of the civil service.

The Department of Public Administration has acted the same way when declaring the employment status, in the case when the supervisory group has not been made available any special act for the implementation of fundamental changes brought by the involvement of this institution in the civil service field.

Analyzing the content of the law regulating pre-university education and the internal regulation of these institutions, it is concluded that Education Departments and their subordinate Education Offices operate based on legal and subordinate legal acts for the civil service administration, as well as structures that have not yet been brought in line with the civil service legislation and the organic law regulating their operations (*law no. 69/2012, “On the pre-university education system in the Republic of Albania”*, amended).

This situation provides an opportunity to act subjectively on various aspects of the civil service administration, such as: determining the role of direct supervisors in the administrative hierarchy scheme during the implementation of various institutes of the law on the civil servant, such as confirmation after the probation period, job evaluation, job description, disciplinary performance, etc.

Likewise, this situation makes it difficult to define categories and classes where employees

of respective Departments and Offices should be positioned in the civil service, as there is no act to regulate civil service positions and cases of equivalent positions, what brings about subjectivism during the recruitment process, both at the moment of entry into the civil service system and in the development of the career system, in cases of parallel movement or promotion.

Meanwhile, based on the content of the acts regulating the recruitment procedure applied during 2017 (*vacancy announcements, general and special requirements*) to fill job positions of “*Head of Sector*”, as in the Education Departments and Education Offices, the Department of Public Administration classifies these positions as equivalent to the executive category, regardless of their name or tasks, referring to article 19 in the law on the civil servant.

All these aspects were ascertained by the Commissioner and as uncertainties of employees in these institutions, who are also in charge of the implementation of special procedures based on different institutions and specific procedures of the law on the civil servant.

In these circumstances, considering the important place Regional Education Departments and Education Offices occupy in the civil service both because the relatively high number of positions regulated by the law on the civil servant and by their function in the pre-university system administration, the Commissioner asked the Department of Public Administration to put special focus in reforming these institutions and place civil service in these entities into legal frameworks.

At the end of the oversight process in these institutions, in the warning decision, the Commissioner asked the Department of Public Administration in cooperation with the Ministry of Education, Sports and Youth and the institutions in question, to carry out these tasks:

Firstly, the Department of Public Administration should guide proposals for relevant changes on the legal basis and by-laws regulating human resources administration in Regional Education Departments and Education Offices, updating it with the civil service legislation. This process is in accordance with article 71, “*Transitional Provisions*”, point 1 of law no. 152/2013, “*On the civil servant*”, amended, instructing the General Secretary of the Council of Ministers to notify the Assembly of the list of legal acts to be amended for coordinating functional laws of institutions with the law on the civil servant, as well as within the scope of duties defined in point 2 of article 7 of the same law.

In this case, it is about the functional law on pre-university education, the sub-legal act regulating the operations and relations of RED and EO, internal regulation, as well as the administrative act governing the structure of these institutions; acts having arisen before the beginning of the effects of the law on the civil servant.

Secondly, in the framework of unification of the law enforcement practice and realization of competencies specifically provided for in letters “c”, “f”, “g”, “gj”, point 2 of law no. 152/2013, “*On the civil servant*”, amended, expressly outlining DPA duties:

- ✓ to oversee the implementation of civil service legislation in state administration institutions,
- ✓ to support and provide consultation to these institutions for the unified implementation of the law,
- ✓ as well as in cooperation with institutions to present their structure and organization to the Prime Minister.

The Department of Public Administration should guide these institutions through a special act where to reflect on:

- a. specification of categories for all positions in the civil service (*high, medium, low executive and executive in the RED and EO*), as well as the role of “*Direct Supervisor*”, expressly defining the administrative hierarchy in the civil service according to article 4, letter “e” and article 19/2 of the law on the civil servant;

Given the uncertainty reflected in several cases by heads of Educational Departments in the country during the administrative action of confirming the civil servant status for the position of Head of the Education Office, and from the position held by DPA in this case, referring as direct supervisor for all employees in RED and EO the General Secretary of the Ministry of Education, Sports and Youth, the Commissioner has estimated that the link between administrative functions performed by the Head of the Education Office and the General Secretary is quite weak, which makes it impossible to effectively implement the civil service administration scheme.

In this case, the Commissioner has estimated that the administration of the civil service would be more effective if the role of the direct supervisor would be played by one of the General Directors of the ministry who are directly related to these structures, also considering functional duties performed by institutions in question.

Likewise, DPA can evaluate whether the Head of RED can be presented as direct supervisor of civil servants for RED and EO.

This recommendation comes under the conditions where the structure and organization of the Regional Education Department meets the organizational and numerical criteria for the creation of a department, as provided by this sub-legal act, although it was approved before the issuance of decision no. 893, dated 17.12.2014, by the Council of Ministers, “*On the approval of rules for the organization and functioning of subsidiary cabinets, internal*

organization of state administration institutions, and detailed procedures for the preparation, proposal, consultation and approval of the internal organization”.

Likewise, based on the regulatory acts in force, the Head of Department is presented as a middle management level civil servant, not only from the title of “*Head of Department*”, but also because of the nature and importance of the functions that this position performs at the head of an subordinate institution to the line ministry.

For all these reasons and because of the specific organizational nature of RED and EO, the Commissioner has asked the responsible unit (DPA) to carefully consider the connection of employment positions in RED and EO with the civil service, clearly defining the administrative dependence of these entities by the Responsible Ministry, which in the present case is the MESY, both in terms of functional duties and civil service administration.

- b.** the unification of job title nominations according to the definitions of article 4, point 1, letter “e” of law no. 152/2013, “*On the civil servant*”, amended, or the definition of equivalent positions, under the conditions when in current structures of Education Departments and Education Offices there are cases terminology use not provided for in the law on the civil servant, such as, “*Head of Education Office*”, etc;

If we analyze the structure and organization of the Education Offices from the numerical point of view, it results that they meet the organizational and numerical criteria for creating a department. But, on the other hand, starting from the institution level (*a subordinate institution from another subordinate institution*), which also determines its importance in the scheme of state administration institutions as well as the actual title of the director of this structure as “*head of office*” or “*head of a subordinate institution from another subordinate institution*”, the Education Office, and consequently its director, cannot be classified with an equivalent position as the head of department.

Under these conditions, the position “*head of education office*”, although it runs daily activities of the respective education office and is in charge of control tasks for its subordinates, due to its title and its subordination from another subordinate institution within the framework of the law on the civil servant, cannot be considered as a middle management level position.

For these reasons, in order to determine the positioning of the “*Head of the Education Office*” position, the responsible unit (DPA) was asked to clarify the civil service category in which this position is classified or its equivalent position according to categories and classes provided for in article 19 of law no. 152/2013, “*On the civil servant*”, amended, and point 5 of chapter II of decision no. 142, dated 12.3.2014, by the Council of Ministers, “*On the description and classification of employment positions in state administration*”.

institutions and independent institutions”, amended. This process should also materialize in the job description to be drafted for the position of “*Head of Education Office*”.

- c. supporting employment positions with a job description form, drafted and approved according to the law and to be administered by the DPA, with all duties of the civil servant defined in detail.

The provisions of law no. 152/2013, “*On the civil servant*”, amended, apply to all RED and EO employees who perform tasks in civil service positions.

On this legal basis, the responsible unit for human resources management in these institutions should draft a new regulation to *identify the main tasks to be fulfilled for each employment position that is part of the law on the civil servant, based on principles and rules of this law.*

Only after the implementation of this administrative action, the job description will be based on an overall regulatory act with expressly defined tasks to be fulfilled by employees appointed in civil service positions.

1.c Thematic inspections initiated mainly to prevent illegal appointments

During this year, **28** subjects were involved in the thematic inspections with the aim of controlling illegal appointments, of which **13** local government institutions (**12 municipalities and 1 County Council**) and **15** subordinate institutions, part of the state administration (*identified in the list of supervised entities, as an annex to the report*).

The object of the inspection was to verify cases of illegal appointments, considering the phenomenon of employment commencement through temporary contracts or simple appointments acts, issued by the head of the institution for positions that are part of civil service by not respecting the procedures required by the law, which recognizes the appointment to the civil service only through competition, considering any act contrary to it as absolutely null. The oversight helped identify problematic institutions in this regard, but at the same time institutions were found that had not applied this procedure in any case. We might mention some examples, such as the *National Food Authority (NFA)* in the first group, where **20** such cases were identified; *Bulqiza Municipality* with **28** cases; *Dibër Municipality* with **28** cases; *Përmet Municipality* with **6** cases; *Kurbin Municipality* with **10** cases. While in the second group we will identify as positive examples the *Agriculture Departments* and *Prefectures*, as well as *Klos* and *Libohovë Municipality*, where no such cases has been identified.

At the end of this process, **116** cases of illegal appointments were found in all inspected institutions, for which the Commissioner was requested by the responsible persons (*in this*

case heads and responsible units of the institutions controlled and found with irregularities), through warning decisions, to immediately ascertain the absolute invalidity of the appointment act, according to article 23/4 of law no. 152/2013 “On the civil servant”, amended, and to regulate consequences by terminating unlawful relations and declaring the positions vacant, further fulfilling them based on the law on the civil servant.

Table no.21 *Institutions where the thematic inspections for illegal appointments were carried out*

Nr.	Institutions	Number of cases
1.	National Food Authority	20
2.	National Tobacco-Cigarette Agency	0
3.	National Coast Agency	0
4.	Department of Fishery and Aquaculture Service	0
5.	Mat Municipality and 7 Administrative Units	10
6.	Belsh Municipality and 4 Administrative Units	1
7.	Bulqizë Municipality and 7 Administrative Units	28
8.	Kurbin Municipality and 3 Administrative Units	10
9.	Klos Municipality and 3 Administrative Units	0
10.	Dibër Municipality and 14 Administrative Units	28
11.	Tirana Municipality and 24 Administrative Units	4
12.	Përmet Municipality and 4 Administrative Units	6
13.	Tepelenë Municipality and 3 Administrative Units	1
14.	Libohova Municipality and 2 Administrative Units	0
15.	Mallakastra Municipality and 8 Administrative Units	2
16.	Kavajë Municipality and 4 Administrative Units	4
17.	Council of Tirana District	2
18.	Shkodër Prefecture	0
19.	Kukës Prefecture	0
20.	Lezhë Prefecture	0
21.	Korçë Prefecture	0
22.	Durrës Prefecture	0
23.	Tiranë Prefecture	0
24.	Agriculture Department Dibër	0
25.	Agriculture Department Shkodër	0
26.	Agriculture Department Korçë	0
27.	Agriculture Department Tiranë	0
28.	Agriculture Department Kukës	0
Illegal appointments in total		116

CHAPTER IV

THE SITUATION OF CIVIL SERVICE ADMINISTRATION ACCORDING TO THE INSTITUTES OF THE LAW APPLIED IN THE SUPERVISED SUBJECTS

1. Recruitment in the civil service

1.2 General aspects regarding the process of admission to the civil service, parallel transfer and promotion, in the institutions involved in the oversight process

Civil service recruitment is an important process directly related to the quality level of new flows in the civil service.

This process starts with planning of recruitment needs through a detailed plan, which is approved at the beginning of each calendar year. This aspect of the law is included in this year's oversight and the situation is presented in the tables below:

Table no. 22 Yearly plan of the admission in the civil service

Type of supervised institutions	Number of institutions for which the plan is drafted	Number of institutions for which the plan is not drafted
Central Government Institutions	8	2
Local Government Institutions	17	12
Total 39 institutions	25	14

From the data presented, it results that from **39** supervised institutions, **25** have drafted the annual plan for the admission in the civil service and **14** have not implemented this law requirement, of which **12** from the local administration.

The implementation of the legal deadline in this civil service administration procedure was also checked, and the situation is presented in the table below:

Table no. 23 Adhering to the legal deadline for the approval of the recruitment plan

Findings on the drafting of the annual plan of admission in the civil service by legal deadline			
Operation way	Local self-government units	State administration institutions	Total
Number of institutions that have drafted the plan <u>within the legal deadline</u>	9	8	Total
Number of institutions that have drafted the plan <u>beyond the legal deadline</u>	8	0	
Number of institutions that have drafted the plan	17	8	

It turns out that out of **25** cases of approved recruitment plans, in **17** of them this was completed within the legal deadline and in **8** cases beyond the legal deadline (*all cases within the local administration*).

In these circumstances, the Commissioner has requested to draft a recruitment plan for identified illegal cases and to consider the legal deadline of its adoption for future implementation.

The recruitment procedure is further provided by law no. 152/2013 “*On the civil servant*”, amended. This law, in article 22 and its following articles, provides that recruitment should only be carried out through competition, respecting the principle of equality of parties and merit. In this regard, the Commissioner considers that satisfactory efforts have been made to establish the process in legal frameworks, but the issue of illegal appointments still remains problematic.

Although the current law on the civil servant considers the appointment act without competition procedures as absolutely invalid, this practice is still applied at a relatively high level especially in the local administration institutions, as we analyzed above.

Meanwhile, during this year we also found illegal appointment acts in the state administration. Comparing the situation with the previous year, where **16** such cases were identified in subordinate institutions, during this year, only NFA and ACAA presented **40** cases.

This situation should be brought to the attention of the Department of Public Administration to closely control developments in these institutions and not allow appointments without its consent and against the law by heads of these subjects.

Group recruitments and the electronic recruitment system allow the Commissioner to monitor this process in real time in state administration institutions where this process is administered by the DPA, as discussed above in this report, while there is no opportunity to develop the same process in local government institutions or independent institutions since they do not have a database for publishing the documentation of the procedure followed in these cases.

For this reason, during this year the Commissioner has decided to monitor the recruitment process by selecting two institutions from the local administration, namely the *Municipality of Tirana* for the processes implemented from 2015-2017, and the *District Council of Tirana*, which are included in a thematic oversight process.

Likewise, in all institutions supervised during this year, the verification of the recruitment process has been an aspect of the work program.

In the table below we present the current completion level of civil service employment positions in the supervised institutions.

Table no. 24 *Data on filling in civil service positions*

The current state of employment positions of the	Number of local government	Number of central government	Number of employment
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civil service	positions	positions	positions Total
Filled employment positions	2069	734	2803
Vacant employment positions	294	82	376
Employment positions in Total	2363	816	3179

It turns out that there were **3179** positions in the civil service, out of which **2803** filled in through temporary contracts according or against the law, and **376** vacancies.

From a statistical point of view, it results that during 2017, in the controlled institutions there were **2803** employees with employment relations in the civil service, of which **1964** with regular employment relations built through one of the ways provided for by the law on the civil servant, and **839** or about **30%** of civil service employment positions were illegally filled in through a simple appointment act issued by the head of the institution. This figure is considered concerning by the Commissioner, who required to proclaim all these cases as absolutely invalid acts and to correct their consequences, interrupting employment relations for illegal appointments and opening competition to fill them.

Table no. 25 *The way of obtaining employment status for employees employed under the requirements of the law on the civil servant*

Way of obtaining the status	Number of employees
Competition	979
Due to the law, article 67	984
Returned by court decision	1
Total	1964

- ✓ According to these data, **979** employees were appointed via competition, in one of the procedures set by law, according to the table below:

Table no. 26 *Recruitment procedures*

Applied procedure	Number of employees
Parallel movement	61
Promotion	106
Acceptance from outside the civil service	812
Total	979

As reflected by the data in this table, a positive trend of developing procedures for the career system development (**106** cases of promotion) and mobility within the system (**61 cases of parallel movement**) is observed.

Based on the legal assessment of the procedure for filling **979** employment positions via competition, it results that in **948** cases legal requirements have been respected and in **31** cases it was operated against the law. In order to regulate the civil service organization, the Commissioner has requested in **31** cases to cancel competition procedures and re-initiate the process.

- ✓ In **984** cases the civil servant status was acquired by law, as employees were found in civil service positions at the time when legal effects of the law on the civil servant started (*according to article 67*);
- ✓ In **1** case the employee was appointed because he returned to office by court decision.

Likewise, oversight data showed a relatively high number of vacant positions for which competition procedures were not announced.

Based on verifications by organizational structures of the supervised institutions, out of **3179** employment positions in the civil service, **2803** positions are filled in various ways, including **839** cases of temporary contracts against the law, while **376** positions are actually vacant.

This is not a normal situation, as any employment position approved in the structure is opened for a particular function, and any vacant position, namely **1215** legal ones (*since **839** positions appointed against the law are considered vacant positions to be published for competition, with **376** employment positions being actually vacant*) accounting for **34%** of the total number of civil service positions, is a potential opportunity to increase the workload of other employees, and consequently affects the decline in the standards of service to citizens, both in terms of quality and respect of legal deadlines. For this reason, the Commissioner has requested to immediately announce the start of competition procedures for their completion.

2. Declaration of the employment status

The legal obligation to declare the status of employment for employees who were in the civil service positions at the moment of initiation of the legal effects of law no 152/13, “*On the civil servant*”, amended, is sanctioned in article 67 of the same law.

During the supervision, there were **984** verified cases where employees were found working when the legal effects of the law on the civil servant started, out of which **852** cases where the procedure for declaring the status of employment was applied, **13** cases where the employment status was refused, and **119** cases where unconcluded procedure of employment status declaration was found.

In the table below we present the situation of employment status declaration for the period including years 2015, 2016 and 2017:

Table no. 27 *Total verified cases in the period 2015-2017*

Nr.	Year	Verified cases
1.	2015	2634
2.	2016	2160
3.	2017	984
Total		5778

Referring to figures presented in this table, which are a summary of the data collected during the oversight process *over the three years*, it results that during 2015 there were **2634** verified cases of employment status declaration or employment positions in the civil service filled by employees found to be already employed there, during 2016 there were **2160** verified positions, and during 2017, **984** positions, thus making it possible to verify the status of employment in **5778** cases.

- If we analyze how the process of declaring employment status was administered by the responsible unit during 2017, it turns out that in **852** cases the civil servant status was acquired by existing employees, in **13** cases the employment status declaration was refused, and in **119** cases unfinished procedure was found.
- Regarding the acquisition of the civil servant status, for **852** existing employees, according to the duration of the employment relationship, it is concluded that in **45** cases employees were employed through competition procedures under the previous law, **585** employees were employed for a period of more than a year, and **222** employees were employed for a period of less than a year, and were therefore included in a probation period.
- Regarding the legitimacy of the actions by the responsible entity in the **852** cases of declaration of the civil servant status, the Commissioner estimates that in **841** cases it was acted according to the law, whereas in **11** cases it was acted against the law. In this case, the annulment of these acts and the re-evaluation of the employee's positioning within the civil service was requested.

For **113** cases where an unfinished procedure for declaring employment status was established, the Commissioner has asked the responsible unit to conclude the status verification process and issue the act of declaring the employment status to the respective employees.

3. Termination of employment in the civil service

The termination of the civil service relationship is an institute governed by articles 63 to 66

of the law on the civil servant and consists of cases of dismissal from civil service, termination of the civil service relationship due to law requirements, and dismissal as a disciplinary measure. The oversight process identified **127** such cases.

Table no. 28 *Termination of the civil service relationship*

Reasons for terminating the civil service relationship	Number of cases in local government institutions	Number of cases in central government institutions	Cases of termination in Total
Dismissal from civil service	66	25	
Termination civil service relationship due to law requirements	20	13	
Dismissal from the civil service as a disciplinary measure	2	1	
Cases in Total	88	39	127

The restructuring of institutions and the permanent transfer of employees to a restructuring case is an important law enforcement institute, as provided for in article 50 of the law on the civil servant. For this reason, the Commissioner has paid particular attention to this aspect, taking care to uphold specific procedures which are the only guarantee to ensure the objectivity of the process as well as the rights of employees for a stable employment relationship in the civil service and employees affected by it.

The following table presents in a grouped manner the cases of termination of the civil service relationship, defining them by reasons of dismissal according to legal provisions governing this institution of law.

Table no. 29 *Termination of the civil service relationship according to articles 63-66 of the law on the civil servant*

The reason for terminating the civil service relationship		Number of cases in local government institutions	Number of cases in central government institutions	Number of cases Total
Dismissal from civil service, due to:	Refusal of the position offered by the restructuring	0	0	0
	Closure or restructuring	1	2	3
	Disability to work, evaluated by the medical commission	0	0	0
	Two unsatisfactory evaluations	0	0	0
	Constant conflict of interest	0	0	0
	Resignation	65	21	86
	Other reasons	0	2	2
Termination of the civil service	Reaching retirement age	17	12	29
	Absolute invalidity of the	0	0	0

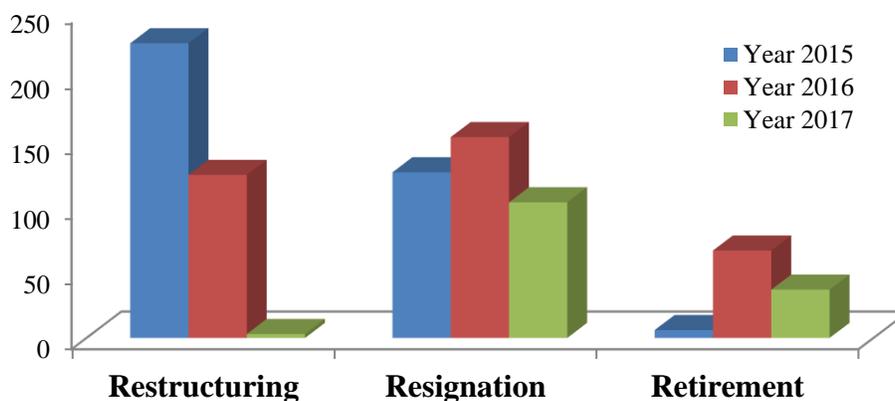
relationship due to these legal requirements:	appointment act			
	Other reasons	3	1	4
Dismissal from the civil service as a disciplinary measure	Commitment of a very serious disciplinary offense	2	1	3
		Total	88	39

If we make a three-year comparison of the three reasons for the termination of the civil service relationship that are most commonly encountered, namely the institution's restructuring, resignation and reaching retirement age, the situation is presented in the table below:

Table no. 30 *Cases of dismissal from civil service in the period 2016-2017 for restructuring, resignation and reaching retirement age*

No.	Year	Restructuring	Resignation	Retirement	Total
1.	2015	226	127	6	359
2.	2016	125	154	67	346
3.	2017	3	104	37	144
Total		354	385	110	849

Graph no. 2 *Cases of dismissal from civil service in the period 2015-2017*



As it appears from the data presented in the two tables above, compared to previous years, 2017 indicates a significant decline in the number of civil service dismissals due to restructuring. This phenomenon occurred since structures of the local self-government units, after joining the municipalities, have only increased the number of civil service positions. Thus, in 2015, which was the moment of union, we find **226** cases of dismissal from civil service due to the restructuring of the institution. The Commissioner considers this fact which relates to reducing the number of cases of dismissals from civil service due to restructuring, as sign of maturity towards increasing the safety on duty of civil servants and the implementation of a sustainable and professional civil service principle. Meanwhile, the trend of resignation is the same as in previous years.

For the 3-year period, in the institutions overseen by the Commissioner during the years 2015-2017, **849** employees were dismissed from the civil service, of whom **354** due to restructuring reasons, **385** due to resignation, and **110** for having reached the retirement age.

4. Job performance evaluation for civil servants

Law no. 152/2013, “*On the civil servant*”, amended (Chapter XI, Article 62), determines the obligation of institutions to assess the performance of each employee performing functions in a civil service position. In addition to the annual assessment, now employees are periodically evaluated even for the acquisition and update of additional knowledge needed to carry out their functions, according to the general/special administration category/group they belong to.

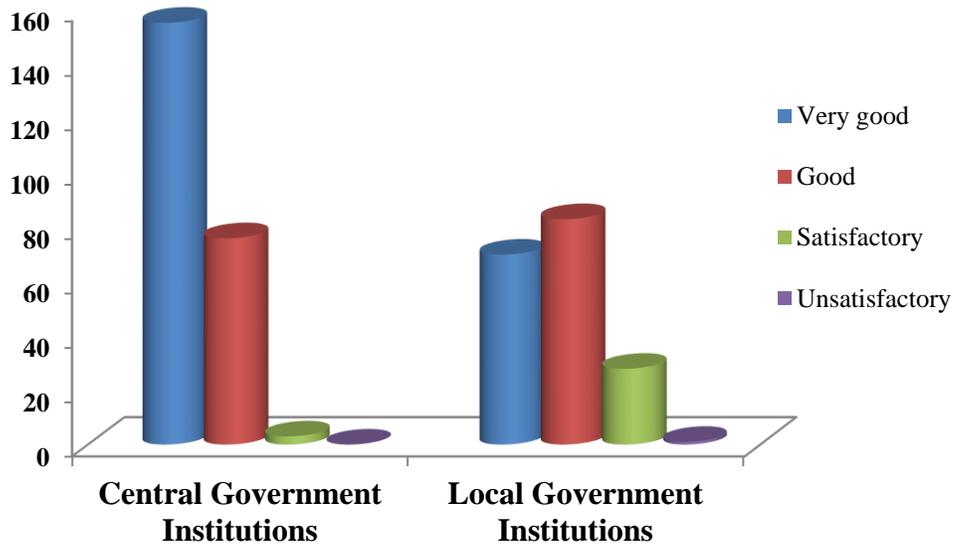
The employee can be assessed in one of the following levels: **a) very good** (1); **b) good** (2); **c) satisfactory** (3); **ç) unsatisfactory** (4).

In the identified cases during the supervision, it turns out that employees were assessed as presented in this table:

Table no. 31 *Classification of work estimates according to the levels defined by law*

Type of supervised institutions	Number of assessed officers for each level			
	Very good	Good	Satisfactory	Unsatisfactory
Central Government Institutions	155	76	3	0
Local Government Institutions	70	83	28	1
Number of overseen cases in Total 416	225	159	31	1

Graph no.3 *Institute of labor assessment according to the levels defined by law*



Analyzing the content of the 2017 process, it is noted that out of the assessed **416** cases, **225** of them were classified as “*Very good*” and **159** as “*Good*”. Meanwhile, there are **31** cases identified as “*Satisfactory*” and **1** with negative evaluation “*Unsatisfactory*”.

What is apparent from the comparative table in this case is the fact that for the year of the report, efforts have been made to use all assessment levels, but it is again noted that senior and mid-level assessment covers about **98%** of the assessed cases.

In order to make the process as objective as possible, the Commissioner continues to urge the assessment subjects to accompany the direct supervisor’s periodic records on the employee’s performance during the assessment year with the assessment form, and store them in the personnel file.

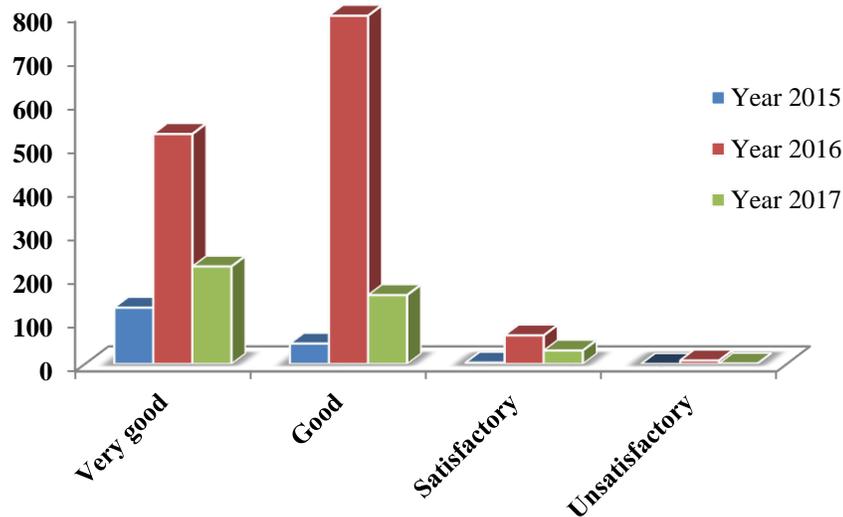
The subjects and especially the personnel units are guided towards improving the process and eliminating subjective evaluations, in order to discipline the supervisors to keep records of the achievements of civil servants during the assessment year, planning trainings in this area for officials charged with assessments, and overseeing the assessment process through supervisors’ oversight, extended throughout the calendar year.

Table no.32 *The trend of annual work assessment in the period 2015 -2017*

No.	Year	Very good	Good	Satisfactory	Unsatisfactory	Assessed cases
1.	2015	130	47	3	0	180

2.	2016	527	796	66	8	1397
3.	2017	225	159	31	1	416
Total		882	1002	100	9	1993

Graph no.4 The tendency of annual work assessment in the period 2015 -2017



Regarding the performance assessment of civil servants, based on the statistics presented above reflecting the situation in 3 years, as well as verifying the implementation of this process, the Commissioner considers that this law institute has turned into a formal process which has not performed its role of serving the law.

At present, the work assessment at the first two levels (*very good* (1) and *good* (2)), according to the law on the civil servant, only affects the development of the career system in the civil service and has no other stimulus, whether material or not. Meanwhile, in the case of assessments at the last two levels (*satisfactory* (3) and *unsatisfactory* (4)), the civil servant is charged with participating in compulsory training held in the School of Public Administration.

It is noted that almost every civil servant in the institution receives high level evaluations (*very good* and *good*). If we analyze the **1993** cases involved in the assessment process, audited by the Commissioner for a 3-year period (*as shown in Graph no. 2*), **1884** employees were evaluated at two highest levels, with very good and good scores, while only **109** cases were evaluated at the two other levels, which in fact does not reflect the reality based on the performance level of the institution they serve in.

This evaluation manner does not motivate the employee who truly deserves it, as all employees of the institution receive high scores regardless of their achievements.

Similarly, employees who are not at their level and get evaluated equally, do not make individual efforts to upgrade their professional level, nor are they obliged by the institution in this regard.

Under these conditions, it is estimated that the employee’s direct supervisor who has the duty to carry out an objective work assessment by dividing employees in all assessment levels, has not performed this task. But, on the other hand, there is no legal limitation in determining the reports on which the supervisor should act to classify the division of assessment levels in general civil service positions. Likewise, there is no direct financial benefit or any other kind of incentive to encourage civil servants to react to the subjectivism of the supervisor in this regard.

In these circumstances, the Commissioner considers that it is time to find effective mechanisms to guide this law institute towards achieving its goal, which may be both in terms of financial reward for best performing employees and in determining the ratio that the direct supervisor should apply between the entire spectrum of evaluations and the total number of civil servants.

The commissioner estimates that legal improvements in this law institute will raise employee motivation to improve the work quality and will bring the supervisor towards a fair and objective assessment. Likewise, this change of the law will have a positive impact in reducing the level of corruption in the civil service.

5. Discipline in the civil service in relation of the type of penalties applied

The civil service discipline is regulated in detail in Chapter X “*Discipline in the civil service*” and includes articles 57 to 61 of law no. 152/2013, “*On the civil servant*”, amended.

Table no.33 Disciplinary performance in relation to the type of measures applied

Type of violation	Disciplinary measures in local government institutions	Disciplinary measures in central government institutions	Disciplinary measures Total
Very serious violations	2	1	3
Serious violations (<i>withholding 1/3 of salary for 6 months</i>)	4	0	4
Serious violations (<i>waiving the right to promotion for 2 years</i>)	14	0	14
Light violations (<i>remarks</i>)	12	0	12
Total	32	1	33

During 2017, the Commissioner found in supervised institutions that extreme disciplinary measures were applied in **3** cases, namely “*Dismissal from civil service*” mainly in the local administration (**2 cases**). It is noted that more than one of the measures corresponding

to serious violations has been applied in **18** cases, of which **4** cases of the disciplinary measure “*Withholding 1/3 of salary for 6 months*” and **14** cases of “*Waiving of the right to promotion for 2 years*”. All cases were ascertained in the local administration and were mainly taken upon the proposal of the Supreme State Audit after audits in these institutions. On the other hand, there have been **12** cases where light disciplinary measures or “*Remarks*” have been applied.

What should be mentioned regarding this law institute is the finding that in **2** cases the disciplinary measure of dismissal from civil service was not applied in local administration institutions, although civil servants did not fulfill the condition of integrity of persons with public functions according to the specific law.

Law no. 138/2015 “*On guaranteeing the integrity of persons elected, appointed or exercising public functions*” delegates to the Department of Public Administration the duty of oversight, administration and processing of self-declaration forms for civil servants and the diplomatic service, as well as the leaders of every central and local public administration level that is not included in the civil service.

The purpose of this law is to guarantee public confidence in the public administration, by preventing the election or appointment of such persons, or by dismissing them from public function.

During the oversight of these cases, it was found that the Department of Public Administration has fulfilled all the requirements of this law and has recommended the dismissal of civil servants, but the institutions did not apply this requirement of the law.

In these cases, the Commissioner has requested the immediate termination of the employment relationship based on the law and requested the publication of the vacancy announcements to be filled through competition.

The data presented above show a downward trend in the number of applied disciplinary measures. In the Commissioner’s view, this situation can be considered as an increase in the level of responsibility and accountability of civil servants in terms of implementing their functional duties.

6. Personnel file and the central staff register

- **Personnel file**

Regarding the implementation of the law in this respect, as in all oversight cases, all personnel files have been verified for employees who were employed at the time of oversight of civil service employment positions.

The content of the file consists of documents with personal data of a technical and professional character, as well as other data defined in Annexes 1 and 2, part of a sub-legal act specifically regulating this aspect.

The data regarding the fulfillment of the legal requirements are reflected and administered in the working documents that are completed during the oversight as annexes attached to the final oversight report, and are considered to be part of it for each employee in an employment relationship with a position included in the civil service.

During the verification process of the documentation administered in the personnel file, the Commissioner found deficiencies, in institutions of both central and local administration.

Table no.34 Deficiencies found in personnel files

Deficiencies in documentation		
ID card	Criminal record	Medical report
57	468	450

As it turns out from the presented data, deficiencies have been noted in the relevant documentation of the personnel file, namely:

- a) ID card in **57** cases;
- b) lack of medical reports confirming the health of the employee in **450** cases;
- c) deficiencies in documents proving that the employee is not convicted, such as a criminal record, self-declaration or confirmation by the institution, in **468** cases.

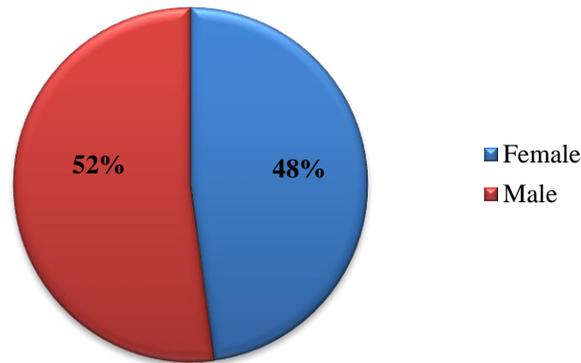
All institutions under the oversight process have been delivered concrete tasks through the final oversight report as well as in the Commissioner’s warning decisions to regulate the situation.

During the confirmation of the documentation contained in the personnel file, various data related to education, age, and gender were collected, some of them presented below and analyzed in the social aspect.

- ✓ In a sample of **2803** civil servants of various institutions, it results that the total number of females is **1341** or **48%** and that of men is **1462** or **52%**, which indicates balanced gender distribution in the civil service.

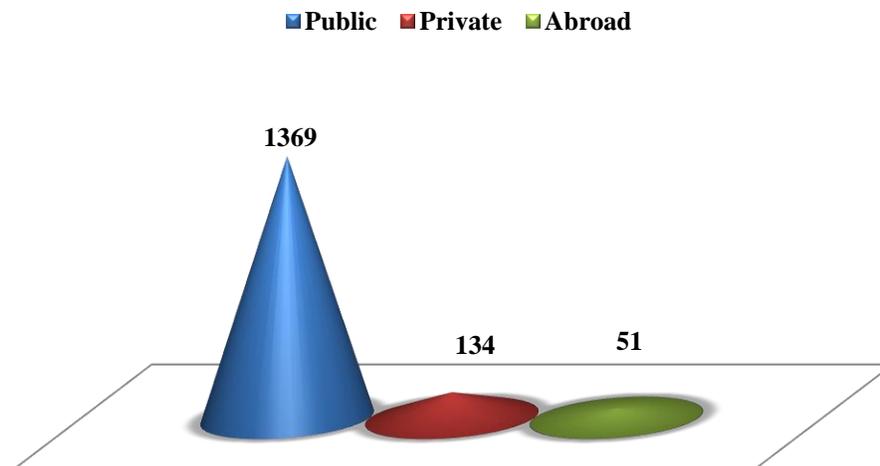
Graph no.5 Data on the gender of civil servants

Ratio male/female



Graph no. 6 Information on the institutions where the civil servant has completed higher education

Education



- ✓ Meanwhile, regarding educational institutions where **1554** verified cases have graduated, it results that **1369** employees were educated in public education institutions, **134** in private education institutions, and **51** employees have completed studies abroad.

Following these figures, **90%** of employees have completed public education and **10%** private education.

According to these data, education in public institutions occupies the largest part of the sample compared to private education. Meanwhile, there is a growing trend of employees who have completed university studies abroad. One year ago there were **16** such cases, while during this year **51** cases, and in only one case the diploma lacked its equivalent to be received in the Ministry of Education, Sport and Youth based on the law on higher

education.

- **Central Staff Register**

The Central Staff Register is a document created under the law no. 152/2013, “*On the civil servant*”, amended and Decision no. 117, dated 05.03.2014 by the Council of Ministers, “*On the content, procedure and administration of personnel files and the central staff register*”.

Under the conditions we are reporting on, the Central Staff Register administered by the Department of Public Administration, has become operational in all line ministries and subordinate institutions, and there are still efforts to include independent institutions and local government units.

This aspect is included as one of the main objectives of the Inter-Sectoral Strategy for the Public Administration Reform with specific implementation deadlines in the action plan for implementing priorities set to finalize the country’s integration process in the European Union.

CHAPTER V

ONGOING SUPERVISION AND THE PROGRESS OF IMPLEMENTATION OF THE COMMISSIONER’S DECISIONS

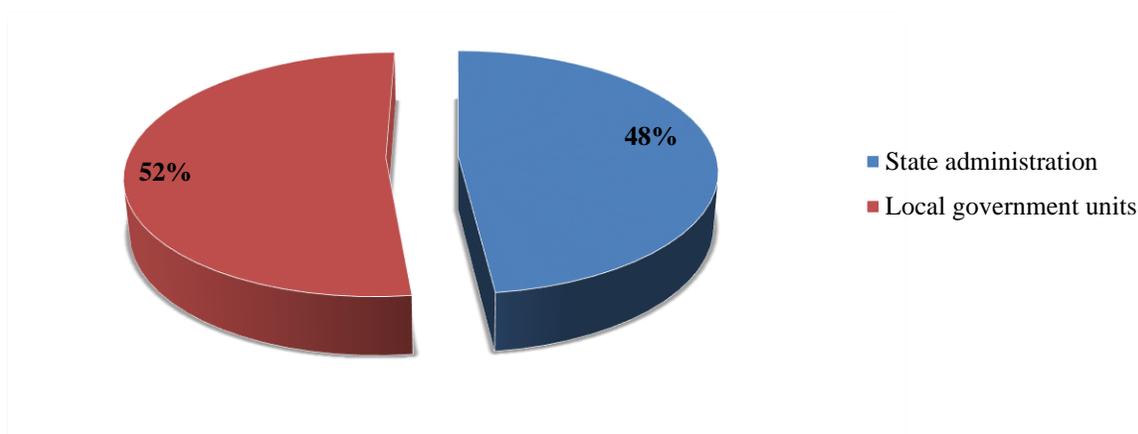
1. Warning decisions of the Commissioner at the end of the general or thematic oversight/inspection process

The activity of the Commissioner in the Civil Service Oversight during 2017 has followed according to the recommendations of the Resolution of the Assembly of Albania “*On the assessment of the activity of the Commissioner for Civil Service Oversight for 2016*” and

the annual activity plan of the institution, approved by Decision no. 2, dated 13.01.2017, of the Commissioner, “*On the approval of the annual work plan of the institution*”, but also taking into account the information received from civil servants or written and electronic media.

For the reporting period, the Commissioner for Civil Service Oversight has carried out general and thematic oversight/inspection in 77 institutions, of which 37 or 48% belong to the state administration (*subordinate institutions*) and 40 or 52% to local government units.

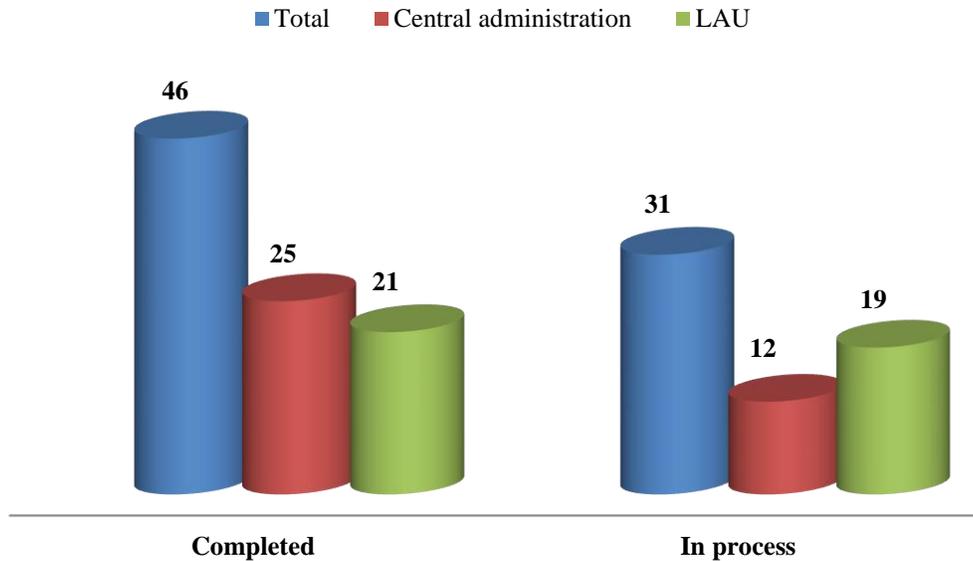
Graph no. 7 General/thematic oversight/inspection by type



46 or 60% of general or thematic oversight/inspection procedures have been completed with a warning decision for regulating legitimacy in the civil service administration, where the Commissioner has submitted recommendations for relevant legal arrangements to be undertaken by supervised institutions in relation to administration of the civil service (*out of which 25 belong to the state administration and 21 to local government units*), and 31 or 40% of general or thematic oversight/inspection procedures are in different stages of the process.

Graphically, this situation is presented as follows:

Graph no.8 The situation at the end of the overall/thematic oversight/inspection process



In the framework of regulating the state of legitimacy in civil service administration, the Commissioner has requested the responsible unit to take the following steps in the warning decisions:

- In **605** cases, canceling administrative acts of appointments against the law and filling of these positions through competition procedures was requested (*of which 18 cases in state administration institutions and 587 cases in local government units*).
- In **44** cases, the annulment of acts of employment status declaration against the law or the issuance of acts of employment status declaration was requested, in cases when this obligation was unjustly unfulfilled (*of which 24 cases in the state administration institutions and 20 cases in local government units*).
- In **71** cases, the termination of employment relations for not fulfilling educational criteria was requested (*of which 1 case in state administration institutions and 70 cases in local government units*).
- In **26** cases, confirmation of fulfilling the criteria by the employees was ordered, and depending on the confirmation results it was requested to continue with the process of declaring the employment status (*of which 15 cases in the state administration institutions and 11 cases in local government units*).
- In **1** case, the annulment of an act of illegal dismissal from civil service was requested (*in local government units*).
- In **12** cases, the annulment of administrative acts illegally confirming the status of civil servant was requested (*all cases in state administration institutions*).
- In **9** cases, the completion of the process of confirmation of the civil servant status at the end of the probation period was requested (*all cases in state administration institutions*).
- In **25** cases, issuing employment status declarations was requested (*of which 6 cases in state administration institutions and 19 cases in local government units*).

- In **31** cases, the annulment of illegal transfer acts was requested (*of which 18 cases in state administration institutions and 13 cases in local government units*).
- In **14** cases, the confirmation of conditions for employees affected by restructuring and re-placement in respective positions was requested (*all cases in state administration institutions*).

The table below summarizes the decision-making of the Commissioner in the warning decisions resulting in the conclusion of the general or thematic oversight or inspection process:

Table no.35 *The Commissioner's decision at the end of the general/thematic oversight/inspection*

INSTITUTIONS	Cases of illegal declaration or non-declaration of employment status	Termination of the employment relationship for non-fulfillment of the educational criteria	Verifying the fulfillment of the criteria and issuing the act of employment status declaration	Illegal dismissal from the civil service	Illegal confirmation of the civil servant status at the end of the probation period	Completion of the process of confirmation of the civil servant status at the end of the probation period	Issuance of employment status declarations	Illegal appointments	Confirmation of conditions for workers affected by restructuring and re-placement	Illegal transfer cases
State administration	24	1	15	-	12	9	6	18	14	18
Local government units	20	70	11	1	-	-	19	587	-	13
In TOTAL	44	71	26	1	12	9	25	605	14	31

1.1 Implementation of Commissioner's warning decisions, issued at the end of the general or thematic oversight/inspection process

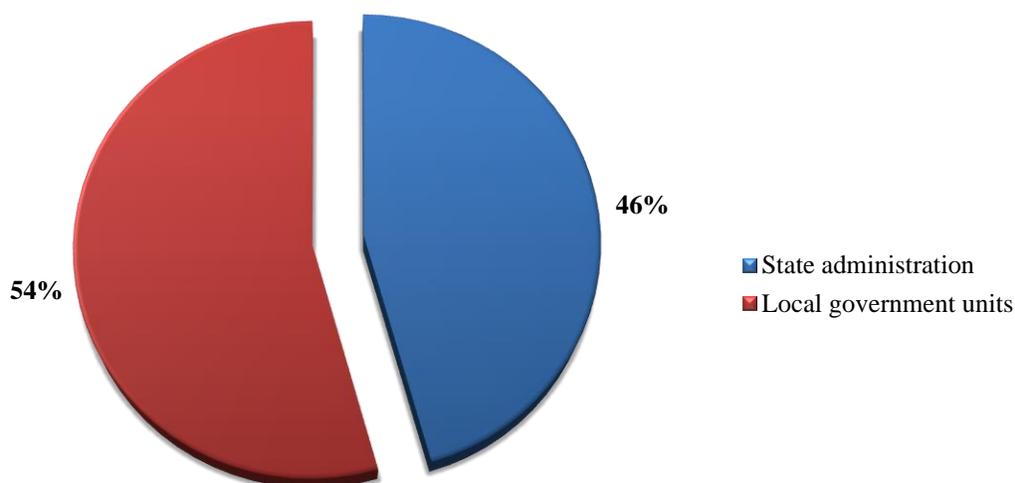
During 2017, the institution of the Commissioner, based on law no. 152/2013, "*On the civil servant*", amended, and the Regulation "*On oversight/inspection procedures*", continued the ongoing oversight process (*confirming the implementation of the Commissioner's decisions*), the results of which are a real and measurable indicator of the efficiency of the Commissioner's activity.

For the period January - December 2017, the ongoing oversight process (*the process of confirming the implementation of the warning decisions*) was carried out in **68** institutions for which the warning deadline was completed, of which **31** or **46%** of cases are in the state administration (*12 county prefectures, 12 agriculture departments and 7 other subordinate*

institutions) and 37 or 54% of cases in local government units (5 county councils and 32 municipalities).

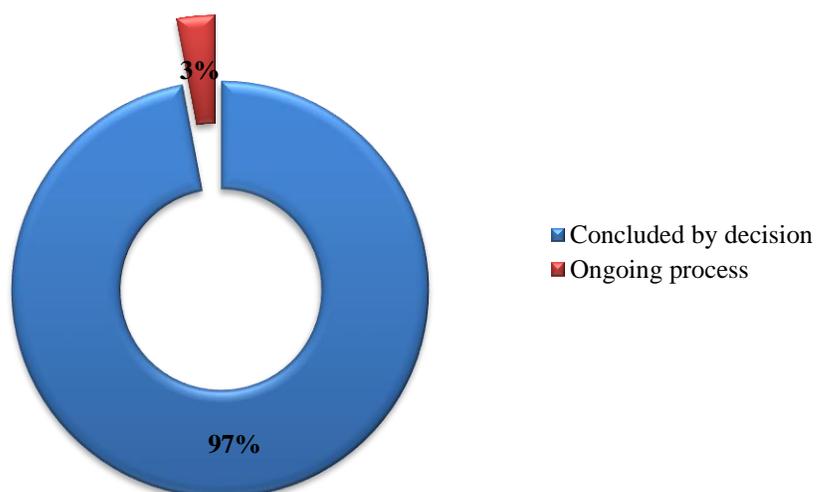
Graphically, this situation is presented as follows:

Graph no.9 The ongoing oversight process according to the type of institutions



The confirmation process was concluded with a decision of the Commissioner in 66 cases or 97%, while in 2 cases or 3% the process is ongoing at various stages (in 2 municipalities). Graphically, this situation is presented as follows:

Graph no.10 The situation at the end of the ongoing oversight process



Referring to the warning decisions issued at the end of the oversight or inspection process, which were subject to the ongoing oversight process due to surpassing the deadline for the implementation of tasks, (including early warning decisions issued in 2016, the verification of which was carried out for 2017), has resulted that irregularities, grouped according to the type of institutions, were mainly concerned with the following aspects:

State administration institutions:

1. Declaration of the employment status for civil status employees, which are delegated functions and do not fall into the field of activity of law no. 152/2013, “*On the civil servant*”, amended.
2. Deficiencies in the documentation that should contain staff files.
3. Confirmation of the civil servant status at the end of the probation period by collective acts.
4. Lack of job descriptions for all employment positions in the civil service.
5. Applying illegal disciplinary measures.
6. Failure to meet the obligations arising from the probationary period, such as the completion of a compulsory ASPA training cycle, receiving the opinion of the most senior civil servant or performing a work performance evaluation at the end of the probation period.
7. Illegal transfers in employment positions outside the civil service.
8. Failure to take the opinion of the Department of Public Administration for the assessment of the legitimacy of the job description forms for each position in the civil service, if it is based on the specific legislation of the field or the approved standard format.
9. Uncertainty regarding the classification of the position “General Secretary” in the civil service administration scheme of the County Prefectures.

❑ Local government units:

1. Deficiencies in the documentation that should contain staff files.
2. Failure to meet the obligations arising from the probationary period, such as the completion of a compulsory ASPA training cycle, receiving the opinion of the most senior civil servant or performing a work performance evaluation at the end of the probation period.
3. Illegal appointments in the civil service, without following competition procedures.
4. Appointments in civil service positions or declarations of the employment status by collective acts.
5. Failure to implement the process of employment status declaration for employees who meet the criteria for being civil servants based on law no. 152/2013, “*On the civil servant*”, amended.
6. Failure to draft and approve job descriptions for all civil service positions.
7. Failure to draft the annual plan of the civil service or failure to include in it occupied positions against requirements of the law or positions that will remain vacant as a result of reaching retirement age.
8. Failure to complete the evaluation process results within the deadline.

9. Procedural shortcomings during disciplinary proceedings (*when the direct supervisor applies disciplinary measures instead of the Disciplinary Commission or vice versa, when the Disciplinary Commission is not created according to legal requirements, etc*).
10. Irregularities in respect of suspension, transfer (*failure to obtain the written opinion of employees appointed after the restructuring, as provided for in point 20, chapter II of decision no. 125, dated 17.02.2016, "On the permanent and temporary transfer of civil servants", by the Council of Ministers*), and the dismissal of civil servants during the restructuring process.
11. Problems with the classification of civil service positions (*lack of a division between positions that are part of the civil service and administrative functions or unjust treatment of positions that are part of the service as administrative functions*).

In the context of regulating the legitimacy state in the civil service administration in these cases, the Commissioner has requested the responsible unit to take the following steps:

- Revoke/cancel administrative acts for illegal appointments and terminate the employment relationship.
- Revoke/cancel, amend, confirm and issue administrative acts for the declaration of the employment status in nominal terms.
- Complete the personnel files with the missing documentation.
- Draft and approve new job descriptions for all civil service positions, based on the Commissioner's detailed guidelines for the implementation of all phases up to their administration in written form in individual personnel files.
- Complete the performance evaluation process within the deadline, based on the Commissioner's recommendations in the final oversight report.
- Find cases of absolute invalidity of employment status declarations issued against the law.
- Correctly classify civil service positions based on the specific legislation.
- Draft the annual plan of new admissions in the civil service, based on requirements of article 18 of law no. 152/2013, "*On the civil servant*", amended, as well as Decision no. 108, dated 26.02.2014, by the Council of Ministers, "*On the annual plan of admissions in the civil service*".
- Issue the acts for starting the financial relationship and the realization of all legal steps that the responsible units should pursue for finalizing the probation period.
- Cancel collective administrative acts for the confirmation of civil servants at the end of the probationary period.
- Revoke/cancel administrative acts for disciplinary action as absolutely invalid and cancel the measure from the personal file and the respective register.

- Revoke administrative acts related to the suspension, appointment, transfer and dismissal of the civil servants and restart the restructuring process.
- Terminate the employment relationship due to the failure to meet the educational level criterion.
- Amend the termination act of the employment relationship with respect to motivation and legal basis.
- Issue appointment acts in a nominal way.
- Provide for a human resources specialist position within the structure.
- Verify the employment status for some employees, confirming their positioning in the civil service (*employees of the Land Administration and Protection Department*).
- Complete the confirmation acts of the civil servants status with the evaluation of individual work performance and the written opinion of the most senior civil servant.
- Take measures to apply amendments in the CMD no. 877, dated 14.12.2016, for employees transferred from agricultural departments to the Agency for Agricultural and Rural Development (AARD); they have gained the civil servant status by declaration from agriculture departments.

The recommendations in the Commissioner's warning decisions to regulate the legitimacy state in the civil service administration, are presented below in numerical terms:

In **66** subjects for which the confirmation process the Commissioner's warning decision has been completed, it turns out that:

□ In the state administration, the Commissioner has requested:

▪ In the County Prefectures:

1. Revocation/cancellation of **33** administrative acts declaring employment status against the law.
2. The annulment of the collective administrative act for the confirmation of **8** civil servants and its issuance in nominal terms.
3. Cancellation of the administrative act for confirmation/reconfirmation of **2** civil servants.
4. Partial or total cancellation of the administrative act for disciplinary measure and its cancellation from the personal file and the respective register in **7** cases.
5. Issuance of the declaration act of the employment status in **3** cases.
6. Issuance of acts of financial relation initiation in **4** cases.
7. Issuance of individual acts of termination of employment relations in **3** cases.

8. Revocation/cancellation of the permanent transfer act due to restructuring in **7** cases, and reviewing of the possibility of transferring employees in another civil service position.
9. Revocation of an illegal appointment act and the termination of employment relations in **1** case.

- In Agriculture Departments:

1. Partial annulment/amendment of the transfer act due to restructuring in **14** cases and the issuance of individual acts of dismissal from civil service due to the termination of the employment relation due to restructuring in **13** cases.
2. Annulment of the disciplinary measure and cancellation from the personnel file and the respective register in **2** cases.
3. Annulment of the administrative act for the confirmation of **1** civil servant as an absolutely invalid act.
4. Cancellation/amendment of administrative acts declaring the employment status in **5** cases.
5. Issuance of the declaration act of employment status in **7** cases.

- In other subordinate institutions (*Fishing and Aquaculture Service Department (FASD), National Tobacco Agency (NTA), Albanian Geological Service (AGS), Food and Veterinary Safety Institute (FVSI), National Food Authority (NFA), National Coast Agency (NCA)*):

1. Revocation/amendment/correction of the declaration act of the employment status in **14** cases.
2. Revocation/cancellation of the transfer act in **8** cases.
3. Issuance of the declaration act of the employment status in **1** case.
4. Revocation/cancellation of administrative acts of appointments against the law in **25** cases.
5. Issuance of confirmation acts of the civil servant status at the end of the probation period in **7** cases.
6. Revocation of the act of dismissal from civil service as an absolutely invalid act in **1** case.

- In local government units, the Commissioner has requested:

- In County Councils:

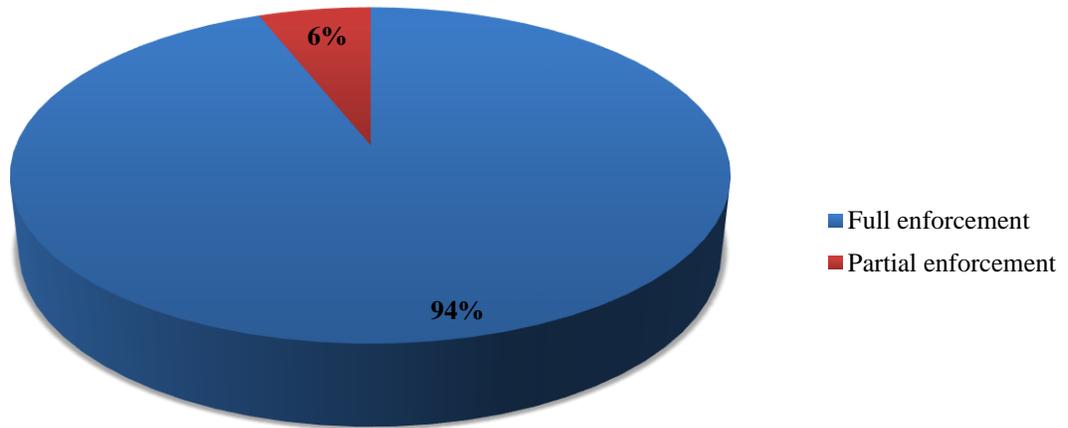
1. Issuance/amendment of declaration acts of the employment status in **7** cases.

2. Revocation of illegal appointment acts and termination of employment relationship in **15** cases.
 3. Revocation of administrative acts of suspension from duty due to restructuring in **11** cases.
 4. Revocation of civil service dismissal acts in **12** cases.
 5. Revocation of administrative acts for disciplinary action in **2** cases.
 6. Issuance of re-appointment acts after restructuring in **4** cases.
- In Municipalities:
 1. Completion of the employment relationship due to failure to fulfill the criteria for being civil servants in **72** cases.
 2. Revocation/cancellation of illegal appointment acts and termination of employment relationship in **290** cases.
 3. Revocation/annulment/amendment of the confirmation/declaration act of the employment status in **40** cases.
 4. Issuance of the declaration act of the employment status in **102** cases.
 5. Revocation of the collective administrative civil service appointment act in **1** case.
 6. Annulment of the act revoking the civil servant status in **1** case.
 7. Revocation of illegal transfer acts in **2** cases.

Regarding the enforcement level of the Commissioner's recommendations in all **66** cases (**31 state administration institutions and 35 local government units**), for which the Commissioner has come up with a decision at the end of the confirmation process of the warning decision, it turns out that:

- ❑ **Out of 31 state administration institutions** (*subordinate institutions including 12 county Prefectures, 12 Agriculture Departments and 7 other subordinate institutions*):
 - In **29** cases or **94%**, full enforcement of the Commissioner's recommendations was found by the human resources unit of the institution.
 - In **2** cases or **6%**, partial enforcement of the Commissioner's recommendations was found by the human resources management unit of the institution.

Graph no.11 Enforcement of the recommendations from state administration institutions (human resources management units)



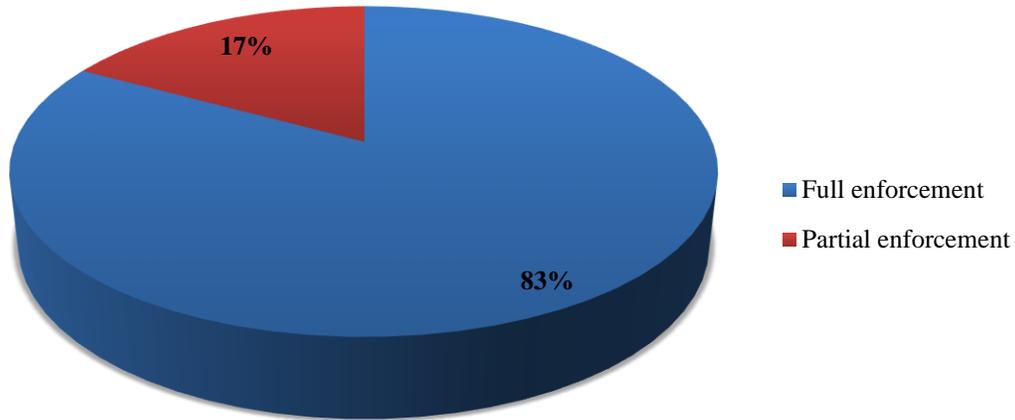
In the state administration institutions, mainly in the County Prefectures and Agriculture Departments, but also in some of the subordinate institutions, in the respective warning decisions the Commissioner has delegated among other things a number of tasks to the Department of Public Administration, which are currently not enforced for objective reasons.

With the new organization of ministries and their subordinate institutions, DPA is unable to enforce these recommendations until the finalization of the restructuring process. For this reason, their enforcement will be followed by the Commissioner at the end of this process.

❑ **By 35 local government units (5 County Councils and 30 Municipalities):**

- In **29** or **83%** of cases, full enforcement of the Commissioner's recommendations was found.
- In **6** or **17%** of cases, partial enforcement of the recommendations of the Commissioner's decisions was found.

Graph no.12 Enforcement of recommendations by local government units



In cases where the decision by the local government units was not enforced (*concretely in 6 cases*), mainly regarding the annulment of the illegal appointment acts, this situation is due to the impossibility of immediate enforcement, due to the need of competition procedures to be carried out, requiring a certain time limit. In some cases, these procedures are repeated due to the lack of candidates or failure to meet the criteria required by their employment position. The Commissioner is following this process and guiding human resources management units whenever necessary.

For these reasons, the Commissioner did not consider it necessary to impose a fine on civil servants responsible for not enforcing measures, as provided for in article 15 of law no. 152/2013, “*On the civil servant*”, amended.

To summarize, it results that out of **66** institutions for which the confirmation process of the warning decision has been completed:

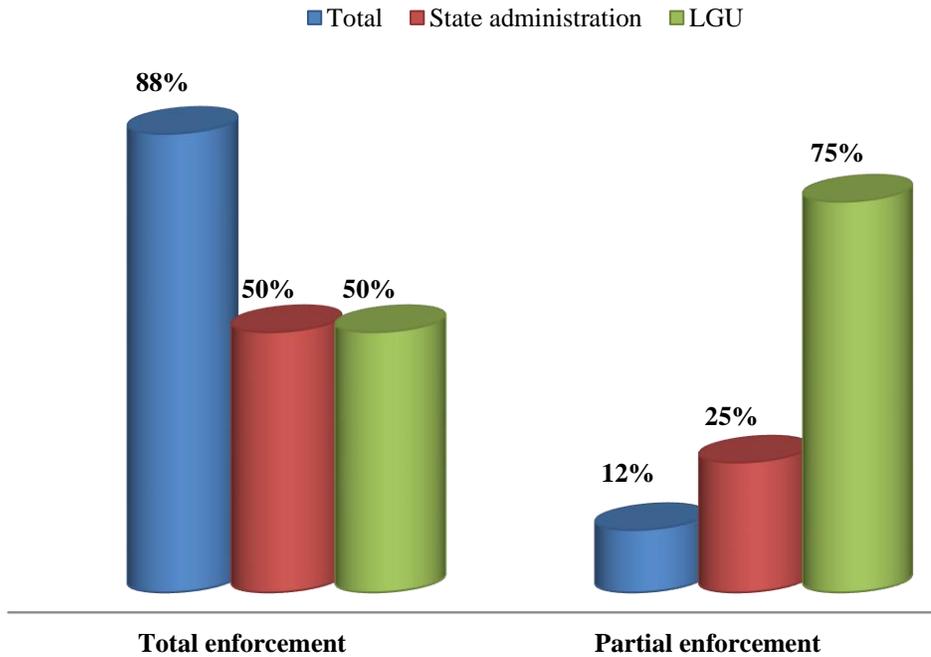
- in **58** or **88%** of cases the Commissioner’s recommendations have been fully enforced (*specifically in 29 state administration institutions or 50% of cases and in 29 local government units or 50% of cases*), and
- in **8** or **12%** of cases the Commissioner’s recommendations have been partially enforced (*specifically in 2 state administration institutions or 25% of cases and 6 local government units (municipalities) or 75% of cases*).

The situation of the enforcement of the Commissioner’s recommendations listed above is summarized in the following table and graph:

Table no.36 Enforcement of the Commissioner’s recommendations (cases of general/thematic oversights/inspections)

INSTITUTIONS	FULL ENFORCEMENT	PARTIAL ENFORCEMENT
State administration (Sub. institution)	29 (or 50%)	2 (or 25%)
Local government units	29 (or 50%)	6 (or 75%)
In TOTAL (66 institutions)	58 (or 83%)	8 (or 12%)

Graph no. 13 Enforcement of the Commissioner's recommendations (cases of general/thematic oversights/inspections)



The above analysis clearly indicates high level of enforcement of the Commissioner's recommendations by human resource management units of institutions that have been subject to general or thematic oversight / inspection.

2. Warning decisions of the Commissioner at the end of the administrative investigation process on individual cases

During the reporting period, there were 89 notifications from civil servants reaching the Commissioner regarding various problems in the field of civil service administration, while in 2 cases the Commissioner initiated administrative investigation.

All these cases have been examined by the Commissioner with the following results:

- ❑ In **17** cases, the investigation was concluded with the decision of the Commissioner to regulate the status of illegitimacy.
- ❑ In **14** cases, the information has been merged and managed in the institutional oversight context.
- ❑ In **5** cases, the conclusion of the procedure was decided, since there were no illegal actions found after the administrative investigation.
- ❑ In **41** cases, the respondents were answered in an administrative way.
- ❑ In **3** cases, after the Commissioner processed the information, he decided to conclude the process, as the case was appealed to the court.
- ❑ In **5** cases the process of administrative investigation was suspended for legal reasons.
- ❑ **6** cases were carried forward for 2018.

In cases where the Commissioner has come up with concrete tasks for the restoration of legitimacy, irregularities have had to do with these aspects:

1. Failure to recognize the rights deriving from article 50 of law no. 152/2013, “*On the civil servant*”, amended, such as granting compensation based on seniority in the civil service as a result of dismissal from the civil service due to restructuring and the possibility of competing as a civil servant within a period of two years.
2. Failure to complete the confirmation process and the declaration as a civil servant at the end of the probation period, respectively by the direct supervisor and the responsible unit.
3. Illegal temporary transfer.
4. Illegal suspension from duty.
5. Failure to comply with the procedures established by the law and bylaws during disciplinary proceedings.
6. Appointment to civil service positions through provisional appointment acts, ignoring competition procedures.

In order to regulate the state of legitimacy in the civil service administration in these cases, the Commissioner has requested the responsible unit to take the following steps:

- Annul administrative acts for the illegal appointment of 1 employee and terminate the employment relationship.

- Determine absolute invalidity and annul administrative acts materializing in disciplinary proceedings, while letting the employee return in the former position.
- Complete the act of removal from civil service due to restructuring, with the recognition of rights deriving from article 50 of the law and the calculation of the compensation based on seniority from the issuance date of this act.
- Conclude the confirmation process at the end of the probation period by the direct supervisor by issuing the respective individual act and informing the employee and the responsible unit in order to issue the declaration act of the employment status based on legal definitions.
- Cancel administrative acts for temporary transfer as illegal acts and adjust consequences, while letting the employee return in the former position.
- Determine the absolute invalidity and annul the administrative acts for the suspension measure, while letting employees return in the former position.

2.1 Implementation of the Commissioner’s warning decisions, issued at the end of the administrative investigation on individual cases

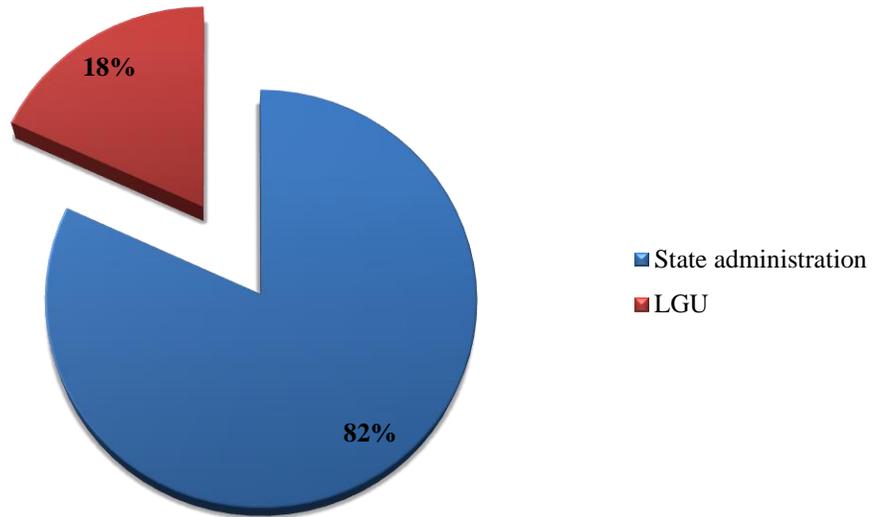
In parallel with the follow-up of the implementation of the warning decisions resulting from the general or thematic oversight / inspection process, the Commissioner has also followed the implementation of warnings issued from the administrative investigation for individual cases.

For the period January - December 2017, the ongoing oversight process (*the process of confirmation for the warning decisions enforcement*) included **22** individual cases, of which **15** cases for which the Commissioner issued a verdict in 2017 and **7** cases carried through year 2016.

Of the **22** cases that were subject to the process of confirming the enforcement of Commissioner’s decisions, **18** or **82%** are in the state administration (**5 ministries and 13 subordinate institutions**) and **4** or **18%** in local government units (**1 council county and 3 municipalities**).

Graphically, this situation is presented below:

Graph no.14 The ongoing oversight process according to the type of institutions for individual cases

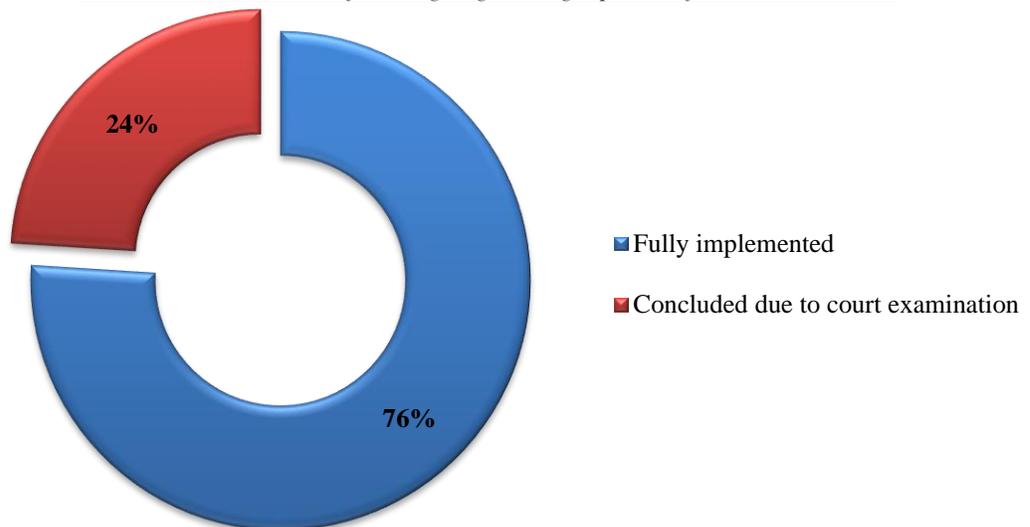


At the end of the process of confirming the implementation of the Commissioner’s recommendations for these 22 cases, the process was concluded with the Commissioner’s decision in 17 cases or 77%:

- In 13 cases or 76%, institutions have fully implemented the recommendations of the Commissioner (of which 4 cases are in ministries, 6 cases in subordinate institutions of the state administration, and 3 cases in local government units).
- In 4 cases or 24%, the confirmation process was completed due to the examination of the case in court (of which 1 case in 1 ministry and 3 cases in subordinate institutions of the state administration).

This situation is presented graphically as follows:

Graph no.15 The situation at the end of the ongoing oversight process for individual cases



For the other 5 cases, the situation is the following:

- In *1* case, the implementation of the Commissioner’s decision was suspended until the end of the restructuring process of the institution (*in a subordinate institution of the state administration*).
- In *4* cases, the confirmation process is ongoing at various stages (*out of which 3 cases in state administration institutions and 1 case in local government units*).

To conclude, given the positive reaction and the efforts of the supervised institutions to regulate the state of legitimacy based on Commissioner’s recommendations in the warning decisions, it can be stated that the role of this institution during the three years of its activity has increased significantly. This is not just a positive outcome of our work but also an important impetus to continue our efforts and engagement to create a sustainable and professional civil service based on merit, moral integrity and political impartiality, in conformity with the purpose of the law on the civil servant.

3. The Commissioner as a party in court proceedings

During 2017, the Commissioner participated in trials conducted by administrative courts in different districts of the country, called as a defendant or third party, in cases where the trial was subject to disputes concerning various institutes of law no. 152/2013, “*On the civil servant*”, amended, whether or not there has been a decision-making on his part in these cases.

It is worth noting that the Commissioner’s recommendations or his adductions before the court have been assessed as fair and have been taken into account by the latter in resolving administrative disputes.

CHAPTER VI

INSTITUTIONAL COOPERATION AND FOREIGN RELATIONS

In addition to the activity of the institution based on the law no. 152/2013, “*On the civil servant*”, amended, the Commissioner had as focus of his work the cooperation with homologue institutions (*almost homologue*), for the purpose of exchanging inter-institutional experiences.

Thus, based on paragraph 5 of the Resolution by the Assembly of Albania, “*On the evaluation of the activity of the Institution of the Commissioner for the Civil Service Oversight for 2016*”, the Commissioner has continued his efforts to increase this cooperation. A summary of activities carried out during 2017 is provided in the following chapter.

1.Cooperation with homologue institutions (*almost homologue*)

On April 20 and 21, 2017, the Independent Oversight Board for the Civil Service of the Republic of Kosovo, headed by the Head of the institution, Mr. Shkëmb Manaj, paid a working visit in Tirana at the invitation of the Commissioner for the Civil Service Oversight in Albania, Ms. Pranvera Strakosha.

The two-day visit program included meetings with the Commissioner for the Civil Service Oversight in Albania, with the President of the Administrative Court of Appeal in Tirana, Mr. Kastriot Selita, with the Head of the Department of Public Administration, Ms. Albana Kociu, and with the Minister of State for Innovation and Public Administration, Ms. Milena Harito.

The purpose of this visit was to exchange experiences and best practices in the civil service administration, as well as to discuss challenges and problems encountered in this area. After the greeting speech held by the Commissioner for the Civil Service Oversight, Ms. Pranvera Strakosha, Head of the Independent Oversight Board for the Civil Service of the Republic of Kosovo, Mr. Shkëmb Manaj, made a brief presentation of his staff and acquainted the Commissioner with the process of amending the law on the civil service in Kosovo. Further, representatives of the Commissioner’s institution introduced members of the Council with the civil service system in Albania, the process of civil service administration oversight, implementation of Commissioner’s decisions, and challenges encountered during the two years of its operation.

During the meeting with the Head of the Administrative Court of Appeal, Mr. Kastriot Selita, he informed the Independent Oversight Board for the Civil Service of Kosovo regarding the functions of the Administrative Court of Appeal and further discussed how to handle administrative disputes for specific aspects of the civil service.

During the meeting with the Head of the Department of Public Administration, Ms. Albana Kociu, both sides shared the common pleasure of this visit, mutually expressing the will for

further cooperation. During this meeting, various aspects of civil service management were discussed, which are administered by the Department of Public Administration. Particular focus was given to the recruitment process and the human resources management system.

During the meeting with the Minister of State for Innovation and Public Administration, Ms. Milena Harito, the Council was informed on the experience of this ministry in terms of reforming the recruitment system towards achieving the goal set by the lawmaker for the creation of an independent, transparent, merit-based civil service.

2. Participation of the Commissioner in conferences organized by international organizations operating in the field of public administration sciences IASIA and IIAS

In the framework of the membership of the Commissioner for Civil Service Oversight in a number of organizations operating in the field of public administration, on May 30 - June 02, 2017, the Commissioner attended the International Congress 2017 in Aix-en-Provence, France, organized from the International Institute of Administrative Sciences (IIAS).

One of the most important topics discussed was the theme: “*Between politics and public administration: The reign of nepotism*”. The fight against nepotism is one of the conditions for strengthening the rule of law, especially in countries with fragile democracies, such as Albania.

In the discussions that took place during the sessions of this congress, it was emphasized that apart from numerous reforming efforts, patronage and nepotism continue to be one of the biggest problems of administration in many countries.

At the end of the congress, the speakers’ arguments converged on the fact that merit-based appointment is the only path that will bring about change.

In addition to the main topic of this congress, particular focus was given to recent increasing emigration and opportunities not only for the acceptance of emigrants, but also their integration in society in general and in the public administration in particular, having the conviction that there is no sense to xenophobia in a world that is increasingly evolving towards the disintegration of borders.

On July 03 – 07, 2017, the Commissioner for the Civil Service Oversight attended the International Common Conference 2017 in Ramallah, Palestine, organized by the International Association of Schools and Institutes of Administration (IASIA) and the Middle East and North Africa Public Administration Research (MENAPAR).

One of the most important topics discussed at this conference was the theme: “*International*

Dimensions of Public Administration”, a very important aspect for our country in the framework of EU membership.

Participation in these conferences was very useful because it familiarized the Commissioner with the experiences and views of different countries around the world regarding their approaches towards the aforementioned issues.

CHAPTER VII

HUMAN RESOURCES, FINANCIAL MANAGEMENT, AND SOME ISSUES

ENCOUNTERED DURING 2017 RELATED TO THESE ASPECTS

1. Human Resources

The Secretariat of the Commissioner for Civil Service Oversight is the supporting structure of the Commissioner in the fulfillment of the tasks entrusted to him by the law. This structure works with all the human resources capacity endorsed by Assembly Decision no. 98, dated December 4, 2014, “*On approval of the structure, organization and categorization of the work of the Commissioner for Civil Service Oversight*”. The body of this Institution envisages **31** job positions, of which **25** are part of the civil service.

The Commissioner has been working towards increasing the capacity of the Secretariat staff, including training sessions in **5** cases as well as inspectors and specialists of other departments on topics related to various aspects of the civil service administration. The trainings were organized in close cooperation with the Albanian School of Public Administration (ASPA) and through study visits to similar institutions abroad.

Although with a limited staff and logistics, the Commissioner has managed to extend his activity in the implementation of subject and ground powers across the country, enabling communication and interaction with all responsible units of institutions that are part of civil service, as well as overseeing about **3,000** civil service positions.

These jobs were accomplished with the utmost commitment of the Commissioner staff, including in the oversight process all human resources (12 inspectors) as well as specialists of the Department for Legal Affairs and External Relations (4 specialists), who handle all initiated oversight and inspection processes, apply a reasonable deadline for their timely completion, follow up and confirm information received by the Commissioner, follow up on court issues, and control the accomplishment of the duties delegated by the Commissioner in warning decisions.

One aspect of the difficulty faced by the Commissioner during his activity is the lack of logistical capacities (*currently there is 1 transport vehicle*), limited budget for *per-diem* and services, as well as limited human resources (*12 inspectors*), compared to the large volume of work to be carried out.

The need to support the Commissioner in these directions is obvious due to the wide territorial scope of competence encompassing the entire territory of the country, the high number of civil service positions (*about 16,000 civil servants*), the high number of procedures carried out during civil service administration by human resources units that are subject to oversight and inspection, increasing court proceedings where the Commissioner is invited as a party to the trial, as well as other activities entrusted to him

by law.

As evidenced in this report, the fulfillment of these needs will have a direct impact on acting as soon as possible and in real time to prevent legal violations and to regulate the situation through confirmations of the subject.

2. Realization of economic-financial indicators for 2017

During 2017, the Commissioner tried to administer effectively and efficiently the funds allocated by the State Budget, strictly respecting the financial management principles and rules based on current legislation, taking into account:

- ✓ Completing the mission of the Commissioner who, as a warrantor for the implementation of legitimacy in the civil service administration, oversees the implementation of procedures for the application of all law institutes in all institutions employing civil servants, in order for this process to be honest, objective, impartial and transparent.
- ✓ Realization of oversight of civil service management in terms of ensuring the same standards in law enforcement.
- ✓ Membership in International Organizations and participation in conferences / visits organized by them.
- ✓ Increase staff performance in the Commissioner's institution through participation in trainings and application of control standards.
- ✓ Ensure transparency and credibility through improving infrastructure (computerization) of institutional activities and periodic reporting.
- ✓ Ensuring good work performance in the institution of the Commissioner.

Budget funds approved at the beginning of 2017 for the Commissioner, amounting to ALL 53,900.00 thousand, are presented in the following structure:

Table no.37 *Initial budget plan*

Financial account	Description	Initial budget plan for year 2017 (in thousand ALL)
600	Salary fund	31,700.00
601	Social & Health insurance contributions	5,300.00
602	Goods and other services	12,200.00

605	Current transfers abroad	460.00
606	Transf. for Fam. & Individ. Budgets	240.00
230-231	Capital expenditures	4,000.00
	Office equipment	2,000.00
	Electronic devices	2,000.00
	T o t a l	53,900.00

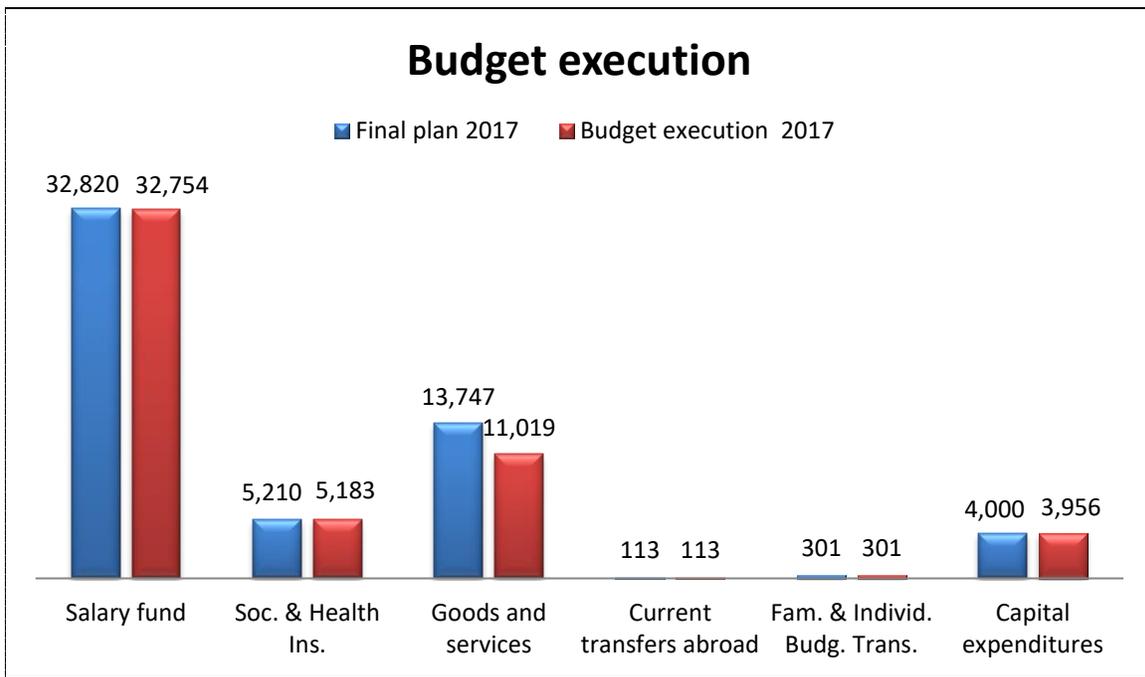
Following the Decision of the Council of Ministers no. 187, dated 08.03.2017, “*On the approval of the salary structure and levels of civil servants / employees, deputy minister and cabinet officers, prime ministry, and line ministries*”, and letter no. 6475/1, dated 12.05.2017, “*Submitting details of the increase of the salary increase fund*” by the Ministry of Finance, budget funds allocated for the Commissioner and executed for 2017 are presented as follows:

Table no.38 Budget execution for year 2017

Financial account	Description	Final budget plan for year 2017	Budget execution for year 2017 (in thousand ALL)
600	Salary fund	32,820.00	32,754.00
601	Social & Health insurance contributions	5,210.00	5,183.00
602	Goods and other services	13,747.00	11,019.00
605	Current transfers abroad	113.00	113.00
606	Transf. for Fam. & Individ. Budgets	301.00	301.00
230-231	Capital expenditures	4,000.00	3,956.00
	Office equipment	435.00	391.00
	Electronic devices	2,688.00	2,688.00
	Salary fund	877.00	877.00
	T o t a l	56,191.00	53,326.00
	% of the total		95 %

And the graphical presentation of budget execution for 2017:

Graph no.16 Budget plan and execution for year 2017



Moreover, during 2017, based on the needs arising during the work to achieve concrete objectives and duties, we have requested and have been approved some changes in the procurement register.

- **The Salary and Social & Health Insurance Fund, (600-601)**, was executed for this year at the value of **37,937.00 thousand ALL**, or **99.8%** of allocated funds.
- **The Fund for other Current Expenditures (602-606)**, was executed for year 2017 at the value of **11,433.00 thousand ALL** or **80.7%** of the allocated funds. This fund was executed for:
 - Repayment of liabilities to the state, such as electricity, water, banking, postal and telephone services.
 - Expenses for purchasing various supplies such as stationery, cleaning materials, ink and toners for printer and photocopy equipment, etc.
 - Expenditures for achieving the purpose of the Commissioner, ensuring the same standards indicated by the law on the civil service, in all institutions operating under the law, through civil service management oversight.
 - Expenditures for the representation and participation of the Commissioner in various activities and business meetings outside of Albania.
- **Capital Expenditures Fund, (231)**, was executed for year 2017 at the value of **3,956.00 thousand ALL** or **98.9%** of the allocated fund of **4,000.00 thousand ALL**.

CHAPTER VIII

LEGAL IMPROVEMENTS – AS A CONDITION TO INCREASE THE LEVEL OF APPLICATION OF LAW NO. 152/2013 “ON THE CIVIL SERVANT”, AMENDED

Based on experience gained during the oversight based on law no. 152/2013, “*On the civil servant*”, the Commissioner considers that the time has come to intervene in its content in terms of specifying and supplementing certain specific provisions in order to increase its implementation level.

Below we will present some concrete proposals for amendments to this law, which were also present in the 2016 report, but since when the legal change did not occur, the Commissioner estimates that he should present them again to the Assembly.

With the beginning of the legal effects of the law on the civil servant, the civil service in general and the civil servant situation in particular, went through significant changes in the positive direction.

This influence of the law relates not only to a new conceptualization of the civil servant status, linking it with the person rather than with the employment position as it was in the past, but also with a more precise definition of the rights and obligations of subjects participating in the enforcement of civil service legislation provisions in general.

Put in another way, it is a major step forward in changing the meaning of the status, from a trait of the employment positions defined in law no. 8549, dated 11.11.1999, “*Status of the civil servant*”, in a personal capacity of the civil servant, in the sense given by law no. 152/2013, “*On the civil servant*”, amended.

Unlike the previous legislation that related all rights and obligations to the civil service position, where the termination of this relationship interrupted the relationship with the status and rights and obligations it contained, with the present law the status becomes a personal quality, acquired under legal terms and continues for a certain period of time after the termination of the employment relationship, for reasons set out in the law.

Currently the law is in the fourth year of its enforcement, and during this process difficulties and problems have arisen, mostly related to:

- ✓ implementation of the permanent transfer institute in the case of restructuring;
- ✓ enforcement of court decisions;
- ✓ identification of the responsible employee in case of illegal actions in a warning decision of the Commissioner.

In these conditions, we are presenting below some of the most commonly encountered problems, or issues causing difficulties for interpretation not only from the administrative

law perspective but also in the practical context, loading the state budget with significant unnecessary liabilities.

1. Problems that have arisen regarding different aspects of the implementation of the permanent transfer institute (due to restructuring of the institution), provided for in article 50 of law no. 152/2013, “On the civil servant”, amended

Paragraph 6 of the article in question (50) provides that: “...*termination of civil service relations due to the restructuring or closure of an institution is not permitted, unless, as a consequence of these proceedings, there is a shortage in the total number of civil servants and the transfer according to point 2 of this article is impossible.*”

The wording of this provision is quite fair and it seems that the lawmaker intended to preserve the rights of a civil servant who is subject of an employment relationship in the civil service as much as possible.

However, the condition to preserve the above right in the civil service, in the order specified in point 2 of the current provision (*citation: The transfer, according to point 1 of this article, is preceded based on this order: a) at the same institution where the civil servant is appointed; b) in the institution which the institution has been dissolved or merged with, one of the institutions which the institution is divided through, or in the institution that received functions previously performed by the employee; c) in the subordinate institutions of the restructured institution; ç) in another civil service institution*), makes it nearly impossible to implement.

This determination has resulted in the fact that in most cases, when the case has been dealt with in court, the institution was appointed to settle the employee at work by ordering salary payment for the entire duration of the decision enforcement.

Under these circumstances, at this moment two problems arise and cannot find a solution by the current law on the civil service:

Firstly, the court orders the return of the civil servant to his previous position, in case this position has been shortened and no longer exists after the restructuring of the institution and, as a rule, when there are mergers or unions of institutions, there are also job cuts;

Secondly, in the case of restructuring, it is required the transfer of a civil servant, whose position has been shortened or restructured, in another position in the civil service in one of the institutions subject to the current law.

This situation in the state administration institutions may find a solution, since the

Department of Public Administration is recognized as the civil service administrator in this category of institutions. Meanwhile, for independent or local government institutions, this provision cannot function, except in cases of subjective assessments, on the basis of recognition.

Therefore, in the case when in local government and independent institutions there is no “*Coordinator*” or an instigation to order or coordinate relations between different institutions in the civil service, the enforcement of point 2, letter “ç”, of article 50, law no. 152/2013, “*On the civil servant*”, becomes impossible.

When such cases are examined in court, court orders always state the obligation to appoint the concerned person in one of the civil service institutions, based on this provision. In these circumstances and when the obligated institution is unable to objectively appoint the employee, then it is unjustly penalized with paying the salary until the enforcement of the decision.

In order to regulate this situation, the Commissioner considers that the competent body should be established to coordinate between independent and local government institutions.

However, in the enforcement of article 50 of law no. 152/2013, “*On the civil servant*”, amended, for the transfer in case of restructuring or closure of the institution, the district administrative courts and the Administrative Court of Appeal, in each case reviewing a dismissal from civil service which was proved to be the cause of restructuring or closure of the position, cannot overcome employee benefits limits provided for in points 7 and 8, where compensation for employees affected by the restructuring up to a one-year salary and the right to compete for parallel positions or promotion for two years. The appropriate mechanism for the unification of law enforcement should also be found on this issue.

3. Enforcement of final court decisions, on the return of civil servants on duty, according to article 66/1 of law no. 152/2013, “*On the civil servant*” (added by law no.178/2014)

This is a provision the Commissioner considers should be of a temporary character, only for those decisions that had not been implemented from previous years and had increased the bill of repayment of the financial liability from the state budget.

This conclusion is reached since the enforcement of court decisions is an institute that is regulated in detail by the relevant chapters of the Civil Procedure Code and law no. 44/2015, “*Administrative Procedure Code of the Republic of Albania*” and there is no need for such provision in a specific law to exist in a specific way, such as the law regulating relations in the civil service.

This remark is generally directed to this case, but in particular, the enforcement of this provision has encountered difficulties due to point 4, article 66/1, of law no. 152/2013, “*On the civil servant*”, amended, which states: “*Since the moment of the opening of a vacancy in the civil service, the responsible unit is obliged to initially appoint, **with the consent of the civil servant**, employees registered in the list by category and meet the requirements of the employment position*”.

There has been difficulty and misunderstanding in the enforcement of this provision due to the fact that for the enforcement of such judicial decisions, the (*unlimited*) consent of the employee who has won the trial is definitely required. In many cases, various employees listed in the waiting list according to point 2 of this provision, have stubbornly refused to start work in a new offered position, asking to return to their previous position although it was closed or restructured, making it impossible to implement the decision in that way.

Speculating on the content of the current provision ordering the payment of the salary based on the last position they held in the civil service until the moment of appointment, they do not accept the transfer to an analogue position of the same category, thus continuing to receive an unjust pay.

On the other hand, even in similar cases, there is a difficulty in the placement of civil servants who have won trials in cases of independent and local government institutions, when there is lack of a coordinator and there is limited number of job positions in general and of vacancies in particular.

In order to regulate the situation and to avoid repeating such unsatisfactory situations that are detrimental to the state budget, the Commissioner considers that the following should be done:

- a) Remove from the provision on the execution of judicial decisions (point 4 of article 66/1) of the law in question, the notion of “*the employee giving consent*” for the appointment to another position in the civil service based on a final court decision, and emphasize the institutions’ obligation to maintain the relevant category and employment position criteria, or
- b) Consent shall not be unconditional, but shall relate to restrictions given by provisions of articles 50, 51, 52, etc., of law no. 152/2013, “*On the civil servant*”, amended, such as: the same category, health reasons, distance from residence, conflict of interest, etc.

This provision should clearly specify how to deal with those cases where employees who have requested the execution of a court decision to resume work in the civil service, by their own will have started working in institutions that are not part of civil service, or in the

private sector. Currently, in such cases, while these employees receive a salary from the institution they are employed, they continue to claim the salary appointed to them by court decision, even under these circumstances.

2. Implementation of the decisions of the Commissioner for Civil Service Oversight, according to point 2, of article 15, of law no. 152/2013, “On the civil servant”, amended and the meaning given by this law to the “responsible civil servant”, in the case of liability for non-enforcement of the decision

Acknowledging the right of the Commissioner to warn the institution in cases of legal violations and to delegate concrete tasks for improvement of the situation, referred to in point 2, article 15 of law no. 152/2013, “*On the civil servant*”, amended, it is also provided for the possibility of using sanctions against the “*responsible officer*” for not executing the assigned duties, according to the measure provided for in this provision.

In practice, an often encountered problem is that in the case of non-compliance with the Commissioner’s decision and failure to enforce the ordered measures, the true responsibility does not go to the employee or manager of the human resources unit, but to the head of the institution itself.

At this moment there is a legal obstacle (*especially the case in local government units, independent institutions, members or heads of collegial governing bodies of committees or institutions subordinated to the Prime Minister or a ministry*), since at the moment this claim is raised by the direct human resources employee, it is impossible to act further.

This is due to the fact that, based on Article 2 of the law on the civil servant, this law does not apply for the elected ones (*letter “a”*); members or heads of collegial governing bodies of committees or institutions subordinated to the Prime Minister or a ministry (*letter “f”*); cabinet officer (*letter “gj”*), etc.

In the Commissioner’s practice there are many cases for which the cancellation of administrative acts of dismissal is required for various reasons, in cases when the heads of local government units, surpassing their competencies, have issued acts for changes or interruptions of employment relations for various reasons, bypassing the competences of the Disciplinary Commission, the Restructuring Commission, etc.

We think that in order to avoid such cases, it would be appropriate to make an amendment in point 2, article 15 of law no. 152/2013, by correctly defining and extending the meaning of the concept of “*responsible officer*” and removing the restriction of responsibilities of heads of local government units, independent institutions, etc., who in most cases specifically and directly deal with the process of human resource management, thus surpassing and taking competences of other bodies entrusted by law.

3. Problems that have arisen during the practical implementation of the civil servant assessment institute, which should be regulated through legal changes

The institute of job results assessment is an important process which relates to the confirmation process of the overall achievement of the objectives set at the beginning of the assessment period, as well as the employee's skills or weaknesses in the performance of each task, taking place every 6 months.

This institute is regulated in article 62 of law no. 152/2013, "*On the civil servant*", amended, and Decision no. 109, dated 26.02.2014, of the Council of Ministers, "*On the performance evaluation of civil servants*".

We are dealing with a difficult process, with a continuous supervisor-subordinate relationship, often associated with subjectivism.

The new provisions and current forms are more detailed and have given a new perspective to this important and delicate administrative process, but the Commissioner estimates that there can be an amendment in point 2 of article 62 of the law in question with regard to the assessment levels.

Currently, this provision provides for 4 assessment levels, of which 3 are positive evaluations and 1 is a "*not satisfactory*" negative assessment. It is estimated that making only 3 levels of assessment available to the direct supervisor (*very good, good, satisfactory*), makes the individualized assessment difficult and brings dissatisfaction among employees who do not feel the incentive to move forward, which this process should ensure.

It would be sensible to double the positive assessment levels in order to facilitate the process of individualization and increase efficiency and competition among employees.

As we have earlier analyzed in this report, when it comes to assessing the work of civil servants, it turns out that this law institute is not carrying out its function in terms of professional growth of the civil servant and increasing his level towards service to citizens.

Given the statistics administered in 3 years and confirming the practical implementation of this process, the Commissioner has estimated that this law institute has become a formal process which has not performed its role according to the objective of the law.

In these circumstances, the Commissioner considers that the time has come to find effective mechanisms to guide this law institute towards achieving its goal, which may be both in terms of financial reward for best performing employees as well as determining the

ratio to be applied by the direct supervisor when applying the entire spectrum of evaluations to the total number of civil servants.

The Commissioner estimates that legal improvements in this law institute will bring motivation to the staff for improving quality of work and will lead the supervisor towards a fair and objective assessment. Likewise, the amendment of the law in this case will have a positive impact on reducing the corruption level in the civil service.

CHAPTERIX

CONCLUSIONS AND RECOMMENDATIONS

The report prepared by the Commissioner has presented the work carried out by the institution during 2017, which is related to the application of the oversight competence,

while at the same time ensuring that this process helps institutions to properly understand and abide the law.

During this year, experience and work performance of employees assisting the Commissioner has increased, and a consolidated practice for solving various problems related to civil service administration was created.

The Commissioner appreciates the good work performed by the staff of human resource management units in most of the institutions employing civil servants who carry out their duties under constant pressure. This is due to their work volume and the mentality of management levels regarding procedures to be implemented during the civil service administration process, considering them often as additional tasks rather than part of functional duties, and in many cases refuse to perform them on time, as in the case of work evaluation, confirmation decision, etc.

The Commissioner evaluates that heads of institutions and other actors of civil service administration should provide proper support to human resource management units, as there are cases where their staffing needs are not considered objectively. Often employees are not given enough time to carry out functional duties, being delegated different jobs related to the institution's activity but not to their functional duty. This situation continues to be ascertained during this year, as in the previous year, by Commissioner inspectors during their visits to the subject in the oversight process.

Given the ascertained situation during the oversight, as well as from continuous communication with institutions operating in the civil service field, the Commissioner evaluates a good level of implementation of law no. 152/2012, "*On the civil servant*", amended. A problem that has begun to emerge again, though in low levels a year ago, is illegal recruitment through temporary contracts. This phenomenon is especially obvious in local administration institutions.

The work carried out during this year by the Commissioner has identified in detail the progress of the law enforcement in all its institutes.

The Commissioner appreciates the rising working standard of the Department of Public Administration in various aspects of civil service administration, such as:

- Towards the process of preparing legal and sub-legal acts, as a task specifically entitled by law which regulates in detail the procedures to be applied during the civil service administration process, among which instructions for the restructuring of the institution.
- Creating a practice for support with specific guidelines, creating the premise for unified law enforcement in recruitments for the entire civil service system,

highlighting successful efforts to improve the electronic competition system, facilitating its use by all stakeholders as well as increasing transparency in the content of the recruiting process.

- Making mobility accessible to all civil service employees, enabling mobility of civil servants in all institutional levels (*state, local and independent*) through parallel movement and promotion.

Based on conclusions drawn during the oversight of the recruitment process conducted by the Department of Public Administration, the Commissioner has concluded that this institution continues to work at high rates to establish the process in a regular procedural framework. Even this year, competitions continue to be held in groups with a considerable number of candidates and satisfactory quality of participants in the process.

The ongoing challenge of the Department of Public Administration is the constant perfection of the content of this process, providing the conditions for expanding the participation of candidates with high preparation levels, and managing the process towards a lower number of competitions, providing a more effective division by including positions with same specifications for each group, while ensuring the necessary transparency and objective evaluation of the candidates participating in the competition. The latter aspect has markedly evolved, as currently the Department of Public Administration has started to develop recruitment procedures using the electronic question bank as well as introducing the process into an electronic system that does not allow subjectivism in terms of correcting the tests.

During this year, efforts have been made to increase group recruitment in the local administration institutions, which continue to be problematic in this regard.

There are still cases where competitions are held for a certain position with a very limited number of candidates, in many cases only one candidate, failing to create a group of positions; a situation which is also due to the limited number of positions they have to fill.

This is a situation in conflict with the law, which aims to implement the group recruitment process through competition where the principle of merit, professionalism, equality and non-discrimination is guaranteed. In this case, mechanisms of inter-institutional cooperation between institutions of local administration should be functional, enabled by the specific law regulating their functioning as well as by the cooperation with the Department of Public Administration to create necessary conditions for law enforcement.

- Regarding discipline in the civil service, a relatively high level of applications is noted this year, with all kinds of disciplinary measures.

Discipline in the civil service is one of the most important law institutes and is intended to

penalize civil servants who violate their legal obligations. Its application level should be in fair relation with disciplinary violations committed by civil servants and therefore the situation has started to be more objective and reflect reality.

- Concerning the enforcement of article 67 in the current law on the civil servant, which relates to the declaration of the employment status of employees occupying civil service positions at the time when legal effects of this law started, despite the relatively long time of enforcement, various irregularities are found.

During this year's oversight of this aspect of civil service administration, same problems of last year were found, where on one hand there are cases of illegal declarations of the status of civil servants, and on the other hand, illegal refusals of the same status. During this year, there are also cases when employees have been dismissed and have abandoned their status, failing to claim the right of declaration as civil servants.

Likewise, there continue to be cases of civil servant status declarations, without the employee undergoing a special period, in this case a probation period. Moreover, there are cases where this obligation was not fulfilled by the responsible unit and the status declaration process was not applied.

In cases of illegal actions, the Commissioner has asked the responsible unit to revoke illegal acts or to require the completion of legal action for cases where the process is not finalized.

- Regarding the institute of dismissal from civil service, there is a tendency toward improving the formal side of the process, such as the establishment of appropriate structures and restructuring committees. Anyways, there are still cases where dismissal from civil service is applied due to restructuring, thus opening new vacancies in the institution.

The Commissioner has recommended the responsible unit through warning decisions, to take into account the rights of the dismissed civil servant, both financially and in terms of the right to return to the civil service within a certain time.

- In the end of the job evaluation process, unlike a year ago, the Commissioner deems that he needs improvement towards objective evaluations and eliminate subjective evaluations. In order to achieve this goal, the Commissioner delegated concrete tasks to the human resources management unit, especially in terms of planning of trainings in this area for the employees tasked with the implementation of the assessment scheme, and through controlling supervisors in order to oversee the evaluation process, extended throughout the calendar year.

The Commissioner considers that it is time to find effective mechanisms to guide this law institute towards achieving its goal. Incentives can be both in terms of financial reward for best performing employees as well as determining a ratio that direct supervisors should apply when considering the entire spectrum of evaluations to the total number of civil servants.

CHAPTER X

PRIORITIES OF THE COMMISSIONER'S ACTIVITY FOR 2018

Drafting of the work plan for 2018, the Commissioner analyzed issues identified in this report to then draft an annual work plan, where he initially included confirmation of the implementation of the Commissioner's warning decisions issued during 2017. Further, he included in the work plan the oversight of problematic local administration institutions, after completing this year the general oversight in 61 country municipalities.

The Commissioner will continue his activity towards assisting institutions to implement the law correctly, what is an already established experience that will be accomplished through technical assistance of his staff, addressed to the responsible units for the civil service administration in these institutions. This work will continue with the process of drafting and approval of the final structures as well as job descriptions, local self-government units, by organizing training sessions, which are also planned in the work plan of the Commissioner, as well as other administration aspects.

In order to enforce its role as supervisor of the civil service system functioning based on the law, as well as supporting the public administration reform, the Commissioner's Institution intends that during 2018, as in the previous year, receive support from different subjects in order to strengthen institutional capacities both in terms of human and financial resources. We must bring to the attention of actors who manage projects with foreign donors, to include the Commissioner as a beneficiary in these projects, to strengthen this

institution and to ensure its normal activity.

Strengthening the capacity of the Commissioner's Institution and increasing institutional performance are closely related both to the independence of the Institution and to the implementation of all the activities listed above, taking into account the expansion of the territory and of the scope of action of the law. This aspect may be applied through a detailed budget required to the Ministry of Finance and further approved by the Albanian Parliament, focused on *increasing staff of the institution* as well as *logistical capacity* to support rapid and efficient actions in preventing illegal actions of civil service administration.

The Commissioner will continue work for electronically administering data collected during the oversight, in order to reflect any change or move, any assessment or disciplinary proceeding with respect to the civil servant, easily controllable by the General Department of Oversight and Inspection.

The Commissioner will continue to cooperate with international bodies to use various instruments for strengthening institutional capacities, will invest towards the development of informatics and logistic infrastructure, for the storage and processing of administered data during the oversight, as well as information provided by relevant institutions that are part of the civil service.

Following the work on the enforcement of the law on the civil servant, the Commissioner will continue his efforts towards possible improvements, in coordination with the public administration reform, and reaching the best parameters of an applicable law in all aspects it regulates.

At the end of the report, the Commissioner evaluates that respecting and monitoring civil service legislation are essential aspects that ensure the success of the civil service reform as an important part of public administration. The Commissioner's challenge remains to ensure an independent and efficient oversight process in order to prevent legal violations and to regulate illegitimacy in cases by means provided by law.

Hoping that through this report we have presented a complete and comprehensive picture of the activity of the Commissioner's Institution for 2017, we thank You for Your understanding,

Respectfully,

THE COMMISSIONER

Pranvera STRAKOSHA

Annex no.1 “Overseen institutions during year 2017”

No.	Institutions
Process of restructuring monitoring	
29.	Prime Ministry
30.	Ministry for Europe and Foreign Affairs
31.	Ministry of Defense
32.	Ministry of Interior
33.	Ministry of Finances and Economy
34.	Ministry of Infrastructure and Energy
35.	Ministry of Education, Sports and Youth
36.	Ministry of Justice
37.	Ministry of Culture
38.	Ministry of Agriculture and Rural Development
39.	Ministry of Health and Social Security
40.	Ministry of Tourism and Environment
General Oversight	
41.	Authority of Civil Aviation
42.	Regional Education Department in Elbasan and Education Offices in Librazhd, Peqin and Gramsh
43.	Regional Education Department in Korçë and Education Offices in Kolonjë, Devoll and Pogradec
44.	Regional Education Department of Tiranë County and Education Offices in Kavajë and Kamëz
45.	Regional Education Department in Berat and Education Offices in Kuçovë dhe Skrapar
46.	Regional Education Department in Lezhë and Education Offices in Kurbin and Mirditë
47.	Regional Education Department in Shkodër and Education Offices in Malësi e Madhe and Pukë
48.	Education Department in Kukës and Education Offices in Has and Tropojë
49.	Regional Education Department in Durrës and Education Office in Krujë
50.	Regional Education Department in Tiranë City
51.	Maliq Municipality and 6 Administrative Units
52.	Memaliaj Municipality and 5 Administrative Units
53.	Lezhë Municipality and 9 Administrative Units
54.	Skrapar Municipality and 8 Administrative Units
55.	Kukës Municipality and 14 Administrative Units
56.	Lushnje Municipality and 10 Administrative Units
57.	Devoll Municipality and 4 Administrative Units

58.	Këlcyrë Municipality and 3 Administrative Units
59.	Poličan Municipality and 2 Administrative Units
60.	Gjirokastër Municipality and 7 Administrative Units
61.	Kuçovë Municipality and 3 Administrative Units
62.	Prrenjas Municipality and 3 Administrative Units
63.	Patos Municipality and 2 Administrative Units
64.	Pogradec Municipality and 7 Administrative Units
65.	Sarandë Municipality and 1 Administrative Unit
66.	Korçë Municipality and 9 Administrative Units
67.	Peqin Municipality and 9 Administrative Units
68.	Dropull Municipality and 3 Administrative Units
69.	Ura Vajgurore and 3 Administrative Units
70.	Roskovec Municipality and 3 Administrative Units
71.	Gramsh Municipality and 9 Administrative Units
72.	Finiq Municipality and 4 Administrative Units
73.	Librazhd Municipality and 6 Administrative Units
74.	Delvinë and 1 Administrative Unit
75.	Konispol and 2 Administrative Units
76.	Pustec Municipality
77.	Divjakë Municipality and 4 Administrative Units
Thematic inspections	
78.	National Food Authority
79.	National Tobacco Agency
80.	National Coast Agency
81.	Department of Fishing and Aquaculture Service
82.	Mat Municipality and 7 Administrative Units
83.	Belsh Municipality and 4 Administrative Units
84.	Bulqizë and 7 Administrative Units
85.	Kurbin and 3 Administrative Units
86.	Klos and 3 Administrative Units
87.	Dibër Municipality and 14 Administrative Units
88.	Tiranë Municipality and 24 Administrative Units
89.	Përmet Municipality and 4 Administrative Units
90.	Tepelenë Municipality and 3 Administrative Units
91.	Libohovë Municipality and 2 Administrative Units
92.	Mallakastër Municipality and 8 Administrative Units
93.	Kavajë Municipality and 4 Administrative Units
94.	County Council Tiranë
95.	Shkodër Prefecture
96.	Kukës Prefecture
97.	Lezhë Prefecture

98.	Korçë Prefecture
99.	Durrës Prefecture
100.	Tiranë Prefecture
101.	Agriculture Department Dibër
102.	Agriculture Department Shkodër
103.	Agriculture Department Korçë
104.	Agriculture Department Tiranë
105.	Agriculture Department Kukës
Total: Prime Ministry, 11 Ministries, 39 Municipalities and 220 Administrative Units, 1 County Council, 5 Subordinate Institutions, 9 Regional Education Departments and 17 Education Offices, 5 Agriculture Departments, 6 Prefectures	