



**ANNUAL REPORT**  
**2019**



COMMISSIONER FOR CIVIL SERVICE OVERSIGHT

**ON THE ACTIVITY OF THE COMMISSIONER FOR  
CIVIL SERVICE OVERSIGHT**

**JANUARY 1<sup>ST</sup> - DECEMBER 31<sup>ST</sup> 2019**

**Tirana, March 2020**

## CONTENT

<b>MESSAGE OF THE COMMISSIONER.....</b>	<b>7</b>
<b>LEGAL REFERENCES ON WHICH THE ACTIVITY OF INSTITUTION IS BASED .....</b>	<b>8</b>
<b>CHAPTER I .....</b>	<b>10</b>
<b>EXECUTIVE SUMMARY OF THE COMMISSIONER’S ACTIVITY FOR 2019 AND A     GENERAL OVERVIEW OF THE CIVIL SERVICE SITUATION</b>	
1. Realization of legal competences and the civil service situation during the process of supervision.....	10
<b>CHAPTER II.....</b>	<b>16</b>
<b>INFORMATION MANAGEMENT AND ADDRESSING OF PROBLEMS     EXTRACTED FROM COMPLAINTS OR SIGNALIZATIONS</b>	
1. Analysis of information/complaints received from various sources and their way of handling.....	16
2. Classification of information verified for 2019, according to their object.....	21
<b>CHAPTER III.....</b>	<b>39</b>
<b>ORIENTED OVERSIGHT OF THE PROCESS OF FILLING JOB POSITIONS FROM     DOPA IN THE STATE ADMINISTRATION INSTITUTIONS</b>	
1. General aspects and statistics concerning the recruitment process .....	39
Progress of the 2019 competitions.....	41
Acceptance into the civil service .....	42
Promotion .....	46
Admission to the senior management level civil servants (TMC) body in the state administration.....	54
<b>CHAPTER IV .....</b>	<b>58</b>
<b>GENERAL SUPERVISIONS THEMATIC INSPECTIONS CARRIED OUT IN SUBORDI-     NATE INSTITUTIONS IN THE STATE ADMINISTRATION DURING 2019</b>	
1. The situation of law enforcement in institutions under the Ministry of Finance and Economy .....	60
Implementation of legal criteria in constructing the structure of the institution as well as during the categorization of job positions part of the civil service .....	60
Drafting job descriptions for positions part of the civil service .....	61
Preparation of the annual plan for admission to the civil service.....	62
Implementation of legal procedures for initiating employment relations in the civil service.....	62
Cases of appointments in accordance with the requirements of the law .....	63
Cases of appointments contrary to the procedures established by law .....	64
Evaluation of job performance for civil servants .....	65
Termination of employment in the civil service.....	67
Discipline in the civil service in relation to the type of penalties.....	68
Personnel file and the central staff register .....	68

2. Inspection performed at the National Food Authority, an institution under the Ministry of Agriculture and Rural Development ..... 70
3. Some statistical aspects regarding the gender relations and educational institutions where civil servants have studied in supervised entities ..... 71

**CHAPTER V ..... 73**

**INSPECTION WITH OBJECT LAW IMPLEMENTATION FOR CIVIL SERVANTS DURING THE RESTRUCTURING PROCESS OF THE INSTITUTION AND ADMISSION TO THE CIVIL SERVICE IN THE LOCAL GOVERNMENT UNITS**

1. Organizing job positions part of the civil service in the structure of the institution at the time of inspection .....75
2. Appointments to civil service positions in violation of the law, through temporary contracts, without first conducting competition procedures ..... 83
3. Cooperation between institutions in order to increase the level of implementation of the law on civil service in local administration ..... 91

**CHAPTER VI ..... 94**

**MONITORING THE IMPLEMENTATION OF THE LAW ON CIVIL SERVANTS, DURING THE ELECTION PERIOD FOR THE LOCAL GOVERNMENT UNITS IN THE REPUBLIC OF ALBANIA**

1. The situation ascertained by reports sent by the monitoring groups ..... 100
2. Supervision through on-site visits ..... 103
3. Measures taken and problems encountered during the monitoring process regarding the behavior of civil servants .....104
4. Civil servants registered as candidates for local elections and civil servants engaged in electoral commissions ..... 110
5. New appointments, as well as dismissals performed during the election period ..... 112
6. Cooperation with domestic and international institutions during the monitoring of the electoral situation in relation to the civil service ..... 112

**CHAPTER VII..... 116**

**OVERSIGHT OF LAW IMPLEMENTATION ON OBSERVANCE OF THE DISMISSAL DEADLINE FOR THE EMPLOYEES WHO REACH THE FULL RETIREMENT AGE**

1. Situation ascertained in the state administration, the Prime Ministry and 11 line ministries ..... 117
2. Situation ascertained in institutions under the Prime Ministry and ministries ..... 118
3. Situation ascertained in local self-government units (61 municipalities).....119
4. Situation ascertained in District Prefectures ..... 120
5. Situation ascertained in District Councils ..... 122
6. Situation ascertained in independent institutions ..... 122

**CHAPTER VIII ..... 125**

**IMPLEMENTATION OF THE FINAL COURT DECISIONS AND RETURN OF THE PREVAILING CIVIL SERVANTS ON DUTY**



1. The progress of the process and the situation which presents the application of legality in the execution of court decisions .....	125
2. The possibility of errors in the application of article 66/1, of the law on civil servants by the institutions and the difficulties encountered in terms of the implementation of the process of execution of decisions .....	135
<b>CHAPTER IX .....</b>	<b>140</b>
<b>ONGOING SUPERVISION AND PROGRESS ON THE IMPLEMENTATION OF THE COMMISSIONER'S DECISIONS</b>	
1. The level of implementation of the Commissioner's warning decisions .....	140
2. Implementation of the warning decisions of the Commissioner at the end of the administrative investigation process for individual cases .....	143
3. The Commissioner as a party in court proceedings .....	144
<b>CHAPTER X.....</b>	<b>145</b>
<b>INSTITUTIONAL COOPERATION AND FOREIGN RELATIONS</b>	
<b>CHAPTER XI .....</b>	<b>147</b>
<b>HUMAN RESOURCES AND FINANCIAL MANAGEMENT DURING 2019</b>	
1. Human Resource management .....	147
2. Realization of economic-financial indicators for 2019 .....	148
<b>CHAPTER XII.....</b>	<b>152</b>
<b>LEGAL IMPROVEMENTS - AS A CONDITION TO INCREASE THE IMPLEMENTATION LEVEL OF LAW NO. 152/2013, "ON THE CIVIL SERVANT", AMENDED</b>	
1. Problems that have arisen regarding various aspects of the implementation of the permanent transfer institute .....	153
2. Implementation of final court decisions on the reinstatement of civil servants .....	154
3. The specification in the law of the category " <i>responsible employees</i> ", against whom sanctions will be imposed for non-implementation of the warning decision .....	156
4. Problems that have arisen during the implementation in practice of the institute of assessment of the civil servant, which must be regulated through legal changes.....	157
<b>CHAPTER XIII .....</b>	<b>159</b>
<b>LEVEL OF IMPLEMENTATION OF THE ASSEMBLY RESOLUTION 2018</b>	
<b>CHAPTER XIV .....</b>	<b>166</b>
<b>CONCLUSIONS AND RECOMMENDATIONS</b>	
<b>CHAPTER XV .....</b>	<b>174</b>
<b>PRIORITIES OF THE COMMISSIONER'S ACTIVITY IN 2020</b>	

## MESSAGE OF THE OFFICE-HOLDER

*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, point 5, I have the honor and pleasure to present to You the report on the activity of the institution that I lead for 2019.*

*This Report presents in full all the activities carried out by the institution of the Commissioner pursuant to the law and the duties assigned by the Albanian Parliament in the Resolution “On the evaluation of the activity of the Commissioner for Civil Service Oversight for 2018”, tasks which have been fully implemented.*

*Before getting acquainted with the content of the Report, I would like to express once again the full willingness and commitment of the Commissioner’s institution to fulfill the tasks assigned to it by law.*

*Thanking You in advance for Your understanding,*

*Respectfully,*

*THE COMMISSIONER*

*Pranvera STRAKOSHA*

## LEGAL REFERENCES ON WHICH THE ACTIVITY OF THE COMMISSIONER IS BASED

The drafting of this report is based on the analysis of the institutional activity for 2019 of the Commissioner for Civil Service Oversight (CCSO), regarding the supervision of the implementation of law no. 152/2013 “*On the civil servant*”, amended.

The rights provided in the above-mentioned law are provided in the Constitution of the Republic of Albania, specifically in its article 107 which provides:

1. Public servants enforce the law and are at the service of the people.
2. Civil servants in the public administration are appointed by competition, except in cases provided by law.
3. Guarantees of tenure and legal treatment of public servants are regulated by law.

The activity of the Commissioner is based on the implementation of the Albanian legislation, on the recommendations of the Resolution of the Assembly of Albania “*On the evaluation of the activity of the Commissioner Civil Service Oversight for 2018*”, approved by the Assembly on 25.04.2019, and on the obligations that stem from international cooperation.

The powers of the Commissioner regarding the supervision of the civil service administration are provided for in articles 14, 15 and 16 of the law on civil servants and are listed as follows:

## **Article 15**

### **Supervision**

1. If during the supervision, the Commissioner deems that there is a violation of the law in the administration of the civil service, with a written decision, warns the relevant institution, assigning tasks for the improvement of the situation and setting a reasonable deadline for their implementation.
2. In case of non-implementation of the given decision, according to point 1 of this article, the Commissioner may fine the official responsible for non-implementation of measures. The amount of the fine is from 20 percent to 30 percent of the monthly salary of the responsible employee. In the event of further non-enforcement of the decision, the Commissioner may impose another fine of up to 50 percent of the monthly salary of the responsible person.
3. The decision to impose a fine may be appealed to the competent court for administrative disputes.

## **Article 16**

### **Collection of fines**

The decision of the fine is executed in accordance with the legislation in force for administrative offenses.

## CHAPTER I

### EXECUTIVE SUMMARY OF THE COMMISSIONER'S ACTIVITY FOR 2019 AND A GENERAL OVERVIEW OF THE CIVIL SERVICE SITUATION

#### 1. Realization of legal competences and the civil service situation during the process of supervision

The Commissioner for the Civil Service Oversight (CCSO), during 2019, has continued its activity in the implementation of the competencies defined by law no. 152/2013, “*On the civil servant*”, amended, in its articles 11, 14 and 15, which deal with the supervision of legality in the administration of the civil service in all institutions that employ civil servants, including in the priorities of its activity the objectives set out in the Resolution of the Assembly for the evaluation of the activity of the institution for 2018, which have been fully implemented.

In summary, we are presenting below the work of the Commissioner carried out for the reporting period:

❖ 74 institutions are involved in the process of general and thematic supervision, of which:

- **61** municipalities of the country, with the object of inspection the implementation of the law on civil servants in terms of structuring the human resources of the institution and recruitment in the civil service. Subsequently, after the completion of the process, as well as throughout the year, technical assistance continued with intensity to support the units responsible for the implementation of tasks assigned by the Commissioner in the warning decisions, as well as for the practical application of the law institutes in these entities, in cases where it has been requested by them.

At the end of the inspection, in **13** entities or **21%** of them, the inspection process was completed, as no irregularities were found during the implementation of the law on civil servants and in **48** entities, which account for **79%** of the supervised cases, irregularities were ascertained in the: **a)** organization of human resources of the institution (*during the creation of the structure, the scheme of administration of the civil service has not been respected, and it is also ascertained that there is no unification of structures in local self-government units with the same administrative features*) and **b)** compliance with the procedures for admission to the civil service (*cases of appointments without prior competition procedures are ascertained*).

During the supervision it was ascertained that in the administration of the local self-government units are included **5918** job positions, considered as part of the civil service,

which in relation to the implementation of the law are filled as follows: in **1091** cases were appointed employees contrary to the law, which account for about **18%** of job positions part of the civil service. Compared to the situation previously ascertained in these subjects, the Commissioner estimates that this figure has decreased; **4266** positions or **73%** of them have been filled in accordance with the law and **561** positions or **9%** of them, are vacant positions.

The subjects in which have been ascertained irregularities in the implementation of the law, have been warned by the Commissioner to regulate the legality, through relevant decisions, defining concrete tasks to be completed within a reasonable time frame.

The inspection process has ended with final decisions on the completion of the process for **13** cases in entities where no violations of the law were found and for **48** cases warning decisions were issued to regulate the legal situation, leaving a reasonable time limit, which until 31.12.2019, had not yet been completed. Currently, the situation is evolving towards the regulation of the legal situation, on which we will keep the Assembly informed.

Regarding the structuring of the institutions of local self-government units, which has been one of the main focus of inspection and which presents problems of various natures, as it will be also further addressed in the relevant section of the report, the Commissioner deems that a new legislation is needed, in order to discipline the organization of the administration of these subjects.

- **13** institutions under the line ministries have been involved in general or thematic supervision/inspections which have been already completed with warning decisions.

In these institutions, where 906 job positions, part of the civil service, have been verified, and no case of appointments at the executive level was evidenced in violation of the law.

These institutions and the Department of Public Administration, as the responsible unit in charge for the administration of the civil service in the state administration, have been warned by the Commissioner to regulate the situation towards the unification of middle and lower management positions in subordinate institutions, with the categorization of duties and remuneration, as defined in article 19 of the law on civil servants, as well as for finalizing the job performance evaluation for members of the Senior Management Corps, aspects for which it has been established that they have not been performed in accordance with the law.

❖ *Intensive work has been done to consolidate the database and solve the problems that arise during the execution of court decisions for the reinstatement of prevailing civil servants.*

This task was assigned to the Commissioner by the Assembly initially in 2018, and has continued also during this year.

Up to the moment of reporting, the Commissioner has communicated and administered data from **208** public administration institutions, including line ministries, state administration subordinate institutions; independent institutions and local administration institutions, of which **36** resulted with problems (**11** line ministries, **6** subordinate institutions, **11** municipalities, **5** District Councils and **3** independent institutions).

By order no. 10, dated 21.01.2019, “*On the initiation of the inspection for cases of non-implementation of final court decisions, for the reinstatement of civil servants, in the institutions that are subject to the law on civil servants*”, the administrative investigation has begun for each case of unexecuted court decisions. The process has started and is being carried out through hearings with the participation of state administration institutions, especially where the problem is more evident in this typology of institutions.

The hearings for **11** line ministries have already ended. In these meetings, the data administered up to this stage of the process were reconciled and all cases of unimplemented decisions were nominally discussed, leaving concrete tasks for the Special Commissions set up in the institution, as well as for the Department of Public Administration. The hearings were held at the Commissioner’s headquarters and were attended by authorized representatives of the Department of Public Administration and of the institution called by the Commissioner.

**601** final court decisions are binding to be executed, of which **236** decisions, or 39% of them have been implemented and employees have returned to the civil service, or have been released from the civil service for legal reasons (*full retirement pension or resignations*) and **365** decisions or 61% of them, the prevailing employees are registered on the waiting list, to be settled in a regular civil service position.

The process will continue during 2020 with the follow-up of the implementation of decisions by line ministries and will be followed by hearings with the General Directorate of Taxes, which has about **143** unimplemented decisions and with local and independent administration institutions.

The Commissioner has noted that the institutions have taken concrete actions to recognize and repay their legal obligations, which is materialized in the registration of prevailing employees in the waiting list, and at the same time in the payment of financial obligations to them, which derive from court decisions accumulated over the years.

According to the data reported by the institutions, it turns out that currently the value of **511.748.508** ALL has been paid from the state budget, in favor of the winning court employees, pursuant to the court decisions.

The Commissioner is working intensively, in close cooperation with the Department of Public Administration and relevant institutions, to enable the appointment of winning em-

ployees in a regular position in the civil service, in order for them to be paid for a concrete job to be performed and not because of a court decision.

This is a process that has reflected problems which have not allowed its progress at a rapid pace, the solution of which requires a rapid intervention to improve and develop legal and sub-legal acts, as proposed in the relevant section of the report.

- ❖ *The ongoing oversight process (the process of verifying the implementation of warning decisions) has continued, which was carried out in 83 cases in institutions after the end of the warning period, as well as in 11 cases for individual decisions related to the handling of civil servants' complaints.*

For the period of January - December 2019, after the expiration of the deadline left by the Commissioner in the warning decisions, the ongoing oversight process (the process of verifying the implementation of the warning decisions) was carried out on-site for **83** institutions.

At the end of the verification, it results that the tasks left by the Commissioner in the warning decisions have been fully implemented by **66** institutions or **80%** of them (28 state administration institutions, of which 5 ministries and 23 subordinate institutions; 34 local government units, of which 31 municipalities and 3 district councils; and 4 independent institutions).

In **17** cases or **20%** of them, the process is continuing in its various phases, in cooperation with the Commissioner (6 subordinate institutions of state administration, 9 municipalities and 2 independent institutions).

For the reporting period, the ongoing oversight process (the process of verifying the implementation of warning decisions) includes **11** individual cases of complaints resolved by a warning decision (all cases belong to the state administration of which: 1 ministry and 10 subordinate institutions) and at the end of the verification of the implementation of the Commissioner's recommendations, the verification process was concluded with a Commissioner's decision, where it resulted that all institutions have fully implemented the tasks left in the warning decision.

In these conditions, the Commissioner has not ascertained cases of inaction for the execution of the decision by the supervised subjects, and consequently the means of fine has not been applied, which is foreseen in article 15 of law no. 152/2013, "On the civil servant", amended.

- ❖ *Orientation oversight of recruitment was carried out at DOPA by monitoring 313 competition procedures for group recruitment, parallel movement and promotion in the state administration.*

This process was carried out by the Commissioner through: *a)* monitoring of public announcements on the recruitment portal; *b)* cooperation with the employees of the Department of Public Administration in charge of recruiting human resources, *c)* as well as through the presence in various competition processes, where he has followed in real time the activity of DOPA. Monitoring of this process aims to prevent legal violations from a procedural point of view, as well as to ensure a fair and transparent competition process.

Consolidation of the recruitment process in the state administration is ascertained, from the point of view of respecting the principles and procedures, by applying: the principle of group recruitment, (*313 competition procedures have been announced for filling 580 positions*); the principle of transparency of the process (*all announcements are published on the portal of the National Employment Service and on the portal of the Department of Public Administration*); the right to appeal of the competitors, (*which is reflected in the increase in the number of competitors in the post-review phase*), as well as on the low number of complaints to the Commissioner (*20 complaints, where it was generally found that DOPA has acted in compliance with the law*).

Meanwhile, the problem lies in the local administration where it is found that often vacancies are created for a limited number of positions, and consequently the organization of “group recruitments” for entry level positions is hindered.

Also, the problems are evident in terms of implementing the principle of transparency of the process, in the absence of a portal for data entry regarding recruitment, for local administration. Currently, work is being done to solve this problem by posting data on the admin-istrata.al portal, where local government units have access, which is also considered as a fulfillment of the recommendation given by the Commissioner regarding this aspect of law enforcement.

- ❖ *During 2019, all information/requests/complaints that have come for review to the Commissioner have been addressed.*

The total number of inspections on the basis of complaints/ requests information is **142**, of which the process has been completed in **120** cases and **22** other cases have been carried out to be treated in 2020, which have already been completed. Compared to a year ago, where 105 complaints were registered, there is a significant increase in their number, which shows the increase of trust in the Commissioner’s institution and the awareness of civil servants to claim their rights.

- ❖ *An important aspect of the Commissioner’s activity has been the monitoring of the activity of civil servants during the local election process, which took place during this year.*

One of the main reasons for the realization of this process has been to ensure the normal and uninfluenced continuity of the election campaign, the activity of the body of civil servants, in the service of the state and citizens.

The Commissioner has paid special attention to monitoring the implementation of the law on civil servants with increased intensity at the moment, taking into account the fact that human resource management units in institutions that employ civil servants, in this special case, face problems of various natures, which require immediate addressing, which requires technical assistance and institutional support, in order for them to be oriented correctly, avoiding the negative consequences that may come in terms of reducing work efficiency, as well as on the involvement of civil servants in the election campaign, on behalf of various political forces (*guaranteeing the principle of political impartiality, on which the administration of the civil service is based upon, article 5, Chapter II, of the law in question*).

During this process, the previous experience of the Commissioner, created during the supervision carried out on the same object, during the election campaign in 2017, has been put in function towards its perfection.

To carry out the oversight process, the Commissioner has communicated with **208** public administration institutions that employ about **12,758** civil servants, focusing the process on new appointments, disciplinary measures “*dismissal from the civil service*” and on monitoring the activity/behavior of civil servants during the election campaign.

At the end of the process, it was found that no cases of new appointments were identified in violation of the law during this period and also no cases of disciplinary measures applied during this process were identified, which proves the observance of the principle of political impartiality and sustainability in the civil service.

During the monitoring of the process, the Commissioner received denunciations for the involvement of civil servants in illegal rallies; violent actions in front of the EAACs, as well as expressions of political preferences in support of a certain political force, or of a candidate in the elections, which were immediately addressed for verification to the disciplinary bodies in the relevant institutions. This process was followed up by the Commissioner and it turned out that all cases were considered in the relevant institutions.

The Commissioner believes that, by acting in support of an electoral process in accordance with the law, has helped to ensure a better electoral process in our country, towards the best standards of the European Space.

## INFORMATION MANAGEMENT AND ADDRESSING OF PROBLEMS EXTRACTED FROM COMPLAINTS OR SIGNALIZATIONS

### 1. Analysis of information/complaints received from various sources and their way of handling

During 2019, the use of information, received from various complaints of employees and third parties has been a priority of the Commissioner’s work, both in terms of identifying concrete problems and taking measures to regulate the state of legality in special cases, as well as the identification of group-problems, on the basis of which general or thematic supervision is planned and organized.

In order to increase the speed of reaction, to bring as close as possible the time of the alleged violation of the employee’s rights, with the moment of the reaction to regulate the state of legality, the method of preliminary verification of information was used.

In cases when repeated violations of the law have been ascertained, in-depth administrative investigations have been performed, registering them as inspection processes, in order to finally resolve them with a concrete warning decision.

There are many cases where the submitted complaints have served to start the supervision process, and have joined this process, receiving solutions upon its completion, as it will be analyzed concretely in the following section of this report. This situation presented above, is materialized with the data on this table:

*Table no. 2.1    Reasons for initiating an administrative investigation*

Reasons for initiating an administrative investigation	No. of investigated cases
Starting from the information about the violation of the law, addressed to the Commissioner	135
Started ex-officio by the Commissioner, from information from third parties	7
<b>TOTAL</b>	<b>142</b>

During 2019, the total number of inspections is **142**, of which the process has been completed in **120** cases and **22** other cases have been carried out to be treated in 2020, which have already been completed.

It is worth noting that the issues handled ex-officio by the Commissioner, initiated on the basis of information received by third parties, which have raised the claim of violation of the civil servants law, have been all completed, with priority, in compliance with procedural deadlines and with an effective response, making concrete interventions to regulate the state of legality, for every practice where problems of non-compliance with civil service

legislation have been identified.

- a Regarding the progress of the inspection process, the situations is as follows:

*Table no. 2.2 The progress of the inspection process started in 2019*

The progress of the inspection process carried out in 2019	Inspections ex-officio	Inspections initiated by claims	Completed inspections
Number of inspections completed during 2019	7	113	120
Number of inspections in process (carried over in 2020)	0	22	22
<b>TOTAL</b>	<b>7</b>	<b>135</b>	<b>142</b>

- b Regarding the typology of institutions for which information has been received, the following situation arises:

*Table no. 2.3 Typology of inspected institutions*

Typology of inspected institutions	Ex-officio inspections	Inspections initiated by claims	TOTAL
<b>A. Central Government Institutions</b>	<b>6</b>	<b>98</b>	<b>104</b>
Subordinate institutions	4	89	93
Ministries	2	9	11
<b>B. Local Government Institutions</b>	<b>1</b>	<b>34</b>	<b>35</b>
District Councils	0	1	1
Municipalities	1	33	34
<b>C. Independent Institutions</b>	<b>0</b>	<b>3</b>	<b>3</b>
<b>TOTAL (A + B + C)</b>	<b>7</b>	<b>135</b>	<b>142</b>

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

- from the state administration, **104** cases or **73%** of the treated cases have been registered (*which includes central administration and subordinate institutions*);
- from the local administration, **35** cases or **25%** of the treated cases have been registered;
- from independent bodies only **3** cases, or **2%** of treated cases.

From the above table, it is noticed that in the total number of treated cases belonging to the state administration, the majority (89%) is occupied by requests addressed by subordinate institutions. This is related to the fact that this category of institutions is in the process of reorganization and has a more limited object in their activity and higher operability. These causes result in greater dynamics in the activity of employees and consequently more frequent confrontation, both with movement in job positions and with their managers, regard-

ing the realization of daily tasks.

Also, this situation is due to the fact that in most of these institutions, job positions belonging to human resources units are missing, and consequently the administration of the civil service is often performed by specialists who have as their object of duty other legal aspects, and have been assigned the task of managing also human resources. The Ministry's human resources unit finds it difficult to administer the civil service in these institutions, in full coherence with the moment of performing the administrative actions related to the civil service.

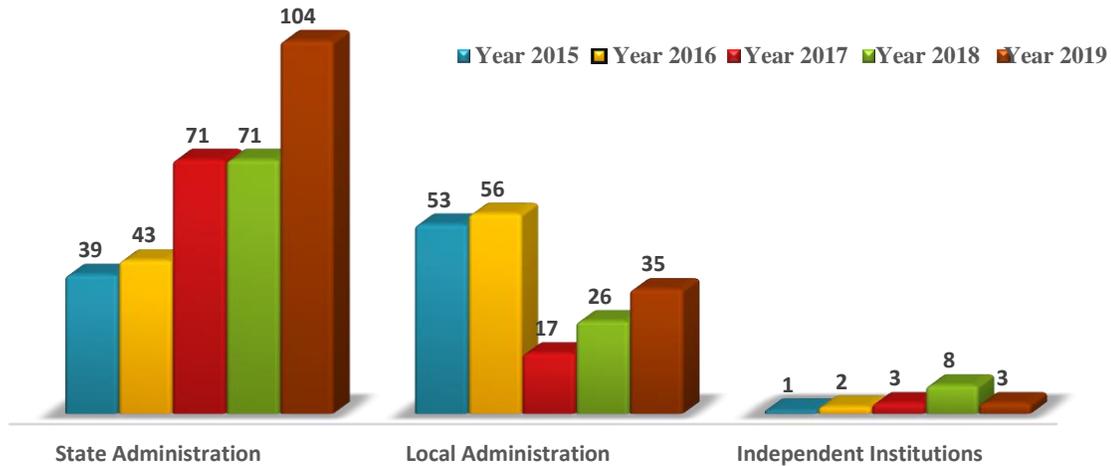
In these circumstances, conditions are created that enable errors during the administration of the civil service, or for the emergence of disputes, which justifies the concentration of cases reviewed in this category of institutions.

Of the cases reviewed, based on information obtained from local government officials, most of them (97%) belongs to municipalities, as they have the highest number of civil servants, exercise daily executive activities and have a higher dynamic in terms of assigned tasks and expectation of results, especially since District Councils have a limited number of civil servants and their nature of work has a special character of planning and coordination, which has a lower dynamics. If we compare the current situation with that of the last four years, it shows an increase in the level and pace. More specifically, the dynamics is expressed in the table below:

**Table no. 2.4** Information according to the level of administration from which they came and a comparison with the situation of 2015, 2016, 2017, 2018 and 2019

<i>Level of administration</i>	<i>Total recorded cases</i>	<i>State Administration</i>	<i>Local administration</i>	<i>Independent institutions</i>
<i>In 2019</i> <i>142 cases</i>		104	35	<b>3</b>
<i>In 2018</i> <i>105 cases</i>		71	26	<b>8</b>
<i>In 2017</i> <i>91 cases</i>		71	17	<b>3</b>
<i>In 2016</i> <i>101 cases</i>		43	56	<b>2</b>
<i>In 2015</i> <i>93 cases</i>		<b>39</b>	<b>53</b>	<b>1</b>

*Graph no. 2.1 Distribution of information according to the level of the institution 2015-2019*



Based on the values presented in the table, as mentioned above, in general, the inflow and interception of information has increased, as the number of complaints is higher for 2019. But, on the other hand, it is evident that the main number of cases reviewed in the last two years comes from the state administration.

This is related, as we said above, to the dynamism that characterizes the high state administration, which is reflected especially in the continuous reorganizations that its structure undergoes, in order to be as appropriate as possible to the tasks and objectives set by the actual development of the country as well as the continuous changes in human resources, in terms of new admissions to the civil service, or in the punishment of various cases of violation of discipline at work. If we were to summarize the manner in which the Commissioner addressed the information received or collected, the situation would be as follows:

*Table no. 2.5 The way of handling the information resolved during 2019*

The manner of completion of the administrative procedure, after reviewing the case	Initiated ex-officio	Initiated by claims	TOTAL
Decision to improve the situation of illegality	1	16	17
Decision to close the procedure for legitimate reasons, as no legal violations were found after the verification	5	63	68
Joined and resolved under general supervision, exercised at the institution where the irregularity is claimed	1	4	5
Reply to the claimer administratively	0	16	16
Joined to be treated together with the process of execution of court decisions not implemented for the relevant institution	0	9	9
Suspension of treatment of information for legal reasons	0	5	5
Carried for 2020	0	22	22
<b>TOTAL</b>	<b>7</b>	<b>135</b>	<b>142</b>

According to this overview, the Commissioner has conducted preliminary investigations and in-depth administrative investigations, providing solutions to all complaints that have come to his address, as well as in the case when the investigation has started ex-officio (7 cases), expressing and assessing in each case the level of application of the rules contained in the civil service legislation.

Assessing how the issues under consideration have been resolved, the situation is as follows:

- in **17** cases irregularities were found and the institution was warned to regulate the legality;
- in **16** cases, there were reasonable suspicions of non-compliance with the law, but during the administrative investigation no actions contrary to the law were identified and for this reason, the case was dismissed, notifying the parties in the process;
- **5** of the information received were combined and treated with a decision within the supervision of the institution (*in those cases when the working teams were in the field*);
- in **68** cases, the process was completed by deciding to archive the information, due to the existence of the conditions provided in articles 66, 67, 68, “*Preliminary issues*”, of law no. 44/2015, “*Code of Administrative Procedures of the Republic of Albania*” and in article 16, of the Regulation of the Commissioner “*On the Oversight/Inspection Procedures*”, or when during the preliminary investigation no irregularity has been ascertained. In this case, the complainant was responded administratively, explaining in detail the treatment of the case and how the case should continue to be handled;
- **9** cases have been joined to be treated in the process initiated by the Commissioner for the execution of court decisions not implemented for the respective institution;
- **5** cases have been decided to suspend the treatment of information received from the Commissioner, for reasons provided by law.

It is noteworthy that all **22** cases carried over to 2020, at this time of reporting have been completed with decisions.

c Referring to the *typology of demand/complaint*, the situation is presented in the following indicators:

The main place is occupied by individual complaints of civil servants, which represent over **94%** of the complaints handled.

*Table no. 2.6 Typology of request/complaint/information addressed to the Commissioner*

Typology of request/complaint/information addressed to the Commissioner, completed in 2019	Number of complaints
Request/information for administrative dispute of the applicant ( <i>personal</i> )	113
Request/information for administrative dispute from third parties	7
<b>TOTAL</b>	<b>120</b>

*\*Note: 120 cases completed during 2019 and 22 cases carried over to 2020, a total of 142 registered complaints.*

## 2. Classification of information verified for 2019, according to their object

By making a classification on the types of administrative disputes, treated ex-officio, case by case for 2019, the situation is presented as in the following table:

*Table no. 2.7 Administrative disputes, classified according to their object*

The institute where the irregularity is presumed according to the request/information	Cases
Disciplinary procedure	30
Transfer or dismissal procedure from the civil service, due to restructuring	7
Temporary transfer procedure	14
Confirmation procedure at the end of the probation period, or job evaluations	8
Refusal to declare the status, or its confirmation	5
Failure to implement the final court decision (article 66/1)	11
Competition procedure	20
Other ( <i>clarification on the meaning/fair application of the law; change in the job category; non-payment of salary in case of temporary transfer for work needs, etc.</i> )	25
<b>TOTAL</b>	<b>120</b>

*\*Note: 120 cases completed during 2019 and 22 cases carried over to 2020, a total of 142 registered complaints.*

As noted from the data presented in the table, the largest number of complaints submitted to the Commissioner this year, are related to problems associated with the development of disciplinary proceedings, in **30** cases.

The problems identified in these cases are mainly related to the allegations raised, with the object of opposing the procedure of disciplinary proceedings for various reasons, such as

non-compliance with procedural rules, improper application of substantive law, failure to properly assess the importance of the disciplinary violation, accompanied by the application of disciplinary measures in disproportion to the violation committed, etc., evidenced during the application of disciplinary proceedings, in cases claimed by the disciplinary bodies for violation of the obligations of the civil servant under the civil service law.

Specifically, it is a matter of non-compliance with the requirements of the law regarding the creation of the Disciplinary Commission, especially in those cases when the positions of civil servants assigned by law as members of the Disciplinary Commission have been vacant or in cases where disciplinary proceedings have been initiated against the member of the Commission himself.

Taking into account the numerous requests regarding this object, the Commissioner, to ensure the implementation of legality in the administration of the civil service and in order to unify the practice of establishing disciplinary bodies, has sent to the local self-government units (61 Municipality), an explanatory and interpretive manual of various aspects of law enforcement, materialized in the most frequently applied institutes, which are related to “*Discipline in the civil service*”, as well as with various aspects of the implementation of this institute such as: a) responsibility for disciplinary measures, b) types of disciplinary measures, c) competencies and procedures for disciplinary measures and ç) Disciplinary Commission, its establishment and composition.

Summarized in this material, the Commissioner clarifies that:

*“.. The Institute of “Discipline” in the civil service is provided in Chapter X, Articles 57-61 of this law. Specifically, in article 57, “Responsibility for disciplinary measures”, it is stipulated that the civil servant is responsible for the violation of obligations under the law. This legal provision also categorizes disciplinary violations. Whereas article 59, of law 152/2013, amended, determines the competence and the procedure for their issuance. According to point 2 of this provision, the measure provided in letter a) of article 58, is given by the direct supervisor of the employee, while the measures provided in letters b), c) and ç) are given by the Disciplinary Commission, for each civil servant in the institution, with the exception of the category of TMC, which is a body that functions only in the state administration and is not the case of local government units. In the case of senior management level civil servants (TMC), the role of the disciplinary commission is played by the National Selection Commission for the TMC, which is set up at DOPA.*

*Pursuant to the legal obligations, the Council of Ministers has approved Decision no. 115, dated 05.03.2014, “On determining the disciplinary procedure and the rules for the establishment, composition and decision-making in the Disciplinary Commission in the civil service”, amended, as well as Decision no. 118, dated 5.3.2014, “On the procedures for the appointment, recruitment, management and termination of the relationship in the civil service of senior civil servants and members of the TMC”, amended.*

*Specifically, in the bylaw that regulates the discipline in the civil service, (DCM no. 115/2014), in Chapter I “Disciplinary Bodies”, point 1, it is determined that: The disciplinary bodies, according to law, are: The National Selection Committee, for members of TMC (NSC); disciplinary commission (DC), for other officials, and the direct supervisor.*

*Further, in point 6, of DCM no. 115, dated 05.03.2014, which provides that:*

*“In case of the need to replace the members of the DC, due to impossibility or legal obstacle, the provisions for replacement, defined in the Code of Administrative Procedures, apply.”*

*Whereas in point 7, of DCM no. 115, dated 05.03.2014, it is sanctioned that:*

*“If the disciplinary proceeding is conducted against one of the members of the DC, he is replaced by the head of the institution with another civil servant of the institution.”*

*In the case of replacement of the members of the Disciplinary Commission, a case provided in the Instruction of the Department of Public Administration no. 1, dated 02.04.2014, in point B/3, it is provided that:*

*“1. Replacement is done by the person covering the first job position in the hierarchy after the DC member to be replaced. Thus, in case the Chairman of the Commission has to be replaced, he will be replaced by the person covering the position that comes directly after the position of the Chairman of the Commission in the hierarchy, preferably in accordance with the professional line of the employee, subject to disciplinary proceedings. In case of legal obstacles of this substitute employee, then the replacement will be done by the person who covers the same position with him, even though he may not be in a professional line with the employee in the proceedings....”*

*In these circumstances, as defined in point 1 of the above-mentioned Instruction, the replacement is done by the person who covers the first position of work in the hierarchy, after the member of DC, who will be replaced, within the institution, in this case within the Municipality, taking into account the observance of article 37, “Cases of disqualification”, provided by the Code of Administrative Procedures.*

*In the event that, after performing the procedure of replacing the members of the Disciplinary Commission, in compliance with the above-mentioned legal requirements, it is not possible to replace these members within the institution, then based on the content of the legislation on civil service, which treats the civil service as a category that includes all civil servants, so it is conceived as a whole, the composition of the Disciplinary Commission in this case, must be completed by civil servants with the required level of employment, from other local government units, or institutions that employ civil servants, in the same line of hierarchy as provided in the instruction of the Department of Public Administration.”*

In several other cases, addressed to the Commissioner, it was found that the composition of the established Disciplinary Commission was regular, in accordance with the requirements of the law and bylaws that regulate it and during the activity of handling disciplinary proceedings, this mechanism has carried out all administrative actions for the realization of this disciplinary proceeding, but on the other hand, as it emerged during the investigation carried out by the Commissioner, problems have arisen from the point of view of the content of the disciplinary proceeding. In some cases, it has been noted that the principle of equality and maintaining the same standard, the principle of proportionality while giving the disciplinary measure, have not been respected, as is the case of the civil servant K.K, a specialist in the Department of Legal Affairs, in an independent institution (AMA), in the case of which the decision of the Commissioner is expressed as follows:

*“...The Disciplinary Commission has unjustly managed this disciplinary proceedings, even at the moment when it has unconvincingly aggravated the position of the prosecuted employee, at the moment when it has changed the qualification of the disciplinary violation from “serious violation” provided by article 57, point 1/b, of law no. 152/2013 “On the civil servant”, amended, to “very serious violation” provided by point 1/a, of article 57, of the law in question, as well as when it has placed in unequal positions civil servants who have acted in the same situations. Thus, the discretionary choice made by the Disciplinary Commission in the case of the decision taken for the civil servant K.K, holding an openly opposite attitude compared to the attitude towards the civil servant E.L, constitutes a violation of the principle of proportionality and unjustifiable deviation of the law, contrary to the principle of equality and the lawful exercise of discretion, provided by point “ç” of article 11, of law no. 44/2015, “Code of Administrative Procedures of the Republic of Albania”.*

*The violations allowed/performed by the Disciplinary Commission described, constitute aspects of illegality of his activity which have negatively affected the decision-making and consequently the acts of conclusion of this disciplinary proceedings, have been issued under the conditions of exercising discretion illegally and in violation of the principle of equality (point 2, article 17, of law 44/2015, KPA) and proportionality (point 2/c, of article 12, of law no. 44/2015, KPA). This situation, in terms of points “dh” and “e” of article 109, of law no. 44/2015, the “Code of Administrative Procedures of the Republic of Albania” makes the above-mentioned decisions illegal acts, which according to point 1, of article 114, of the law in question, must be annulled discreetly (thus, by the body itself who has the discretion to perform proceedings and take the disciplinary action).”*

Referring to the above, in such a case, it has been possible to intervene and overcome these tendentious manifestations to violate the principles of civil service, such as the principle of equality and proportionality. In support of the legal and sub-legal competencies, the Commissioner has issued a decision to regulate the situation of illegality found in the independent institution mentioned above, leaving concrete tasks for the human resources unit of the institution.

The complaints regarding the clarification of the meaning/correct application of the various institutes of the civil service law, occupy a significant place, with 25 cases, due to the dynamics that characterize the state administration, such as the cases for the treatment and interpretation of gaining the status of civil servant (*the case of the civil servant V.B, who exercises a delegated function as a Specialist of the National Business Center, at the counters of the local self-government unit, Durrës Municipality*).

In response to this case, after analyzing the legal basis that regulates the employment relationship for these job positions, the Commissioner estimated that, in fulfillment of legal and sub-legal obligations, by the local self-government unit of Durrës Municipality, should be taken all the necessary steps in compliance with the procedural and material law, for the fulfillment of the work positions “NCB Specialist”, in accordance with the law on civil servants. This position is based on the content of the law, which stipulates that any new employment relationship, which is tied after the onset of the effects of law no. 152/2013, “*On civil servants*”, amended, pursuant to its articles 22 and 23, requires that the requirements of a regular competition procedure be complied with. Any appointment made contrary to this rule is absolutely invalid referred to article 23, of law no. 152/2013, “*On the civil servant*”, amended.

Briefly, in the Commissioner’s response, it is reasoned that:

*“... In article 2, of Law no. 152/2013, “On civil servants”, amended, which defines the scope of the law on civil servants, is expressly provided that this law applies to any employee who exercises a public function in a state administration institution, independent institution or local government units.*

*Further, in Law no. 131/2015, “On the National Business Center”, on its article 8, it is sanctioned that, for the categorization of the employees of the counters of the NBC service, who exercise delegated functions, it is sanctioned that, the employees of the service counters opened by the NBC through service counters at local government units, as a delegated function, in accordance with the provisions of this law and the law on the organization and functioning of local government, are civil servants of the relevant unit of local government.”*

A large number of complaints submitted to the Commissioner this year are related to problems arising during the competition procedures, which is evidenced in **20** cases.

The problems claimed by the complainants in these cases are mainly related to the way of formulation and the space contained in the entirety of the general and special requirements announced for different job positions. Complaints of this nature focus on the reasoning that, in some cases, the requirements that are provided for which the complainants complain about the competition procedures, interpret them as unfair “restrictions” for participation in the competitions.

Thus, we can mention the request that for different positions is set as a condition a kind of “narrowing” of the field of qualification of candidates, determining that both the level of “Bachelor’s Degree” as well as the “Master of Science” are in the same field, while the job description is wider and can accept diplomas of various, similar fields; setting the criteria of work experience, defined in such a way as to create the impression that they have been decided to benefit the predetermined candidate; setting the weighted average grade, or setting the age limit, etc.

Regarding these restrictions (*especially with age restrictions*) we can mention the case of the competitor D.C, who wanted to participate in a competition, to be accepted as a customs officer, but in the announcement of the competition was placed an exclusive request for this competitor, as the age of the applicants had to be less than 35 years old. Regarding this case, immediate intervention was carried out, ordering the removal of the age criterion and the creation of conditions for participation also for other competitors, with an age beyond the limit made.

In summary, in resolving this case, the Commissioner’s decision assessed that:

*“... The Responsible Unit (Human Resources Department) of the General Directorate of Customs, unfairly, has added the criterion that the candidates “... are up to the age of 35”.*

*Determining the age criterion as above contradicts the principles of civil service administration as a whole, as well as the principle of non-discrimination and equal opportunities in particular.*

*This conclusion is reached given the content of article 5 of law 152/2013 “On civil servants”, amended, which explicitly states that the administration of the civil service is governed by law and is based on the principle of equal opportunities, non-discrimination and merit.*

*Likewise, article 20, of law no. 152/2013 “On civil servants”, amended, provides the principles of admission to the civil service, where it is explicitly provided that: “Acceptance in the civil service is based on the principles of equal merit, professional skills, and non-discrimination, and it is carried out through a selective, transparent and fair process”.*

*In these circumstances, the determination of the age limit, in the case of competitions with code #2201, #2203 or even in other similar cases, puts the candidates in general and competitor D.C in particular, in discriminatory conditions due to age.*

*This aspect constitutes an element of illegality of the act of announcing the competition and therefore in support of articles 109/d and 113, of law no. 44/2015 “Code of Administrative Procedures of the Republic of Albania”, in the act of announcing these procedures for admission to the civil service, the age criterion and the act of the responsible unit for the disqualification of the competitor D.C. should be revoked.*

*Pursuant to the competence defined in article 11, point 1, articles 14 and 15, of law no. 152/2013, “On the civil servant”, amended, in law no. 44/2015, “Code of Administrative Procedures of the Republic of Albania”, as well as in articles 16, 34 and 35, of the Regulation, “On the supervision/inspection procedures”, approved by decision no. 17, dated 11.03.2015, of the Commissioner for Civil Service Oversight, I request that the Responsible Unit and the Human Resources Unit of the General Directorate of Customs, take immediate measures to cancel the competition procedure through admission to the civil service, for positions with code #2201, #2203; removing the age criterion and taking action to re-announce this procedure, respecting the principles of administration in the civil service and admission to the civil service ... ”*

In such cases, it has been possible to intervene and overcome these tendencies to prevail over the principle of equality and equal opportunities, in admission to the civil service.

It is worth mentioning that in 2019, there were cases of interference of the Commissioner to interpret and intervene, in cases of competition for admission to the civil service, of persons who meanwhile had disciplinary measures in force, even though they were taken for contractual employment relations, which were regulated by the Labor Code.

As such we can mention the attitude that has been held for applications for admission to the civil service, of the citizens A.I in the tax administration, D.Ç in the customs administration, etc.

In these acts of the Commissioner, a unified position has been held, that in case an applicant for competition has a disciplinary measure in force, although that measure has been taken in the conditions of an employment relationship outside the civil service, based on the spirit of labor legislation, it is a cause for disqualification and admission to the civil service.

Specifically, in the case of candidate A.I, disqualified from the competition due to the previous disciplinary measure, in the stance of the Commissioner it is justified:

*“...In the framework of verifying the circumstances of the case, it was ascertained that, during the exercise of duty as Inspector, in the Investigation Sector, in the Directorate of*

*Tax Investigation (Northern Region) Shkodra, at the General Directorate of Taxes, the tax employees A.I, on the basis of the recommendation of the Inter-Institutional Anti-Corruption Task Force, was given the disciplinary measure “Immediate termination of the employment contract”, for the serious non-fulfillment of duties and non-compliance openly of the legal provisions in fulfilling functional duties (Decision no. 605, dated 20.11.2018, of the Director of General Taxes).*

*The disciplinary measure was given on the basis of law no. 7961, dated 12.7.1995, “Labor Code of the Republic of Albania”, since the position of inspector, in the Directorate of Tax Investigation, according to the provisions of article 105, of law no. 9920, dated 19.5.2008, “On tax procedures in the Republic of Albania”, amended, is not part of the civil service. This law, in its article 19, provides for the employment of civil servants/employees of the tax administration, where, for the civil servants of the central tax administration, the legislation of the civil servant is applied, except when otherwise provided in this law, while, the legal labor relations for the employees of the tax administration who do not have the status of civil servant, are regulated according to the provisions of the Labor Code, as it has been done in this case.*

*The assessment of the case in question is related to the content of the employment relationship and its constituent elements in general, on the basis of the spirit of the law, regardless of whether or not the job position in which the disciplinary measure was taken is part of the civil service.*

*In article 12, of law no. 9920, dated 19.05.2008, “On tax procedures in the Republic of Albania”, amended, it is stipulated that in the administration of the tax system of the Republic of Albania, the tax administration is guided by the same and effective implementation of the legislation, which can be achieved through the recruitment, training and promotion of young, honest, polite and fair employees.*

*According to point 2, of article 153, of the Labor Code, are assessed as justified reasons, all serious circumstances that do not allow, according to the principle of trust, to be sought from the one who has terminated the employment contract, the continuation of employment relations and moreover, the establishment of new labor relations, under the disciplinary measure “dismissal”, which has not exceeded the statute of limitations provided by law.*

*Specifically, in the Regulation approved by Order no. 65, dated 04.10.2017, of the Ministry of Finance, “On determining the procedures of recruitment, evaluation and taking disciplinary measures for employees of investigative structures” (which has been implemented pursuant to point 5, article 16, of the law for tax procedures), it is stipulated that, for admission to the tax audit structures, a candidate must meet the general requirements, among which, that there should be no disciplinary measure of dismissal, which has not been terminated.*

*The same prohibitive provision applies also to cases of employment in a job position part of the civil service, as one of the general requirements for admission to the civil service, defined in point “dh”, of article 21, of law no. 152/2013, “On the civil servant”, amended.*

*So, both in cases of employment through the procedures of the Labor Code, as well as in cases of application for job positions in the civil service, the law contains the same spirit, not allowing the creation of a new employment relationship, in the conditions when the subject (jobseeker) has not repaid the previous disciplinary measure, especially in the concrete case when the field of disciplinary violation found in the previous employment relationship is the same/similar to the field of activity in the new relationship that is claimed to be established and the employment requirements are same.*

*Furthermore, article 4, of the Labor Code, stipulates that special provisions of this Code, apply to persons whose employment is regulated by a special law, if the special law does not provide solutions for work-related problems. Under the conditions when the law on civil servants does not specifically state whether the employees whose employment has been terminated immediately, with a disciplinary measure according to the Labor Code, have the right or not to compete in job positions part of the civil service, for situations which are not available under this law, the provisions of the Labor Code shall apply.*

*Consequently, the disciplinary measure given on 20.11.2018, which is currently in force, according to the provisions of article 203, of the Labor Code, the statute of limitations for the multi-disciplinary measure is one year, from the moment of taking the disciplinary measure, notified in writing to the employee, is a cause for disqualification from competition procedures ... ”.*

The same position was taken also in the case described below:

*“...The hesitation is related to the fact that the disciplinary measure in force has been taken for an employment relationship outside the civil service and the problem arises: can a measure taken for an employment relationship outside the civil service, serve as a cause of obstruction, for participation in a civil service admission procedure?!*

*From the circumstances described in the decision of suspension of the Department of Public Administration, it is clarified that the citizen in question, was employed with the employment contract no. 15755 dt. 03.07.2018, in the position of “Supervisor of the activity of economic operators in Porto Romano” (thus, an employment relationship that is not part of the civil service) and with the act of the head of the institution no. 21450/2 dt. 23.08.2019 “On the immediate termination of the employment contract” has been dismissed from work, a circumstance which was ascertained in the phase of preliminary verification of the applicants’ documentation for job positions with codes 2276 and 2277.*

*In this case, we find it appropriate to emphasize that the customs administration, with the*

*exception of administrative staff, is part of the civil service and their employment is done through the procedures defined in law no. 152/2013, "On the civil servant" amended, based on the principle of equal opportunity, non-discrimination, merit, transparency, professionalism and political impartiality, tenure and continuity in career, integrity, responsibility and correctness in law enforcement.*

*According to article 13/3, of law no. 102/2014 "Customs Code of the Republic of Albania", except for the provisions of the law "On civil servants", due to the peculiarities and complexity of the customs service, admission to duty, appointment, parallel movement, promotion, temporary transfer, specific elements of the procedure for awarding disciplinary measures to the personnel of the customs administration, part of the civil service, is done according to the principles and specifics of this code and bylaws, issued in its implementation for this purpose.*

*Thus, the assessment of the above case should not be done by quoting and interpreting "ad literam" the general requirements of article 21, of law no. 152/2013, "On the civil servant" amended, in point "dh" of which it is foreseen as an exceptional reason from the competition, having a disciplinary measure in force, for leaving the civil service.*

*In this case it is necessary to clarify that the exceptional cause must be analyzed on the basis of the spirit of the labor legislation as a whole, despite the fact that the disciplinary action has been taken under an employment relationship outside the civil service.*

*From a moral and legal point of view, serious breach of discipline is equally punishable, both in civil service employment and in ordinary, contractual, labor relations.*

*This position, based on article 13/3, of law no. 102/2014 "Customs Code of the Republic of Albania", is concretized in Decision no. 921, dt. 29.12.2014 "On the personnel of customs administration", which in all cases of admission to the customs administration, parallel movement, or promotion, is foreseen as a special point, exempt from the admission procedure, having a disciplinary measure in force, or which has not been terminated by law.*

*So, both for employment cases through the procedures of the Labor Code, as well as in the cases of applying for job positions part of the civil service, the law has the same spirit, not allowing the creation of a new employment relationship, when the job seeker has not repaid the previous disciplinary measure ...*

*Furthermore, article 4 of the Labor Code stipulates that special provisions of this Code apply to persons whose employment is regulated by a special law, if the special law does not provide solutions to problems related to labor relations. In conditions when the civil service legislation does not specifically specify whether the employees whose employment has been terminated, immediately according to the Labor Code, have the right or not to compete in job positions of the civil service, for situations that are not available in this law, the provisions of the Labor Code will be applied.*

*Consequently, the measure taken with act no. 21450/2 dt. 23.08.2019 “On the immediate termination of the employment contract” for the citizen D.C, is currently in force, because according to article 203 of the Labor Code, the statute of limitations for the disciplinary measure is one year, from the moment of taking the disciplinary measure, notified in writing to the employee, is a reason for its disqualification from the competition procedure ...”.* Also, during his activity for 2019, the Commissioner was acquainted with several complaints (**14** cases), regarding the observance of the deadline during the application of the institute of temporary transfer to the state administration. A typical case that demonstrates the treatment of complaints related to this issue is the case of the customs officer A.G, Head of Sector, who makes allegations of irregularities in the implementation of civil service legislation, in the performance of temporary appointment in the institution of Tirana Customs Branch.

The essence of the complaint is related to the fact that, through the acts of the General Director of Customs, the employee for work needs has been transferred several times within a short period of time to two different positions, as Head of Sector within his directorate in the GDC and then has been transferred as a Specialist to the Tirana Customs Branch.

The employee objected to the above transfers with the claim that they are unfair in terms of when in the previous position, there was a permanent appointment first through competition and then within the framework of the restructuring of the institution and, therefore, it is claimed that he should be returned to the previous position.

In analyzing the facts and legal acts, the temporary transfer in this case was assessed as a stance in accordance with the legal provisions regarding the temporary transfer of the customs officer, who has a specific regulation, different from other civil servants, specifically defined in law, reasoning as follows:

*“... Assessing the legality of the acts of temporary transfer, it is ascertained that due to the particularities and complexity of the customs service, in its specific legislation (point 3 of article 13, of the Customs Code), based on article 3, point 3/b of law no. 152/2013 “On the civil servant” amended, in addition to the rules provided in article 48 of the law in question, for temporary transfer, special rules are provided, both in terms of types of transfers and their duration, as well as of the competent body ordering these transfers. Specifically, in point 7, of article 15, of this code, in letter “a”, it is stipulated that: “The customs officer may be transferred, temporarily, to another position of the customs administration, of the same category, or in a higher category, for the following reasons and duration:*

- i) in the interest of the institution, up to 6 months;*
- ii) for the improvement of the performance of the employee himself, up to 3 months;*
- iii) for temporary health reasons or during pregnancy, based on the decision of the competent commission, according to the law, as necessary, according to the decision of the rele-*

*vant commission”.*

*As can be seen, in letter “i”, of article 15, point 7/a, of law 102/2014, “Customs Code of the Republic of Albania”, amended, due to the features that characterize the customs activity, the restriction of the similar provision of point 1/a, of article 48, of law no. 152/2013, “On the civil servant”, amended, has been removed, according to which a temporary transfer of an employee up to 6 (six) months (with/or without suspension) for work needs can be made, but this is allowed once every two years. On the contrary, according to this provision, a customs officer may be temporarily transferred, for the needs of the institution, whenever such a need is assessed, without any restrictions, therefore in this regard, the claimant’s claim that she was unfairly transferred several times within a period short, cannot be taken into account.*

*Looking inside at the content of the act, of the Director General of Customs, it results that the employee’s transfer has taken place within the same directorate and within the same category. In this case, the supervisor of the employee supervising it directly on the hierarchical line has not changed. In these circumstances, we consider that this move within the directorate was made for organizational reasons.*

*Further, analyzing the content of the act, of the General Director of Customs, it results that the movement of the employee of A.G., has been done for the needs of the institution (point i, of the above-mentioned disposition) and since the reference provision of the act provides explicitly the maximum term of the temporary transfer, the duration is not marked in the act. Also, in this transfer, the salary category that she had in the previous position (category III-a/1) has been preserved ...”.*

Another aspect of the illegality that has been ascertained during this year is the fact that the institute of periodic evaluation of the job performance of the employees is not finding a full and effective implementation. In many cases the assessments are formal, putting only “grades” with figures (1-4), without associating these with the relevant argumentation and comment, thus giving this process a pronounced subjective and abusive character.

In these cases, the Commissioner intervened by requesting the annulment of the evaluation process and its repetition from the beginning, respecting the requirements of article 62, of Law no. 152/2013 “*On the civil servant*” amended, and decision no. 109, dt. 26.2.2014. of the Council of Ministers, “*On the evaluation of the job performance of civil servants*”.

There have been other cases where employees have not been provided with the latest job evaluation, especially in cases of job cuts or changes in the legal regime of the employment relationship, due to restructuring or reorganization of the institution.

Failure to fulfill this legal obligation has led to the fact that in some cases, various civil servants have not been able to participate in competitions for parallel movement or promotion, or have been disqualified. Regarding this issue, we can mention the case of the citizen

B.U, who was disqualified from a competition procedure, precisely because he did not have the opportunity to present his latest assessment of performance as a civil servant, as he was unfairly not provided with this act by the institution (ARRSH).

In the Commissioner's decision regarding this case, it is argued that:

*"...Competitor B.U, has been a civil servant, in the job position "Head of Standards and Norms Sector, in the Directorate of Quality Assurance, in the Albanian Road Authority", category III-a/1, until the moment that, due to the change in the legal nature of the employment relationship with an act of the competent body, has agreed to sign the individual employment contract with ARRSB, with no. 4844/1 prot., dated 06.06.2018.*

*Being in the above conditions, based on the right recognized by point 8, of article 50, of law no. 152/2013 "On the civil servant" amended, the employee in question, has applied for participation in the competition for parallel movement in the middle and lower management category, with code #2430, "Head of Standards and Construction Rules Sector, in the Directorate of Deregulation, Permits, Licenses and Monitoring, in the General Directorate of Regulation and Compliance in Infrastructure and Energy", in the Ministry of Infrastructure and Energy, category III-a.*

*In the preliminary verification phase the complainant (among others) was disqualified because; he does not meet the criterion of 5 years of experience in the profession and non-loading in his profile of the last evaluation for the period he has been employed as a civil servant (minimum condition), thus for the period (January-May 2018).*

*After being notified of the reasons for the disqualification in the pre-selection phase, he submitted a complaint to the Department of Public Administration on 31.10.2019, through which he requested the reconsideration of the application.*

*In the submitted request, the competitor B.U has clarified that, in relation to the required criterion of at least 5 years of work experience, in the field of standards and rules in construction, he added to his profile a work reference, issued by the Legal Representative of the Company "Blerim" ltd, for the time he was employed by this company.*

*Whereas, regarding the second reason for the disqualification, it turned out that the complainant updated his profile with the last evaluation form for the period he was employed as a civil servant. According to him, the assessment belongs to the second half of 2017. According to him, in the first 6 months of 2018, the institution Albanian Road Authority was restructured and therefore did not make job evaluations.*

*In the above conditions, the Department of Public Administration, after reviewing the complaint submitted by B.U, has concluded that the criterion of work experience has been met by the latter, while, as far as the second cause of disqualification is concerned, where the applicant did not submit the final evaluation of work for the period that he was em-*

*ployed as a civil servant for the period (January-May 2018) it was not considered completed and therefore the candidate was finally disqualified, thus removing the possibility of competition.*

*From the verification of the documentation it results that, pursuant to article 26, point 4, of law no. 152/2013, “On the civil servant”, amended and Chapter II, point 2, of decision no. 242, dated 18.03.2015, of the Council of Ministers, “On filling of vacancies in the lower and middle management category”, amended, it is explicitly provided that, in order to participate in the procedure of parallel movement, the candidate must meet the minimum conditions which are:*

- a) To be a certified civil servant, within the same category for which he applies;*
- b) To not have a disciplinary measure in force;*
- c) To have at least the last grade of evaluation “Good” or “Very Good”;*
- d) To meet the special conditions and requirements set out in the competition announcement.*

*Thus, according to this provision, the candidate B.U, has been disqualified in the procedure of parallel movement with code #2430, “Head of the Standards and Construction Rules Sector, in the Directorate of Dereregulation, Permits, Licenses and Monitoring, in the General Directorate of Regulation and Compliance in Infrastructure and Energy, in the Ministry of Infrastructure and Energy”, category III-a, as it does not meet one of the minimum conditions for his qualification in the parallel movement procedure, namely the job evaluation for the last period that he has been a civil servant.*

*In this case, even though the actions of the Department of Public Administration, in the implementation of the competition procedure for the group of positions with code # 2430, from a formal point of view, are formally assessed as carried out in accordance with the law, failure by the institution of the Albanian Road Authority to carry out the obligation provided by point 1, article 62, of law no. 152/2013 “On the civil servant” amended, decision no. 109, dated 26.02.2014, of the Council of Ministers, “On the evaluation of the job performance of civil servants”, amended by decision no. 252, dated 30.03.2016, of the Council of Ministers, specifically Chapter II, point 2 of this act, of the obligation for the last assessment until the moment of leaving the civil service, is an irregular action.*

*The human resources unit of this institution should have organized the work for the Reporting Officers to complete the last evaluations, for the period January-May 2018, despite the fact that the 6-month deadline had not been met.*

*In such cases, it is not necessary that the assessments be drafted only after meeting formal deadlines. In everyday practice, it often happens that for various reasons, employment relationships are extinguished or changed before the deadline is set, and in such cases employees cannot be denied the right to receive the service, only with the motivation that that 6-month term has not been completed yet, as it has been done in this case. A clear denial of*

*the right is also the case under consideration, where the civil servant B.U has not been able to participate in the competition, precisely because the human resources unit and the relevant officials have not fulfilled the obligation under article 62, of law no. 152/2013 “On the civil servant” amended and point 6 of decision no. 109, dated 26.02.2014, of the Council of Ministers, “On the evaluation of job performance of civil servants”, amended by decision no. 252, dated 30.03.2016, of the Council of Ministers, in which it is explicitly determined:*

*“If during the evaluation period, the officials who have to make the evaluation leave that job position or are unable to continue the task, they are obliged to make the evaluation for the civil servant/employee for the period during which they have exercised the duty”.*

*In this case, we are exactly facing the case where the officials who had to make the assessment, due to the exit of the institution from the civil service, are legally unable to serve as part of the civil service, but their obligation to complete the process of assessment has not been completed yet. They were obliged to complete the evaluation forms for the duration of the employment relationship in the civil service and failure to perform this task cannot be justified on the grounds that the 6-month deadline had not been met.*

*In order to regulate the state of legality, it is necessary that the human resources unit and the head of the institution, despite the fact that they are not currently part of the civil service, should organize the work for completing the evaluation forms, for all interested employees, in order to avoid cases similar to the case under review, where the citizen is unjustly denied the opportunity to benefit from the right recognized by point 8, of article 50, of law no. 152/2013, to resume the relationship in the civil service... ”.*

In the administrative practice of the Commissioner for 2019, there have been cases of exceeding the competencies by the managers or taking over the competencies of other bodies.

Thus, we can mention as such cases when the Mayor, or any other head of the institution, have decided to suspend the employee, as soon as they have started or have requested the initiation of disciplinary proceedings. Pursuant to point 6, article 59, of law no. 152/2013 “On civil servants”, amended, the competence to decide the immediate suspension from duty of a disciplined employee belongs to the Disciplinary Commission and in this case the Commissioner has intervened with a decision to regulate the state of legality.

Likewise was done in those cases where the direct supervisor of the civil servant has exceeded the competence by taking the attributes of the responsible unit (DOPA). As such a case we can mention that of the civil servant G.I, who was transferred from the position where she was appointed to another position, without respecting the relevant procedure.

Specifically, in the decision in question it is reasoned that:

*“... The content of the claims, submitted by the civil servant G.I, consists in the fact of her*

*illegal transfer to another position of the civil service, with an order “Assignment of Duty”, of the Secretary General, without respecting the authority and the procedure provided in cases of temporary transfers for work needs; without setting the time limit provided by the law and moreover, despite the time that has elapsed, no attempt has been made by the institution to fill the vacancy, as it is reasoned in the act of movement in office.*

*... In this case, despite the naming of the act “assignment of duty”, a name that is not recognized by the civil service legislation, in its content we are dealing with a temporary transfer for the needs of the institution, which had to be performed on the basis of point 1/a, of article 48, of law no. 152/2013 “On the civil servant”, amended and decision no. 125, dated 17.02.20116 “On the temporary and permanent transfer of civil servants”, of the Council of Ministers.*

*Act no. 12734 dt. 12.10.2018 of the Secretary General of the Ministry of Infrastructure and Energy is an absolutely invalid act, for the reasons listed below:*

*First, although all measures have been taken to maintain the job position category, and a decisive condition has been set for this established administrative relationship (that this situation will continue until the moment of filling the vacancy through the completion of the competition procedure), point 1/a of article 48 of law no. 152/2013 “On the civil servant”, amended has not been respected, that this time of temporary transfer cannot be more than 6 months, during two years. This shortcoming of the act, even if it was regular, in today’s conditions, cannot be fulfilled because more than 5 months have passed since the entry into force of the order in question and no action has been taken to fill the job position through competition (vacancy announcement; application for starting the competition process...etc.), which makes it objectively impossible its observance, as a competition to be completed takes about three months.*

*Secondly, the act of the Secretary-General is beyond the competences of the authorities. Pursuant to point 2/a, point 4 and point 5, of Chapter I, of Decision no. 125, dt. 17.02.2016 “On the temporary and permanent transfer of civil servants”, the civil servant may be temporarily transferred, under the conditions determined by point 1/a, of article 48, of law no. 152/2013 “On the civil servant”, amended, but it is a necessary condition that this transfer is approved by the responsible unit, the Department of Public Administration, which has the obligation to verify its legality and compliance with the conditions required by the legislation.*

*If the approval of the responsible unit is missing, it means that we are dealing with an act that has come out in violation of the law and in excess of competencies. Pursuant to point a/i), of article 108, of law no. 44/2015 “Code of Administrative Procedures of the Republic of Albania”, an act issued by a body in excess of its competence, makes this act absolutely invalid, which according to article 110 point 1, of the law in question can/should not bring any legal consequences. Pursuant to Article 111, also of the above-mentioned law, the public body has the obligation to immediately ascertain the absolute invalidity of the above act and acting ex-officio, based on article 113, point 1, of law no. 44/2015 “Code of Administrative Procedures of the Republic of Albania”, should cancel the act and take measures to*

*restore the status of legality, immediately returning the employee G.I, in her job position “Head of Expropriation Sector, in the Directorate of Transport, Infrastructure and Urban Development Programs, in the Ministry of Infrastructure and Energy.*

*Based on all the above, analyzing the written administrative documents and the provisions of the legislation in force, the Commissioner concludes that the administrative action of the Secretary General of the Ministry of Infrastructure and Energy, for assigning the civil servant G.I, with the duty of “Head of the Development Programs Sector in the Water Supply and Sewerage Field”, until the moment of conducting the competition to fill this job position, is an absolutely invalid act, beyond the competence and as such should be cancelled, ordering at the same time, the return of the employee in question to her job position “Head of Expropriation Sector, in the Directorate of Transport, Infrastructure and Urban Development Programs”, in the Ministry of Infrastructure and Energy... “.*

\*

\*

\*

Also for 2019, it is evident that the number of employees who turn to the Commissioner to solve their problems is significantly increasing, despite the right granted to them by article 7, letter “ç”, of law no. 49/2012, “*On the organization and functioning of administrative courts and adjudication of administrative disputes*”, to address the court, in relation to labor disputes, or various elements of the relationship in the civil service, in cases where the employer is a body of public administration.

This information is of particular importance to the Commissioner, who examines it from the point of view of his competencies, verifying the procedure followed by the actors and legal mechanisms that are responsible for enforcing the law on civil servants, including the established Commissions during the recruitment process, the Standing Disciplinary Commission, or the direct supervisor, assessing in each case, the reliance on the law and on the evidence of various administrative actions, which in one way or another affect the relationship in the civil service, or its elements.

In the treated cases, the intervention of the Commissioner has been efficient and the decisions taken by him at the end of the treatment of these issues have been evaluated and generally implemented voluntarily by the institutions. In other cases, the relevant structures of the Commissioner have intervened to implement the decisions taken and restore the rule of law.

The Commissioner, through the treatment of specific cases, has taken special care to unify the implementation of the law and at the same time, to create a good practice of resolved cases, which are published on the official website, in order for the human resource management unit, in any institution that is part of the civil service, to be oriented towards solv-



ing the problems that arise during the practical implementation of the law on civil servants.

Following the developments in the civil service in real time, handling the information on time and objectively, as well as the in-depth administrative investigation, will continue to be in the attention of the Commissioner, in order to prevent the erroneous implementation of the law, but also to increase the trust of civil servants and the public in this important institution for overseeing the implementation of the law on civil servants.

## CHAPTER III

### ORIENTED OVERSIGHT OF THE PROCESS OF FILLING JOB POSITIONS FROM DOPA IN THE STATE ADMINISTRATION INSTITUTIONS

Through decision no. 18, dated 25.02.2019, “*On the beginning of the oriented oversight on the implementation of the law in the civil service administration, in the competitions planned to be held by the Department of Public Administration during 2019, with procedures of admission at the executive level in the civil service, parallel movement, promotion and admission to the senior civil servants (TMC) corps*”, the Commissioner has ordered the beginning of the oriented oversight on the implementation of the law in the administration of the civil service, in the competition procedures held by the Department of Public Administration, from March 2019 onwards.

In this regard, in order to achieve the objective of supervision, the competition procedures for admission to the civil service, at the executive level, parallel movement, promotion and admission from outside the civil service, as well as the admission procedures in the senior management corps have been monitored, administering continuous information on the official website “*on-line*” of the Department of Public Administration, as well as through the information received from the representatives of DOPA, authorized to communicate with the Commissioner.

The process was conducted in close cooperation with the civil servants in charge by the Department of Public Administration for the organization and development of competitions under supervision, through continuous verbal and telephone communications, electronically through the official “*e-mail*”, as well as it has been requested to the responsible unit (DOPA) to provide the necessary information for the implementation of supervision and the provision of documentation to conduct the administrative investigation.

#### 1. General aspects and statistics concerning the recruitment process

Pursuant to the provisions of article 18, of law no. 152/2013 “*On the civil servant*”, amended, the annual plan of admissions to the civil service is drafted. This plan is built on the needs sent by the human resources management units to the Prime Minister and to every line ministry, which have previously drafted a consolidated plan of recruitment needs for the entire relevant system that includes the institution’s central administration apparatus, as well as the subordinate institutions.

It is established that the Secretary General of the Prime Ministry and of any ministry, with-in November, has sent to the Department of Public Administration, the consolidated plan of admission needs for the entire relevant system and further, the Department has drafted the draft-decision on the annual planning of admission for the state administration, which has been proposed for approval to the Council of Ministers.

On this basis, the Council of Ministers, with Decision no. 77, dated 20.02.2019, of the Council of Ministers, “*On the annual admission plan for 2019, in the state administration institutions, part of the civil service*”, has planned to recruit during 2019, a total of **495 vacancies**, divided according to the below categories:

• For the senior management civil servants corps ( <i>TMC</i> ):	<b>8 positions</b>
• For the middle management category:	<b>62 positions</b>
• For the lower management category:	<b>190 positions</b>
• For the executive category:	<b>235 positions</b>

• For the senior management civil servants corps ( <i>TMC</i> ):	<b>13 positions</b>
• For the middle management category:	<b>62 positions</b>
• For the lower management category:	<b>190 positions</b>
• For the executive category:	<b>385 positions</b>

Further, it turns out that, with decision no. 500, dated 17.07.2019, of the Council of Ministers, “*On some changes in the decision no. 77, dated 20.02.2019, of the Council of Ministers, “On the annual admission plan for 2019, in the state administration institutions, part of the civil service”*”, the number of vacancies planned for recruitment during 2019, has been changed to **650**, which according to the categories are classified as follows:

The Department of Public Administration (*hereinafter, the responsible unit*), based on article 22, 25, 26, 27, 28 and 29, of law no. 152/2013, “*On the civil servant*”, amended, as well as point 4, of Decision no. 77, dated 22.02.2019, of the Council of Ministers, “*On the annual admission plan for 2019, in the state administration institutions, part of the civil service*”, has been charged to organize the competitions to fill in the vacant positions for the executive, lower, middle and senior management (*TMC*) level, in all state administration institutions through the parallel movement procedure, admission to the civil service and promotion.

In these circumstances, in order to fill **650** positions of executive, middle and lower management level, it turns out that during 2019, **422** competition procedures have been announced. These competitions correspond to the announcements registered from number #2126 to number #2552 in the electronic system that works in this case.

From the real-time verification performed on the official website of the responsible unit, it is ascertained that, until December 2019, the situation on the realization of the process is presented as follows:

- **313** competition procedures have been completed;
- **3** competition procedures have been canceled, pursuant to decision no. 77, dated 26.06.2019, of the Commissioner for Civil Service Oversight, “*On the verification of the implementation of legality regarding the procedure of filling the job positions part of the civil service, through the competition announcements with code #2201, #2203, in the General Directorate of Customs*” (these are competitions with announcement numbers 2201, 2202 and 2203);
- **106** competition procedures turn out to be still in process in December.

In these conditions, in the framework of verifying the legality of the development of the competition procedures, in the content of this report will be treated **313** competition procedures, which at the time of monitoring, have been completed.

On the other hand, the Commissioner has handled all complaints received in his address, from employees or candidates who have participated in a competition procedure, organized by the responsible unit (DOPA), for 2019, who have claimed that there have been performed or allowed irregularities during the conduct of competitions.

### **Performance of the competitions for 2019**

Based on Chapter IV and V, of law no. 152/2013, “*On the civil servant*”, amended, vacancies part of the civil service, must be filled only through competition procedures. From the information administered regarding the competitions held for 2019, in order to fill the vacancies of executive, low and middle management level, for **313** completed competition procedures, the following results have been achieved:

*Table no. 3.1 Summary of competition statistics for 2019*

Competitions conducted in 2019 (announcement #2126 - #2552)				
Conducted competitions	Positions to be filled through these competitions	Winning candidates from the first phase "Parallel movement"	Winning candidates from the second phase "Admission to the Executive Category and Promotion"	Remaining vacant positions
<b>313</b>	<b>580</b>	<b>105</b>	<b>372</b>	<b>152</b>

For the purpose of the detailed analysis of the process, moving forward, the competitions will be treated in these groups: **a) Admission to the civil service;** **b) Promotion.**

### Acceptance in the civil service

In articles 22, 23 and 25, of law no. 152/2013, "On the civil servant", amended and in the decision no. 243, dated 18.03.2015, of the Council of Ministers, "On the admission, parallel movement, probationary period and appointment in the executive category", amended, are determined the procedural rules of competition, for filling of job positions at the executive level.

According to the above legal provisions, filling of vacancies in the executive category is initially done by civil servants of the same category, through the parallel movement procedure. Depending, if the vacancies in a competition procedure in the executive category are filled by the parallel movement procedure, the responsible unit (DOPA) announces the closed competition. Whereas, if there are vacancies left after the application of the parallel movement procedure, then the responsible unit completes them through the procedures for admission to the executive category.

From the "online" verification of the acts which materialize the competitions announced by the responsible unit (DOPA), during the calendar year 2019, some irregularities are ascertained, which we are listing below:

**First of all**, it is concluded that the competition procedure through admission to the civil service has been applied also for job positions titled "Sector Supervisor/Head of Sector" and "Director of Directorate/Regional Director". From the verification of the announcement act, it is ascertained that the above positions are part of the structure of the subordinate institutions and that the salary category for these positions is IV-a, IV-b or III-b. Based on the salary category, the responsible unit has considered these positions as executive level positions and for these reasons has continued with the competition procedure through admission to the civil service. Below we are presenting some data that reflect this situation.

**Table no. 3.2** *Data on positions filled through the admission procedure in the civil service, for positions of low and middle management category titles*

Competitions conducted through admission in the civil service	Job position title	Positions to be filled in these competitions
<b>TOTAL 83</b>	Sector Supervisor/ Head of Sector	<b>75</b>
	Regional Director/Director	<b>13</b>
	Specialist/Inspector	<b>262</b>

In Chapter II, point 5, of decision no. 142, dated 12.03.2014, of the Council of Ministers, “*On the description and classification of job positions in state administration institutions and independent institutions*”, amended, are determined the applicable classes for each category of civil service, as well as the title of the job positions belonging to each class.

Based on this definition, it is assessed that the job positions with the title “*Director of Directorate*” and “*Head of Sector*”, are not classified as executive level positions, but respectively as middle and low management positions. This fact stipulates that these job positions must be filled through the procedure defined in article 26, of law no. 152/2013, “*On the civil servant*”, amended, specifically through parallel movement and promotion.

In these cases it is ascertained that the salary category of III-b, IV-a and IV-b, applied for the job positions “*Sector Supervisor/Head of Sector*” and “*Director of Directorate/Regional Director*”, do not correspond to the category with the same title provided for in article 19 of the aforementioned law. For this reason, the Department of Public Administration, as the responsible unit, should unify and announce the categorization of civil service positions, in accordance with this provision, in terms of defining the category: medium, low management and executive. This is in order to ensure transparency in the process of recruitment, parallel movement and promotion and differentiation of civil service positions, according to the respective category, and at the same time to ensure the principle of equal pay for equal work.

This finding was also evidenced during the general supervision that the Commissioner has conducted in the subordinate institutions in the state administration and has been left as a task to regulate the legality in this case.

The Commissioner is aware of the fact that, in order to regulate the legality in this regard, which is related to the evaluation of the job position as well as to the salary reform in the civil service, the Department of Public Administration is working in cooperation with the experts of the Project “*Implementation of civil service reform in public administration - Albania (AL/IPA2014/05)*”.

*Secondly*, from the review of the announcements published on the “*online*” portal of the Department of Public Administration, it is concluded that, for some of the executive level positions, individual competitions have been held, and not according to the legal division of the grouping of executive level positions, in general or special administration groups.

It turns out that, out of **83** competition procedures completed during the 2019 calendar year, in **26** cases (*which account for 31% of completed announcements*) the competition procedure was conducted for a single position. From the review of the relevant documentation, it is ascertained that, in **16** cases the competition procedure was conducted for positions with the title “*Specialist/Inspector*” and for **10** cases for positions with the title “*Director/Sector Supervisor*”.

This fact is also concluded in the announcements published in December 2019, for which the competition procedure has not yet been completed. Specifically, out of **68** published announcements, it is noticed that, in **23** announcements (*which constitute 34% of announcements*), in the competition procedure through parallel movement and admission to the civil service, the qualified candidates have competed for only one position. These competition procedures have been announced to complete the positions with the name “*Specialist*”.

Pursuant to article 8, point 8, of law no. 152/2013, “*On the civil servant*”, amended, the positions of the executive level are classified according to the nature of the position, specifically in the groups of general administration and in the groups of special administration. Further, in Chapter II, point 1, of decision no. 243, dated 18.03.2015, of the Council of Ministers, “*On admission, parallel movement, probationary period and appointment in the executive category*”, it is determined that the procedure of admission to the civil service is organized separately for the group of general administration positions and for each group of the special administration positions.

From the above reasoning, it is concluded that the Department of Public Administration should be careful in organizing competition procedures for executive level positions, carrying out these procedures according to the principles set out in the legislation on civil service. The realization of the competition according to the groups of general and special administration serves to guarantee a transparent, fair and objective selection process of the civil servants, as well as performing competitive procedures as efficiently as possible.

In conclusion, from the analysis of the data administered during the monitoring process, for **83** competition procedures through parallel movement and admission to the civil service, the following results were achieved:

*Table no. 3.3 Data on the competition procedure through parallel movement and admission to the civil service, for executive level positions*

Conducted competitions  (a)	Positions to be filled through these competitions  (b) (c+e+f)	Winning candidates from the first phase “Parallel Movement”  (c)	Winning candidates from the second phase “Admission in the Executive Category”  (d)	Winning candidates from the second phase, appointed  (e)	Vacant positions  (f)	Waiting list candidates  (g)
<b>83</b>	<b>350</b>	<b>72</b>	<b>230*</b>	<b>181</b>	<b>97</b>	<b>49*</b>

*\* Note:* We clarify that the number of candidates reflected in column (d) and (g) is higher, since the same candidate may have been declared the winner in some competition procedures and therefore may appear registered in the waiting list. Column (b), is the sum of column (c), (e) and (f)

Based on the above data, it is found that the responsible unit through the competition procedures has successfully completed **72%** of vacancies through open competition procedure, of which **20%** have been completed through parallel movement procedure and **52%** through the admission to the civil service procedure.

Furthermore, it is found that the responsible unit, in December 2019, has published **68** announcements, through which it is foreseen the fulfillment of **249** positions through the procedure of parallel movement and admission to the civil service. (Specifically, these are the announcements with numbers: 2423, 2424, 2427, 2433, 2435, 2437-2439, 2442-2443, 2445, 2447-2448, 2450-2452, 2459, 2461-2463, 2468, 2470-2471, 2476, 2485, 2487-2490, 2492-2496, 2498, 2499, 2508, 2510, 2511, 2513-2519, 2521-2529, 2531-2538, 2540-2543 and 2549).

Analyzing the number of executive level positions for which the responsible unit has conducted or is conducting the competition procedure through parallel movement and admission to the civil service, it is noted that this figure exceeds the number of vacancies of executive level positions, planned for recruitment during 2019. In reference to the annual plan, approved by decision no. 77, dated 20.02.2019, of the Council of Ministers, “On the annual admission plan for 2019, in state administration institutions, parts of the civil service”, amended, it turns out that **385** executive level positions have been determined to be completed according to the competition procedures.

From the above, it results that, the responsible unit until December 2019, has published the acts for **151** competition procedures (83 completed and 68 in process), through which it is foreseen the fulfillment of **599** executive level positions.

The Commissioner has requested from DOPA to show caution in preparing the plan of recruitment needs for the calendar year 2020, assisting and instructing state administration institutions part of the civil service, in preparing this plan in accordance with the provisions of decision no. 108, dated 26.02.2014, of the Council of Ministers, “*On the annual plan of admission to the civil service*”, in order to carry out an efficient recruitment process, to reduce the number of competitions for the same group of positions at the executive level.

Preparation of a detailed recruitment needs plan and in accordance with legal requirements, constitutes a guarantee for the development of competitive procedures for executive level positions effectively, in general and special groups of administration in the civil service, in order fill the positions on time to respond to the needs of the institution.

### Promotion

The procedural rules of the competition to fill the positions of lower and middle management level, following the promotion procedures (*including the parallel movement in this category*), are provided in articles 25 and 26 of the law. no. 152/2013, “*On the civil servant*”, amended, as well as Decision no. 242, dated 18.03.2015, of the Council of Ministers, “*On filling of vacancies in the lower and middle management category*”.

According to the above legal provisions, even for this procedure, the filling of vacancies in the lower and middle management category is done first, by the civil servants of the same category, through the procedure of parallel movement, and if through this procedure vacancies are not filled, then the procedure for filling vacancies in the lower and middle management category continues.

In conclusion, from the data collection during the monitoring of the admission process in the lower and middle management category, including the parallel movement in this category, the following results have been achieved:

*Table no. 3.4 Data on the procedure for filling vacancies in the lower and middle management category*

Conducted competitions	Positions to be filled through these competitions	Winning candidates from the first phase “Parallel movement”	Winning candidates from the second phase “Promotion”	Remaining vacant positions
230	230	33	142	55

From the above, it is concluded that, through competition procedures, **76%** of low and middle management vacant positions have been successfully filled, of which **14%** have been filled through parallel movement and **62%** through promotion.

Furthermore, it is ascertained that the responsible unit, in December 2019, has published **38** announcements, through which it is foreseen the fulfillment of **38** low and middle manage-

ment positions. (Specifically, it is about announcements with numbers: 2423, 2424, 2427, 2433, 2435, 2437-2439, 2442-2443, 2445, 2447-2448, 2450-2452, 2459, 2461-2463, 2468, 2470-2471, 2476, 2485, 2487-2490, 2492-2496, 2498, 2499, 2508, 2510, 2511, 2513-2519, 2521-2529, 2531-2538, 2540-2543 and 2549).

➤ ***The procedure of promotion also for candidates from outside the civil service***

In Article 26, point 4, of law no. 152/2013, “*On the civil servant*”, amended, it is stipulated that the Council of Ministers, for state administration institutions, may decide that the procedure for filling vacancies in the lower or middle management category shall be open also for candidates from outside the civil service, provided that they meet the criteria and requirements for the vacancy/vacancies.

In reference to the above legal provision, it results that, the Council of Ministers, with decision no. 246, dated 24.04.2019, “*On the opening of the admission procedure in the lower and middle management category for other candidates outside the civil service for 2019*”, (amended by DCM no. 517, dated 25.05.2019) has approved the maximum number of low and middle management positions, for which the promotion procedure will be open for candidates from outside the civil service. Specifically, according to this act, it turns out that the maximum number of these positions, which are listed in attachment no. 1, attached to this decision, is:

- **15** positions, for the middle management category;
- **35** positions, for the lower management category.

Pursuant to the above sub-legal act, it results that in **230** competition procedures conducted to fill the positions of low and middle management, the responsible unit in **40** cases (*which occupy 17% of these positions of low and middle management level*), has proceeded with their completion also with candidates from outside the civil service.

The data administered by the verification of the “*online*” DOPA website, which relate to this aspect of the administration of this phase of recruitment, are presented below:

*Table no. 3.5 Finalization of the process of parallel movement and promotion*

Conducted competitions	Positions to be filled through these competitions	Winning candidates from the first phase “ <i>Parallel movement</i> ”	Winning candidates from the second phase “ <i>Promotion</i> ”		Remaining vacant positions
			Promotion	Admission from outside	
40	40	2	8	21	9

Analyzing the above data, it is noted that, in **2** cases, the competition procedure ended with winning candidates, selected through parallel movement. For the competition procedures, for which the parallel movement has ended without qualified candidates or without winning candidates, the responsible unit has continued with the promotion procedure. At the end of these procedures, it is noted that, in **8** cases the winning candidate was selected from the ranks of civil servants and in **21** cases, the winner was selected from the ranks of candidates outside the civil service.

At the same time, it is concluded that, in **9** cases, the positions of low and middle management have remained vacant, because the procedure of parallel movement and promotion/admission from outside has ended without qualified candidates or winning candidates.

Furthermore, it is found that the responsible unit, in December 2019, has published **38** announcements, through which it is foreseen the fulfillment of **38** positions of middle and lower management level. From the verification of the act of announcement, it is noticed that in **9** cases of this group, the responsible unit has planned that the competition procedure will be open also for candidates from outside the civil service.

#### *A. Monitoring of competitions from the electronic system*

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

Adherence to this procedure is a real indicator of the transparency of competition, in order to create the opportunity for candidates, or any interested citizen, to become familiar with the announcement of a vacancy in public administration; get acquainted with the candidates who will participate in the competition; be familiar with the requirements to be met during the recruitment stages and, in the end, be familiar with the winners in this process. Similarly, compliance with this procedure guarantees the implementation of the principles of equal opportunities and transparency, defined in Article 5, of Law no. 152/2013 “*On the civil servant*”, amended.

In order to oversee this process, **313** competitions were monitored, with an announcement number starting from #2126 onwards, on the official website of the Department of Public Administration, to verify whether the procedures set out in this case have been complied

with, by the responsible unit (*DOPA*). Below we present the results that have emerged from this monitoring.

*B. Publication of the competition announcement act; the act of preliminary and final verification, as well as the final list of winning candidates*

The law on civil servants and the bylaws issued on the basis of and for its implementation, determine the obligation to publish the act of announcing the competition procedure. The Department of Public Administration, within 10 days from the end of the deadline for submission of documentation (*deadline specified in the announcement*), performs the preliminary verification, selecting applicants who meet the general criteria of the job position.

Subsequently, the qualified candidates are subject to evaluation by the relevant Committees, which includes the evaluation of the CV, the written evaluation and the structured oral interview. The procedure for evaluating candidates is done by the relevant Committees. Based on article 22/5, of law no. 152/2013 “*On the civil servant*”, amended, the winning candidates who are evaluated with over 70% of the total points by the Evaluation Commission, are ranked according to the points obtained in the list of successful candidates (*hereinafter, the list of winners*).

For all the above procedures, the legislator has provided that these processes should be transparent and published, and therefore it was monitored at all times the observance of the legal requirements as well as the documentation that the responsible unit (*DOPA*) is obliged to publish on its official website “*online*”, as follows:

- ✓ Publication of the announcement document for the opening of procedures for filling a vacancy;
- ✓ Publication of the list of qualified candidates from the preliminary verification and the final list, who meet the general and specific conditions and criteria defined in the announcement act;
- ✓ Publication of the preliminary and final list of candidates evaluated as winners by the relevant Commission.

From the continuous monitoring, in **313** cases of national competitions, which turn out to be completed in December 2019, it resulted that:

- a) The responsible unit has made public all the cases in its official portal in the section “*vacancies*”, making sure that this document contains all the information provided by the specific legislation that regulates this aspect, such as the main field on which the competition will be based, as well as the skills and qualities that will be evaluated in the competition, the stages in which the competition will pass, written and oral, 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, “*On the civil servant*”, amended, the general job description, for which the competition will

take place, the documents to be submitted and their way of submission, the deadline for submission set on the exact calendar date, the date of issuance of results for the stage of preliminary evaluation of candidates, the evaluation way of candidates in the stage of preliminary verification, as well as in the stage of evaluation of candidates and the way of notification and communication with candidates.

- b) At the end of the preliminary verification phase, in all cases the responsible unit has made public in its official portal in the column “*vacancies*”, the list of candidates who meet these criteria (*list of winning candidates from the preliminary verification and the final list of candidates qualified, upon appeal*), 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 by the respective commissions, in all cases the responsible unit has made public in its official portal in the column “*vacancies*”, the list of winning candidates (*list of winning candidates at the end of the competition and the final list of the winning candidates, upon appeal*), ranking them by their points, in accordance with the specific legislation governing this aspect.

*C. Data administered during the monitoring of the preliminary verification process and the final list (after the complaint), in the competitions for 2018*

In terms of article 22, point 2/a and article 26, point 5/a, of law no. 152/2013, “*On the civil servant*”, amended and the bylaws issued in its implementation, the competition procedure consists in the preliminary verification and further in the evaluation of the candidates. In reference to these provisions, for the parallel movement the preliminary verification is performed by the human resources management unit of the institution that has the vacancy, while for promotion and admission from outside, it is performed by the responsible unit, DOPA.

The preliminary verification, which aims to verify whether the candidates meet the general and special criteria of the job position, defined in the vacancy announcement, is finalized with the publication of the Final List, which consists of the re-verification of the candidates’ files, who have not been qualified and who have exercised the right to appeal to the Department of Public Administration, within 5 days from the date of their individual notification.

The supervision found that the Department of Public Administration has reviewed all complaints filed at this stage, a fact that is materialized in the inclusion of the candidates in the final list of qualified candidates, recognizing their right to compete. From the monitoring of the official website of the responsible unit (DOPA), during the ongoing supervision, regarding this stage of the competition, the following data are obtained:

**Table no. 3.6** *Data administered during the monitoring of the process of announcing the list of qualified candidates from the preliminary verification and final verification*

Classifica- tion of posi- tions	Number of po- sitions	Parallel movement		Number of po- sitions	Admission to civil service/ Pro- motion	
		Qualified candi- dates from the prelimi- nary verifica- tion	Qualified candi- dates from fi- nal verification (after com- plaint)		Qualified candi- dates from preliminary verification	Qualified candi- dates from final verifica- tion (after complaint)
Executive level	350	129	171	278	1393	1535
Low and middle management level	190	40	58	159	201	277

Meanwhile, for the conducted competition procedures for filling the positions of the lower and middle management level, through the promotion competition procedure, also for candidates from outside the civil service, the data are presented as follows:

**Table no. 3.7** *Data administered during the monitoring of the process of announcing the list of qualified candidates from the preliminary verification and final verification for the competition procedures through promotion also for candidates from outside the civil service*

Low and middle man- age- ment level	Number of posi- tions	Parallel movement		Number of posi- tions	Promotion		Admission from outside	
		Qualified candidates from prelimi- nary verifica- tion	Qualified candidates from final verification (after com- plaint)		Qualified candi- dates from pre- liminary verifica- tion	Qualified candidates from final verification (after com- plaint)	Qualified candidates from pre- liminary verification	Qualified candi- dates from final verifica- tion (after complaint)
	40	5	10	38	25	41	172	197

From the data reflected above, the Commissioner has concluded that the preliminary verification phase was carried out in accordance with the law by the responsible unit (*DOPA*). This conclusion is based on the monitoring of the data published on the official website of *DOPA*, from the analysis of which it turns out that the complaints have been taken into account, which is reflected in the increase in the number of competitors after this phase, during admission at any level.

Grouping the data reflected in the above tables, it is noted that, from **1965** qualified candidates in the preliminary verification phase in recruitment procedures through parallel movement, admission to the civil service and promotion/admission from outside, in the final list result **2289** qualified candidates to participate in these competition procedures. As a result, the list has been increased with **324** candidates, who turn out to have exercised their right, through the complaint, to be participants in the competition procedures.

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

Pursuant to law no. 152/2013, “*On the civil servant*”, amended, after the completion of the preliminary verification, the competition procedure continues with the evaluation of the candidates, which for the parallel movement consists of: *a) the evaluation of the CV and b) the evaluation of the structured oral interview*, while for the competition procedure through admission to the civil service and promotion it consists of: *a) evaluation of the CV (evaluation of the type and level of education, experience and training, related to the field), b) evaluation of the written test and c) evaluation of the structured oral interview*.

At the end of this process, the relevant committees list the winning candidates, who at the end of the evaluation phase have managed to get over 70% of the total points and send the relevant list to the responsible unit. The candidates who have not been declared winners have the right to appeal to the Department of Public Administration, which, within 5 days from the date of completion of the appeal, reviews the complaints and further announces the final list of applicants.

From the monitoring of the competition procedures announced on the portal of the Department of Public Administration, it is concluded that the responsible unit has reviewed the complaints submitted by the candidates for this phase, a fact which is materialized in the inclusion of these candidates in the final list of winners, data which are reflected in the table below:

*Table no. 3.8 Data administered during the monitoring of the process of announcing the preliminary list of winners and the final list of winners (after the complaint)*

Procedure	Candidates announced winners from the preliminary list	Candidates announced winners from the final list (after the complaint)
Admission to the executive category	278	302
Filling vacancies in the lower and middle management category	175	175
<b>TOTAL</b>	<b>453</b>	<b>477</b>

From the data reflected above, the working group assesses that the complaint review phase has been carried out in accordance with the law by the responsible unit (*DOPA*). This conclusion is based on the monitoring of the data published on the official website of *DOPA*, from the analysis of which it results that the complaints have been taken into account, which is reflected in the increase in the number of competitors after this phase.

If we present the data of the tables as shown above in groups, it results that out of **1064** candidates declared winners in the preliminary list, in the final list there are **1070** candidates declared winners. So, the list was increased by **6** candidates, who had the right to appeal, through the complaint, to re-evaluate the answers given in the written test or the structured oral interview.

### *E. Appointment to the civil service, after the completion of legal proceedings*

In terms of the provisions of law no. 152/2013, “*On the civil servant*”, amended, decision no. 243, dated 18.03.2015, of the Council of Ministers, “*On admission, parallel movement, probation period and appointment in the executive category*”, as well as decision no. 242, dated 18.03.2015, of the Council of Ministers, “*On filling vacancies in the lower and middle management category*”, the competition procedure is finalized with the appointment of the candidate in the job position, for which he has been declared the winner.

For the competition procedure through admission to the civil service, article 22/5, of law no. 152/2013, “*On the civil servant*”, amended, stipulates that the winning candidates, who receive over 70 percent of the total points at the end of the evaluation, (*evaluation which includes a) the evaluation of the CV, (evaluation of the type and level of education, experience and training, related to the field), b) the evaluation of the written test and c) the evaluation of the structured oral interview,*) are listed by the relevant committee, according to the points obtained in the list of winning candidates (*hereinafter, the list of winners*).

This list, in its content, has the names of the winning candidates, who are ranked starting from those who have received the most points (*where candidates with equal points can be found*), who have the right to choose from the list of existing vacant positions, for which they have applied and further, the responsible unit, DOPA, appoints the candidate to the selected position.

In cases when, for a competition, more winners have been announced, than the vacant positions for which the open competition procedure has been developed, the responsible unit, pursuant to Article 23, point 2, of law no. 152/2013, “*On the civil servant*”, amended, lists the winning candidates, who have not been appointed due to lack of vacancies or due to legal refusal, in a list valid for 2 years. If during this period the responsible unit conducts a competition procedure for the same group of positions, the winning candidates, still not appointed, are re-ranked in the winning list of the respective competition according to the final result.

On the other hand, for the competition procedure, through parallel movement or promotion, the responsible unit appoints the candidate, who at the end of the evaluation, is ranked first, among the candidates who have received at least 70 points.

Referring to the information transmitted through electronic communication, it turns out that the responsible unit, through competitive procedures conducted until December 2019, has managed to fill **457** executive and middle and lower management positions.

Meanwhile, it is found that the responsible unit, for filling vacancies created due to the law (*such as the positions provided in the annual plan and vacancies created as a result of the appointment of employees in other positions of the civil service, due to parallel movement or promotion*), in addition to the appointment through the competition procedure, has applied other alternative procedures, such as: appointments from the list of winners from previous competitions, appointments from permanent transfers at the end of suspension and appointments pursuant to court decisions, materialized in the data which are reflected in the table below:

*Table no. 3.9      Appointments in vacant positions according to the applied procedure*

<b>Applied Procedure</b>			
<b>Appointments from the list of winners of current competitions</b>	Appointments from the list of winners of previous competitions	Appointments pursuant to court decisions	Appointments from permanent transfers at the end of the suspension
<b>457</b>	16	53	37
<b>563 completed positions completed in total</b>			

The figure of **457** candidates, who have been appointed from the winning list of competitions held in 2019, based on the classification of the job position where they were appointed, despite the competition procedure applied for their completion, is presented in this way:

*Table no. 3.10 Categorization of job positions completed during 2019*

<b>Number of employees appointed according to the competition procedure</b>		
<b>Appointed through admission to the civil service at entry level</b>	Appointed to lower management positions	Appointed to middle management positions
<b>278</b>	133	46
<b>457 completed positions completed in total</b>		

Admission to the senior civil servants (TMC) corps in the state administration

In Article 28 of Law no. 152/2013, “*On the civil servant*”, amended, it is stipulated that admission to the senior management body (*TMC*) can only be made by persons who have completed the in-depth training at the Albanian School of Public Administration. The selection of employees in the in-depth training program for *TMC* is done through a national competition, organized by the responsible unit, where only civil servants of the middle management category have the right to participate, as well as any other individual who is not part of the civil service, but meets the specific requirements for admission to the *TMC*. Furthermore, Article 29 of the above-mentioned law stipulates that admission to the body of senior civil servants can be made directly, through a national competition, which pursuant to point 2, Chapter V, of Decision 118, dated 05.03.2014, of the Council of Ministers, “*On the procedures for the appointment, recruitment, management and termination of the relationship in the civil service of senior civil servants and members of the TMC*”, amended, may also be open to other candidates, outside the civil service, who meet the specific requirements for admission to the *TMC*.

It turns out that, with decision no. 77, dated 20.02.2019, of the Council of Ministers, “*On the annual admission plan for 2019, in state administration institutions, part of the civil service*”, for 2019 it is planned to conduct the recruitment procedure for **8** senior management positions (*TMC*).

Currently it turns out that, with decision no. 215, dated 17.04.2019, of the Council of Ministers, “*On the opening of the procedure of direct admission to the TMC also for other candidates outside the civil service and the use of the procedure of direct admission to the TMC for 2019*”, it was decided that for the calendar year 2019, the admission procedure in the body of senior executives (*TMC*), to be done directly, through a national competition (*point 2 of this act*) and that this procedure will be open for other candidates outside the civil service (*point 1, of this same decision*), who meet the specific requirements for admission to the *TMC*, defined in point 4 of this sub-legal act. At the same time, the content of this act stipulates that the direct admission procedure will be used for **8** *TMC* job positions.

The Department of Public Administration, as the responsible unit, has planned and organized the competition process for filling **8** positions in the body of senior management civil servants (*TMC*), through the national competition procedure, at the end of which, have been achieved the following results:

*Table no. 3.11 Data on the competition procedure for TMC*

Positions to be filled in the corps of senior management civil servants ( <i>TMC</i> )	Candidates qualified from the preliminary verification	Candidates qualified from the final list (after complaint)	Candidates declared winners by KKP (with over 70 points)	<i>TMC</i> positions left vacant
<b>8</b>	<b>29</b>	<b>35</b>	<b>10</b>	-

From the monitoring of the competition procedure announced on the portal of the Department of Public Administration, it is concluded that the responsible unit has implemented the procedures set out in Articles 27, 29, 30 and 31 of Law no. 152/2013, “*On the civil servant*”, amended in decision no. 118, dated 05.03.2014, of the Council of Ministers, “*On the procedures for the appointment, recruitment, management and termination of the relationship in the civil service of senior management civil servants and members of the TMC*”, amended, in relation to:

- publication of the act of announcement for filling the positions of senior management, reflecting in it the necessary elements and data regarding the general description of the job position, general criteria, specific admission requirements, as well as the special conditions and requirements, skills, knowledge and qualities that the candidates must possess to apply in the competition for admission to the senior management staff (*TMC*);
- publication of the preliminary list and the final list of qualified candidates to proceed further with the second phase of the competition, the evaluation of the written test and the structured oral interview
- publication of the preliminary list and the final list of candidates declared winners at the end of the scoring evaluation procedure, guaranteeing the right to appeal, for candidates who have not been declared winners.

\*

\*

\*

These were some of the aspects ascertained by the Commissioner during the process of the oriented oversight on gathering information in terms of the functioning of the recruitment process in state administration institutions, during 2019.

The Commissioner, taking into account the problems identified in the content of this report, as well as the cases handled (*complaints*) in the framework of the administrative investigation, considers that the Department of Public Administration, in implementation of this difficult and complex process, should continue its work towards increasing the quality of the recruited civil servants staff, through interaction with citizens, in order to increase the number of competitors, by publishing on the “*online*” application portal, information that serves to understand the recruitment procedures and to make them aware of the importance of increasing the level of participation in these procedures.

In this context, in the work of the Department of Public Administration, the challenge remains to increase the trust of citizens interested in participating in these procedures, as well as for employment based on merit, which can be achieved through guaranteeing and conducting a transparent and fair competition process, as well as through the creation of special



mechanisms that carry out this process (*relevant recruitment commissions*) with participants with high professional skills, impartiality and integrity of their figure.

On the other hand, the Department of Public Administration should show a higher level of cooperation with state administration institutions, in order to report vacant positions to ensure increased efficiency in the implementation of recruitment procedures in accordance with the legal provisions.

## CHAPTER IV

### GENERAL SUPERVISIONS/THEMATIC INSPECTIONS CARRIED OUT IN SUBORDINATE INSTITUTIONS IN THE STATE ADMINISTRATION DURING 2019

The general supervision during this year has started with the subordinate institutions and specifically with those subordinated to the Ministry of Finance and Economy (**12** institutions). It has further continued with institutions under the Ministry of Agriculture and Rural Development (**1** institution) and it is planned to continue throughout 2020 also in other line ministries.

The process is oriented towards these institutions, taking into account the fact that in general, there are problems in the administration of the civil service, in the conditions when there are no structured units of human resource management and this role is performed by the units of ministries from which they depend, and as a typical case we mention the General Directorate of Financing and Contracting for EU Funds, World Bank and other Donors, where the structure has **34** job positions, but no job position is provided for human resource management.

*Table no. 4.1 Supervised institutions during 2019*

<b>General supervision of institutions under the Ministry of Finance and Economy</b>
General Directorate of Industrial Property
Concession Management Agency (CMA)
National Business Center
General Directorate of Standardization
Customs and Tax Administration Training Center
General Directorate of Financing and Contracting for EU Funds, World Bank and Other Donations
General Directorate for the Prevention of Money Laundering
National Agency for Education, Vocational Training and Qualification
General Directorate of Property Tax
General Directorate of Treasury
General Directorate of Accreditation
Seized and Confiscated Asset Management Agency
<b>Supervision/Thematic inspection</b>
<b>Subordinate institution under the Ministry of Agriculture and Rural Development</b>
National Authority of Food (NAF)
<b>TOTAL: 13 Subordinate institutions</b>

This situation leads to problems in solving various situations of civil service administration in these institutions and in these cases, the institutions identified with this issue have been assigned to cooperate with the human resources unit in the line ministry and the Department of Public Administration, to review the structure, based on decision no. 893, dated 17.12.2014 of the Council of Ministers, “On the approval of the rules of organization and functioning of auxiliary cabinets, the internal organization of state administration institutions, as well as on the detailed procedures for preparation, proposal, consultation and approval of internal organization” planning the job position for human resource management.

In the subordinate institutions in the Ministry of Finance and Economy, the supervision process is extended to all administrative actions performed by the responsible unit and the units in charge of human resource management, in relation to the civil service administration processes, performed from the moment of the beginning of the legal effects of law no. 152/2013, “*On the civil servant*”, amended, and following.

Meanwhile, in the subordinate institutions of the Ministry of Agriculture and Rural Development, specifically for the institution of the *National Food Authority*, a thematic inspection was carried out, launched after a claim that came to the official address of the Commissioner. In this case, the control of law enforcement in the administration of the civil service was focused on verifying the cases of appointments and transfers contrary to the law in job positions that are part of the civil service, where the complainant claimed non-compliance with the law.

The analysis that will be conducted in the content of this material is based on the findings, and the problems that have been identified in **13** subordinate institutions of the state administration, which based on the main competencies that they perform, are organized in agencies, general directorates or centers with various object of activity.

*Table no. 4.2 General and thematic supervisions reflected according to the level of administration and the level of implementation of the process*

Institution	General supervisions	
	Completed the process by Decision of the Commissioner	In process
State administration institutions under the Ministry of Finance and Economy	11	1
<b>Supervision/Thematic inspection</b>		
State administration institutions under the Ministry of Agriculture and Rural Development	0	1
<b>TOTAL</b>	<b>11</b>	<b>2</b>

During this year, **944** job positions were analyzed, in the composition of the structure and staff in force of 13 supervised/inspected institutions, of which **906** positions are included in the civil service according to the following table:

*Table no. 4.3 Job positions verified according to the structure and staff in force of the supervised/inspected institutions*

<b>Classification of job positions by division</b>	<b>Job positions for each classification</b>
Political Officer	1
Administrative staff	37
Job positions of the civil service	906
<b>TOTAL</b>	<b>944</b>

### **1. Situation of law enforcement in institutions under the Ministry of Finance and Economy**

In the process of general supervisions, where for the year we are reporting were included **12** institutions of state administration, part of the civil service, under the Ministry of Finance and Economy, the situation of service administration, according to law institutes for civil servants applied by the human resources management unit and the responsible unit, resulted as follows:

#### **Implementation of legal criteria in the construction of the structure of the institution as well as during the categorization of job positions part of the civil service**

The oversight process has focused on verifying the implementation of the legal framework regarding the organization and functioning of the institution. It has been ascertained that in some cases, which are related to job positions categorized as middle and lower management in these institutions, the titles of job positions do not match with the category of salaries that are applied in other central and independent institutions that are part of the civil service. Specifically, it was ascertained that for the position of “*director of directorate*” in the institutions under the line ministry, it is provided the category of salary III-a and for the position of “*head of sector*”, the category of salary III-a/1 is provided, which do not correspond to the category of civil service with the same title, provided for in article 19, of law no. 152/2013, “*On the civil servant*”, amended, as employees of these categories are also paid in other institutions of the civil service.

In this case, in order to improve the situation in the implementation of the law in the administration of the civil service, the Department of Public Administration, in the role of the responsible unit, has been assigned with the duty to unify the categorization of job positions in the civil service, in the subordinate institutions for the job positions “*Director of the Di-*

rectorate” and “*Head of Sector*”, in accordance with the requirements of Article 19, of Law no. 152/2013, “*On the civil servant*”, amended. DOPA is oriented to carry out the process by evaluating their inclusion in one of the categories defined in this provision: senior management, middle management, low management and executive, in order to increase transparency, both in terms of the recruitment process (*at the executive level, parallel movement or promotion*), as well as in terms of payment method of the civil servant, in accordance with the responsibilities and duties he performs during his activity, as well as the application of the principle of equal pay for equal work throughout the civil service.

To regulate the legality regarding this aspect, the Department of Public Administration is working with experts from the IPA 2014 Project “*Implementation of Civil Service Reform in Public Administration*”, to review job descriptions, in order to clearly define the responsibilities and the importance of the job position, further defining the positioning of the job in the administrative hierarchy provided for in Article 19 of the Law on civil servants.

### **Drafting of job descriptions for positions that are part of the civil service**

The administrative functions performed by the subordinate institutions in the state administration and their competencies are decisive in drafting the job descriptions for each job position approved in the structure and staff of the institution.

During the supervision conducted this year, the actions performed by the job *analyst/direct supervisor, the Secretary General of the line ministry/responsible unit*, who are also the responsible employees for the process of drafting the job description, were checked, to determine whether these acts were drafted in compliance with the requirements of the law and bylaws that have been issued in its implementation. Further, it was verified whether the employees appointed to civil service positions, meet the special requirements, set in the job description.

At the end of this process, the Commissioner has found that in **11** institutions the job descriptions have been drafted and in **2** institutions the job descriptions have not been drafted yet. From the analysis of the content of the job description, as well as after the verification of the drafting procedure, problems have often been identified, which have to do with the ambiguity of the tasks that the employee has to perform in the workplace; shortcomings in identifying specific requirements, and especially cases where the process of approving the job description by DOPA has not been completed, and further depositing these acts with this institution, in order to reflect them on the central staff register.

The Department of Public Administration should check whether the job descriptions are drafted on the basis and in accordance with the specific legislation of the field or the approved standard format, as provided in point 19, of decision no. 142, dated 12.3.2014, of the Council of Ministers “*On the description and classification of job positions in state administration institutions and independent institutions*”, amended.

In order to restore legality, through warning decisions, the Commissioner has brought to the attention of the responsible persons and the Department of Public Administration these irregularities and has requested that the processes be finalized, instructing the institutions on how to act in these cases.

### Preparation of the annual plan for admission to the civil service

The law on civil servants stipulates that the administration of the civil service is based on the annual admission plan. Pursuant to this definition, the recruitment procedures in the civil service in the executive, lower and middle management category start based on the “*Annual plan for admission to the civil service*”. The responsible unit (*Department of Public Administration (DOPA) for state administration institutions and the human resources unit for independent institutions and local government units*) cannot notify the announcement of a recruitment procedure in the civil service, if the relevant job position is not reflected in the annual admission plan, as provided in decision no. 108, dated 26.2.2014, of the Council of Ministers “*On the annual plan of admission to the civil service*”. The way of application of this rule established by law is included in the directions of supervisions performed during this year and the situation is presented according to the data reflected in the table below:

*Table no. 4.4* Annual admission plan to the civil service

Typology of supervised institutions	Institutions that have drafted the plan	Institutions that have not drafted the plan
Subordinate institutions of state administration (MFE)	12	0
<b>TOTAL</b>	<b>12</b>	<b>0</b>

From the presented data, it results that the supervised institutions have drafted the annual plan of admission to the civil service and in all cases the actions have been performed within the legal deadline.

### Implementation of legal procedures for the initiation of employment relations in the civil service

In the state administration institutions under the Ministry of Finance and Economy, employment relations have been verified for **503** job positions part of the civil service, of which **415** cases of appointments have been ascertained in accordance with the requirements of the law and **2** cases of appointment have been done contrary to the procedures set out in the law.

Meanwhile, according to the administered data, **86** positions of the civil service are evidenced, which occupy around **17%** of the total number of job positions that are part of the

civil service, which were vacant at the time of supervision. The Commissioner considers that this is a high figure, which negatively affects the performance of employees in performing service to citizens and therefore the Department of Public Administration has been notified in advance to continue the process of completing them as soon as possible.

### **Cases of appointments in accordance with the law requirements**

From the verification of the appointment procedure in the civil service, it has been ascertained that in **272** cases, the beginning of the employment relationship in the civil service has been done in accordance with the provisions of article 67, of law no. 152/2013 “*On the civil servant*”, amended, a provision which has regulated employment relations for existing employees, at the moment of entry into force of law no. 152/2013, “*On the civil servant*”, amended.

In all verified cases, it has resulted that the procedures for declaring the employment status by the responsible unit DOPA, have been performed within the deadline set in point 1, of chapter IV, of decision no. 116, dated 5.3.2014 of the Council of Ministers “*On the status of current civil servants and employees who benefit from the civil servant status according to law no. 152/2013, “On the civil servant”, amended.*

It turns out that in **88** cases, the beginning of the employment relationship in the civil service was realized through admission to the civil service in the executive category through open competition.

Fulfilling the vacancies of the lower or middle management category, within the civil service system, has resulted that in **50** cases, it has been realized through the parallel movement procedure or the promotion procedure (*25 cases through the parallel movement and 25 cases through the promotion procedure*).

Appointments within the civil service system through parallel movement and promotion procedures in the state administration are found to be increasing, which is assessed as an indicator of increased confidence of civil servants in career development within the civil service.

It was found that in **5** cases, appointments in the civil service were made pursuant to a final court decision (*2 cases in the General Directorate of Accreditation; 1 case, in the Treatment Center of the Tax and Customs Administration; 1 case, at the National Business Center and 1 case, at the General Directorate of Treasury*).

### **Cases of appointments contrary to the procedures established by law**

**1** case is ascertained where the employee is appointed in contradiction with the law, not respecting the competition procedures, which is evidenced in the institution of National Agency for Education, Vocational Training and Qualification.

In this case, with a warning decision, the institution has been ordered to immediately establish, as an absolutely invalid administrative act, the act of appointment on the grounds that the competition procedures defined by law have not been implemented. The institution has been also assigned with the duty to request from the Department of Public Administration to fill the job position with a temporary transfer, until the end of the recruitment process, in accordance with the law on the civil servant, amended.

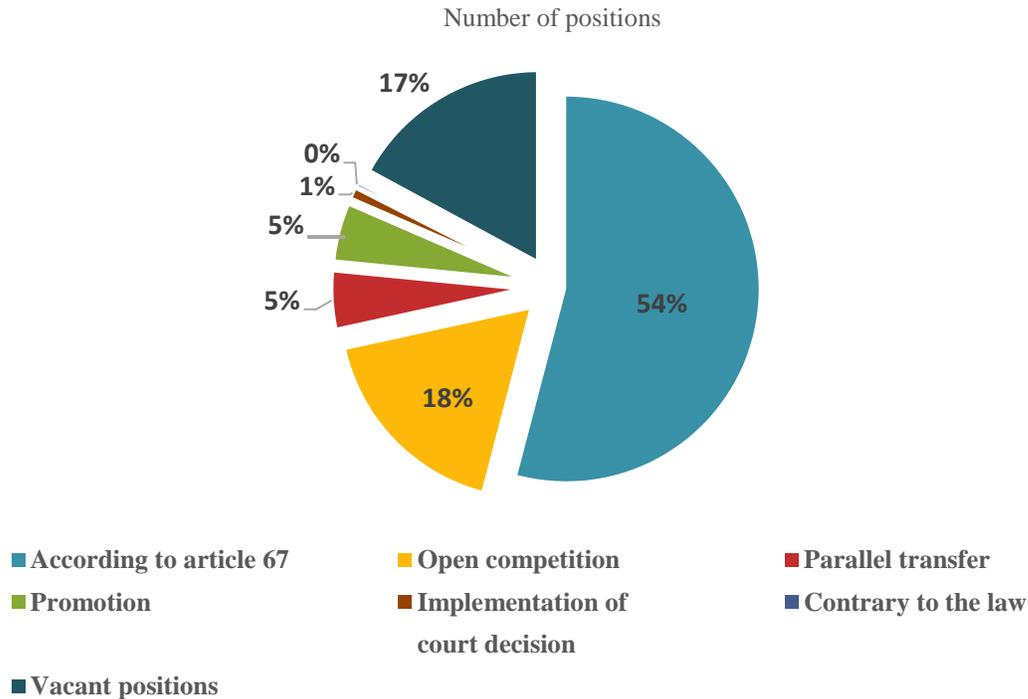
Meanwhile, in 1 case, it was found that the employee does not meet the criteria to be a civil servant, which is evidenced in the institution of General Directorate of Prevention of Money Laundering.

With a warning decision of the Commissioner, this irregularity has been brought to the attention of the human resources unit of the institution, requesting to decide on the termination of the employment relationship for the respective employee, due to non-fulfillment of the special criteria of the job position where he is appointed. Below, we present some data related to the way of filling the job positions in the institutions that are included in this supervision.

*Table no. 4.5* Way of filling the civil service positions in the institutions under the Ministry of Finance and Economy, part of the civil service

Way of filling the service positions	Number of positions
Employees appointed according to article 67, of the law	272
Employees appointed in the executive category with open competition	88
Employees appointed by parallel movement	25
Employees appointed by promotion	25
Employees appointed pursuant to the court decision	5
Positions completed in violation of the law	2
Vacant positions in the civil service	86
<b>Total civil service positions</b>	<b>503</b>

**Graph no. 4.1** Fulfillment of civil service positions in institutions under the Ministry of Finance and Economy



### Job performance evaluation for civil servants

Considering it a difficult and important process, the evaluation procedures of the job performance of civil servants have been one of the main directions of supervision during 2019. Law no. 152/2013, “*On civil servants*”, amended, regulates this institute in Article 62, of Chapter XI, which explicitly provides the obligation of institutions that employ civil servants to perform the procedures for evaluating the job results for civil servants, every 6 months.

In addition to this assessment, employees are subject to a periodic assessment, also for obtaining and updating additional knowledge and in this case, the aim is to train and equip them with the necessary additional knowledge, according to the functions and field in which they operate, in order to increase the quality of services and work in public administration institutions, part of the civil service.

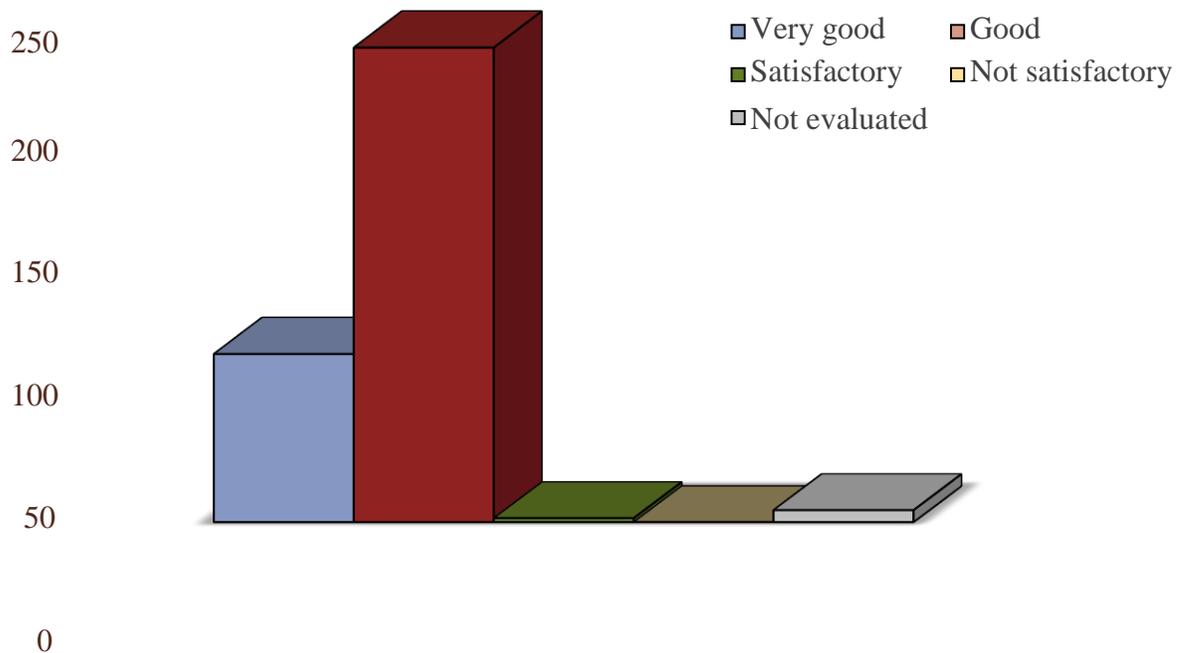
The law on civil servants stipulates that a civil servant may be assessed at one of these levels **a)** very good (1); **b)** good (2); **c)** satisfactory (3); **e)** not satisfactory (4).

In the process of general supervisions carried out in the institutions that we are analyzing, it was evidenced that the civil servants who were involved in the evaluation procedures were evaluated according to the way presented in this table:

**Table no. 4.6** Classification of job performance evaluations according to evaluation levels.

Typology of supervised institutions	Number of evaluated civil servants for each level				
	Very Good	Good	Satisfactory	Not satisfactory	Not evaluated
Institutions under MFE	84	236	2	0	6
Total number of supervised cases	<b>328</b>				

**Graph no. 4.2** Institute of job evaluation according to the levels defined in the law



From the comparison of the assessments made for each level, it results that during 2019, as a year ago, there is a tendency towards evaluation at high levels (very good and good) that occupies about **99.4%** of the assessed cases, while satisfactory assessments are evidenced only in **2** cases that constitute **0.6%** of the assessed cases and in no case is the negative, unsatisfactory assessment found.

In order to improve the process and eliminate subjective evaluations, the Commissioner has oriented the subjects and especially the personnel units, to achieve the discipline of supervisors to keep records of the achievements of civil servants during the evaluation year, planning trainings in this field for the civil servants in charge of appraisals, as well as through the supervision of supervisors, to oversee the appraisal process, extending throughout the calendar year.

Referring to the current legal framework of the civil service, the assessments at *satisfactory (3) and unsatisfactory levels (4)*, oblige the civil servant to participate in the mandatory trainings that take place at the School of Public Administration. Also, after two “*unsatisfactory*” evaluations of job performance, the employee’s work relationship in the civil service is terminated through dismissal from the civil service.

Whereas, the evaluation at levels *very good (1) and good (2)*, is foreseen only as a qualification criterion for the career system in the civil service through parallel movement and promotion, and for this evaluation there have not been foreseen other incentives, material or benefits of any other nature.

Meanwhile, during the supervision in these institutions, it was evidenced that in **6** cases, for senior management civil servants (TMC member), the job performance evaluation procedure has not been conducted.

In all these cases, the Commissioner through a warning decision has instructed the supervised institution to formally send the job evaluation form to the Secretary General of the Ministry of Finance and Economy, and then the Secretary General must forward to the responsible unit/National Selection Commission (NSC), the acts for the job performance evaluation, in order to continue with further procedures provided for in detail in the decision no. 109, dated 26.2.2014 of the Council of Ministers, “*On the evaluation of job performance of civil servants*”, amended, in order to make the final assessment of job performance for senior management civil servants.

### **Termination of employment in the civil service**

Termination of employment in the civil service is an institute that is regulated by articles 63 to 66 of the law on civil servants and consists of cases of dismissal from the civil service, termination due to the law and removal from the civil service as a disciplinary measure. From the supervision of the institutions under the Ministry of Finance and Economy, **50** such cases were constituted, of which **27** cases due to release from the civil service and **23** cases due to law.

*Table no. 4.7      Termination of employment in the civil service*

<i>Reasons for termination of employment in the civil service</i>	<b>Cases in institutions under MFE</b>	<b>TOTAL</b>
<i>Release from the civil service</i>	27	
<i>Termination of employment in the civil service, due to the law</i>	23	

## Discipline in the civil service in relation to the type of penalties applied

The Institute of discipline in the civil service 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.

In the supervisions carried out in the institutions of state administration, under the MEF, a low number of disciplinary measures have been ascertained. It turns out that in **6** cases, civil servants have been prosecuted, of which in **2** cases, the disciplinary measures “*remarks*” have been applied for minor violations; in **1** case, the disciplinary measure “*holding up to 1/3 of the full salary for a period of up to 6 months*” was applied, for serious violations; in **2** cases, the disciplinary measure “*suspension from the right to promotion, including salary increase for a period of up to two years*” was applied, for serious violations and in **1** case, the disciplinary measure “*removal from the civil service*” was applied, for very serious violations.

*Table no. 4.8      Disciplinary proceedings in relation to the type of measures applied*

Type of violations	Disciplinary measures in institutions under MFE
Very serious violations	1
Serious violations (holding 1/3 of the salary for 6 months)	1
Serious violations (revocation of the right to promotion for 2 years)	2
Minor violations (remarks)	2
<b>TOTAL</b>	<b>6</b>

### Personnel file and central personnel register

#### o Personnel file

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

The content of the file consists of documents with personal data of technical and professional character, as well as other data defined according to Attachment 1 and 2, which are part of the sub-legal act that specifically regulates this aspect. The data related to the ful-

fillment of legal requirements are reflected and administered in the working documents that are completed during the supervision, as annexes that are attached to the final supervision report and are considered as part of it, for each employee who is employed in a position which is included in the field of civil service.

During the process of verifying the documentation administered in the personnel file, the Commissioner has found shortcomings of various natures.

*Table no. 4.9 Missing documents found in personnel files*

Lack of documentation		
Identity card	Criminal record	Medical report
0	217	232

As it results from the presented data, shortcomings were found in the completion of the relevant documentation in the personnel file, in terms of lack of medical reports, which confirm the health condition of the employee, identified in **232** cases and in terms of lack of documents proving the judicial status of the employee (*proof of criminal record, self-declaration, or verification by the institution*), evidenced in **217** cases.

In all supervised institutions, concrete tasks have been left through the final report of the supervision, as well as on the content of the warning decisions of the Commissioner, for the regulation of the situation.

In the conditions when, during the verification of the documentation contained in the personnel file, various data have been collected, related to education, age, gender, below we present some of them, analyzed in the social aspect.

○ **Central Personnel Register**

The Central Personnel Register is a document created according to the requirements of law no. 152/2013, “*On the civil servant*”, amended and decision no. 117, dated 5.3.2014, of the Council of Ministers, “*On the content, procedure and administration of personnel files and of the central personnel register*”.

At this time of reporting, the Central Personnel Registry, which is administered by the Public Administration Department, has become functional in all institutions under the ministries.

## 2. Inspection carried out at the National Food Authority, an institution under the Ministry of Agriculture and Rural Development

The supervision process has started ex-officio at the institution of the National Food Authority, with the object of verifying the cases of appointments and transfers in violation of the law, in job positions part of the civil service, performed for the period of 2017-2019. In this case, the beginning of the oversight of the civil service administration process was initiated by a denunciation received at the official address of the institution of the Commissioner for the Civil Service Oversight.

In this institution, **418** job positions were analyzed, approved in the content of the structure and the staff in force, of which **403** of them are part of the civil service.

During the supervision performed in this institution, the following were identified:

- **2** cases of appointments contrary to the procedures set out for recruitment in the executive category of the civil service, provided in articles 22, 23, 25 and 26 of law no. 152/2013, “*On the civil servant*”, amended.
- **9** cases of temporary transfers (commands), contrary to the requirements of Article 48 of Law no. 152/2013, “*On the civil servant*”, amended.
- **11** cases of civil servants, temporarily commanded, contrary to the law, by an individual act issued by the head of the institution, in job positions of a higher category in the civil service, than that where they enjoy the status of civil servant.

In order to regulate the legality of administrative actions found with irregularities, through the warning decision, the Commissioner has ordered the General Director of the National Food Authority to perform the administrative actions grouped as follows:

- a) To ascertain as administrative acts absolutely invalid, the **2** cases of appointment at the executive level contrary to the provisions of article 22, 23 and 25, of law no. 152/2013, “*On the civil servant*”, amended, considering the job positions as vacancies.
- b) To repeal as absolutely invalid administrative acts, the acts of temporary command of **9** civil servants, issued contrary to the provisions of article 48, of the law on civil servants. The human resources management unit of the National Food Authority should guide the process of returning the relevant employees to the job positions where they turn out to have been appointed by the Department of Public Administration.

- c) To ascertain the absolute invalidity of the act of appointment/temporary delegation of duties, for **11** civil servants appointed/commanded in job positions of the civil service without respecting the procedure of promotion, defined in article 26 of law no. 152/2013, “*On the civil servant*”, amended. The human resources management unit of the National Food Authority should guide the process of returning the relevant employees, to the job positions where they turn out to have been appointed by the Department of Public Administration.

The human resources management unit of the National Food Authority has been guided to include in the annual plan of the needs for recruitment in the civil service for 2020, all the appointments evidenced with irregularities, as well as for other positions, which in terms of law turned out to be vacant, and to communicate this act to the Ministry of Agriculture and Rural Development, as well as to the Department of Public Administration.

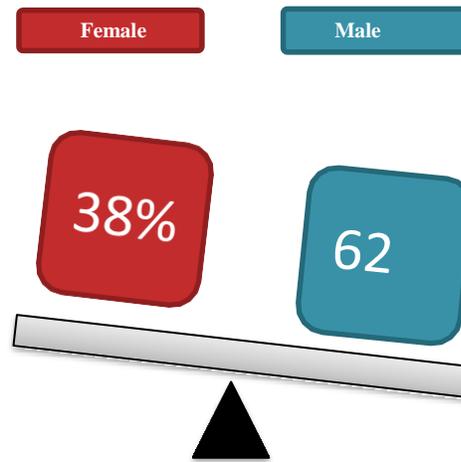
Further, the responsible unit, the Department of Public Administration, was instructed to take immediate measures to fill the vacancies in the National Food Authority, in accordance with the requirements of law no. 152/2013, “*On the civil servant*”, amended and bylaws issued in its implementation.

The institution of the National Food Authority and in particular the human resources management unit have been asked to take measures in order to not repeat actions that are contrary to the principles of civil service administration, which are related to the creation of a stable, professional, merit-based civil service, as well as guaranteeing the rights of civil servants in relation to career development and sustainability in the civil service.

### **3. Some statistical aspects regarding gender relations and educational institutions where civil servants have studied in the supervised entities**

Regarding a study sample of **787** civil servants, of which **417** are employed in state administration institutions under the Ministry of Finance and Economy and **370** others are employed at NFA, an institution under the Ministry of Agriculture and Rural Development, it turns out that the total number of female employees is **490** or **62%** and male employees is **297** or **38%**.

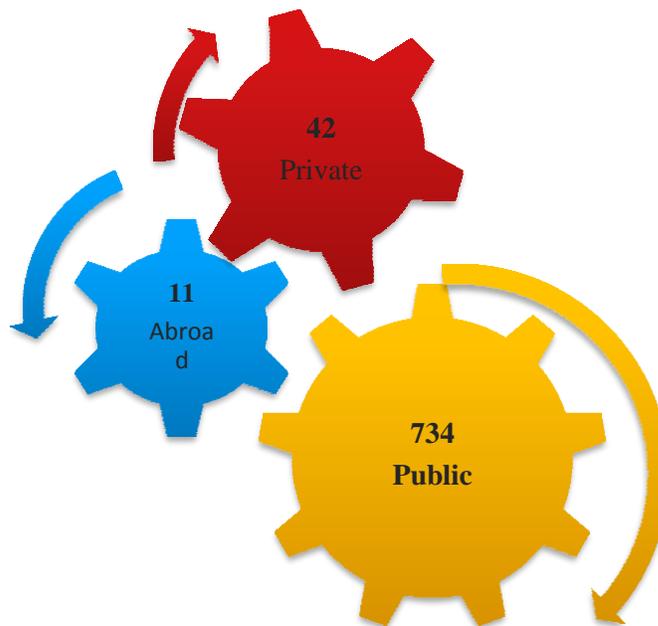
*Graph no. 4.3 Data on gender affiliation of civil servants*



Meanwhile, regarding the educational institution where **787** verified cases have been graduated from, it has resulted that **734** employees have attended public education institutions; **42** others in private education institutions and **11** employees have studied abroad.

In these figures, **94%** are employees who have received education in public education institutions; **5%** in private education and **1%** abroad.

*Graph no. 4.4 Data regarding the institutions where civil servants have completed higher education*



## CHAPTER V

### **INSPECTION WITH OBJECT LAW IMPLEMENTATION FOR CIVIL SERVANT DURING THE STRUCTURING PROCESS OF THE INSTITUTION AND ADMISSION IN CIVIL SERVICE IN THE LOCAL SELF-GOVERNMENT UNITS**

The Commissioner for Civil Service Oversight, after the constitution of the governing bodies of the local self-government units, at the end of the local elections, taking into consideration and evaluating that,

- ✓ the local self-government units were involved in a process of reorganizing their organizational structures;
- ✓ the information received from the local self-government units, in their content reported on appointments contrary to the law in job positions part of the civil service in the local administration;
- ✓ the responsible units for the administration of the civil service in the local self-government institutions have a limited staff, both in number and in the level of knowledge in the field of human resource management;
- ✓ the need for technical assistance to carry out various procedures related to the administration of the civil service in order to unify the implementation of the law on civil servants was evident;
- ✓ the institutions requested assistance for the implementation of legal standards in the organization and administration of the civil service, as an important part of the organizational structure of the country's municipalities,

assessed that it had to verify the situation in the subject and assist the institutions, by supporting them with technical and legal assistance, in order to prevent irregularities in the administration of the civil service and unify the implementation of the law on civil service.

For this purpose, through the Internal Order no. 65, dated 12.9.2019, “*On the initiation of the inspection process regarding the cases of appointments contrary to the law in job positions that are part of the civil service in the local self-government units, as well as the verification of the implementation of legal standards in structuring the civil service, as an important part of the organizational structure of the institution in accordance with the principles of the law on civil servants*”, the Commissioner, has inspected **61** municipalities in the country, in order to identify cases of illegality according to the object of inspection.

The inspection had as its object the appointments contrary to the law in positions that are part of the civil service, as well as the implementation of legal standards in the structuring of the civil service, in accordance with the principles of the law on civil servants.

During this process, it was found that, in some subjects during the administration of the civil service, the legal standards related to the way of organizing the structure of the institution were respected, and the law was implemented in order to fulfill the job positions part of the civil service.

This conclusion is based on the fact that for **13** entities or **21%** of supervised entities, the inspection process was completed, noting that irregularities were not found during the implementation of the law on civil servants by the responsible unit and other entities charged with special tasks for the administration of the civil service.

On the other hand, in **48** entities occupying **79%** of the supervised cases, irregularities were found in terms of law enforcement. These entities have been warned by the Commissioner to regulate legality, through relevant decisions, defining concrete tasks to be performed within a reasonable time. Within this grouping of institutions found with problems in the administration of the civil service, the state of illegality is presented in various institutes of law, which will be addressed in detail below.

During the supervision it was found that in the administration of local government units are included **5918** job positions evaluated as part of the civil service, of which **68** positions are of the senior management category, **444** positions are of the middle management level, **968** positions are of the low management level and **4438** are executive level positions:

*Table no. 5.1 Summary table which reflects the construction of the civil service scheme in the content of the organizational structure in 61 municipalities of the country, according to the category of civil service*

Local self-government units	Civil service positions by category in organizational structures				TOTAL
	Senior management level	Middle management level	Low management level	Executive level	
<b>TOTAL 61 Municipalities</b>	<b>68</b>	<b>444</b>	<b>968</b>	<b>4438</b>	<b>5918</b>

The data administered during the inspection process, have been identified in detail in the relevant tables, which have been included in the inspection documents and have served to assess the situation correctly, to determine the issues and to reach accurate conclusions.

## 1. Organizing job positions part of the civil service in the structure of the institution at the moment of inspection

The grouping of local self-government units, for the purpose of salaries, at different levels of the structure, taking as a basic criterion the number of inhabitants, where the financial treatment of the civil servant is foreseen, is realized through Decision no. 165, dated 2.3.2016, of the Council of Ministers, “*On the grouping of local self-government units, for salary effect, and setting the salary limits of elected and appointed officials, civil servants and administrative employees of the local self-government units*”, which guides these institutions that the organizational structure and salary levels should be approved by implementing the requirements of the specific attachments that are part of this decision.

In this sub-legal act, the categories of civil service, provided in article 19, of the law on civil servant, for all municipalities, according to the respective attachments that are part of it, have been taken into account, since, in all cases, it is foreseen the senior management category, Secretary General, the middle management category, lower management and executive, to which correspond the following classes “*Director of Directorate*”, “*Head of Sector*” and “*Specialist/Inspector*”.

Thus, this sub-legal act has provided, depending on the number of inhabitants of the local unit, also the constituent units of the structure of the institution, in relation to the civil service, as well as the categories of job positions that are part of the civil service, related to classes and salary categories, for all categories of civil service, which means that there is no legal impediment to implementing the civil service administration scheme, which includes the senior management category, up to the executive level. To create an accurate impression of the way the civil service is organized in all municipalities of the country, below we present some data related to the categorization of positions and the way of structuring the organizational units of the structure.

The data administered during the inspection process, on which the way of creating the structure will be analyzed, are presented below, in the tables where the subjects are grouped based on the number of inhabitants, according to the definitions in the sub-legal act mentioned above, which groups the local government units for the effect of salaries in 6 groups.

**Table no. 5.2** Civil service categorization in the structure of Tirana Municipality (Attachment no.1)

Local self-government units	Civil service positions by category in organizational structures				TOTAL
	Senior management level	Middle management level	Low management level	Executive level	
Tirana Municipality	11	49	183	786	1029

**Table no. 5.3** *Categorization of civil service in the structure of the Municipality of Durrës and municipalities with 100,001 - 200,000 inhabitants (Attachment no. 2 and 3)*

No.	Local self-government units	Civil service positions by category in the organizational structures				TOTAL
		Senior management level	Middle management level	Low management level	Executive level	
1	Durrës Municipality	3	11	27	182	<b>223</b>
2	Elbasan Municipality	7	22	48	202	<b>279</b>
3	Fier Municipality	-	10	18	171	<b>199</b>
4	Kamëz Municipality	1	13	19	81	<b>114</b>
5	Shkodër Municipality	-	15	32	155	<b>202</b>
6	Vlorë Municipality	-	11	6	87	<b>104</b>
	<b>TOTAL</b>	<b>11</b>	<b>82</b>	<b>150</b>	<b>878</b>	<b>1121</b>

**Table no. 5.4** *Categorization of civil service in the structure of Municipalities with 50.001 – 100.000 inhabitants (Attachment no. 4)*

No.	Local self-government units	Civil service positions by category in the organizational structures				TOTAL
		Senior management level	Middle management level	Low management level	Executive level	
1	Berat Municipality	1	8	9	59	<b>77</b>
2	Dibër Municipality	1	6	26	75	<b>108</b>
3	Korçë Municipality	2	13	27	114	<b>156</b>
4	Krujë Municipality	1	9	7	102	<b>119</b>
5	Lezhë Municipality	-	10	25	174	<b>209</b>
6	Lushnje Municipality	4	10	13	122	<b>149</b>
7	Pogradec Municipality	-	8	10	107	<b>125</b>



COMMISSIONER FOR CIVIL SERVICE OVERSIGHT

<b>TOTAL</b>	<b>9</b>	<b>64</b>	<b>117</b>	<b>753</b>	<b>943</b>
--------------	----------	-----------	------------	------------	------------

**Table no. 5.5** *Categorization of civil service in the structure of Municipalities with 20.001 – 50.000 inhabitants (Attachment no. 5)*

No.	Local self-government units	Civil service positions by category in the organizational structures				TOTAL
		Senior management level	Middle management level	Low management level	Executive level	
1	Bulqizë Municipality	1	8	9	52	<b>70</b>
2	Cërrik Municipality	3	6	15	48	<b>72</b>
3	Devoll Municipality	1	1	10	41	<b>53</b>
4	Divjakë Municipality	-	4	7	52	<b>63</b>
5	Gjirokastrë Municipality	1	10	23	89	<b>123</b>
6	Gramsh Municipality	1	4	11	28	<b>44</b>
7	Kavajë Municipality	1	10	22	73	<b>106</b>
8	Kuçovë Municipality	1	9	9	44	<b>63</b>
9	Kukës Municipality	2	15	17	79	<b>113</b>
10	Kurbin Municipality	1	9	10	41	<b>61</b>
11	Librazhd Municipality	1	4	17	39	<b>61</b>
12	Malësi Madhe Municipality	1		16	88	<b>105</b>
13	Maliq Municipality	1	11	27	96	<b>135</b>
14	Mallakastër Municipality	1	6	18	41	<b>66</b>
15	Mat Municipality	1	4	16	51	<b>72</b>
16	Mirditë Municipality	1	5	10	33	<b>49</b>
17	Patos Municipality	-	9	16	44	<b>69</b>
18	Peqin Municipality	-	6	6	35	<b>47</b>
19	Prrenjas Municipality	-	6	11	63	<b>80</b>
20	Roskovec Municipality	1	6	16	37	<b>60</b>
21	Rrogozhinë Municipality	1	4	14	53	<b>72</b>
22	Sarandë Municipality	1	8	-	53	<b>62</b>
23	Shijak Municipality	-	4	11	58	<b>73</b>
24	Tropojë Municipality	1	5	11	44	<b>61</b>
25	Ura-Vajgurore Municipality	-	5	8	41	<b>54</b>
26	Vau-Dejës Municipality	1	6	25	70	<b>102</b>
27	Vorë Municipality	1	11	14	68	<b>94</b>
<b>TOTAL</b>		<b>24</b>	<b>176</b>	<b>369</b>	<b>1461</b>	<b>2030</b>

**Table no. 5.6** *Categorization of civil service in the structure of Municipalities with 20.000 inhabitants (Attachment no. 6)*

No.	Local self-government units	Civil service positions by category in the organizational structures				Total
		Senior management level	Middle management level	Low management level	Executive level	
1	Belsh Municipality	1	6	7	39	<b>53</b>
2	Delvinë Municipality	1	2	2	24	<b>29</b>
3	Dropull Municipality	1	6	4	26	<b>37</b>
4	Finiq Municipality	1	8	8	32	<b>49</b>
5	Fushë-Arrëz Municipality	-	2	11	40	<b>53</b>
6	Has Municipality	1	1	9	33	<b>44</b>
7	Himarë Municipality	1	8	8	21	<b>38</b>
8	Këlcyrë Municipality	-	-	8	36	<b>44</b>
9	Klos Municipality	-	3	11	31	<b>45</b>
10	Kolonjë Municipality	1	5	5	53	<b>64</b>
11	Konispol Municipality	1	4	3	30	<b>38</b>
12	Libohovë Municipality	-	-	3	18	<b>21</b>
13	Memaliaj Municipality	1	1	8	21	<b>31</b>
14	Përmet Municipality	1	3	10	25	<b>39</b>
15	Poliçan Municipality	1	6	3	23	<b>33</b>
16	Pukë Municipality	-	2	6	29	<b>37</b>
17	Pustec Municipality	-	-	2	10	<b>12</b>
18	Selenicë Municipality	-	7	29	21	<b>57</b>
19	Skrapar Municipality	1	3	10	17	<b>31</b>
20	Tepelenë Municipality	1	6	2	31	<b>40</b>
<b>TOTAL</b>		<b>13</b>	<b>73</b>	<b>149</b>	<b>560</b>	<b>795</b>

Evaluating the data reflected in these tables, as well as comparing the way of constructing the organizational structure in the local units included in the same group, the phenomenon of non-compliance with the principles of the law on civil servants is evidenced, materialized in the scheme of civil service administration, which appears in several directions:

- the organizational structures in these entities, in most cases change frequently, even within the same calendar year, thus not respecting in this way the principle of sustainability at work of the civil servant.
- it is ascertained that the administrative hierarchy is not respected, which is defined as a legal obligation, in the content of the institute of classification of positions in the civil service, provided in article 19, of the law, which should be materialized in the structure of the institution:
  - ✓ *by categories*, specified as, senior management, middle management, low management and executive;
  - ✓ *classes of the respective categories*, which include the positions of general secretary, director of the department, general director, director of the directorate, head of the sector, or positions equivalent to them, as well as specialist, which belongs to the executive level;
  - ✓ *the nature of the position*, a process which is carried out based on the job description, for each case.
- there are irregularities regarding the way of organizing the basic units of functioning of the civil service in the structure, such as, *general directorates, directorates, sectors*, as it is ascertained that the numerical standard for their creation has not been respected.

The numerical standards that must be taken into account in the composition of these units, during the drafting of the structure, are already set in the field of civil service, to ensure the functioning of the civil service scheme and human resource efficiency, while there are still identified directorates without sectors and without the necessary number of employees under them, sectors without subordinates, etc.

- there is evidence in the structure titles, for some job positions that are regulated by the law on civil servants, with the title of the profession and not with the legal positioning in relation to the civil service, or there are treated as part of the civil service irregularly, some positions while they perform administrative ancillary activities.
- in some cases, positions are found that are considered part of the civil service, they are part of the structure of the municipality, but they are not administered according to the law on civil servants, without any argument or legal basis.

During the inspection process in the local self-government units at the municipal level, different approaches have been found in terms of involvement in the civil service of the job position “NBC Specialist”, which exercises delegated functions to the self-government units, as well as positions of the Civil Emergency structure, which are part of the municipal structure.

These job positions are assessed as part of the civil service, after the analysis on the one

hand, of the special law that regulates the employment relationship for these positions and, on the other hand, focusing on the legal provisions of Articles 2 and 4 of Law no. 152/2013, “*On the civil servant*”, amended, which defines the scope of the law on the civil servant.

In the municipalities where this irregularity has been ascertained, the responsible units have been oriented to take measures to treat these job positions as part of the civil service.

Adherence to the scheme of functioning of the civil service is a legal obligation of the municipalities, through which the principle of unity and hierarchy can be achieved; accountability; de-centralization; clarity in determining and distributing responsibility; efficiency and effectiveness. In order to ensure the approval of a sustainable organizational structure, the basic principle of creating the structure, which is the definition of the administrative hierarchy, must be implemented.

Analyzing this principle, the senior management category corresponds to the positions of “*General Director*” and “*Secretary General*”, which are the highest positions in the management of the civil service. These positions are of particular importance, as they are responsible for formulating policies and advising on them; they define the objectives and formulate the relevant programs, standards and procedures for implementation, which ensure the efficient use of material, human and financial resources necessary for the implementation of programs and objectives, they plan and direct the daily administrative activity of the institution and at the same time separate the civil service from the direct influence of the political level.

The lack of senior management in the way of creating the structure and staff of the institution was evidenced in the *Municipalities of Vlora, Shkodra, Ura-Vajgurore, Klos, Shijak, Peqin, Prrenjas, Fier, Patos, Divjaka, Pustec, Lezha, Puka, Fushë-Arrëz and Selenica*.

This ascertained state prevents the application of the most important procedures to be respected during the implementation of the various institutes of the law in question, because, as part of the procedural mechanisms in charge of their performance, such as,

- ✓ the Competition Commission for different categories in the civil service;
- ✓ the Disciplinary Commission;
- ✓ the Restructuring Commission;
- ✓ the employees who draft and evaluate job descriptions, in the capacity of job analyst, direct supervisor, Secretary General, etc.;
- ✓ the civil servants who assess the performance of the civil servant, through the job evaluation process,

should be civil servants of all categories and classes of civil service, which include the Secretary General, the General Director, the Director of the Directorate, the Head of the sector, as well as the officials of the executive category, the Specialists.

The lack of one of these important links in the structure of the institutions in question results in absolute invalidity of the administrative actions performed during the implementation of the law on civil servants, which is a reality that is very common in the country's municipalities.

In this case, the Commissioner has directed the heads of municipalities and responsible units, to implement the tasks assigned by law on civil servant, to respect the scheme of functioning of the civil service, in accordance with law no. 152/2013, "*On the civil servant*", amended, as well as with the laws that regulate each sector of the activity of the municipality, among which the legislation in the field of budgeting and financial management, audit, etc.

The organization of the structure of the municipal administration is based on law no. 139/2015, "*On local self-government*", which regulates the organization and functioning of local self-government units, but, on the other hand, this structure must also meet the standards set for its functioning according to law no. 90/2012, "*On the organization and functioning of the state administration*", which defines the criteria and principles of the organization and functioning of the state administration.

But, on the other hand, we must also highlight the fact that, while these municipalities are required to meet the basic criteria for the functioning of the civil service, as well as the best established standards, a significant disproportion of salaries is found, comparing initially with the state administration, and further within the local administration itself, which as we demonstrated above is divided into groups according to the number of inhabitants in the territory of the local unit.

Also, it is estimated that the structure of functioning and organization in local self-government units, at the municipal level, is not unified, and this fact is observed within the municipalities of the same level, in terms of structuring the basic units on which the civil service operates, although the laws on which they operate are the same and the features on which they are categorized are similar.

To concretize what we have identified above, we present the case of municipalities of category up to 20,000 inhabitants, where a noticeable change is observed in the way the construction and composition of the basic units of the structure is conceived, from the point of view of the level of employment. Some of them have built the structure by anticipating all levels of civil service, starting from the top management category, to the executive level, among which we identify the municipalities of *Skrapar*, *Tepelena*, *Belsh*, etc. In other cases, the top management level is missing and the structure is built with the middle and lower management level, as well as with executive category positions, where as an example we mention the Municipalities of *Selenica*, *Puka*, etc. Meanwhile, cases are also evidenced when the structure is built only with positions of low management level and executive category, as ascertained in the Municipalities of *Libohova*, *Pustec*, etc.

Likewise, it is ascertained that, in the municipalities with the same number of job positions in the civil service, as example the Municipality of *Saranda and Roskovec*, (with about 60 positions), the number of job positions within the same unit of the structure (*directorate, sector*) varies significantly from one municipality to another.

A problematic situation is ascertained also in terms of respecting the numerical standards that should be taken into account in the composition of the basic units of functioning of the civil service in the structure (*directorate, sectors*), as well as in terms of job titles, which are regulated in Article 19 of the law, which in some cases do not comply with its requirements.

Chapter III of the law on organization of the state administration also regulates the numerical standards for the creation of basic units of structure: **a) Sectors**, **b) Directorates**, **c) General Directorates** and **d) Secretary General**.

During the inspection in question, it was found that these standards have not been respected by all institutions, which are important to ensure the functioning of the civil service scheme and the efficiency of human resources. Specifically, there have been cases when directorates without sectors have been established, sectors without subordinates, etc., irregularities which have been identified more pronounced in the *Municipalities of Kukës, Belsh, and Selenica*.

Meanwhile, regarding the job positions with functions of the executive category, it has been ascertained that the terminology defined in the law and in the bylaws that regulate this aspect are not respected, in order to title the job position. These positions continue to appear in the structure with the name of the profession (*agronomist, veterinarian, finance employee, engineer, topographer, architect-city planner employee and not “specialist”, as provided by law*), although the Commissioner has brought often in their attention this problem. The most typical cases have been identified in the *Municipalities of Rrogozhina, Himara, Kavaja, Roskovec, and Malësi e Madhe*.

In this case, the Commissioner has ordered the responsible unit to regulate the titles, so that they have the same reading as the titles provided by the legal and sub-legal acts in force, which regulate the civil service.

The Commissioner considers that the implementation of these standards already established in the structure of state administration institutions does not affect at all the independence of local government institutions but on the contrary, it unifies the administration of the civil service and establishes it on a scientific basis and in accordance with the law on civil service.

In order for local government institutions to adopt a sustainable organizational structure, to enable the administration of the civil service in accordance with the law, the directors of the municipalities are oriented:

- To apply the basic principle of construction of the structure, which is the definition of the administrative hierarchy, based on the definitions and standards set in law no. 90/2012, “*On the organization and functioning of the state administration*”.
- To take into account the regulations provided in point 17, of Decision no. 893, dated 17.12.2014, of the Council of Ministers, “*On the approval of the rules of organization and functioning of auxiliary cabinets, of the internal organization of state administration institutions, as well as on the detailed procedures for preparation, proposal, consultation and approval of internal organization*”, grouping in organizational units, such as sectors, directorates and general directorates, the positions that perform functions of the same field, as well as similar functions.
- The human resources unit of the institution, during the drafting of the structure, should clearly define the positions of the civil service, separating them from the positions that will perform political functions and from the positions that do not exercise public function (*administrative employees*), adapting the tasks, functions and job titles of the civil service positions, in accordance with the requirements of Article 19 of Law no. 152/2013, “*On the civil servant*”, amended, of Decision no. 142, dated 12.3.2014, of the Council of Ministers, “*On the description and classification of job positions in state administration institutions and independent institutions*”, amended, as well as with the laws governing each sector of the municipality’s activity.

## **2. Appointments to civil service positions contrary to the law, through temporary contracts, without first the competition procedures**

The phenomenon of appointments in violation of the law, through temporary appointments, without previously conducting competition procedures continues to be a concern in local administration institutions, even though it is explicitly provided by law that for any new employment relationship, which is created after the beginning of the effects of law no. 152/2013, “*On the civil servant*”, amended, the requirements of a regular competition/appointment procedure should be respected, defined in Chapter IV, “*Admission to the civil service*”, Articles 22 and 23, as well as in Chapter V, “*Parallel Movement and Promotion*”, Articles 25 and 26 of the law.

Appointment in job positions that are part of the civil service in contradiction with the procedure of their issuance, in view of article 108, points i) and ii) of letter “a” and letter “ç”, of law no. 44/2015, “*Code of Administrative Procedures of the Republic of Albania*”, makes the acts absolutely invalid. Moreover, this phenomenon continues to be evident even though the prohibition of appointment in contradiction with the procedure is explicitly emphasized in point 4, of article 23, of law no. 152/2013, “*On the civil servant*”, amended, in order to avoid subjectivity or misinterpretation in the implementation of this provision in practice.

In order to recognize the situation found during the inspection which will be analyzed below, we are presenting some data related to the way in which job positions that are part of the civil service are occupied, in each municipality, grouped by the number of residents, in the tables below:

**Table no. 5.7** *Completion of job positions that are part of the civil service in the Municipality of Tirana (Attachment no. 1)*

Local self-government units	Completion of job positions			<b>TOTAL</b>
	Appointments in accordance with the law	Contract appointments	Vacancies	
Tirana Municipality	<b>964</b> (94%)	<b>0</b> (0%)	<b>65</b> (6%)	<b>1029</b> (100%)

**Table no. 5.8** *Completion of job positions that are part of the civil service in the Municipality of Durrës and municipalities with 100.001 – 200.000 inhabitants (Attachment No. 2 and 3)*

No.	Local self-government units	Completion of job positions			<b>TOTAL</b>
		Appointments in accordance with the law	Contract appointments	Vacancies	
1	Durrës Municipality	219	0	4	<b>223</b>
2	Elbasan Municipality	239	27	13	<b>279</b>
3	Fier Municipality	159	12	28	<b>199</b>
4	Kamëz Municipality	96	0	18	<b>114</b>
5	Shkodër Municipality	184	0	18	<b>202</b>
6	Vlorë Municipality	92	2	10	<b>104</b>
<b>TOTAL</b>		<b>989</b> (88%)	<b>41</b> (4%)	<b>91</b> (8%)	<b>1121</b> (100%)

**Table no. 5.9** Completion of job positions that are part of the civil service in Municipalities with 50.001 – 100.000 inhabitants (Attachment no. 4)

No.	Local self-government units	Completion of job positions			TOTAL
		Appointments in accordance with the law	Contract appointments	Vacancies	
1	Berat Municipality	74	0	3	77
2	Dibër Municipality	71	15	22	108
3	Korçë Municipality	104	0	52	156
4	Krujë Municipality	112	3	4	119
5	Lezhë Municipality	43	143	23	209
6	Lushnje Municipality	102	42	5	149
7	Pogradec Municipality	110	0	15	125
<b>TOTAL</b>		<b>616</b> (65%)	<b>203</b> (22%)	<b>124</b> (13%)	<b>943</b> (100%)

**Table no. 5.10** Completion of job positions that are part of the civil service in Municipalities with 20.001 – 50.000 inhabitants (Attachment no. 5)

No.	Local self-government units	Completion of job positions			TOTAL
		Appointments in accordance with the law	Contract appointments	Vacancies	
1	Bulqizë Municipality	56	10	4	70
2	Cërrik Municipality	58	4	10	72
3	Devoll Municipality	34	1	18	53
4	Divjakë Municipality	54	6	3	63
5	Gjirokastrë Municipality	49	66	8	123
6	Gramsh Municipality	30	12	2	44
7	Kavajë Municipality	49	50	7	106
8	Kuçovë Municipality	48	12	3	63
9	Kukës Municipality	38	75	0	113
10	Kurbini Municipality	59	0	2	61
11	Librazhd Municipality	22	30	9	61
12	Malësi Madhe Municipality	31	67	7	105
13	Maliq Municipality	126	0	9	135
14	Mallakastër Municipality	43	11	12	66
15	Mat Municipality	49	16	7	72
16	Mirditë Municipality	35	2	12	49
17	Patos Municipality	51	17	1	69
18	Peqin Municipality	23	24	0	47
19	Prrenjas Municipality	15	63	2	80
20	Roskovec Municipality	38	15	7	60
21	Rrogozhinë Municipality	50	10	12	72
22	Sarandë Municipality	39	17	6	62
23	Shijak Municipality	67	2	4	73
24	Tropojë Municipality	52	1	8	61
25	Ura-Vajgurore Municipality	52	0	2	54
26	Vau-Dejës Municipality	33	48	21	102
27	Vorë Municipality	69	0	25	94
<b>TOTAL</b>		<b>1270</b> (62%)	<b>559</b> (28%)	<b>201</b> (10%)	<b>2030</b> (100%)

**Table no. 5.11** *Completion of job positions that are part of the civil service in Municipalities with up to 20.000 inhabitants (Attachment no. 6)*

No.	Local self-government units	Completion of job positions			TOTAL
		Appointments in accordance with the law	Contract appointments	Vacancies	
1	Belsh Municipality	47	5	1	53
2	Delvinë Municipality	22	4	3	29
3	Dropull Municipality	30	5	2	37
4	Finiq Municipality	17	32	0	49
5	Fushë-Arrëz Municipality	14	35	4	53
6	Has Municipality	11	33	0	44
7	Himarë Municipality	27	7	4	38
8	Këlcyrë Municipality	0	34	10	44
9	Klos Municipality	12	32	1	45
10	Kolonjë Municipality	53	3	8	64
11	Konispol Municipality	23	3	12	38
12	Libohovë Municipality	21	0	0	21
13	Memaliaj Municipality	24	2	5	31
14	Përmet Municipality	20	7	12	39
15	Poličan Municipality	33	0	0	33
16	Pukë Municipality	21	10	6	37
17	Pustec Municipality	8	4	0	12
18	Selenicë Municipality	26	30	1	57
19	Skrapar Municipality	5	23	3	31
20		13	19	8	40
	<b>TOTAL</b>	<b>427</b> <i>(54%)</i>	<b>288</b> <i>(36%)</i>	<b>80</b> <i>(10%)</i>	<b>795</b> <i>(100%)</i>

**Table no. 5.12** *Summary table regarding the completion of job positions that are part of the civil service in the local self-government units (Municipalities)*

No.	Local self-government units	Completion of job positions			TOTAL
		Appointments in accordance with the law	Contract appointments	Vacancies	
1	Tirana Municipality Level 1	<b>964</b> <i>(94%)</i>	<b>0</b> <i>(0%)</i>	<b>65</b> <i>(6%)</i>	<b>1029</b> <i>(100%)</i>
2	Level 2 and 3 Municipalities	<b>989</b> <i>(88%)</i>	<b>41</b> <i>(4%)</i>	<b>91</b> <i>(8%)</i>	<b>1121</b> <i>(100%)</i>
3	Level 4 Municipalities	<b>616</b> <i>(65%)</i>	<b>203</b> <i>(22%)</i>	<b>124</b> <i>(13%)</i>	<b>943</b> <i>(100%)</i>
4	Level 5 Municipalities	<b>1270</b> <i>(62%)</i>	<b>559</b> <i>(28%)</i>	<b>201</b> <i>(10%)</i>	<b>2030</b> <i>(100%)</i>
5	Level 6 Municipalities	<b>427</b> <i>(54%)</i>	<b>288</b> <i>(36%)</i>	<b>80</b> <i>(10%)</i>	<b>795</b> <i>(100%)</i>
	<b>TOTAL</b> <b>61 Municipalities</b>	<b>4266</b> <i>(73%)</i>	<b>1091</b> <i>(18%)</i>	<b>561</b> <i>(9%)</i>	<b>5918</b> <i>(100%)</i>

During this year, the Commissioner has inspected all local self-government units (*61 municipalities*), which enables a more detailed analysis of the situation of legality in the administration of the civil service in these institutions. The data presented above have intentionally grouped the institutions according to their categorization based on the number of inhabitants, as the problems found within the groups are different.

If we evaluate the general situation of law enforcement in terms of appointments in the civil service in local self-government units, it results that out of **5918** job positions part of the civil service, **1091** cases are appointments contrary to the law, which occupy about **18%** of the job positions part of the civil service, which is a relatively low figure, compared to the situation previously observed in these entities, while **4266** positions or 73% of them have been filled in accordance with the law and **561** positions or 9% of them are vacant.

On the other hand, if we look at the problem more in depth, precisely by comparing the state of law enforcement between the groups created in the division according to the number of inhabitants, we notice that the situation of law enforcement is different among them.

It is found that in *the first group*, where we have included the **Municipality of Tirana** and **6** municipalities with the highest number of inhabitants in the country, from 101,000 to 200,000 thousand inhabitants, illegality is calculated at low values, from **0%** to **4%**, which reflects a high level of law enforcement.

Meanwhile, the situation changes in the *second group*, which includes **34** municipalities, which have a population of 50,001 - 100,000 and 20,001 - 50,000 inhabitants, where it turns out that illegality figures increase from **22%** to **28%**, which constitutes a considerable number of cases contrary to the law.

In the *third group*, which includes **20** municipalities with a population of up to 20,000 inhabitants, it is found that the figure which materializes appointments contrary to the law increases significantly and goes to **36%**, which represents twice the total average of cases found contrary to the law in 61 municipalities of the country.

So, from all that we analyzed above, there is a significant upward trend of cases of illegality, led by entities with a declining population.

In fact, this is a situation that has been ascertained in the continuation of the work of the Commissioner and for this reason a special attention has been shown to identify the causes that favor it in these subjects.

In these circumstances, in order for the process of appointment to the civil service to be included in the procedural framework, the Commissioner has paid special attention, initially to the announcement of vacancies in local administration institutions identified with problems.

Noting that difficulties have been reported by law enforcement entities during the application of the recruitment institute and in many cases technical assistance has been requested, the Commissioner has sent groups of inspectors to the subject and especially to municipalities that have a limited number of capacities, achieving all vacant position announcements to be completed through competition.

The phenomenon that was found was that in almost all municipalities belonging to those with low population (*20 municipalities*), there have been no requests to participate in the competition, which has led to the failure of the competition procedure and its announcement from the beginning.

Analyzing this situation, both from the figures ascertained and from the concerns raised by these entities themselves, the Commissioner concludes that the reasons in this case are of different natures, among which we can mention the lack of candidates to compete in the territory of these units, as well as the low salaries currently applied in these institutions, for the job positions included in the civil service.

Based on the difficult financial situation of these entities, it is concluded that the salary of job positions in the civil service is determined by the competent body, at the lowest possible level set by the Council of Ministers, in the relevant sub-legal act.

Thus, to demonstrate this fact, the following is an example of the salary of a specialist in the municipalities of the third group, according to the division that we have presented above (*up to 20,000 inhabitants*). The salary for a specialist of category “*IV b*” in these institutions, consists of the value of the salary of the group that means the diploma group, which in this case is 10,000 ALL for the “*Bachelor*” level and 14,000 ALL for the “*Scientific Master*” level, as well as it has set an addition for the position, the value within the range from 21,000 ALL up to 26,750 ALL, to which it is added also the seniority at work for a maximum of 2%.

The value of the salary in this case is estimated at the highest level of around 35,000 ALL and at the lowest level at around 30,000 ALL, a value which competes with the minimum wage established by law for all professions which do not require concrete investment at the level of education. This reality does not motivate the candidates to participate in the announced vacancies to fill these job positions in these institutions.

For all these reasons, the Commissioner has included this moment of administration of the civil service in an in-depth analysis of the causes and reasons that have brought to this situation, the local administration, in the objectives of the IPA 2014 project, which is currently working with this important component, in order to find the most efficient ways and means to positively influence the regulation of legality, by improving the legislation that regulates this aspect of the law.

Simultaneously with the work to intervene in the legal and sub-legal acts that regulate this process, the Commissioner has continued the work towards the regulation of legality, based on the current legislation.

During the inspection on which we are reporting, the most significant cases of illegality were found in some entities, among which we can mention: *Lezha Municipality*, where **143** cases of contract appointments were found (*about 68% of the total number of civil service positions*); *Gjirokastra Municipality*, **66** cases of contract appointments (*about 54% of the total number of civil service positions*); *Kavaja Municipality*, **50** cases of contract appointments (*about 47% of the total number of civil service positions*); *Kukës Municipality*, **75** cases of contract appointments (*about 66% of the total number of civil service positions*); *Malësi e Madhe Municipality*, **67** cases of contract appointments (*about 64% of the total number of civil service positions*); *Prrenjas Municipality*, **63** cases of contract appointments (*about 79% of the total number of civil service positions*); *Finiq Municipality*, **32** cases of contract appointments (*about 65% of the total number of civil service positions*); *Këlcyrë Municipality*, **34** cases of contract appointments (*about 77% of the total number of civil service positions*); *Klos Municipality*, **32** cases of contract appointments (*about 71% of the total number of civil service positions*); *Selenica Municipality*, **30** cases of contract appointments (*about 53% of the total number of civil service positions*).

In order to regulate the situation of legality, through warning decisions, the subjects ascertained in violation of the law have been requested the following:

- The Mayor should immediately ascertain, as absolutely invalid administrative acts, the acts issued by him for the temporary appointment of employees in job positions that are part of the civil service and to regulate the consequences by terminating the employment relationship established in contradiction with the law.
- The responsible unit should immediately announce vacant the civil service positions that remain as vacancies, and to fill them in accordance with the law on civil servant.

During supervision in these institutions, it was found a large number of unfilled positions, a total of **561** positions, which occupy about 9% of the total number of job positions part of the civil service.

From one side, this can be considered as impossibility to fill the positions through competition, but on the other hand, this figure can also be presented as a shortcoming in planning the necessary positions in the structure of the institution, as long as the institution performs its tasks with that capacity. In this case there is room for reviewing the structure, starting from the review of the job description form, for all categories of civil servants of the institution, which provides for the requirements for appointment to a civil service position, as well as the duties and functions performed by this position, in accordance with law no. 152/2013, “*On the civil servant*”, amended and the sub-legal act that regulates this aspect, as well as with the laws that regulate each sector of the activity of the municipality.

Also, the Commissioner has oriented the institutions, that in order to achieve sustainable and effective structures, the institutions, during the process of drafting them, must take into account some objectives:

- Defining the main functions through the reformulation and rationalization of roles, missions, strategic objectives, organizational structures and expected results of the constituent units of the system of the concrete institution involved in this process.
- Identification of redundant functions and overlaps in the institution subject to restructuring.
- Capacity building in the personnel unit in order to make it possible to perform functional analysis in the concrete institution that will be included in the restructuring.

These objectives should be in the attention of the responsible unit, in accordance with the specific conditions of each local government unit, in order for the structure to meet the conditions that enable the administration of the civil service in accordance with the law, as well as the bylaws regulating specific aspects for all its institutes, as well as efficiency in the activity of human resources of the institution.

The situation mentioned above is ascertained at the time of supervision, while this situation has changed and is changing at any moment, as the units responsible for regulating legality, in cooperation with the Commissioner continue to work on the implementation of concrete tasks that are assigned on the content of the warning decisions that have come out for these subjects.

A reasonable time limit has been set in the warning decisions, as provided by law, to regulate legality, which had not yet ended on 31.12.2019, which represents the time limit of the Commissioner's annual reporting.

After the end of the notice period, the Commissioner will inform the Assembly about the state of the civil service, as well as on the level of implementation of the Commissioner's decisions by these institutions.

### 3. Cooperation between institutions in order to increase the level of implementation of the law on civil service in the local administration

According to the legal provisions, provided in Article 4, under the title “*Definitions*” (point 1, letter “f”), as well as in Article 10, “*Human resources units of the institution*”, of the law on civil servant, local self-government units, at the municipal level, are responsible for the administration of the civil service, through the human resources units created at each institution.

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

For this reason, the Commissioner has taken care to stay close to these institutions, providing ongoing technical assistance, which has been realized through cooperation with contact persons authorized by them, in order to prevent legal violations, and to provide a more efficient administration of the civil service, as well as cooperation with the Municipal Council, the Prefect of the District, as well as the Ministry of Interior.

This interaction is conditioned by the fact that the Municipal Council has the right to take decisions regarding the practical implementation of the law on civil servants, in terms of financial support, which is enabled during the approval of the budget by this decision-making mechanism, as well as by the competence it has to approve the maximum number of employees in the municipality.

After the reorganization of the local government bodies, with the entry into force of law no. 139/2015, “*On local self-government*”, the legal competencies of the institutions operating in the field of local administration have been reorganized.

In this case, Article 54 of the law, which provides for the duties and competencies of the municipal council, in letter “dh”, stipulates that *the municipal council approves the budget and the maximum number of employees of the municipality, as well as of the units and budgetary institutions under the municipality.*

Whereas in article 64 of this law, where the duties and competencies of the mayor are foreseen, in letter “j”, it is determined that *the mayor approves the structure, staff and categories/classes of salaries for each position of the civil service and the basic regulations of the municipality administration and of the units and institutions under the municipality, in accordance with the legislation in force.*

In the same line, also the Prefect of the Region must play his role in order to implement the law on civil servants, in the conditions when, according to the law regulating its function-

ing, among other things, this institution coordinates the activity of central institutions at the local level, as well as with the local self-government bodies in the municipality and the region and it is the only administrative institution that verifies the legality of the acts approved by the local government bodies.

On the other hand, part of the institutions that should cooperate in this case, should be the Ministry of Interior, since based on the provisions of Decision no. 502, dated 13.9.2017, of the Council of Ministers, “*On determining the field of state responsibility of the Ministry of Interior*”, in points 2 and 3, of this sub-legal act, it is determined that:

“..., the Ministry of Interior is the body responsible for the implementation of the policy of internal affairs in the Republic of Albania, it is the organizational and professional apparatus, which serves the public interest impartially, implementing the legislation in force, performing public services and drafting and implementing general state policies on domestic affairs.

...The Ministry of Interior carries out its activity, in accordance with the relevant legislation, mainly, but not only, in the areas of state responsibility listed below, as well as in any other area of responsibility assigned to it by law or acts of the Council of Ministers:

...

- b) the activity of the prefect of the region;*
- c) coordination with local government units and local elected associations;*
- d) civil status services;*
- e) drafting policies, coordination and supervision of the fire protection service;*
- f) protection and security of the territory and constructions;*
- g) planning and coping with civil emergencies; ... ”*

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

The Commissioner considers that the need for concrete cooperation between these institutions mentioned above, is further emphasized based on the findings regarding the general state of organization and administration of the civil service in the local government units, of the municipal level, especially materialized in the construction of their organizational structure.

For this purpose, the warning decisions that the Commissioner has issued for 61 inspected municipalities, have been sent to the Prefects in **12** districts of the country, together with a guide for the construction of the structure, which has been sent to the municipalities, in or-

der to recognize the situation and take measures to act at the moment of verification of legality. Also, the decisions were sent to the Ministry of Interior, in the framework of the coordination of its activities with the local self-government bodies, as well as being the body governing the Agency for Support of Local Self-Government.

This intervention of the Commissioner, aims to help to end the problematic situation found, in order to create sustainable and efficient organizational structures, as well as their unification and standardization, in accordance with legal requirements.

On the other hand, these bodies have also expressed their willingness for cooperation, which is materialized in the responses sent by the 12 Prefects of the region, who have informed the Commissioner about the actions taken, and have expressed their willingness to continue the cooperation.

## CHAPTER VI

### MONITORING THE IMPLEMENTATION OF THE LAW ON CIVIL SERVANTS DURING THE ELECTION PERIOD FOR THE LOCAL GOVERNMENT BODIES IN THE REPUBLIC OF ALBANIA

Regarding this aspect of civil service administration, the Commissioner has prepared a special report which he has sent to the Assembly, immediately after the end of the election campaign. In the following we will present a summary of this important process carried out during the activity of the Commissioner for this year.

The Commissioner has carried out this process in implementation of the legal competence to supervise the administration of the civil service, as well as in implementation of the Resolution of the Assembly, dated 25.04.2019, “*On the evaluation of the activity of the Commissioner for Civil Service Oversight*”, which has specifically charged him with this task.

During the implementation of this process, the specific circumstances that are created in an election period in the daily activity of employees charged with specific tasks by the law on civil servants have been taken into account, since at this time several institutes of the law on civil servant become effective, such as: *a)* recruitment to civil service positions, *b)* suspension from the civil service, *c)* work discipline and disciplinary measures; *d)* conflict of interest; *e)* the realization of the external activities of the civil servants who in this case request the implementation of certain defined legal procedures (*in the framework of their participation as candidates to be elected in the local government bodies and also to be appointed to the election administration, as members of the EAAC, CLC and VCG*); *f)* the political rights of the civil servant, and at the same time the restrictions imposed in the provision represented by Article 37 of the law in question, where, among other things, his participation in political activities during official hours is prohibited, as well as public expression of beliefs or political preferences.

One of the main reasons for the realization of this process, which is worth identifying, has been to ensure the normal and uninfluenced continuity of the election campaign, of the activity of civil servants, in the service of the state and citizens.

The Commissioner has paid special attention to monitoring the implementation of the law on civil servants with increased intensity at the moment, taking into account the fact that human resource management units in institutions that employ civil servants, in this special case, face problems of various natures, which require immediate addressing, which requires technical assistance and institutional support, in order for them to be oriented correctly, thus avoiding the negative consequences that may come both in terms of reducing work efficiency, as well as in the involvement of civil servants in the election campaign, on behalf of various political forces (*guaranteeing the principle of political impartiality, on which the administration of the civil service is based upon, Article 5, Chapter II, of the law in*

This conclusion was reached based on, among other things, the previous experience of the Commissioner, created during the supervision carried out with the same object, during the election campaign in 2017.

In these conditions, the Commissioner has coordinated the activity with the responsible units in the institutions that employ civil servants, asking them to complete the written practice that will materialize the realization of the process.

The work has started with the internal order no. 39, dated 09.04.2019, of the Commissioner, *“On the establishment of the monitoring group, with object of supervision, implementation of the law on civil servants with a focus on new appointments/dismissals and the activity/behavior of civil servants during the election campaign”*, through which the control structure was established, which included all members of the Secretariat of the Commissioner.

Based on the written practice, already created in the previous election experience, the Commissioner has informed the institutions about the procedure to be followed, to ensure positive progress and the efficiency of the process of monitoring the activity and behavior of civil servants during the election campaign.

The oversight included all institutions that employ civil servants: the Ministry, the line ministries, the institutions under the Prime Ministry and line ministries (*state administration*), the Independent Institutions, and the local government units, which include the Municipalities and District Councils.

In order to facilitate the work of the structures set up in this case by the relevant institutions, as well as to standardize and unify their activity during this process, the Commissioner prepared the draft of the internal order for the establishment of the monitoring group, as well as the draft regulation of the activity of this group, acts which he sent to these institutions.

The monitoring groups were oriented to determine in the internal regulation the object of their activity, in terms of periodic monitoring of the activity and behavior of civil servants during the election campaign, in relation to the performance of their functional duties in the service of the state and citizens as well as to the implementation of formal discipline at work, and at the same time to establish detailed rules, on the basis of which these ad-hoc groups set up in this case would control the situation.

The composition of the working group was requested to be built on the basis of the specifics of the institution, depending on the number of monitored employees and the territorial extent of the institutions. In these groups, it was requested that the directors of the human resources management unit of the institution, who should be assigned an important role in

this process, be obliged to participate. It was also requested that one of the members of the group be appointed as a coordinator who would maintain contacts with stakeholders.

The Monitoring Group was oriented to act in close cooperation with the direct supervisors of civil servants, as well as with the human resources management unit, in order to respect the legal discretion of these entities, in cases explicitly defined in the law.

*The working methodology for the successful realization of the objective of this group was oriented in several aspects, which were defined as mandatory to be implemented by all civil servants of the institution:*

- In a special register, administered by the monitoring group, civil servants marked every day entry - exits to the institution (*from 08.00 -16.00, or in accordance with the official schedule of the institution*), the destination of movements, as well as the supervisor who has approved the permit.
- The human resources management unit, at 8.00 am, marked all civil servants on business trips outside the institution, their destination and the administrative act authorizing the movement.
- At the end of each working day, until the end of the election campaign, the attendance list of civil servants was signed by the monitoring group and it was included as part of the documentation that materializes its activity.
- The employees registered their telephone numbers at the human resources management unit, in order to enable supervision of their location, during the surveys conducted by the monitoring group.

In order to avoid actions contrary to the law, in some cases also due to the shortcomings in the recognition of the law, especially for specific aspects that are directly related to the electoral situation, the following was sought by civil servants:

- During official hours from 8.00 to 16.00 (*or the time set by some institutions, different from the classic schedule, due to their specifics*), civil servants should not participate in any political activity or organization, such as rallies or of any other nature, on behalf of the various political forces participating in the elections.
- The civil servant should not become part of political discussions, within the premises of the institution, with colleagues or citizens, should not use or keep posters, leaflets and objects with symbols of political entities in the premises of the institution, to not allow the use or holding of posters, leaflets and symbols of political entities, by citizens who perform services in the premises of the institution.
- After the official hours, the civil servant should not speak publicly about his political beliefs or preferences, during the organization of various political activities, by different political forces.

It was also requested by the civil servant, in support of the activity of the monitoring group, to inform in cases when it finds a violation of this regulation.

On the other hand, the content of the regulation explicitly provided for the tasks of the monitoring group, which are found to have been respected during this process:

- The organization of frequent inspections during official hours (*up to 4 times a day*), which are materialized in the minutes, where the employees present at work, have signed individually in these acts, which were then administered as part of the activity of this group.
- Through the coordinator appointed by this group, it has been communicated daily with the contact person, part of the special group, set up by the Commissioner for Civil Service Oversight (*with the exception of a few isolated cases that will be analyzed below*) and the orientations for each institution were sent in real time, in order to monitor the situation as objectively as possible and to solve in time the problems that arose during the monitoring process.
- Following the media coverage of the election process, in order to identify each case of behavior of civil servants contrary to law.
- Cases found in violation of the law, to be sent for the initiation of a disciplinary proceeding, to the direct supervisor, or to the Disciplinary Commission, according to the importance of the violation committed.

The provisions of the regulation, after gaining legal force after its approval by the head of the institution and the monitoring group, were implemented by both the monitoring group and the civil servants of the institution, who were acquainted with this act, through the human resource management unit, in order to enable the application of the rules established in it, by them.

The term of the legal force for this act began on the day of approval by the head of the institution (*heads of local government units and the Secretary General for Ministries*) and it was predicted that it was valid for the election period, until June 30<sup>th</sup> 2019.

With the start of the election campaign, the institutions involved in the civil service scheme have started the monitoring process, setting up **166** Monitoring Groups, who have correctly started communicating with the Commissioner, through the Coordinator appointed by the head of the institution, and in their composition have been involved **584** civil servants.

Table no. 6.1 *Participation in Monitoring Groups*

Institutions involved in monitoring	Employees who have participated in Monitoring Groups
<b>Independent Institutions</b>	58
<b>State Administration</b> (Prime Ministry, Line Ministries, Subordinate institutions and District Prefectures)	370
<b>Local Government Units</b> (Municipalities and District Councils)	256
<b>TOTAL</b>	<b>684</b>

At the same time, pursuant to Article 37 of Law no. 152/2013, “*On the civil servant*”, amended, in order to carry out a process in accordance with the legal requirements, the Commissioner has assisted the Monitoring Groups and the human resources unit of the respective institutions, regarding the preparation of the administrative acts that materialize the compliance with civil rights during the election campaign, including the right to register as a candidate for local elections and the right to engage as an election commissioner, within the EAACs, CLCs and VCGs.

Further, based on the difficulties presented by the institutions during the development of this process, in the framework of providing technical-legal assistance, as well as to verify the activity of the monitoring groups in the subject, the Commissioner, with order no. 53, dated 07.06.2019, “*On the start of the monitoring process in the subject on the new appointments, dismissals and conduct of civil servants, during the election campaign for local government units*”, has conducted surveys in entities, which have been selected mainly on indicators such as the number of employees (*institutions with a relatively high number of employees*), their wide territorial scope, and the level of their impact on public administration.

Given the need for interpretation that arose during the election process, initially ascertained by the requirements of the institutions to clarify the relationship between the political rights of civil servants and legal restrictions; due to the approval of the Decree of President no. 11199, dated 10.06.2019, “*On the abrogation of decree no. 10928, dated 05.11.2018, of the President of the Republic, “On setting the date of the elections for the local government bodies*”, and further also due to the denunciations for participation of civil servants in illegal gatherings near the places where they were committed violent actions against the EAACs’ offices, through damage or destruction of election materials, the Commissioner, after assessing the situation, has been expressed in relation to:

a. clarification and interpretation of the content of Article 37, entitled “Political rights”, of law no. 152/2013, “*On the civil servant*”, informing about the position held in this case, through electronic communication, which was sent to all institutions on 19.06.2019, in order to respect/limit the political rights of civil servants, during the election process, which guarantee the general principles of civil service, such as neutrality, impartiality and integrity in the performance of their duties.

In interpreting this legal provision, which regulates the political rights of civil servants, the Commissioner reiterated once again the right of civil servants to participate in electoral organizations of various electoral subjects, but always outside the official hours and making sure to exercise self-control regarding public manifestation of their political views and loyalty to a political force in private life.

For this reason, in the framework of the cooperation for the implementation of the process of monitoring the implementation of the law on civil servants, during the election campaign, the Commissioner, in cooperation with the Task Force of the Prime Minister and the State Police, has requested from all institutions involved in the process, to identify the cases of participation of civil servants in the above actions and to take measures to verify the cases and initiate disciplinary proceedings against them.

b. implementation of law no. 152/2013, “*On the civil servant*”, amended, during the election campaign, emphasizing the legal obligation of the institutions that employ civil servants, in particular of the local government institutions, to cooperate with the Commissioner, in order to provide a civil service which functions on the principles of moral integrity and political impartiality.

Due to the Decree of the President no. 11199, dated 10.06.2019, “*On the abrogation of decree no. 10928, dated 05.11.2018, of the President of the Republic, “On setting the date of elections for local government bodies”*”, in some of the local government institutions, confusion has been created and communication has been interrupted, which was expressed in the form of suspension of sending the act of ascertainment that materialized the daily monitoring of the activity/behavior of the civil servant. In response to this development, the Commissioner, through the letter sent on 25.06.2019, has requested from the monitoring groups and the responsible unit, to continue the communication and to send daily information.

In this communication, emphasis was placed on the importance of the principles of civil service administration, especially that of political impartiality that should characterize the civil servant during an election period, as well as it has been brought to their attention, the obligation to implement the legal provisions governing the administration of the civil service, and the penalties in cases of non-fulfillment of functional duties.

As it appears from the documents identified above, the Commissioner has taken care to respond immediately to the problems that have arisen during the process, in order to ensure the implementation of the law and not to allow misinterpretations of it, which would bring negative consequences during the conduct of the electoral process.

Also, all the stances that the Commissioner has taken, related to the administration of the civil service during the election campaign, have been notified to the institutions in real time, both through publication on the official website, as well as through the direct communication of the inspector in charge of supervision of the institution, with the subject coordinator.

### 1. The situation ascertained from the reports sent by the monitoring groups

To carry out the oversight process, the Commissioner has communicated with **208** institutions employing **12,758** civil servants, focusing the process on new appointments, disciplinary measures “*dismissal from civil service*” and monitoring the activity/behavior of civil servants during the election campaign.

The monitoring groups at each institution part of the civil service, on the 3.6.2019, have started monitoring according to the object of their activity.

It turned out that the monitoring groups acted by administering the special register of employee presence according to the model sent by the Commissioner, where about 4 surveys per day for the presence of employees were materialized, two of which reflected the start and end of official hours and 2 others have been carried out at different times, during official hours.

At the end of the election process, the Commissioner reports that **208** institutions have been involved in the supervision process, grouped according to this typology:

- 18 Independent Institutions

The total number of civil servants monitored on average 3 times a day for 19 working days is: **828** employees monitored daily x 3 monitorings/day x 19 days  
monitoring = **47196** monitoring contacts

- 117 State, central and subordinate administration institutions:

- a Prime Ministry
- b 11 Ministries
- c 93 Subordinate institutions
- d 12 District Prefectures

The total number of civil servants monitored on average 3 times a day for 19 working days is: **7488** employees monitored daily x 3 monitorings/day x 19 monitoring days = **426816** monitoring contacts

- 73 Local Government Units (LGU):

- a. **61** Municipalities
- b. **12** District Councils

The total number of civil servants monitored on average 3 times a day for 19 working days is: **7488** employees monitored daily x 3 monitorings/day x 19 monitoring days = **253194** monitoring contacts

According to the statistics processed by the Secretariat of the Commissioner, it results that the supervision included **12758** civil servants (*out of 16,000 which is the total number of employees in the entire civil service system*) divided according to the typology of institutions, according to the table below, in this order:

*Table no. 6.2 Number of employees in monitored institutions*

(1) <b>Independent institutions</b> <i>(18 institutions)</i>	(2) <b>State Administration</b> <i>(12 Ministries, 93 Subordinate Institutions and 12 District Prefectures)</i>	(3) <b>Local Government Units</b> <i>(60 Municipalities and 12 District Councils)</i>	(4) <b>Total</b> <i>(Supervised civil servants)</i>  <b>Sum 1+2+3</b>
<b>828</b>	<b>7488</b>	<b>4442</b>	<b>12758</b>

The Secretariat of the Commissioner in charge of monitoring the progress of the process from 3.6.2019, which coincides with the date of the start of the election campaign, until 28.6.2019, has periodically communicated with monitoring groups at the institutions.

This period consists of 19 working days (*since the election campaign started on 1.6.2019, Saturday, also 4.6.2019, it was an official holiday*). At the end of the election process, the Commissioner's staff processed all the information gathered, evidencing the necessary data which reflect the progress of the process, as well as the problems encountered, such as: unjustified absences, cases of non-reporting by the monitoring groups, as well as cases of employees who have participated in violent actions or illegal gatherings.

Below, we are analyzing the aspects in which the work of the Commissioner is focused during this process, in order to reach a clear conclusion regarding the behavior and activity of the civil servant during this election campaign, as well as respecting of their political rights.

*a Monitoring the movement of employees during the election campaign (Presence at work):*

As it has been analyzed in this report, the monitoring teams have monitored the implementation of formal discipline during the official working hours during the election campaign for 2019 and the findings regarding the presence of employees at work have been sent daily to the Secretariat of the Commissioner.

First, we need to clarify that statistics will be reported in working days (*19 working days*), which means that the average of the figures will be found by dividing them by the number of working days in which the process is extended.

*b Cases found with justified absences:*

From the analysis of the collected data, it results that a total of **28364** justified absences have been reported, for 19 working days, for **12758** civil servants, of which:

- ✓ **24822** absences ascertained throughout the day and the daily average of which is **1306** absences for 12758 civil servants, or 0.1 cases per day for 1 employee;
- ✓ **3542** absences found during the day, as the employees were present in the institution at the beginning and end of official hours, and the daily average of which is 186 absences for 12758 civil servants or 0.01 cases per day for 1 employee.

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

- in **4779** cases, the absences are due to annual leave;
- in **2896** cases, absences are justified by a medical report;
- in **3105** cases, absences are justified due to maternity leave;
- in **9934** cases, the absences are conditioned by the nature of the work, justified by the authorization for services inside and outside the country;
- in **4029** cases, the absences are due to the involvement of employees in professional trainings;
- in **79** cases, the absences are because the employees have taken unpaid time off;
- in **3542** cases, the absences were found to be partial during the day, for work reasons outside the institution, justified by the supervisor, according to the nature of the work.

From all that we analyzed in this case, the Commissioner estimates that this is a normal figure, which is justified with the annual vacations, training processes or the functioning of institutions of an auditing and oversight nature. In this case, the Commissioner was informed by the monitoring groups about the reasons for the absences, after the acts of justification of the reported absences were sent to him.

Below we present in a table the results that have emerged from the data processing, specifying in the table, the number of institutions and civil servants monitored, divided according to the typology of institutions, unjustified and justified absences, detailing the reason for their justification.

*Table no. 6.3 Situation of attendance at work for the period of 03.06.2019 to 28.06.2019*

Monitored institutions	Unjustified absences	Justified absences	Total civil servants monitored for 19 working days
Independent Institutions	21	3336	15732
State administration	7	19376	84050
Local Government Units	110	5652	134368
<b>TOTAL</b>	<b>138</b>	<b>28364</b>	<b>234150</b>

*c Cases of unjustified absences:*

On the other hand, regarding the unjustified absences, it results that **138** such cases have been reported by the monitoring groups and the daily average of which is 7 absences for **12758** civil servants or 0.001 cases per day for 1 employee.

As can be seen from the data, this figure is insignificant and is considered reasonable in the normality of the daily work of the administration. The verifications carried out for these cases did not show any data that these absences were related to illegal gatherings or participation in political activities in support of a political party or candidate in the elections. These cases are being followed by the Commissioner and in accordance with the circumstances a position will be taken according to law.

## 2. Supervision through on-site visits

Pursuant to order no. 53, dated 07.06.2019, of the Commissioner for Civil Service Oversight, “*On the initiation of the monitoring process subject to new appointments, dismissals and behavior of civil servants, during the election campaign for the local government units*”, an examination of attendance at work was done, through surveys conducted in the subject on 10.06.2019 - 14.06.2019 and 25.06.2019 - 27.06.2019.

During this process, the Commissioner’s inspection teams, in cooperation with the monitoring groups of the respective institutions, verified the implementation of the law in the civil service institutions, as part of the election campaign for local elections, by monitoring the behavior of civil servants during official working hours. In the survey conducted during this period, **89** entities were monitored, with a number of **3563** civil servants, of which **42** are institutions of the local government unit and **47** are subordinate institutions of the state administration.

The monitoring focused on verifying the way of completing the “*Act-finding*” by the monitoring team, administering all the probative documentation regarding the absences and justified movements of employees during working hours. At the same time, during the survey conducted in the above institutions, the cases of appointments and dismissals of civil servants from the civil service were verified, as well as the cases of disciplinary measures or initiations of disciplinary proceedings, data which are materialized in the minutes signed by the monitoring group and by the CCSO inspectors.

**Table no. 6.4** *Situation of attendance at work during the monitoring by the Commissioner in the subject*

Monitored institutions	Unjustified absences	Justified absences	Total civil servants
<b>Local Government Units</b> <i>(35 Country Municipalities and 7 District Councils)</i>	3	295	2500
<b>State administration</b> <i>(40 Subordinate Institutions and 7 District Prefectures)</i>	0	238	1063
<b>TOTAL</b> 89 institutions	<b>3</b>	<b>533</b>	<b>3563</b>

As reflected in the table above, it results that during the survey conducted in **89** entities, only **3** cases of unjustified absences and **533** cases of justified absences were found, for **3563** civil servants monitored in 1 (one) working day.

### 3. Measures taken and problems encountered during the monitoring process regarding the behavior of civil servants

The resolution of the Albanian Parliament “*On the evaluation of the activity of the Commissioner for Civil Service Oversight for 2018*”, among other things, has asked the Commissioner to engage in 2019 in monitoring the behavior of civil servants during the election campaign for local government units, in order to prohibit the forced use of civil servants in the election campaign, during official hours, by political entities, as well as overseeing the implementation of their political rights and observance from their part, of the restrictions that the law has placed on these rights.

Also in DCM no. 283, dated 10.5.2019, “*On taking measures and monitoring the activity, behavior or use of human, financial and logistical resources of the state administration, during the election process for the local elections for 2019*”, it is provided that the Commissioner for Civil Service Oversight should participate as a guest in the meetings of the Task Force established for the coordination of the monitoring process for the 2019 local elections.

In this context, the Commissioner has periodically reported on the implementation of the measures taken and problems encountered during the monitoring process related to the conduct of civil servants for all institutions that employ civil servants (*208 independent institutions, of local government and state administration*), at the Assembly, as well as has informed the Task - Force.

The cooperation with the Task - Force was realized both through active participation in the meetings convened according to the need and scope of its activity, as well as through written information sent to this *ad - hoc* mechanism.

Initially, the Commissioner has informed about the measures taken regarding the supervision of the implementation of the law in the administration of the civil service, during the election campaign, and further about the specific situations that have been ascertained and the intervention of the Commissioner to address the problems that are identified, which we are analyzing below:

#### *a Termination of the process of monitoring by some institutions*

With the proclamation of the President’s announcement, on 10.6.2019 (*Presidential Decree no. 11199, dated 10.6.2019, “On the abrogation of decree no. 10928, dated 5.11.2018 of the President of the Republic “On setting the date of elections for local government bodies”*), **1** independent institution and **9** local government units, terminated the reporting process to the Commissioner, with the argument that in fact they were not in the conditions of the election campaign. Below we identify these institutions:

- **The President of the Republic**, via e-mail dated 10.6.2019 sent by the coordinator of the monitoring group at this institution, has announced that referring to the President's decree, we are not in a position to continue reporting on the monitoring of the behavior of civil servants during the election campaign.
- **Shkodër Municipality**, via e-mail dated 17.06.2019, has announced that referring to the decree of the President, the order for the establishment of the monitoring group was revoked and then has terminated the communication with the Commissioner.
- **Tropojë Municipality**, via e-mail dated 20.6.2019, has announced that referring to the decree of the President, the order for the establishment of the monitoring group has been revoked.
- **Kukës Municipality**, from the 10.6.2019, has terminated the communication and with the order no. 242/1, dt. 10.6.2019, has canceled the order for the establishment of the monitoring group.
- **Mallakastër Municipality**, has cut off communication with the Commissioner, and it has not made available any administrative act which materializes this decision-making.
- **Berat Municipality**, through electronic communication, has announced that referring to the decree of the President, the order for the establishment of the monitoring group has been revoked and from 19.6.2019, has not reported any data to the Commissioner.
- **Lezhë Municipality**, has cut off communication with the Commissioner, and it has not made available any administrative act which materializes this decision-making.
- **Prrenjas Municipality**, has stopped reporting on 17.6.2019, and has not made available any administrative act to materialize this decision.
- **Mat Municipality**, has stopped reporting and with order no. 205, dt. 26.6.2019 has abrogated the order for the establishment of a special monitoring group.
- **Kavajë Municipality**, has set up a special group to monitor the behavior of civil servants during the election campaign, which has approved the internal regulation of its functioning, but it has never sent any data to the Secretariat of the Commissioner.

Being in the circumstances of the institutions' opposition to report, claiming that they are not in an electoral situation, the Commissioner has made it clear in writing that, referring to point 1, article 14, of law no. 152/2013, "On civil servants", amended, this institution has the competence to supervise the implementation of the law in the administration of the civil service, in all institutions that employ civil servants, which includes also local government institutions, as evidenced above. This framework includes also the organization of monitor-

ing the performance and behavior of civil servants in their daily work, in order to achieve the objectives and mission of the institution where they are employed.

In the communication with these institutions, it is emphasized that, despite the fact that the beginning of this monitoring received clues also due to the approach of the election campaign, where the observance of the obligations set out in Article 37 of Law no. 152/2013, “*On the civil servant*”, amended takes a special meaning and importance, the supervision of the performance and conduct of civil servants in their daily work, based on the principles of professionalism and political impartiality, is a permanent task of the Commissioner for Civil Service Oversight.

Seen in this perspective, it was clarified that the disconnection of communication and not sending daily monitoring data of the civil servants of some municipalities, unjustly linking it with specific aspects of the election campaign and various acts issued related to these developments, come in contradiction with the obligation provided by point 3, of article 14, of law no. 152/2013, “*On the civil servant*”, amended, according to which “*Institutions employing civil servants, as well as any public official or civil servant, who have competencies in the administration of the civil service, or have information in this field, have the obligation to cooperate with the Commissioner*”. Civil servants have the legal obligation to respect discipline at work at all times, to professionally fulfill the tasks assigned towards fulfillment of the mission of the institution, as well as not to publicly express their political beliefs or preferences.

In this case, the relevant responsible units are oriented to continue the process, bringing to their attention that for every institution that is part of the civil service, there is an obligation to send information and cooperate with the Commissioner, for the implementation of the provisions governing the administration of the civil service, an aspect of which is also the monitoring of the behavior of civil servants. Furthermore, these institutions were asked to follow the communication process, to send data on the days when information was missing and onwards, regarding the monitoring of the behavior of civil servants in their institutions, as well as the disciplinary penalties in a case of non-fulfillment of functional duties.

*b Cases of civil servants found in conduct or activity contrary to the law during the election process*

Through institutional cooperation, especially with some Prefects in some Districts of the country, and specifically, through letters no. 868 prot., dated 20.6.2019, of the Prefect of Dibër District; no. 776 prot., dated 21.6.2019, of the Prefect of Berat District and no. 1006 prot., dated 26.6.2019, of the Prefect of Vlora District, the Commissioner has received information that in the local government units of: *Mat, Klos, Berat, Skrapar* and *Delvinë*, violent actions had taken place before the EAACs, and political preferences in support of a political party or candidate in the elections were expressed openly. Immediately, the Commissioner has addressed the relevant institutions to verify the information and bring to justice those who have committed actions contrary to the law.

At the same time, in order to provide complete and accurate information on whether civil servants have participated in violent acts or illegal gatherings at various EAACs in the country, the Commissioner addressed the General Directorate of State Police, with letter no. 111, dated 20.6.2019. In response to the request of the Commissioner, the General Directorate of State Police, with letter no. 5120/1, dated 28.6.2019, “*Sending information about civil servants who have participated in violent actions or illegal gatherings in various EAACs of the country*”, has sent information that such cases have been observed in **13** local government units: Kamza, Selenica, Delvina, Prrenjas, Shkodra, Tropoja, Pogradec, Devoll, Berat, Skrapar, Burrel, Klos and Mat.

In these circumstances, in order to anticipate the legal violations, the Commissioner has sent a letter to all institutions that employ civil servants, requesting detailed information regarding such cases found in the relevant institutions.

Following the verification of the information administered by the Commissioner, **33** cases were identified, where employees employed in civil service positions were reported, in the following institutions:

- **Mat Municipality**: 7 employees of this municipality have publicly expressed their political preferences, participating in the violent protests organized near the EAAC, no. 16, in the town of Burrell.
- **Berat Municipality**: 2 employees of this municipality have publicly expressed their political preferences, participating in the violent protests organized near the EAAC, no. 64, in the town of Berat.
- **Skrapar Municipality**: 2 employees of this municipality have publicly expressed their political preferences, participating in the violent protests organized near the EAAC, no. 66, in the town of Çorovoda.
- **Delvinë Municipality**: 16 employees of this municipality have publicly expressed their political preferences, participating in the violent protests organized near the EAAC, no. 87, in the town of Delvina.
- **Shkodër Municipality**: 2 employees of this municipality have publicly expressed their political preferences, participating in the violent protests organized near the EAAC, in the town of Shkodra.
- **Pogradec Municipality**: 1 employee of this municipality has publicly expressed his political preferences, participating in the violent protests where election materials were stored, in the city of Pogradec.

- **Cërrik Municipality**: 1 employee has publicly expressed his political preferences, participating in violent protests where election materials were deposited in the town of Cërrik.
- **Selenicë Municipality**: 1 employee has publicly expressed his political preferences, participating in the violent protests near the EAAC, in the town of Selenica.
- **Finiq Municipality**: Through the e-mail dated 20.6.2019, has informed the Commissioner about a violent situation, held against the members of the EAAC no. 89 - Livadhja, where 1 employee, civil servant (*on probation*), in the Administrative Unit Livadhja, Municipality of Finiq.

In these conditions, to all the above mentioned institutions, has been requested that the Human Resources Unit should immediately initiate disciplinary proceedings against the above civil servants and request from the Disciplinary Commission, to review with priority the case and bring them to disciplinary liability.

Meanwhile, the Commissioner has continued the work to monitor the implementation of the tasks left in relation to the initiation of disciplinary proceedings and their progress in all institutions that have had such cases.

In particular we mention the case of the Municipality of Mat, where the Mayor, through letter no. 1672/1, dated 25.6.2019, sent to the Commissioner, has claimed that the employees for whom the Commissioner has requested the initiation of disciplinary proceedings, did not violate the law, but have been performing their state duty, according to the order of the Mayor.

With letter no. 1179, dated 02.07.2019, the Commissioner has brought to the attention of the head of the institution and the responsible unit that the Disciplinary Commission should be set up, which is the only body that after the start of disciplinary proceedings, can hear the parties, collect the necessary evidence, which includes especially the daily orders or authorizations for work outside the municipal building and at the end of this activity takes also the relevant decisions in accordance with the law. The head of the institution is oriented that the information he has due to the post, related to the activity of civil servants, in this case should be submitted for evaluation before the Disciplinary Commission.

Meanwhile, we highlight the fact that, after notifying the Task - Force, registered with protocol no. 1174, dated 2.7.2019, regarding the case of dismissal from the civil service of the employee V.H., in the job position of administrator of economic assistance in the Administrative Unit Miras, Municipality of Devoll, immediately after the elections, for reasons related to the election process, with letter no. 1182, dated 02.07.2019, the Commissioner has started the verification of the legality of the administrative act no. 137, dated 01.07.2019, of the Mayor of Devoll “*On dismissal from duty*”, requesting from the institution information

regarding the circumstances in which this decision was taken, as well as the necessary documentation to verify its legality.

The Commissioner has continued to follow the process initiated for these cases and has found that all cases reported by him were reviewed by the disciplinary bodies set up by the relevant institutions.

The above are some aspects of the oversight process carried out by the Commissioner in the framework of the implementation of the law on civil servants, in the specific election situation, as well as further follow-up of the tasks left in order to regulate legality, in cases where actions contrary to the law were ascertained.

#### **4. Civil servants registered as candidates for local elections and civil servants engaged in election commissions**

Regarding this aspect, on 17.05.2019, the Commissioner for Civil Service Oversight, through a letter sent to all the monitored institutions, has requested and further has administered the data, which reflect the cases where civil servants have applied to register as candidates for local elections, as well as the cases of their participation in the election administration bodies, as commissioners in the composition of the EAACs, LCLs, and VCGs.

Pursuant to point 5, of decision no. 283, dated 10.05.2019, of the Council of Ministers, “*On taking measures and monitoring the activity, behavior or use of human, financial and logistical resources of the state administration, during the election process for local elections for 2019*”, the Commissioner has assisted the monitoring groups related to the preparation of administrative acts, which materialize the approval of the institution to exercise the functions of election administration by civil servants.

With reference to the information provided, it turns out that in all cases of engagement of civil servants as election commissioners, their requests have been approved by the institution and the relevant authorizations have been issued by the head of the institution. Regarding this aspect, it results that no complaints have been filed, and no information has been administered regarding the denial of the exercise of this right.

At the same time, pursuant to article 37, point 3, of law no. 152/2013, “*On the civil servant*”, amended, the observance of the right of the civil servant to register as a candidate for local government bodies, both as a candidate for mayor and as a member of the municipal council, has been monitored.

Pursuant to the legal obligation defined in article 54/1/1, of the law on civil servant and in point 17, of DCM no. 283, dated 10.05.2019, the monitoring of this process focused on the procedures followed by the human resources management unit of the institution, regarding the ascertainment of the reason for the suspension and the issuance of the administrative act for the suspension of the civil servant from his duty for the candidacy period.

Specifically, from the data received by the Commissioner from 84 institutions, **28** cases were identified, where civil servants were registered as candidates for mayor or members of the Municipal Council and **325** cases, where civil servants were engaged as election commissioners, of which **123** cases where civil servants were appointed members of EAACs, **126** cases where civil servants were appointed members of the CLCs and **76** cases where civil servants were appointed as members of the VCGs, who, divided according to the typology of institutions, are presented in the table below:

*Table no. 6.5 Statistics regarding the participation of civil servants as candidates for mayor/member of the municipal council, as well as in the election administration*

No.	Institutions that have sent data		Candidate for Mayor/ members of the municipal council	Participation in the election administration		
				EAAC	CLC	VCG
1.	Independent Institutions	5	1	0	0	0
2.	State Administration	50	12	83	88	39
3.	Local Government Units	29	15	40	38	37
<b>TOTAL</b>		<b>84</b>	<b>28</b>	<b>123</b>	<b>126</b>	<b>76</b>

From what is presented in the table above, it is estimated that the civil servants' body has contributed to the administration of the electoral process, increasing the technical level of the electoral administration, and consequently consolidating the election standards, towards those of the best in Europe.

It is worth mentioning that monitoring the behavior of the civil servant during the election campaign, as a mechanism to ensure the principle of political impartiality of the civil service, has also contributed to strengthening the role of the human resources unit, within their functional tasks which derive from the implementation of the law on civil servants, which often present difficulties due to the nature of the control that they have, and consequently also to the constant resistance made by civil servants of all levels, to avoid clear rules of work discipline, as well as specific procedures required to be followed by the aforementioned law.

Referring to the complexity of this process, in the analysis of the content of the acts of findings and the relevant documentation, the Commissioner concludes that the monitoring of the civil servants' behavior during the election campaign is an additional indicator, regarding the evaluation of the performance of the human resources unit, in the framework of the realization of its functional tasks. At the same time, this process constitutes an added value and support to the role of the human resources unit, and also directly affects the realization and fulfillment of functional tasks, as well as the increase of the work discipline of civil servants.

#### **5. New appointments, as well as removals or dismissals from duty carried out during the election period**

In the framework of monitoring the behavior of civil servants during the election campaign, the Commissioner also focused on overseeing new appointments, as well as dismissals or removals from duty, made during this period.

Through the reports received from the coordinators of the monitoring groups, set up at the institutions part of the civil service, as well as by the responsible units, the Commissioner was informed that only **16** cases of new appointments or transfers were recorded, as well as dismissals in **32** cases (*resignation/old age pension*), which have been carried out according to the procedures of the law.

Meanwhile, only one disciplinary measure of dismissal from the civil service is ascertained, in the municipality of Devoll, which was analyzed above, for which the verification has started and the case is being pursued by the Commissioner.

The above is positively assessed by the Commissioner, because it shows the observance of the principles of civil service administration, especially that of political impartiality and the sustainability of the civil service.

#### **6. Cooperation with domestic and international institutions during the monitoring of the electoral situation regarding the civil service**

An important aspect of the process of monitoring the electoral situation regarding the civil service by the Commissioner has been the cooperation with the institution of the Assembly of Albania, as well as the Task Force, established by decision no. 283, dated 10.05.2019, of the Council of Ministers, "*On taking measures and monitoring the activity, behavior or use of human, financial and logistical resources of the state administration, during the election process for local elections, for 2019*", who are continuously informed about the progress of this process. Also, the Commissioner participated as a guest in the meetings of the Task Force, giving his contribution to the smooth running of the electoral process in accordance with the provisions of law no. 152/2013, "*On the civil servant*", amended.

At the same time, the Commissioner has continued the cooperation with international institutions that exercise their activity in our country, informing them about the progress of the process of monitoring the activity and behavior of civil servants during the election process, as well as the identified problems. Among these institutions, we mention: The Charge d’Affaires of the Embassy 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 Policy Development and Coordination Advisor, at SIGMA; The Head of the OSCE Presence in Albania and the Head of the OSCE-ODIHR Election Observation Mission in Albania, to whom we have addressed to seek their support during this process.

They praised and supported the initiative of the Commissioner to contribute in changing the behavior of public administration during the electoral process, towards European standards, in accordance with the principles of civil service administration, helping the administration to orient itself towards the implementation of functional duties in the service of the state and the public. On this occasion, we highlight the position of the Head of the OSCE-ODHIR Election Observation Mission, Ambassador, Mrs. Audrey Glover, who in response to the information sent by the Commissioner, in the letter dated 10 June 2019, states:

*“Thank you for your letters dated May 30, 2019. My staff and I are grateful for the information you have sent us on the precautions taken by the Commissioner for Civil Service Oversight to monitor the conduct of civil servants during the election campaign”.*

Following the correspondence with the Commissioner, with the letter dated 2 July 2019, Mrs. Glover has sent the full Statement on Preliminary Findings and Conclusions for the Local Elections of June 30, 2019, expressing once again her appreciation on the ongoing information that the Commissioner has sent throughout the monitoring process and requesting to be kept informed of the results of this process.

These appraisals encourage the Commissioner in his work and motivate him to take important actions, despite the difficulties encountered, to implement important principles of civil service administration, such as equality of opportunity, non-discrimination, merit, transparency, professionalism and political impartiality, as well as to guarantee the tenure of the civil servant and the continuity of the civil service.

At the end of the monitoring we are presenting some conclusions reached by the Commissioner regarding the implementation of the law on civil servants during the election period as well as some recommendations for improving the situation:

- Based on the analysis of the provisions governing electoral subjects, in the Electoral Code, which has not yet changed, that are mainly related to the definition of senior functions in the administration, the Commissioner, as he has stated before, remains again of the opinion that they should be reviewed, and should be set in coherence with the civil servant law, which recognizes to the civil servants who are running

for office, regardless of their level in the civil service hierarchy, the right to be suspended from the civil service and does not force them to resign.

- The commissioner received denunciations on involvement of civil servants in illegal rallies; violent actions before the EAACs, as well as expressions of political preferences in support of a certain political force, or the candidate in the elections, which were immediately addressed for verification by the disciplinary bodies in the relevant institutions. This process is constantly monitored by the Commissioner. However, these remained isolated cases, prompted by the specific circumstances that accompanied this election campaign and do not affect the assessment of the general conduct of civil servants, which is assessed as correct and in accordance with the law on civil servants.
- During this process, communication was interrupted by some institutions, not providing the information requested by the Commissioner, which is an action that is contrary to the law on civil servants, and therefore will be analyzed case by case and a decision will be taken against the responsible persons.
- From the administration and analysis of data, the Commissioner estimates that there are no cases of new appointments in violation of the law and also there are no cases of disciplinary measures applied during this process. These data show the observance of the principle of political impartiality and stability in the civil service.
- In the case of the application of the institute of suspension, due to the participation as a candidate for deputy, in these political elections, by the human resources unit of the institution, where the civil servant is appointed, we consider that the legal requirement has been respected, for ascertainment of the suspension of the civil servant status, due to participation as a candidate in these elections.
- In the case of external activities of civil servants, the Commissioner has found that the head of the institution, at the request of the civil servant, has implemented the legal requirement to allow these categories of activities, such as participation in the election administration, in composition of the EAACs, CLCs and VCGs, issuing the relevant authorization.
- The Commissioner estimates that the Monitoring Groups have correctly verified the reported cases and further, have followed the legal procedure for following up the cases when disciplinary violations have been found.
- The Commissioner has started monitoring the progress of criminal charges that have been filed with the Prosecution, against civil servants, claiming that they have violated the electoral process, to further assess their objectivity and efficiency.
- Assessing the progress of the monitoring process and the impact it had on the discipline of the administration, the Commissioner estimates that this process should

continue also in cases of electoral processes in the future.

- Human resource management units should continue to communicate with the Commissioner, after this successful experience of cooperation, to increase the level of law enforcement for civil servants, in all its aspects.
- Human resource management units should continue to monitor the observance of formal discipline at work, as this leads to increased efficiency and effectiveness at work.
- The heads of institutions should support human resources units, both with staff as well as by evaluating their role in the administration of the civil service.
- The Commissioner estimates that, acting in support of an electoral process in accordance with the law, he has helped to ensure a better electoral process in our country, towards the best standards of the European Area.
- Civil servants, aware of the important task they have in the state pyramid, should be the vanguard of a radical reform of the mentality of the administration in our country, towards the implementation of such principles as the principle of responsibility at work, political impartiality and meritocracy.
- Civil servants understood the monitoring process and there was no resistance to imposing some new additional rules regarding work discipline and they respected them.
- The Commissioner appreciates the role of civil servants in the election administration, who oriented the election process towards new standards, towards calmness and professionalism.
- In conclusion, the Commissioner thanks in particular the international institutions, including the Embassy 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, for the support they have given to his work during this important and also delicate process, and seeks their support in the future, to face the challenges of public administration reform.

## CHAPTER VII

### OVERSEEING THE IMPLEMENTATION OF THE LAW ON COMPLIANCE WITH THE TERM OF DISMISSAL FROM THE CIVIL SERVICE FOR EMPLOYEES WHO REACH THE FULL RETIREMENT AGE

Based on the legal competencies of the Commissioner as well as pursuant to the Resolution of the Assembly of the Republic of Albania “*On the evaluation of the activity of the Commissioner for Civil Service Oversight for 2018*”, where it is explicitly requested:

*“To give priority to the cases of individuals, part of the civil service in the central and local administration, who continue to be employed, even though they have reached the retirement age and should have terminated their legal and financial relations in time”,*

the verification process has been carried out throughout the year regarding the application of article 65, letter “c”, of law no. 152/2013, a provision which provides for cases of termination of employment in the civil service due to law and orders the release from civil service of employees who have reached the age of full retirement pension.

For the realization of this process, the Commissioner has requested information from the responsible units to report on the employees who are kept at work, although they have reached the age for full retirement pension, throughout the year 2019. Regarding this process, it has been communicated with **114** institutions, from which **24** state administration institutions (*Prime Ministry, 11 line ministries which have also reported on their subordinate institutions*); **73** local administration institutions (*municipalities and district councils*) and **17** independent institutions.

It is worth emphasizing that a very high level of cooperation has been noticed in this case, as reporting by institutions has been done to the extent of 100%.

From the collection and processing of reported data, **149** cases were identified, of employment surpassing the legal deadline set for dismissal from civil service due to reaching the age to retire in full retirement pension, of which: **86** cases or **58%** of them belong to the state administration (*24 cases in the ministries and 64 cases in the subordinate institutions*); **5** cases or **3%** of them to district prefectures; **41** cases or **28%** of them to municipalities; **6** cases or **4%** of them to district councils and **11** cases or **7%** of them to independent institutions.

## 1. The situation ascertained in the state administration, Prime Ministry and 11 line ministries

The human resource management units of the Prime Ministry and 11 line ministries have sent data for their apparatus and from the processing of information it is noticed that:

- In **3** ministries, namely: the Ministry of Culture, the Ministry of Justice and the Ministry of Agriculture and Rural Development, no case of this nature has been identified.
- In the Prime Ministry and **7** ministries, have been reported **24** cases of employees who have reached the full retirement age, by the end of the calendar year 2019.

In detail, this situation is presented in the following table:

**Table no. 7.1** *Situation regarding the employees who have reached the age for full old age pension until 31.12.2019, for the apparatus of the Prime Ministry and line ministries*

No.	Institution	Employees who have reached full retirement age
1.	Prime Ministry	3
2.	Ministry of Finance and Economy	6
3.	Ministry of Interior	1
4.	Ministry of Europe and Foreign Affairs	1
5.	Ministry of Infrastructure and Energy	5
6.	Ministry of Education, Sports and Youth	1
7.	Ministry of Defense	1
8.	Ministry of Health and Social Protection	6
<b>TOTAL</b>		<b>24</b>

The Commissioner has followed the situation and has asked the Human Resources Units of these institutions to take immediate measures to restore the status of legality, by ending the employment relationship in the civil service due to law for **21** employees (*since for 3 employees, the relationship in the civil service was terminated on time, in accordance with Article 65 of the law, without the need for the intervention of the Commissioner*) who had reached the age of full retirement, as well as the reflection of these acts in the Human Resource Management Information System (HRMIS) , which is administered by the Department of Public Administration.

After the procedural deadline, left in the ordering part of the decision, the human resource management units have notified about the measures taken to implement the warning decision. At the time of reporting, the situation is as follows:

- In **13** cases or **54%** of them, the employment relationship was terminated due to reaching the age of full retirement pension pursuant to the decision of the Commissioner;
- For **3** cases or **13%** of them, the employment relationship in the civil service was terminated on time, in accordance with Article 65 of the law, without the need for the intervention of the Commissioner.
- For **8** cases or **33%** of them, the responsible units are in the process of fulfilling the legal obligation.

## **2. The situation ascertained in the institutions under the Prime Minister and the Ministries**

In fulfillment of the aforementioned legal obligation, the Prime Minister and the ministries have also reported on their subordinate institutions, which are part of the civil service. From the processing of the information it is noticed that **62** employees had reached the age for full retirement pension by the end of the calendar year 2019.

The Commissioner has followed the situation and has requested through the warning decisions that the human resources units of these institutions take immediate measures to restore the status of legality, ending the employment relationship in the civil service due to the law for **57** employees, identified by job position and moment of reaching the age to receive the full retirement pension, since in **5** cases, the institution has acted without the need for the Commissioner to intervene. Subsequently, it was requested from the Department of Public Administration, in the capacity of the responsible unit of these institutions, that the job positions which have remained vacant after ascertaining the circumstances of article 65, point 1/c, should be declared vacant, to be completed through competition procedures, in order not to create obstacles in the continuity of the work of institutions.

After the expiration of the procedural deadline, left in the ordering part of the decision, the human resources management units have notified about the measures taken for the implementation of the warning decision. At the time of reporting, the situation is as follows:

- In **36** cases or **58%** of them, the employment relationship was terminated due to reaching the age of full retirement pension pursuant to the decision of the Commissioner;
- In **21** cases or **34%**, the responsible units are in the process of fulfilling the legal obligation.
- In **5** cases or **8%**, the state of legality has been restored by the institution itself.

**Table no. 7.2** *Situation regarding the employees who have reached the age for full retirement pension until 31.12.2019, for the institutions under the state administration*

No.	Institution	Employees who have reached full retirement age
1.	Assistance Programs Audit Agency, EU Accredited	1
2.	Water Resources Management Agency	1
3.	National Environmental Agency	6
4.	General Directorate of Taxes	16
5.	General Directorate of Customs	3
6.	NFA, Gjirokastra Regional Directorate	1
7.	NFA, Vlora Regional Directorate	1
8.	NFA, Korça Regional Directorate	2
9.	Regional Agency of Veterinary Service and Plant Protection, Vlorë	1
10.	Regional Agency of Veterinary Service and Plant Protection, Shkodër	2
11.	Regional Agency of Veterinary Service and Plant Protection, Elbasan	1
12.	Regional Agricultural Extension Agency, Shkodër	2
13.	Regional Agricultural Extension Agency, Lushnjë	3
14.	Agricultural Technology Transfer Center, Shkodër	1
15.	Food Safety and Veterinary Inspectorate	1
16.	National Cigarette Tobacco Agency	1
17.	Agricultural Technology Transfer Center, Lushnjë	1
18.	National Nuclear Agency	3
19.	State Technical and Industrial Inspectorate	5
20.	Albanian Geological Service	3
21.	Official Publishing Center	1
22.	Institute of Forensic Medicine	1
23.	General Directorate of Probation Service	1
24.	State Agency for the Protection of the Rights of Children	1
25.	State Social Service	3
<b>TOTAL</b>		<b>62</b>

### 3. The situation ascertained in the District Prefectures

The data requested by the Commissioner regarding the implementation of the institute of law which is being analyzed, have been reported by both the human resources management unit of the Ministry of Interior and the human resource management units of the District Prefectures. From the collection and processing of information it is noticed that 5 employees have reached the age for full retirement pension, by the end of the calendar year 2019.

In detail, this situation is presented in the following table:

**Table no. 7.3** *The situation regarding the employees who have reached the age for full retirement pension until 31.12.2019, for District Prefectures*

No.	District Prefectures	Employees who have reached full retirement age
1.	Elbasan	1
2.	Gjirokastrë	2
3.	Korçë	1
4.	Lezhë	1
<b>TOTAL</b>		<b>5</b>

In the warning decisions, the Commissioner has asked the human resources units of these institutions to take immediate measures to restore the status of legality, by terminating the employment relationship in the civil service due to the law for 5 employees identified over the age needed to benefit the full retirement pension and these job positions should be announced vacant, to be filled through competition procedures.

After the procedural deadline, left in the ordering part of the decision, the human resource management units have notified about the measures taken to implement the warning decision and until the reporting moment, the situation is as follows:

- In **4** cases or **80%** of them, the employment relationship was terminated due to reaching the age of full retirement pension pursuant to the decision of the Commissioner;
- In **1** case or **20%** of them, the responsible unit is in the process of fulfilling the legal obligation.

#### **4. The situation ascertained in the local self-government units (61 country municipalities)**

The responsible units of the municipalities have reported 41 employees who had reached the age for full retirement pension, by the end of the calendar year 2019.

The Commissioner has asked the human resources units of these entities to take immediate measures to restore the status of legality, by ending the employment relationship in the civil service due to the law for 35 employees, given that in 6 cases the institutions have acted without the need for the intervention of the Commissioner and their job positions should be announced vacant, to be filled through competition procedures.

In detail, this situation is presented in the following table:

**Table no. 7.4** The situation regarding the employees who have reached the age for full retirement pension until 31.12.2019, for municipalities

No.	Municipalities	Employees who have reached full retirement age
1.	Poliçan	1
2.	Durrës	3
3.	Shijak	1
4.	Krujë	2
5.	Elbasan	4
6.	Cërrik	1
7.	Belsh	1
8.	Librazhd	3
9.	Fier	3
10.	Gjirokastër	1
11.	Tepelenë	1
12.	Pogradec	2
13.	Tiranë	5
14.	Kavajë	1
15.	Rrogozhinë	2
16.	Finiq	4
17.	Sarandë	2
18.	Selenicë	1
19.	Korçë	1
20.	Lushnje	1
21.	Lezhë	1
<b>TOTAL</b>		<b>41</b>

After the procedural deadline, left in the ordering part of the decision, the human resource management units have notified about the measures taken to implement the warning decision and until the reporting moment, the situation is as follows:

- In **21** cases or **51%** of them, the employment relationship was terminated due to reaching the age of full retirement pension pursuant to the decision of the Commissioner;
- In **14** cases or **34%** of them, the responsible units are in the process of fulfilling the legal obligation (*the termination of the relationship in the civil service for these employees will be done after the completion of the competition procedures, which have been announced and are in process, in order not to hinder the smooth running of the institution*).
- In **6** cases or **15%**, the state of legality has been restored by the institution itself without the need for the intervention of the Commissioner.

## 5. The situation ascertained in 12 District Councils

From the information sent by these institutions, it results that **6** employees reached the age for full retirement pension, by the end of the calendar year 2019.

In detail, this situation is presented in the following table:

*Table no. 7.5 The situation regarding the employees who have reached the age for full retirement pension until 31.12.2019, for the District Councils*

No.	District Councils	Employees who have reached full retirement age
1.	Vlorë	2
2.	Gjirokastrë	2
3.	Korçë	1
4.	Tiranë	1
<b>TOTAL</b>		<b>6</b>

The Commissioner has asked the human resources units of the district councils to take immediate measures to restore the status of legality, by ending the employment relationship in the civil service due to the law, for **4** employees, since in **2** cases the institutions have acted immediately, without the need of the intervention of the Commissioner and their job positions should be announced vacant, to be filled through competition procedures.

After the expiration of the procedural deadline, left in the ordering part of the decision, the human resources management units have notified about the measures taken for the implementation of the warning decision. At the time of reporting, the situation is as follows:

- In **4** cases or **67%** of them, the employment relationship was terminated due to reaching the age of full retirement pension pursuant to the decision of the Commissioner;
- For **2** cases or **33%** of them, the state of legality has been restored by the institution itself without the need for the intervention of the Commissioner.

## 6. The situation ascertained in independent institutions

In order to fulfill this task and collect the most accurate and comprehensive information, the Commissioner has requested information from **17** independent institutions, of which only **6** had problems with law enforcement. The situation in this case is as follows:

From the information sent, it results that **11** employees had reached the age for full retirement pension by the end of the calendar year 2019.

In detail, this situation is presented in the following table:

**Table no. 7.6** *The situation regarding the employees who have reached the age for full retirement pension until 31.12.2019, for independent institutions*

No.	Independent Institutions	Employees who have reached full retirement age
1.	Competition Authority	2
2.	Constitutional Court	2
3.	Supreme Court	2
4.	High Judicial Council	1
5.	Supreme State Audit	3
6.	The Presidency	1
<b>TOTAL</b>		<b>11</b>

The Commissioner has asked the human resources units of the above institutions to take immediate measures to restore the status of legality, terminating the employment relationship in the civil service due to the law on the above employees and their job positions should be announced vacant, to be completed through competition procedures.

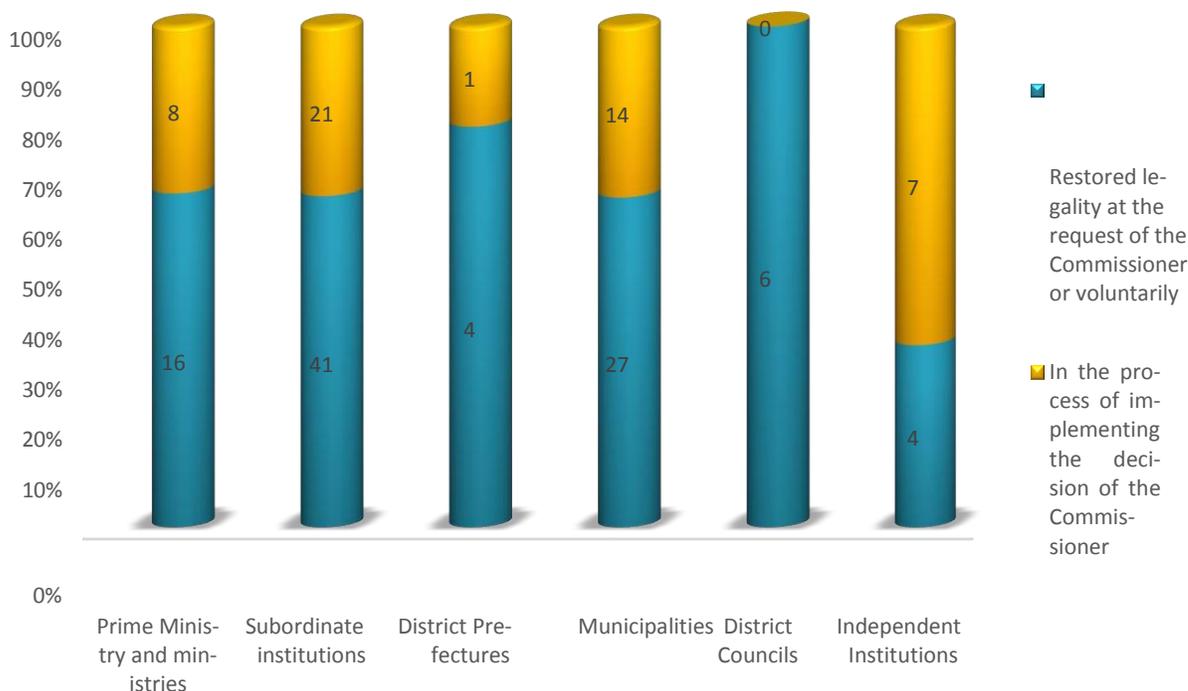
After the procedural deadline, left in the ordering part of the decision, the human resources management units have reported about the measures taken for the implementation of the warning decision. At the time of reporting, the situation is as follows:

- In **4** cases or **36%** of them, the employment relationship was terminated due to reaching the age of full retirement pension pursuant to the decision of the Commissioner;
- In **7** cases or **64%**, the responsible units are in the process of fulfilling the legal obligation.

In the analysis of the data reflected above, the general situation regarding the return of the state of legality in accordance with article 65, point 1/c of law no. 152/2013, “*On the civil servant*”, amended, in the state administration, local government units and independent institutions, is presented in the following graph:

**Graph no. 7.1**  
article 65.

*The general situation of restoring legality in the cases of employees under the conditions of point 1, letter "c", of law no. 152/2013*



From the data presented above, it results that out of **149** cases identified during 2019, in **98 cases** or **66%** of them, the employment relationship in the civil service has been terminated (of which **82** cases pursuant to the decision of the Commissioner and **16** cases, the employment relations are terminated by the institutions themselves at the moment of reaching the age for full retirement pension by employees), while **51 cases** or **34%** (8 cases in the apparatus of the Prime Minister and ministries, 21 cases in institutions under them, 1 case in the District Prefecture, 14 cases in municipalities and 7 cases in independent institutions) are in the process of restoring legality and at the end of the deadline left in the warning decisions, will notify the Commissioner.

As evidenced by the data analyzed above, the reaction of the institutions has been immediate to correct the violations found in relation to this aspect of civil service administration. The Commissioner is constantly following this process, which will continue throughout 2020.

## CHAPTER VIII

### IMPLEMENTATION OF FINAL COURT DECISIONS AND RETURN OF PREVAILING CIVIL SERVANTS ON DUTY

#### 1. The progress of the process and the situation which presents the implementation of legality in the execution of court decisions

Referring to article 66/1, point 1, of law no. 152/2013, “*On the civil servant*”, amended, every institution which has civil servants employed, must take measures for the execution of final court decisions for the reinstatement of civil servants in office, as well as pay them for the entire time of unemployment.

The responsible unit, pursuant to the content of this provision, in order to execute court decisions on time, to respect the rights of the civil servant, as well as to reduce the financial damage to the state budget, must reinstate the prevailing civil servant or create a court database and compile a waiting list for civil servants for whom a return to a regular civil service position is objectively impossible.

The process of supervising the execution of court decisions by the Commissioner is based exactly on the provision cited above as well as articles 14 and 15 of law no. 152/2013, “*On the civil servant*”, amended, which define the institutional competencies.

Also, for the realization of this process, a special task has been left for the Commissioner in the Resolution of the Assembly of Albania “*On evaluating the activity of the Commissioner for Civil Service Oversight for 2018*”, as well as for the Department of Public Administration, in the Resolution of the Assembly of Albania “*On the evaluation of the work of the Department of Public Administration (DOPA) for the situation in the civil service for 2018*”, where DOPA has been asked to continue the work for the implementation of final court decisions, in cooperation with the Commissioner, as well as with all public administration institutions.

This aspect of law enforcement has been discussed at length, due to its importance, but, during the monitoring of the process, the Commissioner found that the institutions were unprepared to act quickly and efficiently, which is reflected in the fact that the database was missing, and consequently also the waiting list to determine the cases and the order of execution of court decisions was missing.

But, on the other hand, during this process the Commissioner has encountered difficulties of various natures that hinder the ability to act quickly in time to adjust the legality in this case, which are reflected in the high number of unenforced decisions as well as of the institutions ascertained with such cases; in the lack of financial budget, as well as in the difficulties of implementation in practice of article 66/1, of law no. 152/2013, “*On the civil servant*”, amended, as every court decision contains different circumstances, which in some

cases present objective problems to be executed, as it will be analyzed in detail later in this section.

In these circumstances, the Commissioner, in the role of supervisor, has assessed to continue this process by monitoring the activity of the responsible units, whose functional duty is the implementation of court decisions, dividing the work into several stages. In the case of the state administration, the responsible unit is DOPA, which carries out the process in cooperation with the Special Commissions set up in each institution.

This process has started in 2018 with order no. 589, dated 01.08.2018, of the Commissioner “*On initiating the process of monitoring the implementation of final court decisions for the return of civil servants on duty*”.

At the beginning of the supervision, the process consisted of data collection in the main state administration institutions (*line ministries and some central subordinate institutions (DPT and DPD)*), as well as in the independent and local administration institutions, which included **112** institutions.

Further, the process has continued during 2019 with order no. 10, dated 21.01.2019, of the Commissioner “*On the beginning of the inspection for cases of non-implementation of final court decisions, for the return of civil servants in office, in institutions that are subject to the law on civil servants*”, starting the administrative investigation for each case found in violation of the law.

The Commissioner, after verifying the preliminary data sent by the institutions and ascertaining inaccurate and often contradictory information, has continued working in another phase of the process, requesting the reorganization, updating and reconciliation of the data, as well as the submission of all the documentation administered by them during the process of execution of court decisions, which includes court decisions and the analysis of the activity of the Special Commission, as a mechanism set up to give direction to the solution of this problem.

Also, at this moment it was requested to fill in the data for all subordinate institutions (**96** institutions), which had not been managed to be administered before.

In conclusion, until the moment of reporting, the Commissioner has communicated and administered data from **208** public administration institutions, including line ministries, subordinate institutions of state administration; independent institutions and local administration institutions, of which **36** of them resulted with problems (**11** line ministries, **6** subordinate institutions, **11** municipalities, **5** District Councils and **3** independent institutions).

In order to unify the database, the Department of Public Administration has made functional the *administration.al* system, which is being populated with data from state administration institutions, and to which, have access to upload data and to be users, all institutions that are part of the public administration.

Below we present a summary table of the process in order to identify the cases found and the progress of the implementation of court decisions:

**Table no. 8.1** Data on the situation of execution of court decisions that have become final, relating to civil servants, who have won the right to return to the civil service, according to the typology of institutions

The situation reflected numerically according to the typology of institutions	(1) Final court decisions for return to the civil service, until December 31, 2019 ( <i>executed or on the waiting list</i> ) (2+3)	(2) Prevailing civil servants returned to a regular civil service position, 31 December 2019	(3) Winning civil servants on the waiting list, December 31, 2019
State administration institutions	<b>433</b>	<b>170</b> (39%)	<b>263</b> (61%)
<i>Line ministries</i>	186	71	115
<i>General Directorate of Customs</i>	30	30	0
<i>General Directorate of Taxes</i>	187	44	143
<i>Other subordinate institutions</i> (96 institutions)	30	25	5
Local administration institutions	<b>152</b>	<b>62</b> (41%)	<b>90</b> (59%)
Independent institutions	<b>16</b>	<b>4</b> (25%)	<b>12</b> (75%)
<b>TOTAL</b>	<b>601</b> (100%)	<b>236</b> (39%)	<b>365</b> (61%)

As shown in this table, as of December 31st, 2019, there are **601** final court decisions binding to be executed, of which **236** decisions, or 39% of them have been implemented and the employees have been returned to the civil service, or have been released from the civil service for legal reasons (*full retirement pension or resignation*) and **365** decisions or 61% of them, the winners have been registered in the waiting list, to be placed in a regular position of the civil service.

Analyzed according to the typology of institutions, the situation is presented as follows:

- in the state administration institutions, **433** final decisions have been identified, of which: in **170** cases (*or 39%*) of them, the prevailing civil servants have been reappointed to a civil service position and **263** cases (*or 61%*) of them are still on the waiting list, which shows that these institutions represent the highest number of court decisions that have become final in favor of the civil servant removed or dismissed from the civil service, as well as not yet implemented.
- in the local administration institutions there are **152** final court decisions of which **62**, (*or 41%*) of them have been executed while **90** cases (*or 59%*) of them are on the waiting list to be executed.
- Regarding independent institutions, **16** cases of court decisions have been identified, of which **4** have been executed and **12** are on the waiting list.

Unlike a year ago, when the process focused on collecting data and creating a database, as it was completely missing, currently this moment has been overcome. The Commissioner has already established a database and has continued to analyze court decisions on a case-by-case basis, initially focusing on the institutions that have the largest number of them, belonging to the state administration.

This process is taking place through hearings which are organized at the headquarters of the Commissioner, in which by the end of the year being reported, all line ministries have been included. In these sessions, as a source of data for the acts on which the analysis is conducted are evaluated:

- a) written and electronic information sent by the Department of Public Administration and all institutions involved in the scope of the law on civil servants;
- b) Statements of representatives of institutions and DOPA during the hearings.
- c) Written acts received from bailiffs or civil servants themselves that are subject to article 66/1 of the law on civil servants;
- d) Verifications performed by CCSO inspectors in state administration institutions in relation to this object.

Simultaneously with this process, the Commissioner has assisted the institutions to fulfill the legal obligations that arise for the execution of court decisions, by sending his inspectors to the subject, as well as communicating with them through all means provided by law. Communication with the subjects has not been interrupted at any point and still continues intensively, in order to provide objective data that present the reality and during the hearings to achieve concrete results to help solve this problem which is of particular importance in the implementation of the civil servant law.

Estimating that the most significant problems in this area lie within the institutions of state administration, which account for about 71% of court decisions in total and 72% of decisions not yet executed, hearings began with 11 line ministries. This process was conducted with the participation of representatives authorized by the relevant institutions and the Department of Public Administration, in the role of the responsible unit.

In these sessions, all cases of employees registered in the waiting list, who have not yet been placed in a suitable job position in the civil service, have been treated nominally. During this process, the concrete situation was presented by the institutions and DOPA, as well as the problems encountered during the implementation of the final court decisions which, for the purpose of analysis, we are grouping in this way:

- job cuts, as a result of restructuring, or filling the job position through competition procedures;
- change of job descriptions, which are being reviewed according to the proposals of the IPA 2014 project “*Implementation of the civil service reform in public administration*”, for all civil service positions. As a result, in some cases for job vacancies in the civil service, the job descriptions have not yet been approved, a fact which prevents the selection of civil servants from the waiting list that meet the specific criteria for vacancies.
- in some cases, it is alleged that the dismissed employee no longer meets the special criteria of the job position, as they have changed as a result of the restructuring.
- Refusal of the prevailing civil servant, in cases when he/she has been offered another job position, equivalent to the one at the moment of dismissal.
- The contact with the civil servant has been lost, or the obligation to settle the civil servant has come from another institution as a result of restructuring and therefore the file of the civil servant with his data is not available, etc.

At the end of each hearing session, for the institution and DOPA, the Commissioner has left concrete tasks to be completed within a certain deadline. The Commissioner requested that the representatives who participated in these hearings, authorized by the relevant institutions, forward the tasks left to the Special Commissions, set up for the execution of final court decisions, as well as case by case, to other officials charged by law with specific roles in this process.

From reporting or verbal communication in the ongoing sessions, it has been ascertained that not all the tasks left in the previous hearings have been implemented, which consist especially in the meeting of the Special Commission with the obligatory participation of the DOPA representatives, aiming at analyzing the cases and sending concrete proposals for appointment to DOPA, and consequently the situation of illegality has not changed.

In these conditions, through an official letter, each institution was requested to send to the Commissioner concrete proposals of the Special Commission, for the placement in civil service positions, of employees on the waiting list. Also, with the same letter, the attention of the members of the Special Commission has been drawn for non-fulfillment on time of the obligation imposed by order no. 5151, dated 28.10.2015, of the Minister of State for Innovation and Public Administration, *“Implementation of final court decisions by state administration institutions, included in the field of civil service law enforcement”*.

The Commissioner, evaluating the importance of the case review process by the Special Commission, has decided to monitor it in real time, participating through his representative in the meetings held by this body, and therefore has requested to be notified on time by the institution. Currently this process has started during 2020 and is ongoing.

During the hearings, shortcomings were also found in the activity of the subjects that execute the court decisions, among which we are listing some of them below:

- ❖ In general, the Special Commissions have not investigated and consequently have not analyzed the facts that occurred after the termination of employment with civil servants, facts related to the activity of the employee during the period of termination of employment.

This procedural step is of particular importance, as it relates to the activity of the employee during the period of termination of employment, in relation to the rules established by the civil servant law.

In this context, the subjects charged by law have not investigated the activity of the civil servant, in relation to the following aspects:

- Has he been employed in other institutions of public administration, as it is ascertained that the institutions have made full payments to the beneficiaries, while they have been employed in other institutions of public administration. To prove this fact a statement must be required from the winning employee.
- Does he meet the general criteria for being a civil servant, due to the fact that it may happen that during this period the civil servant has been convicted by a final decision; may have lost the Albanian citizenship due to the acquisition of another citizenship; may have become incapable of work; senior management civil servants may have been involved in political entities, and other aspects of activity that do not comply with the requirements of the law.
- Does he meet the general criteria for being a civil servant, due to the fact that it may happen that during this period the civil servant has been convicted by a final decision; may have lost the Albanian citizenship due to the acquisition of another citizenship;

may have become incapable of work; senior management civil servants may have been involved in political entities, and other aspects of activity that do not comply with the requirements of the law.

- Is there a possibility for conflict of interest, in cases when the civil servant is of middle or senior management level? He must be required in advance to submit a declaration of private interests in compliance with law no. 9049, dated 10.04.2003, “*On the declaration and checking of assets, financial obligations of elected officials and some public servants*” as well as a statement on conflict of interest referring to law no. 9367, dated 7.4.2005, “*On the prevention of conflicts of interest in the exercise of public functions*”, acts which in addition to the legal obligation would assist the Special Commission to analyze the situation.
- Is the winning civil servant interested in reestablishing the employment relationship with the institution, or does he only demand unpaid salaries. It may be that the civil servant has already been placed in another job position and has no interest in being appointed to the position ordered by the court decision.

The Commissioner has ascertained that in some cases, when contact with the civil servant was lost by the state institutions, no attempt was made to cooperate with other competent institutions to find his place of residence, in order to notify the civil servant of all administrative actions that are being carried out in relation to him.

In other cases, the Special Commissions, assessing the impossibility for the resettlement of the employee within the institution, have suspended the execution process and the practice for settlement has not been forwarded to DOPA, as an institution which has the opportunity to offer other vacancies, outside the institution, where the qualification and experience of the employee meet the specific criteria of the vacancy.

For these reasons, the Commissioner has asked the institutions to cooperate closely with DOPA and make it part of their efforts to execute court decisions.

- ❖ In some cases, when the winning civil servant, without reasonable reasons, has refused to be settled in the position proposed by the Special Commission, the latter has not followed the appointment procedure further, but has continued to propose new positions, therefore not finalizing the process even at the moment that we are reporting.

In these cases, the Special Commissions must follow the procedure following all the legal avenues to resolve the issue. After analyzing the obligations deriving from the executive title, which in our case is the court decision (*summarized in the enacting clause of the decision*), it is acted by correctly applying it. If the job position held by the employee at the time of termination of employment does no longer exist, as a result of restructuring, or has been filled with another civil servant, referring to the enacting clause of the decision and article

66/1, of law 152/2013, “*On the civil servant*” amended, another position is proposed to the civil servant, where his qualification complies with the special criteria required by the job position.

A special attention must be paid with the procedure regarding notices and deadlines. After it has been acted in full compliance with the law and the court decision, but the civil servant still refuses without justified reasons to be placed in office, then the bailiff is asked first and then the court, to terminate the execution of the obligation of the institution to replace the civil servant in the civil service. At that moment, the payment should be terminated also, as it is considered that the employment relationship has been terminated.

It is important to note at this point that, in this procedure, the reappointment of the civil servant must be handled carefully, as he must be placed in the same civil service category which he held at the time of release or dismissal from duty. Only if the Court in the final decision has ordered resettlement also in a lower category, a lower category position can be proposed to the employee. This fact is emphasized because, it has been ascertained that in many cases, the civil servant has been proposed to be appointed in one or two lower categories than what he previously held. This action is considered as committed in violation of both the law on civil servants and the court decision.

- ❖ It is ascertained that the payment of obligations arising from a court decision, (*salary, social and health insurance, as well as seniority at work*), as well as respecting the order of payment of the obligation, are not carried out according to a unified procedure by the institutions which have such obligations.

Compared to a year ago, when there were rare cases of repayment of obligations, during this year the number of cases of payment of the value of the obligation deriving from the right to pay the salary has increased significantly. It turns out that in most cases, these payments are made in the form of compensation, which is disbursed in different periods of time and not as wages, which have in their structure also tax liabilities, social and health insurance, or seniority at work.

According to the data reported by institutions, it turns out that currently the amount of **511,748,508** ALL has been paid from the state budget, in favor of the winning employees, pursuant to court decisions.

In order to avoid problems related to these very important elements of the execution of the court decision, the institutions should unify the practice according to the instructions that should be issued by the Ministry of Finance and Economy, or the Department of Public Administration.

To assist in this process, in the framework of institutional cooperation, as well as of the tasks left by the Assembly, the Commissioner has addressed the specialized institutions in this field, which are the Supreme State Audit, the Ministry of Finance and Economy and the

Department of Public Administration, seeking unification of attitude in this case.

The Supreme State Audit has responded to this request by drafting an instruction for the inspectors of SSA, regarding how they should act during the audit exercised by them in the institutions where these cases are found. The Commissioner was informed by the Department of Public Administration that this institution has requested assistance from the Ministry of Finance and Economy, as an institution specialized in this field, which has not yet responded regarding this aspect.

However, although there are still problems in the implementation of court decisions, it is important to emphasize the fact that comparing the situation with the beginnings of the monitoring process, the Commissioner estimates that at this moment of reporting, the state institutions in cooperation with DOPA, have made serious efforts towards regulating the legality and improving the situation of the civil service administration, which is reflected in the following directions:

- ✓ A Special Commission has been set up at each state administration institution, charged by the bylaws to provide a solution to this problem accumulated over the years.
- ✓ All cases of winning civil servants have been identified, creating a database for each specific case.
- ✓ A waiting list has been created with the winning civil servants, both within each institution as well as at DOPA, on the administrata.al platform.
- ✓ In most of the central state administration institutions (Ministries) a significant part of the arrears of salaries has been paid to the winning civil servants.
- ✓ The Special Commissions have made efforts to accommodate the winning civil servants, by proposing to them positions which have been vacant in the institution and a significant part of them have been accommodated.

Likewise, if the current situation will be assessed in the optics of the forecast of point 2 and 3, of article 66/1, of law no. 152/2013, “*On the civil servant*”, amended, which explicitly provides that:

2. “*If the return of civil servants to duty, according to point 1 of this article, is objectively impossible, then they are registered in a waiting list until their placement in a regular position in the civil service. The list is administered by the responsible unit.*”

3. *During their wait on the list, civil servants are paid according to their last position in the civil service.”*

we estimate that, now in general, the state administration institutions administer the waiting list and continue to pay the salary according to the court decision.

But, on the other hand, despite this fact, state institutions and DOPA, in the role of the responsible unit and responsible institution for the management of the waiting list, must continue the process until the final arrangement of the winning civil servant, in a regular civil service position, in order to avoid paying the employee due to a court decision, without working. As long as there are vacancies in the structure of the institutions, they should first be offered to civil servants from the waiting lists, who meet the criteria to work in them.

According to the data administered by the reports of DOPA, of institutions as well as by the verifications of the Commissioner, it results that in 11 line ministries, there are currently **228** vacancies (*categorized according to the level of civil service: 17 senior management level; 33 middle management level; 43 lower management level; 135 executive level*), while there are **115** decisions to be executed (*categorized according to the level of civil servants who have won the trial: 13 senior management level; 36 middle level management; 23 lower management level and 43 executive level*).

As presented above, there is a possibility that the vacancies, which currently appear about 2 times more than those needed for the execution of court decisions, will be analyzed by the Special Commissions, to be proposed to the Department of Public Administration, in order to continue the appointment process from the waiting list, for those winning civil servants who meet the criteria to be appointed pursuant to a court decision.

As annexes to this section, we will present some tables, attached to the report (*annex 2 to 13*), through which the whole process is materialized, where the administrative actions performed by the special bodies are evidenced in detail and as well as nominally reflecting every employee who has gained the right to return to the civil service, in the state administration institutions (*11 line ministries*).

Supervision of the execution of court decisions is a dynamic process, where the data are updated at all times, as new court proceedings begin and previously initiated court proceedings end, and consequently new court decisions are added for execution. Likewise, on the other hand, court decisions which have been in process during previous reporting are executed, which causes the reported figures to change frequently in different time periods. The situation until December 31<sup>st</sup>, 2019 is presented in the tables attached to this material.

Following this process, the Commissioner will continue to work following the implementation of the law during the activity of the Special Commissions, by participating in these meetings, in order to speed up the process and ensure proper and unified implementation of the law.

Likewise, during 2020, local administration institutions and independent ones that still have unenforced decisions will be included in the hearings.

## 2. The possibility of error in the application of article 66/1, of the law on civil servant by the institutions and the difficulties encountered in carrying out the process of execution of decisions regarding the realization of the process of execution of decisions

As it was pointed out a year ago, the Commissioner estimates that, a serious obstacle to the execution of final court decisions, are also the spaces for misinterpretation allowed by law no. 152/2013, “*On the civil servant*”, amended, in this institute of it.

The way of execution of final court decisions is defined only in one provision of this law (*article 66/1*) and in two administrative acts of regulatory character, which are Instruction No. 1, dated 04.06.2014, of the Council of Ministers, “*On the way of execution of monetary obligations of the General Government Units in the treasury account*”, which sanctions rules only for financial compensation and Order No. 5151, dated 28.10.2015, of the Minister of State for Innovation and Public Administration, “*Implementation of final court decisions by state administration institutions, included in the field of implementation of the civil service law*”, which is a sub-legal act issued by an institution which currently does not exist and therefore has no possibility to further develop it and which provides only procedural rules, not defining in any case the content of the process.

On the other hand, this regulatory act is not binding on local government institutions and independent institutions, which employ civil servants.

In these conditions, where the methodologies to be followed during the process of execution of decisions are not clearly defined, institutions find it difficult to act, as they face difficulties of various natures, and in some cases, where the final court decision is executed by them, the civil servant again opposes it judicially. The aspects that should be clearly defined in the legislation, or through certain methodologies that should be drafted in this case, in order not to leave room for misinterpretation, relate especially to the moment when the job position held by the employee before leaving is abolished or is not vacant and the institution must propose to him another job position in the same category. Article 66/1, in points 4 and 5 of it, has sanctioned that:

4. “*The responsible unit is obliged that at the moment of creating a vacancy in the civil service, to appoint, initially, with their consent, civil servants who are registered in the list, **according to the respective category and who meet the criteria of the job position.***”

5. *These employees, with their consent, can also be arranged to fill vacancies, created temporarily. The responsible unit in this case makes the temporary appointment of these employees.*

Referring to this legal provision, the institution, in order to execute a final decision must meet two cumulative conditions; **a) to appoint the employee to a job position in the category he held before leaving** and **b) to make sure that this employee meets the criteria of the job position offered to him.**

Law no. 152/2013, “*On the civil servant*”, amended, in Chapter III, article 19, has exhaustively defined how job positions in the civil service are classified. From this provision it is sanctioned that job positions in the civil service are divided into 4 categories which are: senior management; middle management; lower management; executive.

The classification of job positions part of the civil service in these cases is based on the job description of each position. Further, the legislator has determined that each category is divided into classes. Point 9, of article 19, of law no. 152/2013, “*On the civil servant*”, amended, sanctions that the Council of Ministers approves:

- a) applicable classes for each of the categories;
- b) the general job description for each category, class and groups according to this article, as well as special administration groups;
- c) general requirements for admission to each category, class and groups according to this article;
- d) the naming of positions that belong to each class, category or group;
- e) the methodology of classification of a position in a certain category, class and group.

Pursuant to this legal provision, the Council of Ministers has approved Decision no. 142, “*On the description and classification of job positions in state administration institutions and independent institutions*”, which defines in detail all the points presented above.

The classes of each category are defined in this sub-legal, and furthermore also the methodology of classification of job positions, unifying similar civil service positions and defining the special criteria that must be met by the employee.

There are cases when, in full implementation of the above legal acts, the employment of employees in the same category (e.g. executive) has been done and in a job position where the employees met the special requirements of the job position, but the appointment was refused by them on the grounds that the position offered was not of the same name or of the same class.

Likewise, there have been cases where there have been claims regarding the level of salary, although this element of the employment relationship is variable.

Due to the fact that article 66/1 of law no. 152/2013, “*On the civil servant*”, amended, does not clearly define what is understood with “*equivalent position*”, what should these job po-

sitions have in common, and in case there is changes in class, will the decision be considered executed, this legal gap has led to obstacles or delays in the execution of court decisions.

An important point that should be discussed as an argument for the difficulty in the execution of court decisions, which is related to a significant number of unenforced decisions, is also the case of court decisions which have been made before the onset of the effects of the current law, on civil servant. The law, which regulates the administration of the civil service, radically changes the employee's relationship with the status of civil servant, as it considers the status as a right related to the person and not to the job position.

The previous law no. 8549, dated 11.11.1999, "*On the civil servant status*", now repealed, provided that the status of the employee was associated with the job position where he had competed and was confirmed as a civil servant. This law did not at any time provide for the concept of the Senior Management Corps (*TMC*), or the division into categories of job positions (*senior, middle, lower and executive*), as regulated by the current law.

This situation makes the decision of the court practically unenforceable, if the winning employee will take a stance and ask to be appointed only in the same job position where he was before and where the court returned him, by decision. This has been also one of the main reasons, which has led to the non-execution of court decisions in the Ministry of Agriculture, where top management civil servants are paid from 2006 onwards, for each month, while being employed in other institutions.

Another clarification that should be made in the law is the determination of the importance of the "*salary*" element in the equivalence of job positions. This, due to the fact that, the courts have annulled the administrative acts through which during the process of restructuring or execution of a final court decision, a civil servant has been appointed to a job position within the same category, but with a lower level of salary. From the content of the decisions it is noticed that in the legal reasoning, there is no division between the "*salary level*" and the "*job position category*", as these aspects represent two different concepts. Article 66/1 of law no. 152/2013, "*On the civil servant*", amended, in its point 4 refers only to the category of the job position and not the level of salary.

Based on the above, it is concluded that law no. 152/2013, "*On the civil servant*", amended should be improved by sanctioning legal solutions to the following issues:

- How should the institutions act, in cases when, the category or class of the job position held by the winning civil servant at the time of dismissal has changed;
- How should the institutions act, in cases when, the salary level of the job position has changed, because as discussed above this element is variable. This definition in law is necessary as the courts have concluded that salary is a very important element of the employment relationship, and in the civil service law, the concept of job position cate-

gory is different from the salary level. In the conditions when the current law does not provide any definition regarding this important element of the employment relationship, there is room for improvement by addressing and finding solutions for this issue, in order to enable the correct execution of court decisions.

- How should the institutions act, when the employee unjustifiably refuses the job position? In the instruction no. 5151, dated 28.10.2015, “*On the implementation of final court decisions by state administration institutions, included in the field of implementation of the civil service law*”, some general rules have been defined, but the institutions are not oriented through them with regards to further legal steps needed to be taken. Moreover, this act, as we explained, has come out of an institution, which is currently closed, and consequently cannot further develop it. On the other hand, this regulatory act is not binding on local government institutions and independent institutions, which employ civil servants and have cases when they must execute court decisions of the nature we are discussing.
- How should the institutions act if the civil servant, from the time of dismissal or release from the civil service, until the moment of execution of the court decision, has been employed by another state or private institution?
- How should the amount of compensation be calculated? How will be treated financially and further, will they be registered in the waiting list, the civil servants who during the period of the court proceedings, and then in the period after the beginning of the execution live and work abroad?

Resolving these issues through the completion of the legal framework has been requested also a year ago by the Commissioner, but acts have not yet been finalized to fix this legal vacuum, the existence of which would facilitate the process of execution of final court decisions and would significantly reduce the annulment or abrogation of administrative acts by the court.

## CHAPTER IX

### ONGOING SUPERVISION AND PROGRESS OF IMPLEMENTATION OF THE COMMISSIONER'S DECISIONS

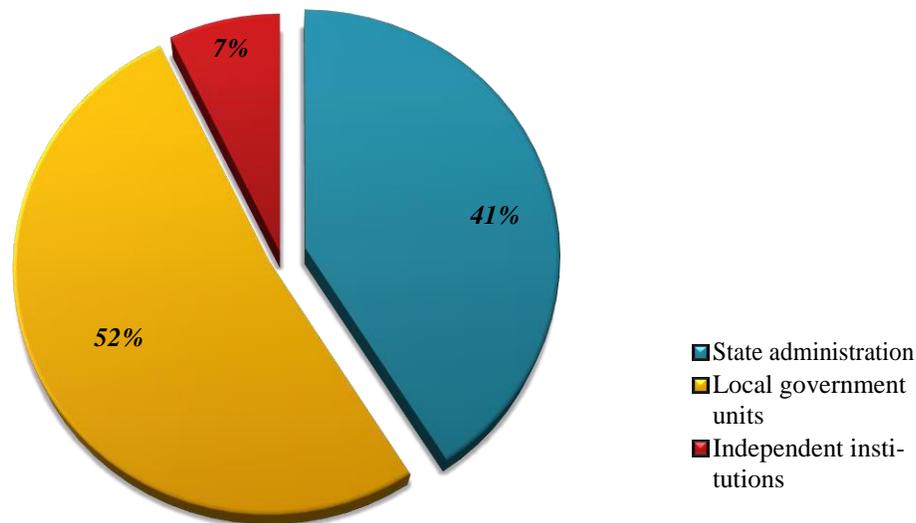
#### 1. Level of implementation of the Commissioner's warning decisions

For the period January - December 2019, after the expiration of the deadline left by the Commissioner in the warning decisions, the ongoing supervision process (*the verification process of the implementation of the warning decisions*) was carried out in the subject for **83** institutions, of which:

- **34** or **41%** of them belong to the state administration (*5 ministries and 29 subordinate institutions*)
- **43** or **52%** of them to local government units (*3 district councils and 40 municipalities*)
- **6** or **7%**, to independent institutions.

Graphically, this situation is presented as follows:

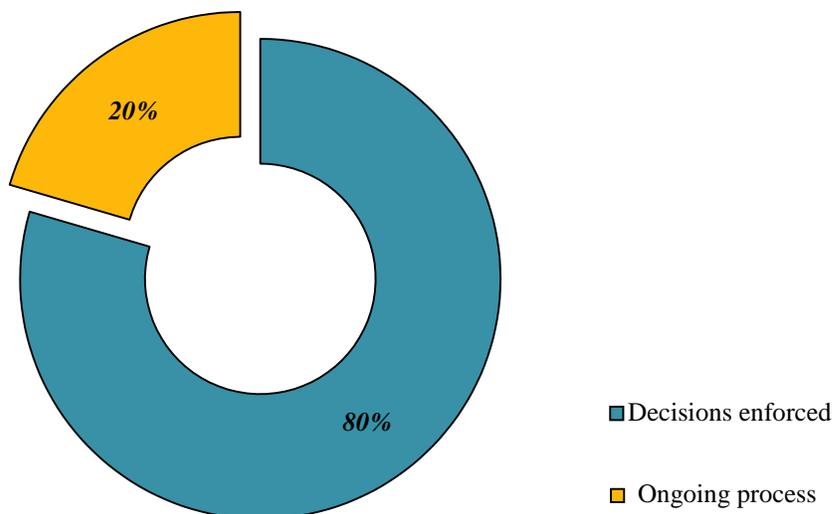
*Graph no. 9.1 Ongoing oversight process according to the typology of institutions*



At the end of the verification, it results that the tasks left by the Commissioner in the warning decisions have been fully implemented by **66** institutions or **80%** of them (*28 state administration institutions, of which 5 ministries and 23 subordinate institutions; 34 local government units, of which 31 municipalities and 3 district councils; and 4 independent institutions*) and in **17** cases or **20%** of them, the process is ongoing in different phases (*6 subordinate state administration institutions, 9 municipalities and 2 independent institutions*).

Graphically, this situation is presented as follows:

*Graph no. 9.2 The situation at the end of the ongoing supervision process*



In numerical terms, in relation to the tasks defined in the enacting clause of the warning decision of the Commissioner for the regulation of the state of legality in the administration of the civil service, this situation is presented as follows:

In **66** subjects (of which 28 state administration institutions, 34 local government units and 4 independent institutions) the process of verification of the warning decision has been completed and it results that the tasks left by the Commissioner have been fully accomplished as follows:

❑ **In the state administration:**

1. The Human Resources Unit has taken immediate measures to restore the state of legality, by terminating the relationship in the civil service due to the law (*article 65, point 1/c*) in **53** cases.
2. In **36** cases, the administrative acts for appointments made in violation of the law were revoked or annulled, and the employment relations were terminated.
3. The responsible unit (DOPA) has annulled the administrative act for the declaration of the employment status of the civil servant, thus changing the positioning in relation to the civil service, from “*civil servant*” to “*civil servant on probation*” in **1** case.
4. The act of refusal of the civil servant status has been issued in **2** cases, due to non-fulfillment of the legal conditions by the employees.
5. The act of declaration of the civil servant status has been issued in **1** case.

☐ In the local government units:

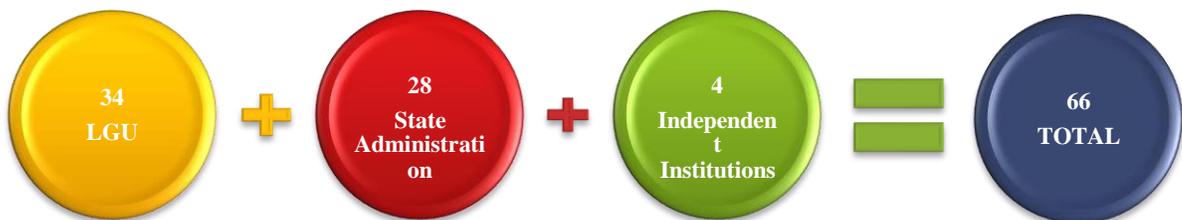
1. The Human Resources Unit has taken immediate measures to restore the state of legality, terminating the relationship in the civil service due to the law (*article 65, point 1/c*) in **25** cases.
2. The administrative acts for appointments made in violation of the law were re-vo-  
ked/annulled and employment relationships were terminated in **44** cases.
3. The employment relationship for the employees has been terminated in order to guarantee  
the integrity of the persons who are elected, appointed or exercise public functions in **1**  
case.
4. In **2** cases has been ascertained the absolute invalidity of the act of transfer.
5. The act of declaration of the employment status has been annulled, thus changing the con-  
tent from “*civil servant*” to “*civil servant on probation*” in **1** case.
6. The act of refusal of the civil servant status has been issued in **1** case, due to non-  
fulfillment of the legal conditions by the employees.
7. The employment relationship has ended due to non-fulfillment of the educational level cri-  
teria in **1** case.
8. The administrative act of declaration of employment for employees has been issued in **16**  
cases.

☐ In the independent institutions:

1. The Human Resources Unit has taken immediate measures to restore the state of le-  
gality, by terminating the relationship in the civil service due to the law (*article 65,*  
*point 1/c*) in **4** cases.

Graphically, this situation is presented as follows:

*Graph no. 9.3 Implementation of recommendations according to the typology of institutions at the end of the ongoing oversight process (verification of the implementation of warning decisions)*



The situation of implementation of the Commissioner's recommendations identified above is summarized in the following table:

**Table no. 9.1** Implementation of the Commissioner's recommendations (cases of general/thematic supervisions/inspections)

INSTITUTIONS	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED
State administration	28 (42%)	-
Local government units	34 (52%)	-
Independent institutions	4 (6%)	-
<b>TOTAL</b>	<b>66 (100%)</b>	-

In **17** subjects, for which the verification process of the warning decision of the Commissioner is ongoing, it results that:

In the state administration, the Commissioner has requested:

1. To take immediate measures to restore the state of legality, by terminating the relationship in the civil service due to the law (*article 65, point 1/c*), in **30** cases.

In the local government units, the Commissioner has requested:

1. To take immediate measure to restore the state of legality, by ending the relationship in the civil service due to the law (*article 65, point 1/c*), in **14** cases.

In the independent institutions:

1. To take immediate measures to restore the state of legality, by terminating the relationship in the civil service due to the law (*article 65, point 1 c*), in **7** cases.

## 2. Implementation of the Commissioner's warning decisions at the end of the administrative investigation process for individual cases

During the reporting period, in parallel with monitoring the implementation of the warning decisions, which have been issued at the end of the general or thematic supervision/inspection process, the Commissioner has followed also the implementation of the warning decisions issued at the end of the administrative investigation of individual cases. For the period of January - December 2019, in the ongoing supervision process (*the process of verifying the implementation of the warning decisions*) are included **11** individual cases, where all cases belong to the state administration of which: 1 ministry and 10 subordinate institutions). Graphically this situation is presented as follows:

At the end of the verification of the implementation of the Commissioner's recommendations, the verification process was concluded with a decision of the Commissioner, where it resulted that all institutions have fully implemented the tasks left in the warning decision.

As we have noted also in the previous reports, given the serious efforts of the supervised institutions to regulate the situation of illegality in accordance with the tasks left by the Commissioner in the warning decisions, it can be said with conviction that the role of this institution has increased significantly from year to year, which motivates us to continue more and more our efforts and commitment in fulfilling the purpose of the law to create a stable, professional civil service, based on merit, moral integrity and political impartiality.

## 3. The Commissioner as a party in court proceedings

During 2019, the Commissioner has continued to participate in trials conducted by administrative courts in different districts of the country, summoned as a defendant or a third party by them, in cases when the trial has had as its object disputes relating to various institutes of law no. 152/2013, "*On the civil servant*", amended, regardless of whether or not there was a decision-making on his part, for **9** cases.

It is worth mentioning that the recommendations of the Commissioner before the court were considered fair and have been taken into consideration by the latter, in resolving the administrative disputes.

## INSTITUTIONAL COOPERATION AND FOREIGN RELATIONS

In addition to the activity of the institution pursuant to law no. 152/2013, “*On the civil servant*”, amended, the Commissioner has had in the focus of his work also the cooperation with counterpart institutions (*quasi homologues*) or other foreign organizations operating in the field of public administration, in order to exchange inter-institutional experiences.

In the framework of the membership of the Commissioner for Civil Service Oversight at the International Institute of Administrative Sciences (IIAS) and the International Association of Schools and Institutes of Administration (IASIA), organisms operating in the field of public administration, dates 18 - 21 June 2019 and 22 - 26 July 2019, the Commissioner participated respectively in the International Congress 2019 of IIAS, in Singapore and the Annual Conference 2019, of IASIA, held in Lisbon.

During these events, important topics were addressed, such as:

- “*Efficient, responsible and inclusive governance*”, which is one of the main challenges of all societies that aspire to ensure equal opportunities and realization of the fundamental rights of citizens through their decision-making process, being extremely important principles for any institution of public administration, as they constitute the basic pillars of its functioning, especially for an institution which the legislator has conceived as a guarantor in that part of the government that has to do with the administration of the civil service.
- “*Goals and mission of Public Administration for achieving sustainable development*”. As part of the public administration, to which the law has clearly given the role of the controller of all public institutions that employ civil servants, in order to create, among others, a stable and professional civil service, the participation in this conference of the Commissioner for Civil Service Oversight was of great value not only in terms of fulfilling the tasks assigned to it by law, but also in the framework of the Public Administration Reform Strategy.

On the other hand, during this year the Commissioner has continued to report on the activity of the institution on the following issues:

- Reporting in the framework of the implementation of the Resolution of the Albanian Parliament for the evaluation of the activity of the Commissioner for the Civil Service Oversight for 2018

- Period reporting in the framework of the implementation of the Action Plan of the Inter-sector Strategy for Public Administration Reform 2015-2022
- Reporting in the framework of the 8th meeting of the Special Group for Public Administration Reform
- Reporting in the framework of drafting the contribution of the Albanian Government for the Report of the European Commission for Albania
- Reporting within the Stabilization and Association Committee European Union - Albania
- Periodic reporting within the mechanism set up by the Albanian Parliament to monitor the implementation of the recommendations of independent institutions

## CHAPTER XI

### HUMAN RESOURCES AND FINANCIAL MANAGEMENT DURING 2019

#### 1. Human resource management

The Secretariat of the Commissioner for Civil Service Oversight is the support structure of the Commissioner in fulfilling the duties assigned by law. This structure operates with all the capacity of human resources approved by the Decision of the Assembly no. 98, dated 4 December 2014, “*On the approval of the structure, staff and categorization of job positions of the Commissioner for Civil Service Oversight*”. The staff of this Institution envisages **31** job positions, of which **25** positions are part of the civil service.

During the five-year period since its inception, this institution has continuously tried to fulfill all the tasks assigned to it by the law with professionalism, impartiality and within reasonable deadlines, despite the fact that human resources, logistical capacities (*currently functioning 1 vehicle*) and the budget for allowances and business trips has been limited, compared to the large volume of work done by this institution, as evidenced in the chapters above in this report, and which continues to grow rapidly, in coherence with the high dynamics of actions in the public administration in general and in the civil service in particular.

The Commissioner for Civil Service Oversight is one of the institutions that have a special role in the development of public administration reform, the progress of which is an important indicator for the fulfillment of one of the main priorities for the opening of negotiations the country’s accession to the European Union.

Although under the conditions of a limited staff and logistics, the Commissioner has managed to extend his activity in the implementation of the material and territorial competencies, throughout the territory of the country, enabling communication and interaction with all responsible units of the institutions that are part of the civil service.

These works were carried out with the maximum commitment of the Commissioner’s staff, including in the process of supervision all human resources (**12** inspectors), the specialists of the Directorate of Legal Affairs and Foreign Relations (**4** specialists), as well as **5** employees of middle and senior management, who face all the initiated supervision and inspection processes, enforce a reasonable deadline for their timely completion, follow up and verify the information received from the Commissioner, pursue cases in Court, as well as check the execution of the tasks left by the Commissioner in the warning decisions.

Enforcement and observance of the civil service legislation has been and remains one of the main aspects of the overall human resource management of the institution. During 2019, a recruitment procedure was successfully performed in the category “*Parallel transfer*” by filling 1 (one) vacancy in the Supervision Directorate.

Pursuant to the Annual Trainings Plan, **31** employees have been involved in trainings, as well as have participated in activities inside and outside the country, enabling the exchange of experience and acquaintance with the best practices. Specifically, at ASPA, the Albanian School of Public Administration were realized: **1** mandatory training in the framework of the training “*Introduction to Public Administration*” for civil servants on probation (*1 participant*); **1** training in the financial field (*2 participants*); **1** training in the field of public procurement (*3 participants*); **1** training in the legislative field (*a total of 23 participants for the Code of Administrative Procedure*); **1** training in the field of Human Resource management (*1 participant*), as well as **1** training in the field of computer security (*1 participant*).

Within the obligations of the Commissioner for Civil Service Oversight to report data related to the declaration of assets of officials, but also reports related to the treatment and avoidance of conflict of interest, has been drafted by the Responsible Authority together with the Directorate of Legal Affairs and Foreign Relations, the updated Regulation “*On the prevention of conflict of interest in the exercise of public functions in the Institution of the Commissioner for Civil Service Oversight*”, approved by Decision no. 169, dated 10.12.2019, of the Commissioner.

The institution of the Commissioner, in its actual structure, is represented at considerable levels in favor of women, both at the level of specialists and managers. The ratio of women to men in the total number of employees (*civil servants and temporary contracted administrative employees*) is 77% female and 23% male, while this ratio only at the management level is 70% female and 30% male.

## **2. Realization of economic-financial indicators for 2019**

During 2019, the Commissioner has tried to effectively and efficiently administer the funds allocated from the State Budget, by strictly respecting the principles and rules of financial management, in accordance with the applicable law, taking into consideration:

- The accomplishment of the Commissioner’s mission, which, as a guarantor for the implementation of legality in the administration of the civil service, oversees the implementation of the procedures for the application of all law institutes in all institutions that employ civil servants, in order for this process to be honest, objective, impartial and transparent.

- The realization of the supervision of the civil service management in terms of ensuring the same standards in the implementation of the law on civil servants.
- The membership in International Organizations and participation in conferences/visits organized by them.
- Increasing the performance of the employees of the Commissioner's institution, through participation in trainings and implementation of control standards.
- Ensuring transparency and credibility through improving the infrastructure (computerization) of the institution's activities and periodic reporting.
- Ensuring the smooth running of the work in the institution of the Commissioner.

Regarding the public procurement procedures during 2019, **18** procedures have been successfully completed; **3** (three) low value procurements, **2** (two) dynamic system procurements, and **13** (thirteen) purchases with a value below 100,000 ALL (excluding VAT). The procedures are carried out according to the legislation drafted and approved by the Public Procurement Agency as well as by the orders, manuals, instructions and recommendations published on the official website of this institution, throughout 2019.

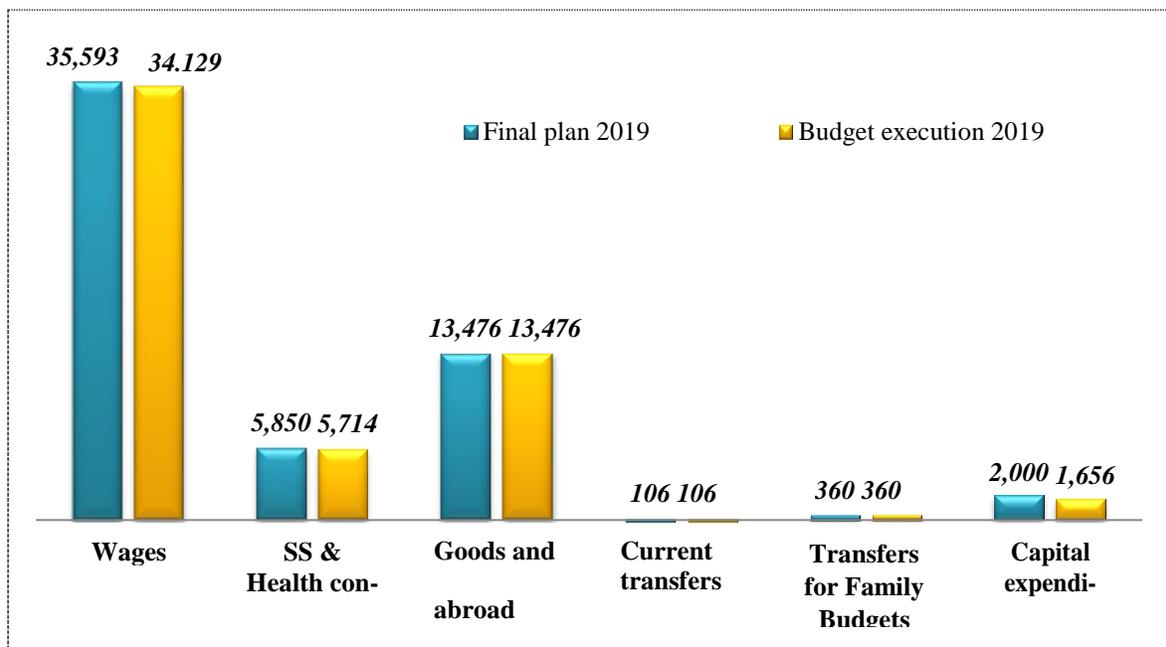
The internal and external infrastructure of the institution year after year is improving, in accordance with the modern technology, as well as in function of the daily work of the staff.

Pursuant to law no. 99/2018 "*On the budget of 2019*", Instruction of the Minister of Finance no.9, dated 20.03.2018 "*On the standard procedures of budget implementation*", amended, Supplementary Instruction of the Minister of Finance no. 1, dated 17.01.2019 "*On the implementation of the 2019 budget*", amended, Normative Act no. 2, dated 2.10.2019 "*On some changes in Law 99/2018 "On the 2019 budget"*", Decision of the Council of Ministers no. 750, dated 27.11.2019 "*On the declaration of the state of natural disaster in the regions of Durrës and Tirana*", as well as letter no. 21920, dated 02.12.2019 of the Minister of Finance "*On the priority of payments in the conditions of the declared state of natural disaster*", amended, the budget funds approved, allocated and realized for the Commissioner for Civil Service Oversight for 2019 are presented as follows:

*Table no. 11.1 Budget Planning and Execution for 2019*

<b>Economic Account</b>	<b>Description</b>	<b>Budget plan for 2019 (in thousand ALL)</b>	<b>Budget execution year 2019 (in thousand ALL)</b>
<b>600</b>	Wages	<b>35,593</b>	<b>35,312</b>
<b>601</b>	Social Security and Health Contributions	<b>5,850</b>	<b>5,714</b>
<b>602</b>	Other goods and services	<b>13,476</b>	<b>13,476</b>
<b>605</b>	Current transfer abroad	<b>106</b>	<b>106</b>
<b>606</b>	Transfers for Family Budgets and Individuals	<b>360</b>	<b>340</b>
<b>230-231</b>	Capital expenditures	<b>2,000</b>	<b>1,656</b>
	Office equipment	1,000	756
	Electronic equipment	1,000	900
<b>TOTAL</b>		<b>57,386</b>	<b>56,604</b>
<b>In % versus total</b>		<b>98.65 %</b>	

*Graph no. 11.1 Budget Planning and Execution for 2019*



According to the accounting items, the realization of funds is presented below:

- **Wages and Social & Health Insurance Fund, (600-601),**

in the value of **41,026.5 thousand ALL**, or **99.0%** of the allocated funds.

- **The fund for other Current Expenses (602-606)**, in the amount of **13,476 (thousand) ALL**, or **100%** of the allocated funds. This fund has been used for:
  - i. Repayment of liabilities to the state, such as electricity bills, water, banking services, postal and telephone services.
  - ii. Expenses for the purchase of various supplies such as stationery, cleaning materials, ink and toners for the operation of equipments such as printers, photocopiers, etc.
  - iii. Expenses for the execution of court decisions.
  - iv. Expenditures in the framework of achieving the goal of the Commissioner, ensuring the same standards in the implementation of the law on civil service, in all institutions that operate under the law, through supervision of the civil service management.
  - v. Expenses for the representation and participation of the Commissioner in various activities and workshops abroad.

Capital Expenditure Fund, (231), **in the amount of 1,656.00 thousand ALL or only 82.8% of the fund of 2,000 thousand allocated ALL.**

## CHAPTER XII

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

Based on the experience created during the supervision performed in accordance with 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 some specific provisions, in order to ensure an increase in the level of its implementation in practice.

Below we will present some concrete proposals for changes in this law, which were presented also in the 2018 report, but since the legal change did not happen, the Commissioner deems that he must submit them once again before the Assembly.

With the onset of legal effects of the civil servant law, the civil service as a whole, and the state of the civil servant in particular, underwent significant changes in the positive direction.

This impact of the law is related not only to the new conception of the status of civil servant, which already ties it with the person and not with the job position, as before, but also with the more precise definition of rights and obligations of entities participating in the implementation of the provisions of the civil service legislation in general.

In other words, the change of the status meaning, from a quality of the job position that was defined in law no. 8549, dt. 11.11.1999, “*Civil servant status*”, to a personal capacity of the civil servant, according to the meaning given by law no. 152/2013, “*On the civil servant*”, amended, is a big step forward.

Unlike the previous legislation that associated all rights and obligations with the job position in the civil service and with the termination of this relationship, all connection with the status and rights and obligations contained in it was terminated, with the current law, the status turns into a personal quality, acquired under the terms of the law and continues for a certain time after the termination of employment, for those reasons specified in the law.

During the law enforcement process, difficulties and problems have arisen, most of which relate to:

- ✓ the implementation of the institute of permanent transfers in a case of restructuring;
- ✓ enforcement of court decisions;
- ✓ the designation of the responsible civil servant in a warning decision of the Commissioner, in case of evidence of his actions in violation of the law.

In these conditions, below we present some of the problems that are encountered most often, or that have created difficulties for interpretation not only from the point of view of the administrative law, but also in practical terms, burdening the state budget with liabilities in unnecessary, considerable amounts.

### **1. Problems that have arisen in relation to various aspects of the implementation of the permanent transfer institute**

In paragraph 6, of article 50, it is provided that: “... *termination of relations in the civil service, due to restructuring, or closure of an institution, is not allowed, unless as a result of these procedures, there is a reduction 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 very fair and it seems that the legislator intended to preserve as much as possible the rights of an employee who is subject to an employment relationship, in the civil service.

But, the conditioning of the preservation of the above right in the civil service, with the order defined in point 2, of the provision in question (*citation: The transfer, according to point 1 of this article, is done with precedence according to this order: a) in the same institution where the civil servant is appointed; b) in the institution with which the institution is merged or united, in one of the institutions, into which the institution is divided or in the institution that has taken over the functions previously performed by the employee; c) in the subordinate institutions of the restructured institution; ç) in another civil service institution.*), makes its implementation almost impossible.

This definition has resulted in the fact that in most cases, when the issue has been addressed in the court, the institution has been obliged to hire the employee, ordering the payment of salary for the entire time until the implementation of the decision.

In these circumstances, at this moment, two problems arise which through the current civil service law cannot find solutions:

**First**, the court orders the return of the employee to the previous position, when it is known that this position after the restructuring of the institution has been cut and no longer exists and, as a rule, when there is a merger or amalgamation of institutions, there are also job cuts;

**Secondly**, in the case of restructuring, the placement of the employee whose job position has been reduced or restructured is required, in another position in the civil service, in one of the institutions that are subject to the law in question.

This situation in the state administration institutions can find a solution since the Department of Public Administration holds the position of the civil service administrator in this category of institutions. Meanwhile, for independent institutions or for those of local government, this provision cannot work, except in some cases through subjective assessments, on the basis of acquaintances.

Therefore, since for the local government institutions and for the independent institutions, a “*Coordinator*” or an instance above them is not provided, for ordering or coordinating the relations between the institutions of different typologies in the civil service, the implementation of point 2, letter “ç”, of article 50, of law no. 152/2013, “*On the civil servant*”, becomes impossible.

At the moment when such cases are reviewed in court, based on this provision, in court decisions it is always noted the obligation to place the interested party in one of the civil service institutions. In these circumstances and under the conditions when the obliged institution finds it impossible to objectively place the employee, then it is unjustly penalized with the payment of the salary for the whole time, until the implementation of the decision.

To regulate this situation, the Commissioner deems that a competent body should be determined to coordinate between state, independent and those of local government institutions.

However, pursuant to article 50 of law no. 152/2013, “*On the civil servant*”, amended, for transfers in case of restructuring or closure of the institution, by the district administrative courts and the Administrative Court of Appeal, in any case reviewed for release from the civil service, when it is proven that there has been a restructuring, or reduction of the job position, the employee benefit limits cannot be exceeded, provided by points 7 and 8, which determine that the compensation for employees affected by the restructuring is up to one year salary and the right to compete through parallel movement or promotion is for two years. Even for this issue, the relevant mechanism for unifying the implementation of the law must be found.

## **2. Implementation of final court decisions for the reinstatement of civil servants in office**

Article 66/1, of law no. 152/2013, “*On the civil servant*”, (added by law no. 178/2014) is a provision, which the Commissioner considers that it should have a temporary character, only for those decisions that had remained unimplemented from previous years and which had increased the bill for the settlement of the financial obligation from the state budget.

This conclusion is reached due to the fact that the implementation of court decisions is an institution which is regulated in detail by the relevant chapters of the Code of Civil Procedure and law no. 44/2015, “*Code of Administrative Procedures of the Republic of Albania*” and there is no need to specifically exist such a provision in a specific law, such as the law

governing the relations in the civil service.

This remark is in general for this case, but in particular, point 4, of article 66/1, of law no. 152/2013, “*On the civil servant*”, amended has raised difficulties in the implementation of this provision because it states: “*The responsible unit is obliged that at the moment of a vacancy in the civil service, to appoint, initially, with their consent, civil servants registered in the list, according to the respective category and who meet the requirements of the job position*”.

The difficulty and misunderstanding encountered in practice in the implementation of this provision is related to the fact that, for the implementation of such court decisions, the consent (*without restriction*) of the employee who won the trial is required. In many cases, various employees listed in the waiting list under point 2 of this provision have stubbornly refused to start work in a offered position, claiming that they should return to their previous job, even though that position, meanwhile, may have been shortened or restructured and it is objectively impossible to enforce the decision that way.

Speculating on the content of the provision in question, which orders the payment of salary according to the last position they held in the civil service, until the moment of appointment, they do not accept the transfer to an analogous position, of the same category, continuing to unjustly receive the salary.

On the other hand, even in such similar cases, there is a difficulty in the placement of employees who have won trials, in cases of independent institutions and those of local government, in the absence of a coordinator between them and the limited number of job positions in general and vacancies in particular.

In order to regulate the situation and to avoid the recurrence of such unpleasant situations, which come to the detriment of the state budget, the Commissioner considers that it should be acted in this way:

- a) To remove from the provision that deals with the execution of court decisions (point 4, of article 66/1), of the law in question, the notion “*receiving the employee’s consent*”, for the appointment pursuant to a final court decision, to another position in the civil service and to emphasize the obligation of the institution in this case, to maintain the relevant category and criteria of the job position, or
- b) The consent should not be unconditional, but should be related to those restrictions contained in the 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 the place of residence, conflict of interest, etc.

This provision should clearly define how to act in those cases where officials who have requested the execution of a court decision to resume work in the civil service, meanwhile, have voluntarily started working in institutions that are not part of civil service, or in the private sector. Currently, in these cases, while these employees receive a salary in another institution where they are employed, they continue to demand payment of the salary due to the court decision, even in these circumstances.

### **3. Specification in the law of the category “responsible employees”, against whom sanctions will be imposed for non-implementation of the warning decision**

Recognizing the right of the Commissioner, to warn the institution in those cases when violations of the law are found and to assign concrete tasks for the improvement of the situation, in point 2, of article 15, of law no. 152/2013, “*On the civil servant*”, amended, it is provided also the possibility of imposing sanctions against the “*responsible civil servant*”, for non-fulfillment of the assigned duties, according to the measure provided in this provision.

In practice, the problem often arises that, the real responsible employee, in cases of non-compliance with the decision of the Commissioner and failure to take the ordered measures, is not the civil servant or the head of the human resources unit, but the head of the institution.

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

This is due to the fact that, according to article 2 of the law on civil servants, this law does not apply to the elected (*letter “a”*); members or chairmen of collegial governing bodies of committees or institutions under the Prime Minister, or of a ministry (*letter “f”*); cabinet functionary (*letter “gj”*), etc.

In the practice of the Commissioner there are many cases, for which the annulment of administrative acts of dismissal has been requested for various reasons, when the heads of local government units, overcoming their competencies, have issued acts for changes or termination of labor relations, for various reasons, bypassing the competence of the Disciplinary Commission, the Restructuring Commission, etc.

We think that, in order to avoid such cases, it would be appropriate to make a change in point 2, of article 15, of law no. 152/2013, defining it precisely and expanding the meaning of the concept of “*responsible employee*”, removing the limitation of responsibility for the heads of local government units, independent institutions, etc., who in most cases deal specifically and directly with the process of human resource management, exceeding and tak-

ing over the competencies of other bodies, charged by law.

#### **4. Problems that have arisen during the practical implementation of the institute of job evaluation of the civil servant, which must be regulated through legal changes**

The institute of job evaluation is an important process and has to do with the process of verifying the overall realization of the objectives set at the beginning of the evaluation period, as well as the skills or weaknesses of the employee in performing the tasks, which is done each 6 months.

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

We are dealing with a difficult process, with a constant supervisor-subordinate relationship, which is often accompanied by doses of subjectivism.

The new provisions and the current forms are more detailed and have given a new impetus to this important and delicate administrative process, but the Commissioner deems that a change can be made to point 2, of article 62, of the law in question, in relation to assessment levels.

Currently, this provision provides for 4 levels of evaluation, of which 3 are positive evaluations and 1 is an *“unsatisfactory”* negative evaluation. It is estimated that providing to the direct supervisor only 3 levels of evaluation (*very good; good; satisfactory*) leads to a difficulty in individualizing the evaluation and dissatisfaction among employees who do not feel the stimulus to move forward, which this process must contain.

It would be appropriate to double the positive evaluation levels, in order to more easily realize the process of individualization and increase efficiency and competition among employees.

As we have analyzed above in this report, where we treated the job evaluation for civil servants, it turns out that this institute of law is not performing its function in terms of professional growth of the civil servant and increasing his level in terms of service to citizens.

Based on the statistics administered in 3 years, as well as verifying in practice the implementation of this process, the Commissioner has assessed that this institute of law has turned into a formal process, which has not performed its role in function of the purpose of law.

In these circumstances, the Commissioner estimates that the time has come to find effective mechanisms to orient this institute of law towards achieving its goal, which can be both in terms of financial reward for employees who perform better, as well as in in terms

of determining the ratio that should be implemented by the direct supervisor, when applying the whole spectrum of assessments, with the total number of civil servants.

The Commissioner estimates that the legal improvements in this institute of law will motivate the employees to improve the quality of work, as well as will force the supervisor towards a fair and objective evaluation. Likewise, the change of the law in this case will have a positive impact on reducing the level of corruption in the ranks of the civil service.

## CHAPTER XIII

### IMPLEMENTATION LEVEL OF THE ASSEMBLY RESOLUTION 2018

The Commissioner for Civil Service Oversight, as an independent institution which is subject to the obligation to report to the Assembly of Albania, and also in function of the implementation of Decision no. 49/2017 of the Assembly “*On the monitoring of independent constitutional institutions and those established by special law*”, lists below the implementation of the recommendations of the Assembly Resolution of 2018, on the evaluation of the activity of the institution.

For 2019, the Albanian Parliament requests from the Commissioner for Civil Service Oversight that:

**1. To conclude the actions for the administration of data related to the return of the prevailing civil servants to duty, in the entire civil service system, in order to identify the reasons that hinder the progress of this process and to continue the process of administrative investigation in relation to individual cases, found in violation of the law, in the first stage of the process.**

*This point of the resolution is fully accomplished:*

The Commissioner has finalized the data administration process and is currently in the process of administrative investigation regarding those individual cases where the winning civil servants have not yet returned to the civil service.

Up to the reporting moment, the Commissioner has communicated and administered data from **208** public administration institutions, including line ministries, subordinate institutions of the state administration; independent institutions and local administration institutions, of which **36** of them resulted with problems (**11** line ministries, **6** subordinate institutions, **11** municipalities, **5** Regional Councils and **3** independent institutions).

By order no. 10, dated 21.01.2019, “*On the beginning of the inspection for non-implementation of final court decisions cases, for the return of civil servants in office, in the institutions that are subject to the civil servant law*”, the inspection has begun for each case found in violation of the law.

The process has started with the realization of hearings with state administration institutions, in the conditions when this problem is more evident in this typology of institutions.

The hearings for the **11** line Ministries have already ended. In these meetings, the data administered up to this stage of the process were reconciled and all cases were discussed nominally, leaving concrete tasks for the Special Commissions set up in the institution, and at the same time also for the Department of Public Administration. The hearings were held at the headquarters of the Commissioner and were attended by authorized representatives from the Department of Public Administration and the institution summoned by the Commissioner.

There are ascertained **601** final court decisions that must be executed, of which **236** decisions, or 39% of which have been implemented and the employees have been returned to the civil service, or have been released from the civil service for legal reasons (*full retirement pension or resignation*) and **365** decisions or 61% of them, the winners are registered in the waiting list, to be placed in a regular position of the civil service.

According to the data reported by the institutions, it turns out that currently the amount of **511,748,508** ALL has been paid from the state budget, in favor of the winning employees, pursuant to court decisions.

The process will continue during 2020 with the follow-up of the implementation of decisions by the line ministries and hearings will continue with the General Directorate of Taxes, which has about **143** unenforced decisions and with the local and independent administration institutions.

**2. To coordinate the activity with the Department of Public Administration and the responsible units of the local and independent administration institutions, in order to identify the possibilities of settling the winning employees with a job in the civil service, according to the enacting clause of the court decision.**

*This point of the resolution is fully executed:*

During 2019, the Commissioner has verified and corrected the data on the winning civil servants in all local administration institutions and independent institutions and it turns out that there are **168** cases. The process of execution of decisions in these institutions is being followed simultaneously with that of the state administration, identifying vacancies, in order to further enable interaction with the Department of Public Administration, to appoint civil servants of local administration or independent institutions. Likewise, these institutions will have the opportunity to interact with the Department of Public Administration through the platform *administrata.al*, which they are currently populating with data. This process will continue step by step until all the winning civil servants in the state administration have been appointed, in order to evaluate the vacancies and the possibility for place-

ment in these positions of winning civil servants from institutions with different typologies from that of the state administration.

**3. To encourage the level of cooperation between the Commissioner and the Supreme State Audit in the implementation of court decisions for the reinstatement of winning civil servants in office, in order to reduce financial costs to the state budget.**

*This point of resolution is fully achieved:*

The cooperation between the two institutions has continued intensively, both in terms of requesting information regarding the irregular cases identified during the SSA inspections in entities, which have to do with the implementation of final court decisions for reinstatement in duty of the winning civil servants, as well as intervening in resolving the problematic aspects identified by the Commissioner, of a financial character, where SSA is specialized.

The responses in this case have been immediate, both in terms of sending information, as well as for the other aspect of cooperation, drafting a control guide for the SSA inspectors, in order to unify the implementation of the law during the settlement of financial effects related to the obligation of the institution to compensate the winning employees.

The cooperation continues to remain at high levels also during the following year.

**4. To continue oriented supervision towards the admission procedures in the civil service, parallel movement and promotion, for the executive category, lower and middle management level and admission procedures in the Senior Management Body (TMC) at the Department of Public Administration, paying special attention to the recruitment in the local administration.**

*This point of the resolution is fully accomplished:*

The orientation supervision regarding recruitments at DOPA was concluded with a decision by the Commissioner, in conditions when no irregularities in the implementation of the law were found. During this process, **313** competition procedures were monitored for group recruitment, parallel movement and promotion in the state administration and admission procedures in the TMC.

Meanwhile, the recruitment process has been supervised also in the local administration, where it is found that vacancies are often created for a limited number of positions, and consequently the organization of “*group recruitments*” for entry level positions is prevented.

Likewise, the problems are evident also in terms of implementation of the principle of transparency of the process, in the absence of a portal for data entry regarding recruitment, for the local administration. Currently, work is being done to solve this problem by posting data on the portal *administrata.al*, where local government units also have access, which is considered also as a fulfillment of the recommendation given by the Commissioner regarding this aspect of law enforcement.

**5. To carry out the process of verifying the implementation of the Commissioner’s decisions, after the expiration of the deadline for the regulation of legality, by the supervised/inspected institutions, as well as to complete the initiated processes, which have not been finalized, and constantly inform the Assembly about the progress.**

*This point of the resolution is fully realized:*

For the period of January - December 2019, after the expiration of the deadline left by the Commissioner in the warning decisions, the ongoing supervision process (*the process of verifying the implementation of the warning decisions*) was carried out onsite for **83** institutions.

At the end of the verification, it results that the tasks left by the Commissioner in the warning decisions have been fully implemented by **66** institutions or **80%** of them (*about 28 state administration institutions, of which 5 ministries and 23 subordinate institutions; 34 local government units, of which 31 municipalities and 3 district councils; and 4 independent institutions*) and in **17** cases or **20%** of them the process is ongoing in its various phases, in cooperation with the Commissioner (*about 6 subordinate institutions of state administration, 9 municipalities and 2 independent institutions*).

For the reporting period, in the ongoing monitoring process (the process of verifying the implementation of warning decisions) are included 11 individual cases of complaints resolved by a warning decision (*all cases belong to the state administration of which: 1 ministry and 10 dependent institutions*) and at the end of the verification of the implementation of the Commissioner's recommendations, the verification process was concluded with a decision of the Commissioner, where it resulted that all institutions have fully implemented the tasks left in the warning decision.

*This point of the resolution is fully achieved:*

In relation to this aspect, work has continued to assist local administration entities, in cooperation with the School of Public Administration (ASPA).

Through a cooperation contract, the institutional interaction with ASPA has been achieved, among others also by offering the premises of CCSO (*meeting rooms*), to conduct trainings at all levels of public administration, where an important place is occupied by local administrations.

In the training sessions, the problems found by the Commissioner during supervisions were discussed with the groups of civil servants, as well as the point of view of the Commissioner on various aspects of the law on civil servants, which was achieved by mobilizing trainers from the Commissioner's staff.

The training processes were carried out pursuant to the annual training plan drafted by ASPA in cooperation with the CCSO.

**7. To review with priority the cases of individuals, part of the civil service in the central and local administration, who continue their employment, even though they have reached the retirement age and should have terminated their legal and financial relations in time.**

*This point of the resolution is fully accomplished:*

The Commissioner has asked **114** institutions to report on the employees kept at work even though they have reached the full retirement age, throughout 2019.

In this case, the reporting was done by 100% of the institutions and **149** cases of employment were found exceeding the legal deadline set for dismissal from the civil service, due to reaching the age for full retirement pension.

Up to the reporting moment, it results that out of **149** identified cases, in **98 cases** or **66%** of them, the employment relationship in the civil service has been terminated and the positions have been announced vacant to be filled through competition, while **51 cases** or **34%** of them are in the process of restoring legality and at the end of the deadline left in the warning decisions, they will notify the Commissioner.

This process continues also during 2020 in all institutions which already report in real time on the situation.

**8. To monitor the behavior of civil servants during the election campaign on local government units, in order to prevent the forced use of civil servants in the election campaign, during office hours, by political entities, as well as monitoring the implementation of their political rights, as well as their observance on the restrictions that the law has imposed in relation to these rights.**

*This point of the resolution is fully executed:*

To carry out the oversight process, in this case the Commissioner has communicated with **208** public administration institutions that employ about **12758** civil servants, focusing the process on new appointments, disciplinary measures “*dismissal from the civil service*” and monitoring of activity/behavior of civil servants during the election campaign.

At the end of the process, it was found that there were no cases of new appointments in violation of the law during this period and also no cases of disciplinary measures applied during this process, which proves the observance of the principle of political impartiality and sustainability in the civil service.

During the monitoring of the process, the Commissioner received denunciations for the involvement of civil servants in illegal rallies; violent actions before the EAACs, as well as expressions of political preferences in support of a certain political force, or a candidate in the elections, which were immediately addressed for verification by the disciplinary bodies

in the relevant institutions. This process was followed continuously by the Commissioner and it turned out that all cases were reviewed in the relevant institutions.

The Commissioner deems that, acting in support of an electoral process in accordance with the law, has helped to ensure a better electoral process in our country, towards the best standards of the European Area.

## CHAPTER XIV

### CONCLUSIONS AND RECOMMENDATIONS

In the material presented this year, the Commissioner has reported on the activity of the institution, which has been oriented on different aspects of civil service administration, focusing mainly on the process of general and thematic oversight regarding compliance with the procedures during the application of the institutes of the civil servant law and checking the implementation of the warning decisions of the Commissioner; in the process of monitoring law enforcement during the local administration election period; in the coordination and control of administrative actions carried out during the process of execution of court decisions; in verifying the implementation of the law on the termination of the employment relationship in the civil service for cases when the employees reach the age to retire in full pension; ascertained during the supervision, and other aspects in the realization of the competence of the supervision and the implementation of the tasks left in the Resolution of the Assembly.

During his activity, the Commissioner has identified the difficulties encountered during the activity of the responsible units, which are in charge of carrying out difficult legal processes which require high professional training and experience in solving problems, while lacking the tools that will assist these bodies in carrying out their functions, such as explanatory manuals or exhaustive bylaws governing various aspects of their work during the administration of the civil service. The responsible units face a large volume of work, which must be carried out with a very limited number of staff, which is often charged with other tasks that are not in the field of human resource management.

In many cases, the work of the responsible unit is hampered by the delayed response of managers charged by law with specific tasks such as job evaluation, job description, acts concluding the confirmation process, etc., waiting for their duties to be performed by the responsible unit.

On the other hand, the progress that has been made in various aspects of law administration should be appreciated, initially highlighting the increase in the level of law enforcement during the execution of court decisions, which has been a process followed with priority by the Commissioner. Currently, all cases of court decisions have been identified and in almost all cases, the winning civil servants are registered in the waiting list and are paid according to the provisions of the enacting clause of the court decision. The challenge in this process is to appoint the winners to a regular position in the civil service in order to be paid for their work and not because of a court decision.

Also, during the election period, it was found that civil servants acted responsibly in the implementation of their duties and on the other hand, it was found that their political rights provided by law were respected.

In the local administration there are still problems related to the administration of the civil service, though there are significant developments, especially in terms of announcing job positions to be filled through competition, as well as introduction of civil service administration processes in procedural frameworks.

The problems in this area, in general for the implementation of the civil service legislation and in specific aspects of it are presented below:

⇒ *In general, in the implementation of the civil service legislation:*

- The implementation of the civil service legislation at the local level, especially in municipalities with a limited number of inhabitants, still remains low, although good and promising practices can be identified in some of the municipalities, mainly those categorized as first level municipalities;
- The number of HRM staff in the municipality and their capacities are limited;
- The level of awareness and knowledge on specific elements of human resource management for the implementation of the civil service legislation is still low among HRM staff;
- The implementation of appropriate competitive procedures for recruitment or promotion is not at the right level, as there are still cases when the municipality does not perform recruitment at the entry (executive) level as required by law, while recruitment procedures based on position are organized only for a few jobs and in an informal approach;
- The phenomenon of implementation of the employment contract for civil service positions is still evident, although it is lower than in previous years;
- The municipalities complain about the impossibility of recruiting/retaining staff for certain positions/professions, due to the required level of education (*higher education*) imposed by the secondary legislation on civil service (*bylaws governing the field of recruitment, salary and job description*).

⇒ *Regarding the structures and functions:*

- The implementation of existing legal provisions and legal standards for the preparation of organizational structures of the municipal administration is deficient;
- There is no good understanding of a coherent and well-articulated division or distribution of functions of different nature/typology, between the municipal apparatus and other municipal administration units;

- The structures of the municipal administration are involved in frequent unjustified changes that seriously affect the process of preparation of job descriptions or the proper implementation of civil service legislation. There are cases when the organizational structure is changed as soon as it is built, or very often, at least once a year during the budget approval process/ fiscal year and/or several times during the year, without any obvious or logical reason;
- Restructuring is carried out on an *ad hoc basis (as appropriate)* and does not have a logical consequence of a preliminary needs assessment or performance analysis of the existing organizational structure;
- Some of the legally binding standards (*which derive from the sector legislation, e.g. urban planning, etc.*) for the organization of the local administration are very rigid and difficult to apply to the current capacities of LGUs;
- Legal provisions for the organization of local administration are significantly incomplete (*such as regarding the typology and legal status of subordinate units*) or outdated (*e.g.: law on state-owned enterprises*);
- HRM staff in the municipality has a poor level of assessment of the general legal requirements related to the process and standards of organization and operation. In particular the level of awareness of the legal standards deriving from sector legislation is really deficient;
- There is generally a lack of implementation tools for the efficiency and organizational effectiveness of the administration and services of the municipality (*manuals or guides*).

⇒ *Regarding job description:*

The realization of the process of organizing the local administration and the observance of the standards during its application are closely related to the realization of the job description process for the civil service positions. Regarding this moment, the following situation is ascertained:

- Preparing job descriptions for most positions is at an early stage, despite efforts to formally draft the form. There are cases when job descriptions are not prepared or are of poor quality;
- The process of preparing job descriptions is not logically (*as assumed*) related to the process of proposing structural changes. These processes are considered as pure formalities and not interrelated;
- Most of the weaknesses are evident in job description part related to “*job position requirements*”. These weaknesses lead to the inability to group positions into “*working*”

*groups*” (*special administration groups*) as required by civil service legislation and consequently hinder the organization of “*group recruitments*” for entry-level positions. This also leads to the impossibility of carrying out quality procedures for recruiting or evaluating candidates for other levels of management (*lower, middle and higher category*);

- HRM staff in the municipality has a low level of general legal knowledge regarding the job description preparation process and likewise, the level of skills to ensure proper implementation is quite deficient;
- HRM staff recognizes the importance of legal acts and formats that should be implemented, but generally finds them too complicated and difficult to adapt to the needs and specifics of local government units;
- The tools available for law enforcement, in the case of job descriptions, are few, complex and not related to the context of local administration.

The Commissioner has already identified these problems and has always been on the side of these institutions, advising and supporting them in various ways to solve them.

#### ⇒ Recommendations

In these circumstances, it is estimated that good human resource management is a key component of a professional, effective and civic local administration. In achieving such an objective, the proper implementation of civil service legislation is crucial for LGUs in our country. While, on the one hand, HRM staff in the local government administration is generally aware and has a fair level of understanding of the legislation, the existing implementation tools (*manuals, guides and forms prepared for various procedures*) to support HRM staff in their daily work are few and do not adapt to the specifics of LGUs. On the other hand, the level of specific skills for implementing a modern human resource management in accordance with civil service legislation is significantly problematic and needs to be significantly improved in the near future. To help regulate the situation in local government units, the Commissioner considers as an immediate need their methodological support and the revision of the civil service legislation in several directions, which will be presented below:

- Increasing the number of trainings of LGU staff in the field of human resource management in accordance with the civil service legislation;
- Establishing a national team of trainers and a network of managers capable of replicating and providing specific training programs and modules for the implementation of civil service legislation;
- Preparation of implementation tools (*manuals, guides, etc.*) for the organization and functioning of the LGU administration (*including grouping of legal standards, best practices/standards and structures and standards for all essential functions of LGUs*).

They should include the following: (i) existing legal standards; (ii) to be further developed based on:

- a) general principles of organization;
  - b) principles of organizational management (*policy development functions, regulatory functions, service delivery and internal services*);
  - c) standards of internal organization/unit (*management, hierarchy and accountability, etc.*); as well as
  - d) to suggest the standards of the number of employees for workload per function. The “*Structure stamp*” in the organization of the administration, should be conceived as a friendly working tool and have a standard setting approach instead of creating boxes and number of employees.
- Preparation of job model description/mission for each of the typical local administration units for each main function/process as well as preparation of job descriptions for each of the typical job positions of the new municipal administration;
  - adapting the existing law enforcement tools for human resources, prepared by DOPA with the features identified at the local level, taking into account the possibility of simplifying their use for municipalities;
  - preparation of manuals and instructions for civil service procedures related to recruitment, career development, mobility, job descriptions, performance appraisal, discipline, restructuring and personnel files, etc.;
  - further development of HRM tools and procedures for the implementation of civil servants legislation adapted to the needs of the local government unit;
  - the possibility of simplifying part of the legal procedures for local needs is assessed (*recruitment procedures, educational requirements for certain positions and levels of administration, job description forms, etc.*);
  - assesses the need of a new legislation for the organization of local administration, in particular the need of a legislation for “*municipal enterprises*”;
  - to gradually develop, maintain and update the public administration portal by reorganizing the full range of tools and procedures for human resource management for the implementation of civil service legislation in local government units.

All what we presented above, have been evident in the previous reports of the Commissioner and still remain coherent and should guide the organization of various projects at national and international level in order to strengthen the capacities and for a good governance in the local self-government units.

The Commissioner appreciates the increasing level of work of the Department of Public Administration in various aspects of civil service administration, specifying especially the

successful efforts to improve the electronic competition system, to facilitate its use by all interested parties, as well as in terms of increasing transparency in the content of the recruitment process.

Based on the conclusions drawn during the supervision of the recruitment process, carried out at the Department of Public Administration, the Commissioner concluded that this institution continues to work at a high pace, to place the process in regular procedural frameworks. Also during this year, the competitions continue to take place in groups and with a considerable number of candidates which ensures a satisfactory quality threshold of the participants in the process.

The challenge which will always be evident in the work of the Department of Public Administration, is to improve the content of the process, making sure to create the conditions to expand the participation of candidates with a high level of preparation and to manage the process in terms of reducing the number of competitions, by realizing the most effective division of groups, in which to include positions with the same specifics, as well as to create the conditions to ensure the necessary transparency and objective evaluation of the candidates participating in the competition. The last aspect has marked a significant development, as currently, the Department of Public Administration has started to develop recruitment procedures, using the electronic question bank and further, the introduction of the process in an electronic system that does not allow subjectivism in terms of test correction.

⇒ Regarding the *mobility in the civil service*, the Commissioner estimates that there is a positive development of the process in the state administration institutions, but this trend is not reflected in the entirety of the civil service system, as the transfer of civil servants within institutions of various typologies is not easily accomplished (*local administration, state administrations, independent institutions*).

To regulate the situation in this case requires harmonization and unification of the procedures that are applied, as well as of the specific requirements, which is realized through a portal with access from all public administration institutions, part of the civil service system.

The unification of the processes in the civil service, in terms of mobility and development of the career system, has also highlighted the need for a reform of the salary system in the civil service. There is a significant disproportion between the salaries of civil servants in the state administration and independent institutions, compared to subordinate institutions and local administration, especially in the second and third tier municipalities, with a limited number of inhabitants.

In general, in the local administration, there is a tendency to increase the number of job positions, within the same budget, not caring that the salary level corresponds to the responsibility of the job position. This means that the salary limit is always at the minimum allowed

through the sub-legal act that regulates salaries for these institutions, therefore not motivating civil servants or even candidates to come from outside this system, to work in them. This is also the reason why they often do not compete for job positions, at high management levels, which need specialized education in the field of engineering, jurisprudence, economics, etc.

In these conditions, the Commissioner estimates that the entire part of the legislation related to the civil service in the local administration should be reviewed, in order to define clear and binding rules to be implemented, which are often left to their will, on the argument that they are independent institutions. In the civil service system there should be the same rules, in order for its development to be realistic and to achieve the principles of the civil servant law. The Department of Public Administration should be more active in this regard and take real responsibility to develop this part of the system, to bring it to the level of developments in the state administration.

⇒ Regarding *the institute of discipline in the civil service*, for this year, a low level of application is found, although all types of disciplinary measures are identified.

Discipline in the civil service is one of the most important institutes of law and aims to penalize civil servants who violate their obligations under the law. The level of its application should be in direct proportion to the disciplinary violations committed by civil servants and, therefore, the situation continues to move towards objectivity and reflection of reality.

⇒ Regarding the *job evaluation process*, the Commissioner clearly assesses the need for improvement in terms of the objectivity of the appraisal and the elimination of subjective appraisals.

To achieve this goal, the Commissioner has left concrete tasks for the human resources management unit, especially in terms of planning trainings in this area for civil servants in charge of implementing the evaluation scheme, as well as through the control of supervisors to oversee the evaluation process, extended throughout the calendar year.

The Commissioner deems that the time has come to find efficient mechanisms to orient this institute of law towards achieving its goal. The incentives can be both in terms of financial reward for employees who perform better, as well as in terms of determining the ratio to be applied by the direct supervisor when applying the ratings, across their spectrum, with the total number of civil servants. The Commissioner estimates that this process would be helped by the expansion of job evaluation levels in order to enable choices as close to reality as possible.

⇒ The Commissioner deems as problematic the situation of *execution of court decisions that have become final*, in the field of reinstatement of civil servants at work, although, unlike a year ago, progress is noted in terms of evidencing court decisions; registration of judicial winners in the waiting list, applying also the financial obligation as well as

their appointment to a position in the civil service where they meet the specific requirements.

The Commissioner considers that there are still problems related to obstacles, both of a financial nature as well as those of a technical-legal nature, created due to shortcomings and ambiguities in special provisions of the laws applied during the implementation of court decisions, which need to be reviewed and supplemented, in order to help the progress of the process and not create spaces for subjective attitudes. No concrete action has yet been taken regarding the legal changes, or the development of existing regulatory acts, to facilitate and unify the work of the Special Commissions and the Department of Public Administration, as proposed by the Commissioner. The Special Commissions in institutions should increase the level of cooperation with the Department of Public Administration, in order to enable the conclusion of the analysis process of circumstances and facts for each unimplemented decision, with concrete proposals addressed to the Department of Public Administration to settle the winning civil servants in the civil service.

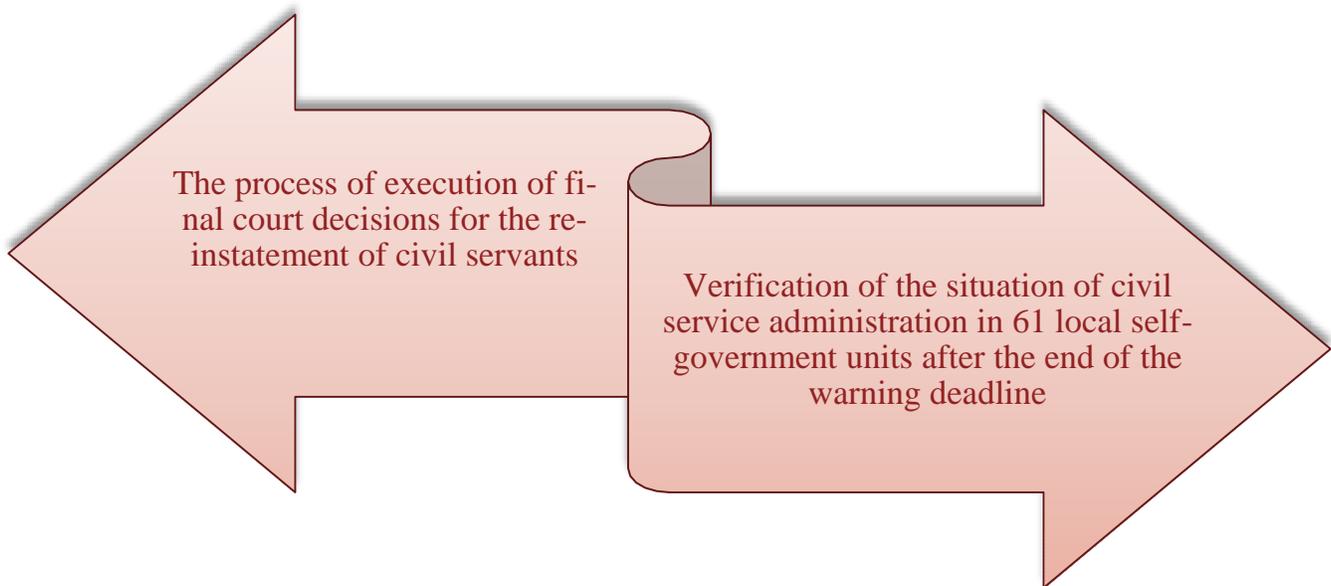
Regarding the process of termination of the employment relationship in the civil service due to reaching the full retirement age, the Commissioner has requested from the institutions to report these cases in time to the Department of Public Administration, so that these positions can be completed through competition. In this regard, the Department of Public Administration should play an active supervisory role, since it administers the Central Personnel Register, and in these circumstances must have updated information on the situation in the civil service in the state administration. The same is worth noting for the responsible units in the local administration and independent institutions, which should be attentive to perform their duties on time, as provided by law, to ascertain these cases.

## CHAPTER XV

### PRIORITIES OF THE COMMISSIONER'S ACTIVITY FOR 2020

During the drafting of the work plan for 2020, the Commissioner has analyzed the problems identified in this report, and then, has drafted the annual work plan, where it has initially included the verification of the implementation of the Commissioner's warning decisions, especially for 61 municipalities of the country, for which the warning deadline expires during 2020, and further has continued to oversee the implementation of court decisions. Work will also continue in terms of identifying and unifying the reporting indicators with the Department of Public Administration. Regarding this aspect, work will be done in the framework of the project "*Implementation of the Civil Service Reform in Public Administration*" (IPA 2014), materialized also in the platform [adminisrata.al](http://adminisrata.al).

These aspects are foreseen also as priorities of the Commissioner's work during his activity for the following year:



The work plan for the following year also includes the process of supervision and administrative investigation of complaints addressed to the Commissioner, which are related to various aspects of law enforcement for civil servants.

The Commissioner will continue his activity towards advising and assisting institutions to properly implement the law, an already established experience, which will be realized through technical assistance through his staff, directed to the responsible units in the civil service administration, in these institutions.

This initiated work will continue with the consultation of the responsible unit during the process of drafting and approving the final structures, as well as during the drafting and approval of the job description, in the local self-government units, by organizing training meetings, in cooperation with the School of Public Administration, which are also included in the work plan of the Commissioner, as well as for other aspects of civil service administration. Specifically, this intervention will be achieved through:

Involvement of the Commissioner in the training process of the HRM employees in these entities, in cooperation with the School of Public Administration, through the participation of the Commissioner's staff in specific trainings targeting this civil service group

Orientation towards the local administration of the project "*Implementation of the Civil Service Reform in the public administration*" (IPA 2014), towards the improvement of the organizational structures and job description

Pursuant to the legal and institutional competencies, work on civil service oversight will continue during this year, focused on the subordinate institutions in the state administration as well as the administrative investigation of the cases submitted for solution to the Commissioner.

Capacity building as well as increasing institutional performance, will be in the focus of the Commissioner, as they directly affect both the independence of the institution, as well as the realization of all the tasks listed above, taking into account the expansion of the territory and the scope of the law. This aspect is ensured by detailing the necessary budget from the Ministry of Finance and further with its approval by the Albanian Parliament, towards *increasing the staff of the institution*, as well as *the logistical capacities* in support of prompt and efficient actions to prevent illegal actions during the administration of the civil service.

The Commissioner for Civil Service Oversight is one of the institutions that have a special role in the progress of the public administration reform, which is one of the important indicators for meeting one of the key priorities for the opening of negotiations on the country's accession to the European Union.

Increasing and strengthening the institutional capacities of the CCSO, has been and will be a continuous request of the Commissioner, made present also during the previous years of reporting to the Albanian Parliament, and this need has been supported by the Assembly, which is materialized in the Resolution approving the activity of the CCSO for 2018, but it has not yet been realized with the argument of lack of funds in the state budget. We emphasize this institutional need, given that:

- ✓ in each calendar year, the scope of the law on civil servants is expanded, including new institutions in this service;
- ✓ the requests for reporting on public administration reform in the framework of the EU integration have increased;
- ✓ clear additional tasks have been assigned to the institution, regarding the increase in the number of supervisions; monitoring the conduct of civil servants in election campaigns; as well as the coordination of the activity for the execution of final court decisions in the entire field of civil service.

The Commissioner will continue to present the needs and requirements for the empowerment of human resources and logistical capacities, in the responsible financial institutions of the government, and further in the hearings of the preparatory phases of the MBP, for which currently, the response and engagement of the Law Commission has been maximal and approving.

Under these conditions, the Commissioner continues to seek the support of the Assembly to meet the requirements for strengthening its capacities, in order to enable the accomplishment of the increasing tasks for the implementation of civil service legislation.

The Commissioner will follow with priority during this year the implementation of final court decisions for the reinstatement in office of the winning civil servants, in reference to article 66/1 of the law on civil servants, making sure that the specialized institutions provide answers to the issues identified in the relevant section of the report.

Resolving these issues should be achieved through the fulfillment of the legal and regulatory framework by specialized institutions where this aspect of law enforcement is a legal obligation, especially by DOPA and the Ministry of Finance. In this way, the process of execution of final court decisions will be facilitated and the annulment or abrogation of administrative acts by the court will be significantly reduced.

At the end of the reporting, the Commissioner deems that the observance of the civil service legislation and its monitoring are essential aspects that ensure the success of the civil service reform, as an important part of the public administration. The Commissioner's challenge remains to ensure an independent and efficient oversight process, in order to prevent violations of the law and to regulate illegality in cases where it has occurred, through the means provided by law.

Hoping that through this report, we have presented to You a complete and comprehensive picture of the activity of the Commissioner's Institution for 2019, we thank You for your understanding and support,

With respect,

**THE COMMISSIONER**

**Pranvera STRAKOSHA**

*Annex no. 1 “Supervised institutions during 2019”*

No.	Institutions
<b>State Administration</b>	
1.	Prime Ministry
2.	Ministry of Internal Affairs
3.	Ministry of Defense
4.	Ministry of Finance and Economy
5.	Ministry of Infrastructure and Energy
6.	Ministry of Education, Sports and Youth
7.	Ministry of Justice
8.	Ministry of Culture
9.	Ministry of Agriculture and Rural Development
10.	Ministry of Health and Social Protection
11.	Ministry of Tourism and Environment
12.	Ministry of Europe and Foreign Affairs
<b>Subordinate institutions</b>	
1.	Agency for the Administration of Sequestered and Confiscated Assets
2.	Concession Handling Agency (ATRAKO)
3.	National Agency for Education, Vocational Training and Qualification
4.	National Authority of Food (AKU)
5.	General Directorate of Accreditation
6.	General Directorate of Financing and Contracting for EU Funds, World Bank and other Donations
7.	General Directorate of Prevention of Money Laundering
8.	General Directorate of Industrial Property
9.	General Directorate of Standardization
10.	General Directorate of Property Tax
11.	General Directorate of Treasury
12.	Customs and Tax Administration Training Center
13.	National Business Center
<b>Local self-government institutions/Municipalities and administrative units</b>	
1.	Municipality of Belsh
2.	Municipality of Berat
3.	Municipality of Bulqizë
4.	Municipality of Cërrik

5.	Municipality of Delvinë
6.	Municipality of Devoll
7.	Municipality of Dibër
8.	Municipality of Divjakë
9.	Municipality of Dropull
10.	Municipality of Durrës
11.	Municipality of Elbasan
12.	Municipality of Fier
13.	Municipality of Finiq
14.	Municipality of Arrëz
15.	Municipality of Gjirokastrë
16.	Municipality of Gramsh
17.	Municipality of Has
18.	Municipality of Himarë
19.	Municipality of Kamëz
20.	Municipality of Kavajë
21.	Municipality of Këlcyrë
22.	Municipality of Klos
23.	Municipality of Kolonjë
24.	Municipality of Konispol
25.	Municipality of Korçë
26.	Municipality of Krujë
27.	Municipality of Kuçovë
28.	Municipality of Kukës
29.	Municipality of Kurbin
30.	Municipality of Lezhë
31.	Municipality of Libohovë
32.	Municipality of Librazhd
33.	Municipality of Lushnjë
34.	Municipality of Malësi e Madhe
35.	Municipality of Maliq
36.	Municipality of Mallakastër
37.	Municipality of Mat
38.	Municipality of Memaliaj
39.	Municipality of Mirditë

40.	Municipality of Patos
41.	Municipality of Peqin
42.	Municipality of Përmet
43.	Municipality of Pogradec
44.	Municipality of Poliçan
45.	Municipality of Përrenjas
46.	Municipality of Pukë
47.	Municipality of Pustec
48.	Municipality of Roskovec
49.	Municipality of Rrogozhinë
50.	Municipality of Sarandë
51.	Municipality of Selenicë
52.	Municipality of Shijak
53.	Municipality of Shkodër
54.	Municipality of Skrapar
55.	Municipality of Tepelenë
56.	Municipality of Tiranë
57.	Municipality of Tropojë
58.	Municipality of Ura Vajgurore
59.	Municipality of Vau i Dejës
60.	Municipality of Vlorë
61.	Municipality of Vorë
<p><b>Total: 86 Institutions</b>  <b>(Prime Ministry, 11 Ministries, 13 Subordinate institutions and 61 Municipalities)</b></p>	

