



**ANNUAL REPORT**

**2020**



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

**JANUARY 1<sup>ST</sup> - DECEMBER 31<sup>ST</sup> 2020**

**Tirana, March 2021**

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## MESSAGE OF THE HEAD OF INSTITUTION

*Honorable Mr. Speaker of the Assembly of Albania,  
Honorable Ladies and Gentlemen Deputies,*

*I am pleased to present to You the Annual Report on the activity of the Commissioner for the Civil Service Oversight for 2020, as an obligation sanctioned in article 11, point 5 of Law no. 152/2013, “On the civil servant”, amended.*

*This year, this Report comes in specific circumstances created due to the Covid-19 pandemic, which forced institutions and the whole society to operate in emergency conditions.*

*In this context, the Commissioner also took all measures to adapt the activity of the institution to the situation and managed to fulfill all legal obligations and recommendations assigned by the Assembly in the 2019 Resolution.*

*The Commissioner has stood by all institutions that are part of the civil service system, orienting them to adapt to the new working conditions “online, in order for the joint and continuous efforts for the correct implementation of the duties assigned to each party by law, to continue uninterrupted in the direction of strengthening the rule of law in general, and the establishment of a stable and professional civil service, in particular, which is based on merit, moral integrity and political impartiality.*

*With the belief that by working together we have managed to influence the improvement of civil service administration standards, as an important part of the public administration in our country, I would like to reconfirm once again the commitment of the Commissioner’s institution, to do the best in the mission entrusted to him.*

*Thanking You in advance for Your understanding,*

*Respectfully,*

**THE COMMISSIONER**

**Pranvera STRAKOSHA**

## LEGAL REFERENCES ON WHICH THE ACTIVITY OF THE INSTITUTION IS BASED UPON

The drafting of this report is based on the analysis of the institutional activity for 2020 of the Commissioner for the Civil Service Oversight (CCSO), regarding the supervision of the implementation of law no. 152/2013 “*On the civil servant*”, amended.

The law on civil servants is based on article 107 of the Constitution of the Republic of Albania, 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; the recommendations of the Annual Resolution of the Albanian Parliament on the evaluation of the activity of this institution, as well as the obligations arising from the international cooperation.

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

### **Article 14**

- 1. The Commissioner oversees, ex officio or at the request of the institutions, the implementation of the law in the administration of the civil service in all institutions that employ civil servants.*
- 2. In the exercise of powers, the Commissioner:*
  - a) conducts a full administrative investigation, according to the Administrative Procedures Code;*
  - b) requests and receives from the institutions any information necessary for the performance of its duties*
  - c) inspects files and any documents related to the administration of the civil service;*
  - ç) requests, ex officio or upon request, evidence of any civil servant or functionary of the institution;*
  - d) examines and inspects every administration practice in every institution that employs civil servants.*
- 3. Institutions that employ 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.*

**Article 15**

**Supervision**

*1. If during the supervision, the Commissioner deems that there are violations of the law in the administration of the civil service, by a written decision, warns the relevant institution, assigning the tasks to improve 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 responsible civil servant for non-implementation of the measures. The amount of the fine is from 20 percent to 30 percent of the monthly salary of the responsible civil servant. In case of further non-implementation 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 infringements.*

## CHAPTER I

### EXECUTIVE SUMMARY OF THE COMMISSIONER'S ACTIVITY FOR 2020 AND A GENERAL OVERVIEW OF THE CIVIL SERVICE SITUATION

The Commissioner for Civil Service Oversight (CCSO), during 2020, has continued its activity in implementation of the competencies defined by law no. 152/2013, “*On the civil servant*”, amended, in articles 11, 14 and 15, which deal with the supervision of legality in the administration of the civil service in all institutions employing civil servants, including in the priorities of its activity, the objectives set out in the Assembly Resolution on the evaluation of the activity of the institution for 2019, which have been fully implemented.

Respecting the rules dictated by the Covid-19 pandemic, in order to continue the institutional activity intact, the Commissioner took measures to adapt the logistics of the institution also to the requirements of communication mainly “online” with all entities under supervision.

In summary, we are presenting below, the work of the Commissioner carried out for the reporting period and a brief description of the situation ascertained for each reported aspect:

■ *During 2020, all information/requests/complaints that have come for review in the direction of the Commissioner have been addressed.*

The total number of inspections on the basis of complaints/requests/information is **150**, of which the process has been completed in 110 cases and another 40 cases have been carried out to be handled in 2021, which at the time of reporting have all been completed.

The number of information received by the Commissioner is on the rise, compared to a year ago, where 142 complaints were registered, which indicates the increase of trust in the institution of the Commissioner and the awareness of civil servants to seek their rights.

It is noted that the main place is occupied by individual complaints of various civil servants, which have served as an indicator for the Commissioner, to verify preliminarily and initiate ex officio, the inspection process. These cases represent over **86%** of the handled cases and they relate mainly to the concerns of various citizens or existing civil servants, who claim to have been wronged or that violations of the law have been allowed, which have violated those rights that are guaranteed from the civil service legislation, therefore requesting the intervention of the Commissioner for the evaluation and resolution of the case.

Although the Commissioner for Civil Service Oversight does not have direct competence to resolve the complaints of various civil servants or citizens, based on his competence provided in point 1, of article 14, of law no. 152/2013 “*On the civil servant*” amended, to exercise supervision ex officio or at the request of institutions, has performed the verification and evaluation of all complaints, requests or various denunciations, received in his address, giving concrete answers to the concerns raised by legal entities or citizens, through decisions to regulate the legal situation.

This aspect of the Commissioner’s activity also serves as an indicator to accurately orient the process of supervision and inspection, towards the entities that show problems, which emerge from the in-depth administrative investigation of the reported cases.

■ *In the process of general and thematic supervision have been included 9 subordinate institutions of the state administration, which were planned to be checked in the annual activity plan of the institution.*

In these institutions, the oversight process has been completed in **7** cases, where 842 job positions part of the structure and staff in force have been verified, of which, **134** positions part of the civil service scheme and no cases of appointments at the executive level have been identified in violation of the law.

Just like a year ago, the issues have been the same, related to the unification of job positions. These institutions and the Department of Public Administration, as the responsible entity in charge of administering 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 job positions in subordinate institutions, with the categorization of duties and remuneration, according to the provisions of article 19 of the civil servant law, as well as the finalization of job evaluation for members of the Senior Management Body, aspects that have been found not to have been performed in accordance with the law.

This process is currently being carried out by the Department of Public Administration, in cooperation with the experts of the IPA 2014 project, which supports the institutions that administer and supervise the civil service, with the application of the civil service reform.

■ *The process has continued in terms of consolidating the database and resolving the problems that arise during the execution of court decisions for the reinstatement of court-winning civil servants.*

This task has been assigned to the Commissioner by the Assembly initially in 2018, and has continued also throughout this year, showing a special attention towards the development of the process in local administration institutions, including municipalities and district councils, in conditions when during 2019, this process was followed with priority in state administration institutions.

As of December 31, 2020, **222** court decisions have been identified in the local administration, in favor of civil servants, who have gained the right to return to the civil service, divided as follows according to the typology of institutions:

- 📌 in *61* municipalities of the country, **143** final decisions have been identified, in accordance with which, civil servants have been registered in the waiting list and their financial obligation deriving from the court decision has begun to be settled.

For these decisions the responsible unit has acted in 50 cases, reappointing the winning court clerks to a civil service position and the other cases (*93 cases*) are still on the waiting list. We highlight the fact that out of 61 Municipalities of the country, currently 50 of them have executed all court decisions and in 11 institutions the process continues.

- 📌 in *12 district council institutions*, **79** decisions have been identified that have become final, pursuant to which civil servants have been registered in the waiting list and their financial obligation deriving from the court decision has begun to be liquidated.

For these decisions, the responsible unit has acted in 56 cases, reappointing the winning court civil servants to a civil service position and the other cases (*23 cases*) are still on the waiting list. In relation to these institutions (*12 district councils*), currently 6 of them have executed all court decisions and 6 other institutions are continuing the process.

As presented above, it is found that institutions have taken concrete actions to recognize and pay their legal obligations, which is materialized in the fact that the winning court civil servants have already been identified and registered in the waiting list, and have further been reappointed to positions where they meet the requirements for the job, while the payment of financial obligations continues for employees who have not yet been able to be included in a regular civil service position.

The Commissioner is working intensively, in close cooperation with the relevant institutions, to enable the appointment of all employees who have earned the right to return to the civil service, in order for them to be paid for an actual job that they will perform and not due to a court decision.

This is a process that during its application in practice has reflected problems which have not allowed its progress at a faster pace, the solution of which requires a rapid intervention for the improvement and development of laws and bylaws, which is being prepared in cooperation with the Department of Public Administration, as will be explained in more detail in the relevant section of the following report.

📌 *The oriented supervision related to recruitments was carried out at DOPA,*

*monitoring the competition procedures for group recruitment, parallel movement and promotion in the state administration, for 880 job positions.*

In the conditions of the Covid-19 pandemic, during this year, the process was followed by the Commissioner through “online” monitoring in real time, of public announcements on the recruitment portal, as well as through cooperation with the employees of the Department of Public Administration in charge of recruiting human resources. The purpose of monitoring this process is to prevent legal violations from a procedural point of view, as well as to ensure a fair and transparent competition process.

The Commissioner appreciates the growing efforts of the Department of Public Administration to improve the procedures and content of the recruitment process in the state administration, from the point of view of adhering to the general principles of recruitment. However, it is worth mentioning at this moment, that this institution should be more careful in terms of expanding the recruitment group, with as many executive level positions with the same characteristics, in order to increase efficiency of competition and to respect the principle of meritocracy.

This conclusion is reached after it has been ascertained that, out of 519 competition procedures completed in implementation of the annual plan for 2020, in 444 cases (*accounting for 85% of completed announcements*) the competition procedure was developed for a single position.

Meanwhile, qualitative indicators should be identified related to the observance of the principle of transparency of the process (*all announcements are published on the National Employment Service portal and on the Department of Public Administration portal*); the observance of the right of competitors to appeal, (*which is reflected in the increase in the number of competitors in the phase after reviewing the complaints*). The Commissioner reaches this conclusion based also on the low number of complaints/denunciations that have come regarding the competition process from the participating candidates during 2020 (*12 complaints*), from the investigation of which it was generally concluded that DOPA has acted in accordance with the law.

On the other hand, the problem of group recruitment in the local administration continues to be identified, as vacancies are often created for a limited number of positions, which consequently objectively hinders the organization of “group recruitments” for entry level positions. Also during this year, the lack of candidates to compete in civil service positions, announced to be filled through competition, especially in the municipalities of the second and subsequent level, remains a concern.

■ *Local self-government institutions, municipalities and district councils have been involved in an oriented supervision process, in order to collect data to understand the situation of civil service administration in real time and to intervene immediately to fix the legal situation, as well as to enable proper planning of*

*entities to be supervised for the following year.*

The oversight was focused on data administration in the country's 61 municipalities, and 12 district councils, and has began shortly after the outbreak of the Covid-19 pandemic, assessing the impossibility of physically appearing in the subjects planned for control. The object of this supervision was the collection of data to identify the level of implementation of the law on civil servants in terms of its most important institutes, including: structuring the human resources of the institution; civil service recruitment; mobility and career system development; discipline in the civil service, etc.

During the supervision it was found that in the administration of local government units, there are about **6090** job positions in the civil service, which occupy around **30%** of the total number of local administration (*about 23000 job positions in total*). **4611** positions or **76%** of the total number of job positions in the civil service were identified to have been filled in accordance with the law, through the competition procedure or status declaration, according to article 64, of law no. 152/2013; **891** job positions, or **14%** of job positions that are part of the civil service were filled in violation of the law, through temporary appointments, therefore not following the competition procedures; as well as **588** vacancies, or **10%** of job positions that are part of the civil service.

For 2020, competition procedures has been foreseen for filling **1883** vacancies in the civil service, which according to the classification are divided into **31** senior management positions, **182** middle management positions, **352** lower management positions and **1318** executive level positions.

These figures show that the competition process is developing rapidly in the local administration. Compared to the state administration, where 880 job positions have been announced for competition, in the local administration are planned more than twice of them. This is a positive indicator, in favor of increasing the level of law enforcement in the local administration for this important institute. But the fact that not all end up with winners, still remains evident for various reasons, such as salary level, or lack of interest due to distance or working conditions.

A total of **1211** appointments were made through competition procedures, of which **45** civil servants were appointed through the parallel movement procedure to executive level positions; **842** civil servants were appointed through the admission procedure in the civil service to executive level positions; **50** civil servants were appointed through the parallel movement procedure to senior, middle and lower management positions; **125** civil servants were appointed through the promotion procedure to senior, middle and lower management positions; **149** civil servants were appointed through the promotion/admission from outside the civil service procedure (20%).

Comparing the cases of appointments made during this period (*a total of 1211 appointments*), with the number of vacancies defined in the annual recruitment plan (*a total of 1883 vacancies*), it is estimated that the annual recruitment plan for local self-

government institutions has been implemented to the extent of **64%**.

From what is noticed, the process of mobility in the civil service is also developing in favor of strengthening the career system, even though the movements are only within the local administration institutions and do not circulate easily within the entire civil service system. **220** cases of mobility and change of job position through the procedure of parallel movement or promotion were declared, of which only **10** cases or **4%**, have come to the local administration from the state administration or independent institutions. This shows that local government units are not attractive to civil servants outside of this typology of institutions.

The situation identified during this process has served the Commissioner to draft the oversight plan for 2021, defining as entities to be checked, the institutions with the most significant problems.

- *An oriented oversight was carried out in relation to data collection and monitoring of the dismissal process from civil service of employees who have reached the age for full retirement pension, as a special task assigned by the Assembly.*

During 2020, it was communicated with **173** institutions and **171** such cases were identified, out of which it results that in **137** cases or **80.1%** of them, the employment relationship in the civil service was terminated, while **34** cases or **19.9%** are in the process of restoring legality and at the end of the deadline left in the warning decisions, will inform the Commissioner about the progress of the process.

As evidenced by the data identified 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 has included in the annual plan of his activity for 2021, the monitoring of the implementation of the law in this field of civil service administration, for all subjects that are part of this system.

- *The process of verifying the implementation of the Commissioner's warning decisions after the end of the notice period has continued, both for the supervised entities and for the individual inspections related to the handling of the civil servants' complaints.*

For the reporting period, after the expiration of the term left in the warning decisions, the process of verification of their implementation by the institutions, has been carried out for **90** institutions, of which **41** or **46%** of them belong to the state administration, **45** or **50%** of them to local government units and **4** or **4%** of them, to independent institutions.

At the end of the verification, it turns out that the tasks left by the Commissioner have been fully implemented by **81** institutions or **90%** of them and in **9** cases or in **10%** of them, the process is continuing in different phases.

In the ongoing supervision process have also been involved **11** individual cases of complaints resolved by a warning decision, which belong to the state administration. At the end of the verification of the implementation of the Commissioner's recommendations, the process was concluded with a decision of the Commissioner, as all institutions have fully implemented their duties.

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

■ *The participation of the Commissioner in court proceedings has continued, in all cases when he was summoned by the court as a party in various procedural positions.*

The Commissioner, even throughout 2020, has continued to participate in trials conducted by administrative courts in various districts of the country, summoned as a defendant or a third party by them, in cases where 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 on his part, for **59** cases.

The recommendations of the Commissioner, or submissions to the court, have been assessed as fair and have been taken into consideration by the latter in resolving administrative disputes. Compared to a year ago, when only **9** cases of participation in court proceedings were identified, there is a significant increase of this indicator, which has come as a result of the evaluation of the work of the Commissioner by the courts, which almost in all cases, leave in force the decision of the Commissioner, or take into account his opinion, according to the case under trial.

## CHAPTER II

### MANAGEMENT OF INFORMATION AND ADDRESSING PROBLEMS IDENTIFIED THROUGH COMPLAINTS OR SIGNALS

#### 1. Analysis of information/complaints received from various sources and the manner of handling them

During 2020, the use of information received from various complaints of civil servants and third parties has been a priority of the work of the Commissioner for Civil Service Oversight, both in terms of identifying concrete problems and taking measures to regulate the state of legality in special cases, as well as identifying group-problems, on the basis of which general or thematic supervisions are planned and organized.

In contrast to before, in 2020 there was an increase in requests from state institutions, which within the right recognized by point 1, of article 14, of law no. 152/2013 “*On the civil servant*” amended, have requested the cooperation with the Commissioner for various issues or have requested interpretation of specific provisions or cases, which they have encountered during their daily activity.

In order to increase the speed of reaction, to get as close as possible from the occurrence of the alleged violation of the rights of the employee, with the moment of reaction to regulate the situation of legality, the method of prior verification of information has been used more often.

In cases where repeated violations of the law have been found, in-depth administrative investigations have been carried out, registering them as inspection processes, to be finally resolved 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 will be analyzed concretely in the following section of the report.

This situation presented above, is materialized with the data of this table:

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

Reasons for initiating an administrative investigation	No. cases investigated
Started at the request of institutions	17
Started ex officio by the Commissioner, from information by civil servants and third parties	133
<b>TOTAL</b>	<b>150</b>

During 2020, the total number of inspections is **150**, of which, the process has been completed in **110** cases and the other **40** cases, which have been carried over to be treated in 2021, have all been completed at the time of reporting.

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

- a. Regarding the *progress of the inspection process*, this situation is as follows:

*Table no.2.2 The progress of the inspection process started in 2020*

Progress of the inspection process conducted in 2020	Inspections started ex officio, based on complaints from civil servants	Inspections initiated at the request of institutions	Completed inspections
Number of inspections completed during 2020	93	17	110
Number of inspections in process (carried over and completed, early in 2021)	40	0	40
<b>TOTAL</b>	<b>133</b>	<b>17</b>	<b>150</b>

- b. Regarding the *typology of institutions* for which the information has arrived, the following situation is presented:

*Table no. 2.3 Typology of inspected institutions*

Typology of inspected institutions with completed issues	Inspections started ex officio at the request of civil servants	Inspections initiated at the request of institutions	TOTAL
A. <b>Central Government Institutions</b>	<b>82</b>	<b>2</b>	<b>84</b>
Subordinate Institutions	73	2	75
Ministries	9	0	9
B. <b>Local Government Institutions</b>	<b>49</b>	<b>1</b>	<b>50</b>
District Council	4	0	4
Municipalities	45	1	46
C. <b>Independent Institutions</b>	<b>2</b>	<b>14</b>	<b>16</b>
<b>TOTAL (A + B + C)</b>	<b>133</b>	<b>17</b>	<b>150</b>

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

- 📌 **84** cases or **56%** of the treated cases were registered from the state administration (including central administration and subordinate institutions);
- 📌 **50** cases or **33%** of the treated cases were registered from the local

administration;

📌 **16 cases or 11%** of the treated cases were registered from independent bodies

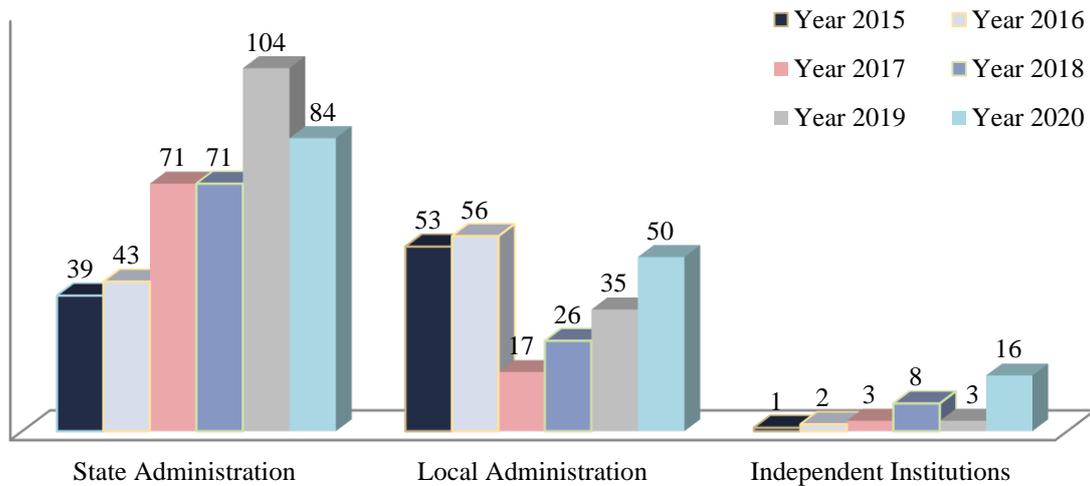
From the table above, it is noted that in the total number of cases handled belonging to the state administration, the largest part (*73 cases or 51%*) is occupied by requests addressed by subordinate institutions. This is related to the fact that this category of institutions is in the process of reorganization and they have a more limited object in their activity and higher operability. These causes bring as a consequence a greater dynamics in the activity of employees and consequently more frequent confrontation, both with movements in job positions, as well as with their managers, regarding the realization of daily tasks. This situation is also due to the fact that in most of these institutions, there are no job positions that should deal directly with human resource management, and consequently the administration of the civil service is often performed by specialists, who have other duties according to the structure in place, who are also charged with the task of managing human resources. On the other hand, the human resources unit of the line ministry finds it difficult to administer the civil service in these institutions, in full coherence with the moment of performing 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.

From the reviewed cases, based on the information received from local government employees, most of them (*45 cases or 31%*) of course belong to the municipalities, as they have the highest number of civil servants, exercise daily executive activities and have a higher dynamics in terms of tasks assigned, accountability and expectation of results, while District Councils, have a limited number of civil servants and their nature of work has a planning and coordination character, which has a lower dynamics. If we compare the current situation with that of the last five years, it is presented with an increase in level and rhythm. More specifically, the dynamics are 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, 2019 and 2020*

Total Registered Cases	LEVEL OF ADMINISTRATION		
	State Administration	Local Administration	Independent Institutions
In 2020 - <u>150</u> cases	84	50	16
In 2019 - <u>142</u> cases	104	35	3
In 2018 - <u>105</u> cases	71	26	8
In 2017 - <u>91</u> cases	71	17	3
In 2016 - <u>101</u> cases	43	56	2
In 2015 - <u>93</u> cases	39	53	1

*Graph no. 2.1 Dissemination of information according to the level of the institution 2015-2020*



Based on the values presented in the table, as mentioned above, in general, the flow and perception of information as an indicator for the start of the inspection process has increased, as the number of complaints is higher for 2020. But, on the other hand, it is evident that the main number of cases reviewed in the last year, as in previous years, consists of those coming from state administration officials.

This is related, as we said above, to the dynamism that characterizes high state administration, which is reflected especially in the constant reorganizations that it undergoes in the structure, in order to be as appropriate as possible with the tasks and objectives that it constantly sets, with the current development of the country as well as the continuous movements in human resources, towards new admissions in 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 processing of information received or collected by the Commissioner was completed, the situation would be presented as in the table below:

*Table no. 2.5 Way of handling resolved information during 2020*

Manner of completion of the administrative procedure, after reviewing the case	Started ex officio	Started from requests	TOTAL
Decision to improve the situation of illegality	-	28	28
Decision to close the procedure, as no legal violations were found after verification	-	30	30
Joined and resolved in the general supervision, exercised at the institution where the irregularity is alleged	-	1	1
Responding to the applicant administratively	-	44	44
Joined to be handled along with the process of execution of unenforced court decisions for the relevant institution	-	7	7
Processing of information suspended for legal reasons	-	0	0
Carried over for 2020	-	40	40
<b>TOTALI</b>	<b>0</b>	<b>150</b>	<b>150</b>

According to this overview, the Commissioner has conducted preliminary investigations and in-depth administrative investigations, providing solutions to all complaints addressed to him, expressing and evaluating in each case the level of implementation of the rules contained in the civil service legislation.

Evaluating the way in which the reviewed issues were completed, the situation is presented as follows:

- ❏ irregularities were found in **28** cases and the institution was warned to regulate legality; here is the case to say that in general, by the relevant institutions, has been shown understanding regarding the decision orders and the tasks assigned have been voluntarily completed. In other cases, based on point 2, of article 15, of law no. 152/2013 “*On the civil servant*”, amended, the procedure for implementation of decisions has started, by the Legal Directorate of the Commissioner.
- ❏ in **30** cases, an administrative investigation was conducted as there were reasonable suspicions of non-compliance with the law, but at the end of it no acts or actions contrary to the law were identified and therefore, the case was dismissed and archived, notifying regularly, the parties in the process;
- ❏ **1** of the received information was joined and treated with a decision within the supervision conducted at the institution (*in those cases when the working teams were in the field*);
- ❏ in **44** cases, the process was completed, 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 Commissioner’s Regulation “*On the Supervision/Inspection Procedures*”, or when during the preliminary investigation no irregularities were found, which have violated the merits of the administrative process. In this case, the complainant was answered administratively, explaining in detail about the handling of the case and how the case should continue to be handled, or after the relevant decision was notified to the parties, it was followed by its publication on the official website of the institutions;
- ❏ **7** cases were joined to be handled in the process initiated by the Commissioner for the execution of unenforced court decisions for the respective institution;

It should be noted that all **40** cases carried over for 2021, have been completed with decisions since the first month of 2021.

c. Taking as a reference [the typology of the request/complaint](#), the situation is presented in the following indicators:

The main place is occupied by the individual complaints of various civil servants, which have served as indicators for the Commissioner, to verify in advance and start ex officio, the inspection process.

These cases represent over **86%** of the cases handled and relate mainly to the concerns of various citizens or existing civil servants, who claim to have been wronged or that violations of the law have been allowed, which have violated those rights guaranteed by the civil service legislation, therefore requesting the intervention of the Commissioner for the evaluation and resolution of the case.

Although the Commissioner for Civil Service Oversight does not have direct competence to resolve the complaints of civil servants or citizens, but as it was pointed out above, within his right, provided in point 1, of article 14, of law no. 152/2013 “*On the civil servant*” amended, to exercise supervision ex officio, or at the request of institutions, has performed the verification and evaluation of almost all complaints, requests or various denunciations, received in his address, issuing relevant decisions.

But, on the other hand, there have been cases when, citizens or various civil servants of the state administration, for reasons which do not matter to the initiation or not of the verification process, have reported various cases, with allegations of mismanagement of various administrative processes, in order to favor certain persons participating in these processes.

*Table no. 2.6 Typology of the request/complaint/information received from the Commissioner*

Typology of the request/complaint/information received by the Commissioner, completed in 2020	Number of requests
Request/information for administrative disputes raised by various civil servants ( <i>personal</i> )	93
Request/information for administrative disputes by third parties	17
Carried over for 2021	40
<b>TOTAL</b>	<b>150</b>

*\*Note: 110 cases completed during 2020 and 40 cases carried over for 2021, a total of 150 complaints registered.*

It is worth noting that, in all those cases, when requests/denunciations have been filed with the Commissioner for third parties, with the object of complaint, or submissions submitted for actions with the purpose of favoring any party, competitor/employee, the claim has not been proven and these issues have been settled with archiving decisions or by administrative response replies.

**2. Classification of verified and completed information within 2020, according to their object**

Making a classification on the types of administrative disputes, treated ex officio, case by case for 2020, 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	12
Procedure for transfer or release from civil service, due to restructuring	16
Violation of the procedure for temporary transfer	17
Confirmation procedure at the end of the probationary period, or job evaluations	3
Refusal to declare the status, or confirmation of it	5
Failure to enforce the final court decision (article 66/1)	8
Competition procedure	12
Others (clarification on the meaning/correct application of the law; change of salary category; non-payment of salary in case of temporary transfer for work needs, etc.)	37
<b>TOTAL</b>	<b>110</b>

*\*Note: 110 cases completed during 2020 and 40 cases carried over for 2021, a total of 150 complaints registered.*

As ascertained from the data presented in the table, **37** cases, thus the largest number of complaints submitted to the Commissioner this year, were related to problems of ambiguity in the correct understanding of various provisions of law no. 152/2013 “*On the civil servant*” amended and various aspects identified in the practice of implementing the civil service legislation.

These are mainly allegations of various irregularities in the conduct of disciplinary proceedings, especially in terms of non-compliance with procedural rules; misunderstanding and misapplication of substantive law; failure to properly assess the significance of the disciplinary violation, accompanied by the application of disciplinary measures in proportion to the violation committed; etc.

As typical cases we can mention here, the ambiguities encountered in practice, regarding the way the Disciplinary Commission is created, in those cases when the positions of civil servants charged by law as members of the Disciplinary Commission have been vacant; in cases when the disciplinary procedure has been initiated for one of the members of the Commission, or in terms of superimposing the qualities of members on a single employee, etc.

In order to clarify the above-mentioned ambiguities, the Commissioner, in order to ensure the implementation of legality in the administration of the civil service and the unification of the practice for the establishment of disciplinary bodies, in independent institutions where there is a legal vacuum regarding this aspect of civil service administration, has prepared an explanatory and interpretive material from a legal point of view on the composition of the Disciplinary Commission and the replacement of its

members under the conditions when: a) we have overlapping qualities of the members of the Disciplinary Commission to a single employee; b) when there is no employee within the organizational unit, to carry the quality of the senior civil servant in the Disciplinary Commission.

Summarized in this material, the Commissioner has identified and specified two aspects of the practical implementation of the provisions governing the disciplinary body in independent institutions, reasoning, among others, as follows:

*“...First, what should we do when we are in the conditions where the highest civil servant as the head of the Disciplinary Commission, is also a member of this commission in the capacity of direct supervisor.*

*...Secondly, what will be done when one of the members of the Board of Directors simultaneously carries the quality of, direct superior, head of the responsible unit in the institution and senior civil servant of the institution, where the employee for whom the disciplinary proceeding has started, works.*

*For the clarification of the above cases, the legal basis on which the interpretation is based, “Discipline in the civil service”, is regulated in Chapter X, articles 57-61, of law no. 152/2013, “On the civil servant”, amended.*

*Article 58 of this law provides the “Types of disciplinary measures” which can be applied to civil servants, which are;*

*a) remarks;*

*b) withholding up to 1/3 of the full salary for a period of up to six months;*

*c) suspension from the right to promotion, including an increase in the salary scale for a period of up to two years.*

*ç) dismissal from the civil service.*

*Whereas in article 59, of this law are defined “Competencies and procedures for their issuance”. According to point 2 of this article, the measure provided in letter a) of article 58, is given by the direct supervisor of the employee, while measures b), c) and ç) by the Disciplinary Commission, for every civil servant in the institution, with the exception of the TMC.*

*Further, with reference to point 10, of article 59, the Council of Ministers approves the detailed rules of the disciplinary procedure, as well as the rules for the establishment, composition and decision-making in the disciplinary commission.*

*The decision of the Council of Ministers no. 115, dated 05.03.2014, “On determining the disciplinary procedure and rules for the establishment, composition and decision-making in the Disciplinary Commission in the civil service”, amended, in chapter I “Disciplinary Bodies”, point 3, stipulates that:*

*“The disciplinary commission, for independent institutions, municipalities and districts, consists of 5 (five) members and is composed of:*

*a) the highest civil servant in that institution;*

*b) the direct supervisor of the civil servant, for whom the disciplinary proceeding has started;*

*c) the head of the responsible unit for that institution;*

*ç) the senior civil servant of the institution where the employee works, for whom the disciplinary proceeding has started;*

*d) the senior civil servant of the unit where the employee works, for whom the disciplinary proceeding has started;”*

*Referring to the request forwarded for interpretation to the Commissioner for Civil Service Oversight, in the first case, we are in the conditions when the highest civil servant in the institution is also a member of the DC in the capacity of direct supervisor, therefore in this case arises the need for replacement of one of the members.*

*Following the above argumentation, it is worth mentioning that point 6, of DCM no. 115, dated 05.03.2014, provides that:*

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

*In more detail, the manner of replacing the members of the Disciplinary Commission is regulated in the Instruction of the Department of Public Administration no. 1, dated 02.04.2014, in point B/3, which provides that:*

*“Replacement is done by the person who covers the first job position in the hierarchy after the member of the DC who will be replaced. Thus, in case the Chairman of the Commission is to be replaced, he will be replaced by the person who covers 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 civil servant, subject to disciplinary proceedings. In case of legal impediment also of this substitute civil servant, then the replacement will be made by the person who covers the same position with him, even though he may not be in a professional line with the civil servant in the proceeding...”*

*Following the spirit of the following provisions of the above act, specifically Chapter B/3, of the above-mentioned Instruction, to which we will refer by analogy, we clarify that: since the Secretary General of the institution, as its highest civil servant and Chairman of the Disciplinary Commission, will participate in this administrative procedure in the capacity of direct supervisor, his replacement will be made by the head of the institution, who will be the chairman of the Disciplinary Commission.*

*Regarding the second case, when one of the members of the Disciplinary Commission, simultaneously carries the quality of direct supervisor, the director of the responsible unit in the institution and the oldest civil servant of the institution where the employee for whom the disciplinary proceeding has started works, this member will hold the role of direct supervisor, given the important and active role that this member of the commission has in the development of the disciplinary proceeding.*

*Continuing further with the logic of the above provisions, the role of the head of the responsible unit in the institution, based on point B/3, paragraph 5, of Instruction no. 1, dated 02.04.2014 of DOPA, will be taken over by another civil servant of the human resources unit, as in this provision it is explicitly provided that, in the case when the direct supervisor of the employee in the proceeding is the head of the human resources unit of the institution, his replacement is done with another civil servant of the human resources unit.*

*At the same time, the member represented by the senior civil servant of the unit where the employee works, for whom the disciplinary proceeding has started, will be replaced by another employee of this unit who comes in seniority directly after him, thus preserving the element of being in the same unit with the employee for whom the disciplinary proceeding has been initiated. In case there is no other person within the unit to perform this replacement, then the senior civil servant from*

*another unit can become a member of the Disciplinary Commission, which referring to the organizational structure of the institution has similar functions or approximate to the unit where the civil servant for whom the disciplinary proceeding has started, belongs. ”*

In some other cases, addressed to the Commissioner, it was found that the composition of the established Disciplinary Commission was correct, in accordance with the requirements of the law and bylaws that regulate it and during the activity for handling the disciplinary proceedings, this mechanism has performed all administrative actions for the realization of this disciplinary proceeding, but on the other hand, as it turned out during the investigation conducted by the Commissioner, problems have arisen from the point of view of the content of the disciplinary proceeding, as in the case of the civil servant in the position of specialist in the Municipality of Tropoja, in which the principle of exercising discretion illegally by the direct supervisor has been evidenced. For the case in question, in the warning decision, the Commissioner has assessed the illegality of the act, reasoning that:

*“...Analyzing and evaluating the legality of act no. 94 (1629 prot.) dated 17.04.2020, for the issuance of the disciplinary measure “Remark”, it is concluded that we are facing an illegal act, according to point “dh” of article 109, of law no. 44/2015 “Code of Administrative Procedures of the Republic of Albania”. This act is considered as taken in violation of the law, because the recommendation given in the final audit report, to take disciplinary action against the employee in question, was previously taken into consideration, in the administrative procedure concluded with act no. 76 (787/61 prot.) dated 05.08.2019 of the Mayor of Tropoja, by which it was decided to terminate the disciplinary investigation against this civil servant. This is a legal act, taken in regular exercise of discretion by the direct supervisor, as the administrative procedure for dealing with a disciplinary proceeding, defined in article 59, of law no. 152/2013 “On the civil servant” amended, and decision no. 115 dt. 05.04.2014 “On determining the disciplinary procedure and rules for the establishment, composition and decision-making in the disciplinary commission in the civil service” has been followed. According to point 6, of article 60, of law no. 152/2013 “On the civil servant” amended, for each disciplinary violation only one disciplinary measure is taken.*

*In a broader sense of this definition, it should be said that for the review of a disciplinary violation can be conducted only one administrative procedure, which at its conclusion, according to point 17, of Decision no. 115, dated 5.3.2014, of the Council of Ministers, “On determining the disciplinary procedure and rules for the establishment, composition and decision-making in the Disciplinary Commission in the Civil Service”, amended, concludes with a decision to take a disciplinary measure or to terminate disciplinary proceeding.*

*In the present case, the direct supervisor, in whose competence is the review of the disciplinary proceeding for issuing the measure “Remarks”, with act no. 76 (787/61 prot.) dated 05.08.2019, has decided to terminate the disciplinary proceeding. This is a legal act which had to be taken into account by the current*

*mayor. Pursuant to point 1, of article 116, of law no. 44/2015 “Code of Administrative Procedures of the Republic of Albania”, a legal act can be repealed only when it is necessary to prevent or eliminate a serious injury to life and health of people or public safety, circumstances that have nothing to do with the actual case. At the same time, it should be noted that the issuance of act no. 94 (1629 prot.,) dated 17.04.2020, of the Mayor of Tropoja, for imposing the disciplinary measure “Remarks” to the employee in question, was not dictated by any new circumstance, which was not taken into account in the development of the previous disciplinary proceeding.*

*Based on all the above, it is concluded that order no. 94 (1629 prot.,) dated 17.04.2020, of the Mayor of Tropoja, for imposing the disciplinary measure “Remark” to the employee in question, is an illegal act, which based on point dh), of article 109, of law no. 44/2015 “Code of Administrative Procedures of the Republic of Albania”, is an exercise of discretion in an illegal manner. This act, based on point 1, of article 113, of law no. 44/2015 “Code of Administrative Procedures of the Republic of Albania”, must be annulled by the public body that issued it, with a new written act, according to point 3 of this provision.”*

Referring to the above, in such a case, it was managed to act in time and to overcome these manifestations of the tendency to violate the principles of civil service law, such as the principle of discretion. In support of legal and sub-legal competencies, the Commissioner has issued a decision to regulate the situation of illegality found in the institution of the local self-government unit mentioned above, assigning concrete tasks for the human resources unit of the institution.

A prominent place with 17 cases is taken also by the complaints regarding the clarification of the understanding and proper implementation of the requirements of the process of temporary transfer to the civil service, as well as delayed actions taken by the institution to return employees to their previous position at the end of the temporary transfer period.

A significant part of these cases were occupied by complaints from customs administration officials, who submitted that although there was a significant overdue in time of the 6 months period for temporary transfers, the administration made no attempt to return them in the previous position, or even other cases, where the temporary transfer period was just over, a second transfer was ordered and so on.

Regarding these requests, a detailed verification of the documentation and customs legislation was performed, combined with the civil service legislation, and it was clarified that in the case of employment relations in the customs administration, special rules are provided, which change from the general rules set out in the civil service legislation, and which take precedence. On this occasion, the unification of the approach to be used was set, giving clarity to an ongoing dispute between customs officials and their administration.

For illustration, we are presenting below a part of the reasoning of one of the decisions of the Commissioner, which highlights the peculiarities of the employment relationship of customs officials and the way of understanding and handling cases of temporary transfers to this administration. Specifically, in the case of the employee M.B., who has a regular appointment to the position of “*Head of the Luggage Control Office*”, the Security Control Sector, Durrës Customs Branch, who was temporarily transferred to the position of “*GFI Specialist, in the Energy Products Sector*”, Directorate of Excise and Post-Customs Controls (Aposteriori), Department of Excise and Aposterior, in the General Directorate of Customs and although the maximum deadline of 6 months of temporary transfer had passed, by the customs administration no action was taken to return him to his previous job position, where he is appointed in accordance with the civil servant law.

At the end of the analysis of this case, the Commissioner has analyzed the meaning of the provisions of the Customs Code and the difference from the provisions of the civil service legislation, reasoning as follows:

*“...In the framework of the assessment of the legality of the act of temporary transfer in this case, it is concluded that, due to the specifics and complexity of the customs service, in its specific legislation (point 3 of article 13 of the Customs Code), special rules are provided, both in terms of the types of transfers, their periodicity and the competent body that orders these transfers. Specifically, point 7 of article 15 of this Code, in letter “a” provides that: “The customs employee may be temporarily transferred to another position of 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) to improve 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 respective commission”.*

*As we can see, in letter “i”, of article 15, point 7/a, of law no. 102/2014, “Customs Code of the Republic of Albania”, amended, 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 can be made for up to 6 months (simultaneously or in part) for work needs, but not for more than a period of 6 -months, over two years.*

*This means that a customs officer can be temporarily transferred, for the needs of the institution, whenever the need arises for such a thing, without any limitation on the frequency, therefore in this view the claim that the temporary transfer is unfair cannot be accepted because the applicant has a final appointment after the restructuring of the institution.*

*The fact that in the content of act no. 13143 prot., dated 28.5.2019, of the General Director of Customs, the deadline for temporary transfer has not been determined, it does not make the act illegal. While we are facing a temporary transfer, for the needs of the institution (point “I”, of the aforementioned provision) and since the*

*reference provision of the act explicitly provides for the maximum period of the temporary transfer, the duration, despite not being marked in the act, is presumed to be no more than 6 months.*

*It is also concluded that the act is legal, since it has been issued by the competent body, the General Director of Customs, as provided in point 17, chapter V, “Temporary transfer”, of decision no. 921, dated 29.12.2014, of the Council of Ministers, “On the staff of the customs administration”, amended while preserving the salary category he had in the previous position (category C1).*

*Further, at the same point, it is provided that, in the case of customs officials who enjoy the status of civil servant, a copy of the transfer act is sent to the Department of Public Administration, which although is the responsible unit for the institution, in this case, does not play the role of the approving body, as provided in point 5, chapter I, of decision no. 125, dated 17.2.2016, of the Council of Ministers, “On the temporary and permanent transfer of civil servants”. According to this point of the sub-legal act, the only competent body, which makes and approves at the same time the temporary transfer of customs employees and in most cases also the initiation of the procedure upon its request, is the General Director of Customs. In these circumstances, the allegation that the act of temporary transfer is illegal is not grounded as it has not been approved by the responsible unit.*

*From the analysis of all that was described above, it is concluded that, the temporary transfer of the employee in question, to the position of “GFI Specialist, in the Energy Products Sector”, Directorate of Excise and Customs Clearance Controls (Aposteriori), Excise and Aposterior Department, at the GDC, was made in accordance with the legal provisions regarding the temporary transfer of a customs officer. But, on the other hand, it is appropriate to underline that, by the competent body that orders these types of transfers and the human resources unit of the General Directorate of Customs, has been acted in violation of the civil service legislation, at the moment that the order of the law has not been respected, in letter “c”, point 7, of article 15, of the Customs Code, where it is explicitly defined that: “At the end of the transfer period, the employee returns to the previous position, except when the employee accepts to continue in the position where he was transferred”.*

*In the conditions when it is confirmed that the 6-month period of the last transfer of the employee in question has expired (in November 2019), as well as when we are not dealing with any exceptional case provided by law, this employee should have returned to his previous job position, unconditionally.”*

During 2020, the Commissioner for Civil Service Oversight, has handled **16** cases, which are related to the verification of the validity of the permanent transfer procedure, accompanied by a reduction in the salary category, dictated by the restructuring process of the institution, cases in which the Restructuring Commission has accepted as a matter of fact the change of the education criterion for the job position, without respecting the requirements of the civil service legislation, sanctioned in 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”, (case of employee V.B., in the position of “Archive Protocol Specialist” at the Durrës District Council.*

In summary, the Commissioner in his decision has held this position:

*“...Regarding the change in the salary level category from III-b to IV-a, for the position of “Archive Protocol Specialist”, in the evaluation of laws and bylaws, which regulate the way of grouping as well as determine the salary limits of officials elected and appointed, of civil servants and administrative employees in local self-government units, it turns out that law no. 139/2015, “On local self-government”, in letter ç), of its article 77, has given the legal right to the District Council to approve the structure, staff and salary categories/classes, for each civil service position, etc., based on 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, as well as in Decision no. 165, dated 02.03.2016, 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 local self-government units”, amended.*

*Referring to these bylaws, in point 4, of Decision no. 165, dated 02.03.2016, amended, it is provided that the structure and the salary levels for civil servants in the District Council are provided in attachment no. 7, attached to this decision and is an integral part of it, while according to point 14 of the above act, the legal right for the approval of the salary value is held by the District Council, according to the relevant attachment. But, on the other hand, the legislator connects, the recognition of the right of every public administration institution to determine the relative value of each job position in the civil service and to enable its classification in the respective category and class, with the observance of the requirements of Chapter V, “The procedure and methodology of evaluation and classification of job positions”, of DCM no. 142, dated 12.03.2014, amended, which provides for the procedure and exceptional cases when the reassessment and classification of job positions in the civil service is performed, defining at the same time the phases that this process follows, as well as the bodies charged by law to perform the process of evaluating and classifying job positions.*

*Specifically, referring to Chapter V, of Decision no. 142, dated 12.03.2014, of the Council of Ministers, point 23, provides that the evaluation of the job position is performed when:*

- a) a new job position is created;*
- b) the change of the job description for the existing positions is so essential that it requires a reclassification of the position, in accordance with the new duties and responsibilities;*
- c) required by law or bylaws.*

*Whereas in point 24, of Decision no. 142, dated 12.03.2014, it is sanctioned that the job evaluation procedure follows these stages:*

- a) establishment of the evaluation committee;*
- b) identification of the job position/positions to be evaluated*

- c) factor evaluation and scoring according to the methodology of job position evaluation;
- d) classification of the job position in the respective category, class and group.

Based on the above rules and on the content of the administered documentation and the requirements of the provision cited above, it is concluded that in this case the requirements regarding the procedure and methodology to be followed by the institution for evaluation and classification of job positions are not respected, a violation which invalidates the act of changing the salary level category, for the position of “Archive Protocol Specialist”, at the Durrës District Council, from level III-b to IV-a.

Also, it turns out that the employee did not know in advance about the change in the salary level category, and even after her request (registered with no. 86 prot., dated 10.02.2020) addressed to the direct supervisor, did not receive a response on the reason and the procedure followed for this change, thus violating article 42, of law no. 44/2015, “Code of Administrative Procedures of the Republic of Albania”, which provides that, when an administrative procedure is initiated by a public body, the latter has the obligation to notify all parties in the process for the initiation of actions.

Secondly, regarding the permanent transfer of the employee VB, from the position of “Archive Protocol Specialist”, to the position of “Specialist, in the Directorate of Land Administration and Protection”, according to the documentation and explanations given by the institution of the District Council Durrës, it is claimed that the above transfer was dictated by the change of conditions and criteria of the previous job position and the change of the type of diploma for the position of “Archive Protocol Specialist”. According to the new claimed conditions, to this job position has been added the obligation to carry the technical archive of previous decisions of the district RCT, which presupposes the recognition, interpretation and certification of these acts, consequently for this job position knowledge of engineering character is required.

Also, as a reason for not keeping the claimant in the previous position, is presented the fact that in the personal file of the employee V. B, has not been deposited the certificate of foreign language knowledge, which is a necessary criterion to hold the job position of “Archive Protocol Specialist”.

Taking into account the above claims and after analyzing the specific legislation governing the institute of permanent transfer to the civil service, we note the following: Article 50, of Law 152/2013, “On the civil servant”, amended, provides that an employee may be permanently transferred to another civil service position of the same category, only if due to closure or restructuring of the institution, its previous job position no longer exists.

According to point 13, of Decision no. 125, dated 17.2.2016, “On the temporary and permanent transfer of civil servants”, will be considered legitimate reasons that justify the permanent transfer of a civil servant, only when, due to the restructuring that has occurred: a) Job positions have been cut; b) Job positions have been restructured; c) Job position criteria have changed.

Based on these criteria of the civil service legislation and the entirety of the documentation administered, it results that according to the new structure of the

*Durrës District Council, approved by Decision no. 01, dated 26.02.2020, “On the approval of the structure and staff of the Durrës District Council, as well as some previous changes” confirmed legally with act no. 202/1 prot., dated 03.03.2020, of the Prefect of Durrës District, the position of “Protocol, Archive Specialist”, at this institution has not been abolished, and even referring to the copies of job descriptions for the years 2018, 2019, 2020, it is concluded that all these years, there are no fundamental changes in objectives, tasks and responsibilities for the position.*

*In attachment no. 3, 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, job positions are classified according to similar groups, defining also the criteria for each position;*

*In point 26 of this attachment, the classification for the job position of “Archivist” is made, in which the tasks for this position are defined as well as the criteria/qualifications for the position; Higher education, degree “Master of Science/Fine Arts”; “Professional Master”, “Bachelor”, according to the specifics of the job description; Short-term qualifications/trainings in the country or abroad as an advantage; Knowledge of the foreign language English and/or any other language.*

*Comparing the copies of the job descriptions for the position “Archive Protocol Specialist”, it results that in the description of 2018 and 2019, Higher Education was required as an educational criterion, without specifying the profile of studies in accordance with the requirements of attachment no. 3, of DCM no. 142, dated 12.03.2014, reflected as above.*

*Whereas, in the job description of 2020, without being accompanied by any substantiated explanation, the educational criterion has been changed by stipulating that the education profile for this job position should be in Economics/Engineering Sciences, while the employee holds a degree issued by the Faculty of History-Philology, branch “Geography”, University of Tirana, as well as a Professional Master “Tourism Management”, Faculty of Political and Legal Sciences in Durres. In these circumstances, this has served as a reason for the Restructuring Commission to accept that we are facing a fundamental change in the requirements of the job, which makes it inappropriate for the civil servant V.B., to continue working in this job position.*

*Analyzing this conclusion of the Restructuring Commission, it is concluded that in the decision of the latter, the reasons and convincing argument for the change of the requirements of the type of education required for the job position are missing. On the other hand, the employment relationship already exists and can be changed or terminated only under the conditions and procedures set out in the law. This means that the type of education is a crucial qualifying element at the moment of establishing the relationship in the civil service, thus at the moment of initial employment through the competition procedure, while afterwards, there must be obvious and well-argued reasons, which dictate the need for changing the type of diploma, accompanied also by the objective impossibility to meet this condition, to change or compromise an existing employment relationship.*

*Also, the claim that this employee cannot hold the previous position as an “Archive Protocol Specialist” because she does not have knowledge of a foreign language is*

groundless. From the comparison of job descriptions, it results that this has been a required criterion for the job position also in the previous years and this claim has not been raised in any case by the responsible unit of the institution.

Furthermore, in the last CV of the employee, brought by the institution of the Durrës District Council itself, it is stated that the employee defended the English language in 2007, at the University of Tirana and has evidence “Toeic”, year 2013, which means that even this fact cannot serve as a cause for breach of the existing employment relationship.

Finally, it is found that the decision of the Restructuring Commission is groundless and unsubstantiated in its conclusion that the employee V.B., for the reasons mentioned and analyzed above, should be transferred to the position of “Specialist of coordination of cadastral documents, in the sector of Land Administration and Protection.”

According to the job description, for the above position, in the description of some of the main tasks for this position, is required:

- Updating the data on agricultural land and its other categories and their reflection in the cadastral documentation;
- Meetings and trainings with the employees of ZMMTs of the local government units of the district, as well as any other institution related to the legislation, change of resources, ways of re-categorization of resources, consolidation of agricultural land, drafting of the new cadastral documentation, etc.;
- Follow-up of the completion of the agricultural land register by the ZMMTs of the local government units of the district, the problems that arise and the necessary clarifications;
- Cooperation with ZMMTs and urban planning directorates regarding the decisions taken by them for squares and construction permits and the reflection of changes in the cadastral item in the cadastral documentation of DAMT;
- Drafting the land fund on the basis of village, municipality, district and county, reflecting the changes of the above-mentioned resource categories and sending it to the MBZHRAU;
- Completion of DAMT with the new documentation of the reform on the agricultural land using the documentation available to the ZVRPPs, ALUIZNI, Directorates of Forest Service, QTTB Fushë-Krujë, etc., in manual and digital form; etc

From the above description of the tasks that the employee must perform in this position, it is required that he/she possesses knowledge in the field of Engineering Topography/Geo-sea etc, since these tasks require specific knowledge in these fields of study, qualities which are not possessed by the employee V.B., as she is graduated in the branch of Geography.

At the end of the above analysis, it is estimated that the Restructuring Commission was wrong also in this regard as it has not objectively assessed the requirements/tasks of the new job position to which it transferred the employee V.B., who referring to the education she possesses, has no objective possibility of this kind of knowledge in order to perform responsibly the tasks assigned to her by the permanent transfer to the position of “Specialist, in the Directorate of Land Administration and Protection”, thus proving this way the illegality of the transfer of this employee.

Another element of illegality is evidenced in the content of Order no. 07, dated

22.01.2020, of the Chairman of the Durrës District Council, for the establishment of the Restructuring Commission. Pursuant to point 17, of Decision no. 125, dated 17.2.2016, of the Council of Ministers, “On the temporary and permanent transfer of civil servants”, and Instruction no. 01, dated 01.03.2016, of DOPA, its composition is foreseen with three members, specifying also their administrative qualities. In this case, the Restructuring Commission is composed of five members, including persons outside the legal framework, who may have influenced the fairness of the conclusions and the decision-making of the commission.

Furthermore, I find that, on the same date with the proposal of the Restructuring Commission for the permanent transfer, the structure of the institution was changed again with Decision no. 01, dated 26.02.2020, “On the approval of the structure and staff of the Durrës District Council, as well as some previous changes”, a fact which had to be reflected and analyzed in the acts issued by the Restructuring Commission.

Another aspect of illegality in the activity of the Restructuring Commission, is the rush and issuance of acts by it, before conducting the legality verification process by the Prefect of Durrës District (conducted with act no. 202/1 prot., dated 03.03.2020, of the Prefect of Durrës District).

The above violations, referring to article 107, “Legality of the administrative act”, of law no. 44/2015, “Code of Administrative Procedures of the Republic of Albania”, which provides that an administrative act is legal if issued by the competent public body, in accordance with the principles and legal requirements provided in this Code, as well as legislation in force and letter b) of article 109, “Illegality of the administrative act”, which sanctions that an administrative act is illegal if it is the result of violation of the provisions related to the administrative procedure, result in the fact that the act of the Restructuring Commission no. 134 prot., dated 26.02.2020, for the release of the employee V.B., from the position of “Archive Protocol Specialist” and her transfer to the position of “Specialist, in the Directorate of Land Administration and Protection”, as well as any act issued in its implementation, should be annulled in accordance with article 114, of law no. 44/2015, “Code of Administrative Procedures of the Republic of Albania”.

In addition to the above, in 2020, **12** requests were submitted to the Commissioner, with problems related to alleged irregularities during the conduct of competition procedures.

The problems alleged by the complainants in these cases are mainly related to the way of formulation and the span contained in the set of general and special requirements announced for the various job positions. Complaints of this nature focus on the reasoning that in some cases there are requirements that competitors interpret as unfair “restrictions” for participation in competitions, which are made for the purpose of favoring different persons.

Thus, some cases of competitions can be mentioned, where in the compilation of special requirements, there is a tendency for a kind of “narrowing” of the field of qualification of candidates, such as: ➡ determining that the level of “Bachelor

*Degree*” and *“Scientific Master”* should be of the same field, at a time when the job description is broader and can accept diplomas in different, similar fields; ⇨ setting the criteria for work experience, or experience in the profession, defined in such a way as to create the impression that they are set to benefit the predetermined candidate; ⇨ setting the average grade, or setting the age limit, etc.

From these claims made in the treated requests, we single out the one for setting as a criterion in some cases, the average grade, as a reason for the qualification or disqualification of the competitor. This was also related to the policy pursued by the state administration for the employment of students with high results at the end of college (*students of excellence*), therefore the Commissioner paid special attention to giving solutions with a unifying decision. Setting the grade point average as a pre-selection criterion in some specific positions was considered by the contending competitors as a violation of the principle of equality and equal opportunities, and therefore the intervention of the Commissioner was requested, to restore the state of legality.

After carefully analyzing this dispute, and after evaluating the opinions of all participants in processes of this nature, the Commissioner concluded that setting the average grade as a pre-selection criterion, in certain job positions, is a right of the employing institution to attract from the labor market, individuals of good quality and with higher expectations. In his position, the Commissioner considered as right the reasoning of the employing institutions that the high average grade is, after all, an indicator of the greatest efforts of certain students during the learning process, which should normally be accompanied by a higher probability for best results, even in fulfilling the tasks assumed by the job position.

Specifically, the Commissioner in his decision, states the following:

*“...To make a fair assessment, both of the administrative action of setting as a special requirement the grade point average in university studies, and of the claim that this action is discriminatory which violates the principle of equal opportunities, we reason as follows:*

*Article 21, of law no. 152/2013, “On the civil servant”, amended, sets out the general requirements that a candidate must meet to be admitted to the civil service.*

*Specifically, the competitor must,*

*a) be an Albanian citizen;*

*b) have full capacity to act;*

*c) master the Albanian language, written and spoken;*

*ç) be in health conditions that allow him to perform the respective task;*

*d) not be convicted by a final decision for committing a crime or for committing a criminal offense intentionally;*

*h) not have taken a disciplinary measure against him to leave the civil service, which is not extinguished according to this law;*

*e) meet the special requirements for the level of education, experience and other special requirements for the respective category, grade, group and position.*

*Whereas, in attachment 2, entitled “General job description for each category and class” and in point 6, of the division entitled “Classification of job positions according to similar work groups/according to work professions”, which are attached as an integral part to 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, it is provided that the special requirements of the job must contain:*

- the higher education profile that the applicant must have;*
- the level of degree that he/she must possess (“Bachelor”, “Professional Master” or “Scientific Master” degree);*
- degrees, which have been obtained abroad, must be known in advance at the institution responsible for acknowledging diplomas, according to the legislation in force;*
- various qualifications/trainings;*
- knowledge of a foreign language”.*

*As can be seen, from the content of the above provisions, it does not appear that any requirement has been mentioned regarding the grade point average of university studies.*

*However, the special requirements of the above job position are indicative and not mandatory. If we look at the way of constructing the provision cited above, it can be seen that there are listed some points with requirements for the higher education profile, degree level of “Bachelor”, “Professional Master” or “Scientific Master”, qualifications-trainings, foreign languages, etc., but it cannot be claimed that this provision has an exhaustive character and that in addition to these requirements mentioned, no other more specific requirements can be added, in accordance with the concrete work needs and objectives of the institution.*

*In this regard, it can be said that there is no legal obstacle, that at the request of the institution and its specific needs, the responsible unit accepts the establishment of special criteria for specific positions, including the requirement for a certain level of the average grade of higher education, which presupposes a certain level of educational qualification of the candidate, according to the circumstances in which he will perform the task.*

*The determination of the grade point average criterion is not related to the objectives, tasks of the job position or to the specifics of the position. Every job position in the administration is important and in order to accomplish the defined tasks and objectives, the institutions have the right to set criteria to ensure the possibility of attracting candidates with the best qualities.*

*In this view, the institutions have the right to make a combination of potential candidates with experience and inexperienced young people, where for the latter, in order to be sure that they have an education which promises a good performance, despite the lack of experience, the average grade criterion is set. Therefore, setting the average grade of university studies, as a requirement to be met by candidates applying*

*for a competition procedure, should not be considered as a violation of the principle of equal opportunities.”*

In other cases, it has been achieved to intervene and overcome manifestations of the tendency to go beyond the principle of equality and equal opportunities in admission to the civil service.

It is fair to say that in 2020, there were cases of intervention from the Commissioner to interpret and intervene, in cases of competition for admission to the civil service, on various aspects of this procedure, such as the composition of the Admissions Committee as well as on the way of developing the “online” competition, in order to favor the competitors (*the case of the employee I.S., Specialist in the Ministry of Education, Sports and Youth*).

In summary, the Commissioner in his decision has maintained this position:

*“...First, regarding the allegation raised for the irregular composition of the SCP, we clarify that based on Chapter III, point 7, of Decision no. 242, dated 18.03.2015, of the Council of Ministers “On filling vacancies in the lower and middle management category”, amended, members of the Standing Committee for Promotion (SCP) are: the representative of the responsible unit, who chairs the Committee, a member from the institution that has the vacancy, part of the middle management category determined by DOPA; Direct supervisor of the position for which the competition takes place; two experts in the respective field.*

*Taking into account the dynamics of human resources of the institution (vacancies/health condition/business trips, etc.), as well as the principle of efficiency of administrative competition procedures organized by the responsible unit, in Chapter III, point 12, of DCM no. 242, dated 18.03.2015, of the Council of Ministers “On filling vacancies in the lower and middle management category”, amended, it is determined that in case of impossibility of participation of any of the members of the SCP, the responsible unit takes measures to replace them.*

*Based on this opportunity provided by the above provision, due to the vacancy of the position of Director of the Directorate of Programs for the Development of Education, Sports and Youth, in MESY, the responsible unit in the capacity of direct supervisor in SCP, has assigned the employee SH.A. (Head of the Human Resources Sector - MESY), while in the capacity of representative of the institution V.Gj. (Director of the Directorate of Good Administration of Human Resources, Assets and Services - MESY).*

*In this case, it is ascertained that the responsible unit has acted in violation of article 4, “Definitions”, letter e), of law 152/2013, “On the civil servant”, amended, which stipulates that the direct supervisor of all employees of other positions, is the director of the directorate and in his absence, the responsible unit should have been careful to make the replacement either with an employee holding a homologous function, with similarities in the nature of functions, or with the highest supervisor in the hierarchical rank of the “Director of the Directorate of Programs for the Development of*

*Education, Sports and Youth”.*

*For this reason, the claim of the complainant I.S., regarding the participation of the employee Sh.A., as “Head of the Human Resources Sector”, in the role of direct supervisor, in the Admission Committee for Promotion (ACP), is formally considered unfair. But, taking into account the fact that the ACP is a collegial body, which operates under law no. 8480, dated 27.05.1999, “On the functioning of collegial bodies of state administration and public entities”, it makes its decision by a majority of votes, which means that this violation allowed by the responsible unit, has not affected the validity of the competition process, as the other members of this committee voted without objection in favor of the final conclusion. The Department of Public Administration should consider this rule of hierarchy, in other similar cases, of the replacement of the members of the Admission Committees.*

*Secondly, regarding the online development of competition procedures, it is concluded that at the end of April 2020, the Department of Public Administration, due to the pandemic situation, based on Order no. 262, dated 16.04.2020, of the Minister of Health and Social Protection, “On an amendment to Order no. 156, dated 10.03.2020, “On taking special measures to prevent the spread of infection caused by COVID-19”, amended”, has conducted all the competition procedures carried out after that, entirely online.*

*Subsequently, with the reduction of measures for the prevention of the COVID 19 pandemic, respecting the protocols provided by the Ministry of Health and Social Protection, the responsible unit has gradually resumed the physical development of the competition procedures, combining them with online ones, an action based on Order no. 38, dated 12.05.2020, of DOPA, “On the approval of the typical regulation “On taking organizational measures to exercise the activity of state administration institutions during the state of the epidemic caused by Covid-19””, which stipulates that during the state of the epidemic, the state administration institutions will carry out their activity through a combination of work on the premises of the institution and distant work, online.*

*Regarding the other claim of the applicant, that the decision of the responsible unit for conducting the written evaluation online and not physically was taken in order to favor the other qualified candidate, is considered unfounded, as the decision to conduct online competition procedures has been dictated by the Covid-19 pandemic situation and is based on Order no. 262, dated 16.04.2020, of the Minister of Health and Social Protection, “On an amendment to Order no. 156, dated 10.03.2020, “On taking special measures to prevent the spread of infection caused by COVID-19”, amended”, as well as Order no. 38, dated 12.05.2020, of DOPA, “On the approval of the typical regulation “On taking organizational measures to exercise the activity of state administration institutions during the epidemic caused by Covid-19”, therefore it is considered a regular action, in accordance with the civil service legislation and the actual conditions of the pandemic.*

*In conclusion, from all the above, the Commissioner for Civil Service Oversight concludes that in the actions of the Department of Public Administration for the development of the competition procedure with code #3022, no elements of illegality have been found, to have affected negatively, in the conduct of the competition process*

*and in the quality of decision-making of the ACP.”*

There have been other cases when employees have complained that they have not been provided with the latest job evaluation, especially in cases of dismissal from civil service due to job cuts or changes in the legal regime of employment, due to restructuring or reorganization of the institution.

Failure to meet this legal obligation has led to the fact that in some cases, various officials have not been able to participate in competitions for parallel movement or promotion, or have been disqualified for not having this document.

Regarding this issue, we can mention the case of the employee G.M., who was disqualified from a competition procedure, precisely because she was not able to present the final evaluation of her activity as a civil servant, as she was unfairly not provided with this act by the institution (*Durrës Municipality*).

For the case in question, the Commissioner intervened immediately, by requesting relevant clarifications and submission of documentation for the case by the Municipality of Durrës, as well as from the responsible unit DOPA, for the reason of disqualification of this employee. In response to the request of the Commissioner, both institutions reacted by taking concrete measures in implementation of legal obligations sanctioned in the civil service, and specifically, by the former employer, the Municipality of Durrës provided the employee GM with the last performance evaluation, while the Department of Public Administration once again reviewed the reasons for the disqualification of the candidate and re-qualified her to proceed to further stages of the competition.

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\*      \*

Also for 2020, it is evident that the number of employees who turn to the Commissioner for the solution of 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 public administration body.

This information is of particular importance to the Commissioner, who reviews it in terms of his competencies, verifying the procedure followed by the actors and legal mechanisms in charge of implementing the law on civil servants, among which the Commissions set up during recruitment process, the Standing Disciplinary Committee, or the direct supervisor, assessing in each case, the reliance on the law and evidence of various administrative actions or acts, which affect in one way or another, the relationship in the civil service, or elements of it.

In the cases handled, the intervention of the Commissioner has been effective and the decisions taken by him at the end of addressing 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 restoring the status of legality.

The Commissioner, through the handling of specific cases, has taken special care to unify the implementation of the law and at the same time, to establish a good practice of resolved cases, which are published on the official website, in order for the human resources administration unit, in every institution that is part of the civil service, to be oriented towards solving the problems that arise during the practical implementation of the law on civil servants. Following the developments in the civil service in real time, the treatment of information in a timely and objective manner, as well as the in-depth administrative investigation, will continue to be in the attention of the Commissioner, in order to prevent misapplication of the law, but also to increase the trust of civil servants and the public in this important institution which oversees the implementation of the civil servant law.

## CHAPTER III

### MONITORING OF DOPA'S ACTIVITY DURING THE PROCESS OF FILLING JOB POSITIONS IN THE CIVIL SERVICE IN STATE ADMINISTRATION INSTITUTIONS

Through decision no. 35, dated 28.05.2020, “*On the initiation of the oriented supervision on law enforcement in the civil service administration, in the competitions planned to be held by the Department of Public Administration during 2019, with the admission procedures at the executive level in the civil service, parallel movement, promotion and admission to the senior management body of civil servants (SMB)*”, the Commissioner has ordered the start of oriented supervision on the law enforcement in civil service administration, in the competition procedures conducted by the Department of Public Administration, from March 2020 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, for parallel movement, promotion and admission from outside the civil service, as well as the admission procedures in the senior management body have been monitored, administering ongoing information on the official “*online*” website of the Department of Public Administration, as well as through the information received from representatives of DOPA, authorized to communicate with the Commissioner.

The process was conducted in close cooperation with the employees in charge by the Department of Public Administration for the organization and development of supervised competitions, through continuous verbal, telephone and electronic communications, through official and written “*e-mails*”, as well as the responsible unit (DOPA) has been requested to provide the necessary information needed to carry out the supervision and provide the documentation to conduct the administrative investigation.

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

Pursuant to the obligations of article 18, of law no. 152/2013, “*On the civil servant*”, amended, the Council of Ministers has approved decision no. 14, dated 15.01.2020, of the Council of Ministers, “*On the annual admission plan for 2020 in state administration institutions, part of the civil service*”, based on which the entire recruitment process is administered.

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

Based on this, the Council of Ministers, with decision no. 14, dated 15.01.2020, “*On the annual admission plan for 2020 in state administration institutions, part of the civil service*”, has planned **880** vacancies for recruitment, during 2020, divided according to the following categories:

•For the senior management body of civil servants (SMB):	<b>3 positions</b>
•For the middle management category:	<b>59 positions</b>
•For the lower management category:	<b>150 positions</b>
•For the executive category:	<b>668 positions</b>

The Department of Public Administration (*hereinafter, the responsible unit*), pursuant to article 22, 25, 26, 27, 28 and 29, of law no. 152/2013, “*On the civil servant*”, amended and pursuant to point 4, of decision no. 14, dated 15.01.2020, of the Council of Ministers, “*On the annual admission plan for 2020 in state administration institutions, part of the civil service*”, has organized the competitions for filling vacancies in the executive, lower, middle and senior management (SMB), through the procedure of parallel movement, admission to the civil service and promotion, in all institutions of state administration, part of the civil service.

It turns out that, as a result of the situation created due to the COVID 19 pandemic, the Department of Public Administration, with order no. 31, dated 11.03.2020, “*On the approval of the organizational and administrative measures plan by the Department of Public Administration, in the framework of preventing the spread of the COVID 19 virus*”, (*amended by order no. 31/1, dated 12.03.2020*), has decided to suspend the competition procedures for the period between 11.03.2020 - 03.04.2020.

Following this situation, the responsible unit, in fulfillment of the legal obligation to carry out the recruitment process, has taken measures for “*online*” development of the competition procedures, assisting the participating candidates through instructions approved by it, regarding testing and the “*online*” interview.

In order to fill 877 vacancies at the executive, lower and middle management level, it turns out that during 2020, 804 competition procedures were announced. These competitions correspond to the announcements registered from number 2555 to number 3447. From the verification performed on the official website of the responsible unit, it is concluded that by the end of February 2021:

- 📌 747 competition procedures have been completed, through the publication of the winner notification (by the end of February 2021);

📌 57 competition procedures turn out to have been announced in January and February of 2021, but turn out to be still in process (*specifically, it turns out that the parallel movement procedure has been completed, while the procedure of admission to the civil service or promotion is in the phase of structured oral testing or interview or at the winner announcement stage*).

Regarding the above, in the framework of the verification of the legality in the realization of the competition procedures, in the content of this report will be treated 747 competition procedures, which turn out to have been completed by the end of February 2021.

In the framework of the supervision of the administration of the competition process, the Commissioner has handled also the complaints received in his address, from employees or candidates who have participated in the competition procedures organized by the responsible unit (DOPA), for 2020, for which irregularities were allegedly committed or permitted during their development.

### 1.1 Performance of competitions for 2020

Based on Chapter IV and V, of law no. 152/2013, “*On the civil servant*”, amended, vacancies that are part of the civil service, are filled only through competition procedures. From the information gathered regarding the competitions held for 2020 to fill the vacancies of executive, lower and middle management level, the following results have been achieved for 747 completed competition procedures:

*Table no. 3.1 Summary data for the competitions realized for 2020*

Competitions held in 2020 (announcement #2555 - #3447)				
Competitions developed	Positions to be filled in these competitions	Winning candidates from the first phase “Parallel Movement”	Winning candidates from the second phase “Admission to the Executive Category and Promotion”	Remaining vacancies
747	1065	112	1517*	126

(\*) Note: *We clarify that the number of candidates reflected in this column is high because in the admission procedures through admission to the civil service, it has resulted that the number of candidates who have received over 70 points is higher than the number of positions published in the announcements, a fact that determines their registration in the waiting list.*

For the purpose of process analysis, we group the competitions as follows: **a)** Parallel movement and admission to the civil service for the executive category and **b)** Parallel movement and promotion for lower and middle management level.

**1.1.1 Parallel movement and admission to the civil service for executive level positions**

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

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

From the analysis of the data collected during the monitoring process, it results that, for 2020, the responsible unit has announced 519 competition procedures for filling executive level positions, for which according to the acts published on the “*online*” website, the following results have been achieved:

**Table no. 3.2** Data on filling executive level positions, through parallel movement and admission to the civil service

Competitions held (a)	Positions to be filled by these competitions (b) (c+e+f)	Winning candidates from the first phase “Parallel Movement” (c)	Winning candidates from the second phase “Admission to the Executive Category” (d)	Winning candidates from the second phase, appointed (e)	Vacant positions (f)	Candidates on the waiting list (g)
519	837	85	1358*	668	84	697*

(\*) Note: *The number of candidates reflected in columns (d) and (g), is high because: a) the number of candidates declared winners in the civil service is higher than the number of positions for which this procedure has been conducted, a fact that determines their registration in the waiting list or b) the same candidate may have been declared the winner in several competition procedures. Column (b) is the sum of column (c), (e) and (f).*

Based on the above data, it is concluded that, at the end of the above competition procedures, about **89%** of the vacancies in the executive category were filled with winning candidates, of which **10%** were filled with winning civil servants through parallel movement.

Furthermore, it is concluded that, the responsible unit in order to fill the remaining

vacancies of the executive category, due to the completion of competition procedures without successful candidates, has published **34** announcements, through which it has foreseen to fill **151** positions (*specifically announcements with numbers 3305, 3306, 3327, 3332, 3333, 3338, 3345, 3346, 3360, 3370, 3376, 3388, 3389, 3391, 3394, 3395, 3399, 3404-3408, 3430, 3432, 3434- 3439, 3441, 3442, 3444 and 3447*).

From the “*online*” verification of the acts which materialize the competitions announced by the responsible unit (DOPA), for filling the vacancies of the executive level during the calendar year 2020, irregularities are ascertained which we are presenting below:

**First:** It is ascertained that, for a considerable part of the executive level positions, individual competitions have been held and not according to the legal division of grouping of executive level positions, into general and special administration groups.

It turns out that, out of **519** competition procedures completed in implementation of the annual plan for 2020, in **444** cases (*accounting for 85% of completed announcements*) the competition procedure was held for a single position.

From the review of the announcement act, it is noticed that the job position for which the competition procedure was held, had the same name, was part of the same organizational unit (*as sector, directorate*) and had the same special criteria, but the responsible unit has continued to conduct individual procedures for each of them.

Regarding this finding we can mention the announcements with number 3246, 3247, 3248, 3249 and 3250, from which it results that the competition procedures have been performed for the same position, with the title “*Specialist*”, in the Call Center, at the Taxpayer Service Directorate, in the General Directorate of Taxes, for which the special requirements of the job position are the same.

Pursuant to article 8, point 8, of law no. 152/2013, “*On the civil servant*”, amended, executive level positions are classified according to the nature of the position, specifically in the general administration groups and in the special administration groups. 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 to the executive category*”, it is determined that, the admission procedure in the civil service is organized separately for the group of general administration positions and for each group of special administration positions.

It is worth mentioning that this issue has been ascertained by the Commissioner through decision no. 23, dated 21.02.2020, “*On the completion of oriented supervision, initiated with decision no. 18, dated 25.02.2019, “On the initiation of the oriented supervision on law enforcement in the civil service administration, in the competitions planned to be held by the Department of Public Administration during 2019, with the admission procedures at the executive level in the civil service, parallel movement, promotion and admission to the senior management body of civil servants (SMB)*”.

Given the above conditions, we seek to bring to the attention of the Department of Public Administration that, during the implementation of the competition procedures in implementation of the annual plan for 2021, it must be careful in the organization of the competition procedures for executive level positions, by carrying out these procedures according to the principles set out in the civil service legislation. The realization of the competition according to the general and special administration groups serves to guarantee a transparent, fair and objective selection process of the civil servants, as well as performing the competition procedures as effectively as possible.

**Second:** Analyzing the number of executive level positions for which the responsible unit has held or is conducting the competition procedure through parallel movement and admission in the civil service, it is noticed that this figure exceeds the number of vacant executive level positions, planned for recruitment during 2020.

In reference to the annual plan, approved by decision no. 14, dated 15.01.2020, of the Council of Ministers, “*On the annual admission plan for 2020 in state administration institutions, part of the civil service*”, amended, results to have been determined **668** executive level positions, to be completed according to competition procedures.

From what is foreseen in the content of this report, it results that, the responsible unit, in reference to the annual plan for 2020, has announced **553** competition procedures (*519 completed and 34 in process*), through which it has been forecasted the fulfillment of **988** executive level positions. It is worth noting that this number is relatively high, despite the fact that some of the competition procedures were completed without qualified candidates or successful candidates.

Regarding the above, we seek to bring to the attention of the responsible unit, that it should be careful in preparing the recruitment needs plan, assisting and instructing the state administration institutions that are part of the civil service, in the preparation of 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*”.

Even in cases of necessity to hold competition procedures for vacancies created after the approval of the annual recruitment plan, as a result of resignation or dismissal from the civil service, according to the reasons provided by law, the responsible unit must take measures for its reflection by changing the annual plan through the bylaws.

The preparation of the recruitment needs plan in detail and in accordance with the legal requirements, constitutes a guarantee for the development of competition procedures for executive level positions effectively, in general and special management groups.

### 1.1.2 Parallel movement and promotion for lower and middle management positions

The procedural rules of competition to fill the job positions in the lower and middle management level, following promotion procedures (*including also the parallel movement in this category*), are provided in articles 25 and 26, of 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 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 civil servants of the same category, through the parallel movement procedure, and if through this procedure the vacant positions are not filled, then the procedure for filling vacancies in the lower and middle management category follows. In conclusion, from the analysis of the data collected during the process of “*online*” monitoring of competitions through the promotion procedure, including also the parallel movement, for **228** completed announcements were achieved the below results:

**Table no. 3.3** Data on the procedure for filling vacancies in the lower and middle management category, through parallel movement and promotion

Competitions held	Positions to be filled in these competitions	Winning candidates from the first phase “Parallel Movement”	Winning candidates from the second phase “Promotion”	Remaining vacancies
228	228	27	159	42

From the data reflected in the table above, it is concluded that, the responsible unit has successfully filled through competition procedures **82%** of the lower and middle management positions, of which **15%** are filled through parallel movement and **85%** are filled through promotion/admission from outside the civil service.

Further, it is found that, the responsible unit in order to fill the remaining vacancies in the middle and lower management level, due to the completion of competition procedures without successful candidates, has published an additional **23** announcements, to fill 23 executive level positions (*specifically announcements with no. 3354, 3379, 3387, 3400, 3403, 3410, 3412, 3415, 3417-3419, 3422-3428, 3431, 3440, 3443 and 3446*).

### 1.1.3 Promotion procedure also for candidates 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 can be open also for candidates from outside the civil service, provided that they meet the criteria and requirements for the vacancy/vacancies.

With reference to the above legal provision, it turns out that the Council of Ministers, with decision no. 509, dated 01.07.2020, “*On the opening of the admission procedure in the lower and middle management category for other candidates outside the civil service for 2020*”, (amended by DCM no. 921, dated 24.11.2020), has approved the maximum number of middle and lower management positions, for which the promotion procedure will be open also to 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:

- 📌 **14** positions, for the middle management category;
- 📌 **30** positions, for the lower management category.

Pursuant to the above legal acts, it results that in **251** competition procedures announced for filling low and middle management positions (228 completed and 23 in process), the responsible unit in **36** cases (*occupying 14% of the middle and lower level vacancies*), has proceeded with their completion also with candidates from outside the civil service. The data collected from the verification of the “*online*” site of the responsible unit are presented below:

**Table no. 3.4**      *Data on the procedure for filling vacancies in the lower and middle management category, through the promotion procedure with acceptance from outside the civil service*

No. of announcements	No. of positions to be filled in these competitions	No. of winning candidates from the first phase “ <i>Parallel movement</i> ”	No. of winning candidates from the second phase “ <i>Promotion</i> ”		No. of remaining vacancies
			Promotion	Acceptance from outside	
<b>Completed</b>	<b>30</b>	0	6	24	0
<b>In process</b>	<b>6</b>	0		In process	

Analyzing the above data for the **30** completed procedures, it is noticed that the parallel movement procedure has ended without winning candidates and as a result the responsible unit has continued with the promotion procedure, allowing the participation of candidates also from outside the civil service.

At the end of these procedures, it is noticed that in **6** cases the winning candidate was selected from the ranks of civil servants and in **24** cases, the winner was selected from the ranks of candidates from outside the civil service.

## 2. Supervision of law enforcement regarding the obligation to publish acts arising from the competition process in the electronic system

The obligation to publish the act of announcement of the competition, the act of preliminary and final verification and the publication of the final list of winning candidates, is a procedural condition defined in the provisions of law no. 152/201, “*On the civil servant*”, amended and Decision no. 242, dated 18.03.2015, of the Council of Ministers, “*On filling 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, “*On the process of filling vacancies in the civil service through the procedure of parallel movement, promotion to the middle and lower management category and admission to the civil service in the executive category through open competition*”, of the Department of Public Administration.

Adherence to this procedure is a real indicator of transparency of competitions, as it creates the opportunity for candidates, or any interested citizen, to get acquainted with the announcement for a vacant position in public administration, to get acquainted with the candidates who will participate in the competition and to get acquainted with the winners in the process. Also, the observance of this procedure guarantees the application of the principles of equal opportunities and transparency, defined in article 5, of law no. 152/2013, “*On the civil servant*”, amended.

To supervise this process, **747** competitions were monitored, with announcements from 2555 onwards, on the official website of the Department of Public Administration, to verify whether the procedures set out in this case were followed by the responsible unit (DOPA). Below, we are presenting the results that have emerged from this monitoring.

### 2.1 Publication of the announcement act of the competition; the act of preliminary and final verification, as well as the final list of the winning candidates

The Law on civil servants and the bylaws issued on the basis of and for its implementation, define 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 (*a deadline which is defined in the announcement*), performs the preliminary verification, selecting applicants who meet the general criteria of the job position.

In continuation, the qualified candidates are subject to evaluation by the respective Commissions, which includes CV evaluation, written evaluation and structured oral interview. The procedure for evaluating candidates is done by the relevant Committees.

Based on article 22, point 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 for this reason, the observance of legal requirements was monitored at all times, as well as the documentation that the responsible unit (*DOPA*) is obliged to publish in 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 set out 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 **747** cases of national competitions, which turn out to have ended in March 2020, it resulted that:

- a) The responsible unit has made public all cases on its official portal in the “*vacancies*” section, taking care that this document contains all the information provided by the specific legislation governing this aspect, such as, the main area upon 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, in writing and orally, the number of planned places for which the admission will be made, 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 the manner of their submission, the submission deadline determined by the exact calendar date, the date of release of the results for the preliminary evaluation phase of the candidates, the manner of evaluation of the candidates in the preliminary verification phase, as well as in the candidate evaluation phase and the manner of notification and communication with the candidates.
- b) At the end of the preliminary verification phase, in all cases the responsible unit has made public on its official portal under the “*vacancies*” section, the list of candidates who meet these criteria (*the list of winning candidates from the preliminary verification and the final list of qualified candidates, 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 on its official portal under the “*vacancies*” section, the list of winning candidates (*list of winning candidates at the end of the competition and the final list of the winning*

*candidates, after the complaint*), ranking them by points, in accordance with the specific legislation governing this aspect.

### 3. Data administered during the monitoring of the preliminary verification process and the final list (after the complaint), in the competitions for 2020

Pursuant to 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 of the preliminary verification and further, of evaluation of candidates. With 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 vacant position, while for promotion and admission from outside the civil service it is performed by the responsible unit, DOPA.

The preliminary verification, which aims to verify whether the candidates meet the general and specific criteria of the job position, defined in the competition announcement, is finalized with the publication of the Final List, which consists in 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.

From the supervision it was found that the Department of Public Administration has reviewed all complaints submitted at this stage, a fact which is materialized in the inclusion of 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 data are as follows:

**Table no. 3.5** Data administered during the monitoring of the process of announcing the list of qualified candidates from the preliminary verification and the final verification

Classification of positions	Parallel movement		Admission to civil service/Promotion			
	Number of positions	Candidates qualified from the preliminary verification	Candidates qualified from the final verification (after the complaint)	Number of positions	Candidates qualified from the preliminary verification	Candidates qualified from the final verification (after the complaint)
Executive level	837	179	253	752	7035	7678
Lower and middle management level	228	45	54	201	208	286

Meanwhile, for the 30 competition procedures conducted for filling the lower and middle management positions, through the promotion competition procedure, also for candidates from outside the civil service, which have been completed through the announcement of the winner, the data are presented as follows:

**Table no. 3.6** Data administered during the monitoring of the process of announcing the list of qualified candidates from the preliminary verification and the final verification of the competition procedures through promotion also for candidates from outside the civil service

Low and middle management level	Number of positions	Parallel movement		Number of positions	Promotion		Admission from outside	
		Candidates qualified from the preliminary verification	Candidates qualified from the final verification (after the complaint)		Candidates qualified from the preliminary verification	Candidates qualified from the final verification (after the complaint)	Candidates qualified from the preliminary verification	Candidates qualified from the final verification (after the complaint)
	30	1	1	30	21	24	199	227

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

**4. Data administered during the monitoring of the preliminary and final list of the 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 candidates, which is a process that for the parallel movement consists of: *a)* evaluation of the CV and *b)* evaluation of the structured oral interview, while for the competition procedure through admission to the civil service and promotion consists of: *a)* evaluation of the CV (*evaluation of the type and level of education, experience and trainings, related to the field*), *b)* evaluation of written testing and *c)* assessment 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 received over 70% of the total points and send the relevant list to the responsible unit. 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 termination of the appeal, reviews the complaints and further announces the final list of winners. 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 candidates for this stage, a fact that materializes in the inclusion of these candidates in the final list of winners, data which are reflected in the table below:

**Table no. 3.7** *Data administered during the monitoring of the process of announcing the preliminary list of winners and the final list of winners (after the complaint)*

<b>Procedure</b>	<b>Announced winner from the preliminary list</b>	<b>Announced winner from the final list (after appeal)</b>
Admission to the executive category	1454	1465
Filling vacancies in the lower and middle management category	186	186
<b>TOTAL</b>	<b>1640</b>	<b>1651</b>

From the data reflected above, the working group assesses that the grievance review phase has been carried out in accordance with the law by the responsible unit (DOPA). This conclusion is based on the monitoring of 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.

### 5. Appointments in the civil service

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, probationary 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 to the job position, for which he was 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) CV evaluation, (evaluation of type and level of education, experience and trainings, related to the field), b) written test evaluation and c) evaluation of structured oral interview, are ranked by the relevant committee, according to the points obtained in the list of winning candidates (hereinafter, the list of winners).*

This list materializes in its content the names of the winning candidates, who are ranked starting from those who have received more points (where candidates with equal points may also result), who have the right to choose from the list of existing vacancies, for which they have competed and further, the responsible unit, DOPA, appoints the candidate to the chosen position.

In cases when, for a competition, more winners have been announced than the vacant positions for which the open competition procedure has been conducted, 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 rejection, in a list with a validity of 2 years. If during this period the responsible unit conducts a competition procedure for the same group of

positions, the winning candidates, not yet appointed, are rearranged 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.

With reference to the information transmitted through electronic communication, it results that, the responsible unit, through competition procedures conducted until December 2020, has managed to fill **985** positions of middle and lower management level, as well as executive level.

Meanwhile, it is ascertained that the responsible unit, for filling the 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 civil service positions, due to parallel movement or promotion*), in addition to appointments 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 under court decisions, data which are reflected in the table below:

**Table no. 3.8** *Appointments to vacant positions according to the applied procedure*

<b>Applied procedure</b>			
Appointments from the list of winners of current competitions	Appointments from the list of winners of previous competitions	Appointments pursuant to court decisions	Appointments from permanent transfers at the end of the suspension
985	52	33	36
<b>1106 total filled positions</b>			

The figure of **985** candidates, who were appointed from the winning list of competitions held in 2020, based on the classification of the job position where they were appointed, regardless of the competition procedure applied for their filling, is presented as follows:

**Table no. 3.9** *Categorization of job positions filled during 2020*

<b>Number of employees appointed according to the competition procedure</b>		
Appointed through admission to the civil service at entry level	Appointed to low management position	Appointed to middle management level position
782	158	45
<b>985 total filled positions</b>		

## 6. Direct admission to the Senior Management Body (SMB)

Article 28, of law no. 152/2013, “*On the civil servant*”, amended, stipulates that admission to the senior management body (SMB) can be done only 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 SMB 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 SMB.

Furthermore, article 29 of the aforementioned law stipulates that the admission to the body of senior management civil servants can be done 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 of appointment, recruitment, management and termination of the relationship in the civil service of senior management civil servants and members of the SMB*”, amended, may also be open to other candidates outside the civil service who meet specific requirements for admission to the SMB.

It turns out that, with decision no. 14, dated 15.01.2020, of the Council of Ministers, “*On the annual admission plan for 2020 in state administration institutions, part of the civil service*”, for 2020, it is planned to conduct the recruitment procedure for 3 positions of the senior management level (SMB).

Currently it turns out that, with decision no. 591, dated 24.07.2020, of the Council of Ministers, “*On the opening of the direct admission procedure to TMC for other candidates outside the civil service and for the use of direct admission procedure to SMB for 2020*”, it was decided that for the 2020 calendar year, the admission procedure to the senior management body (SMB), should be done directly, through a national competition (*point 2 of this act*) and that this procedure will be open to other candidates outside the civil service (*point 1, of the same decision*), who meet the specific requirements for admission to the SMB, defined in point 4 of this bylaw. At the same time, the content of this act stipulates that the direct admission procedure will be used for **1** SMB job position.

The Department of Public Administration, as the responsible unit, has planned and organized the competition process for filling **1** position in the senior management body (SMB), through the national competition procedure, at the end of which, the following results were achieved:

**Table no. 3.10** Data on the competition procedure for SMB

Positions to be filled in the corps of senior management civil servants (SMB)	Candidates qualified by prior verification	Qualified candidates from the final list ( <i>after complaint</i> )	Winning candidates announced by KKP ( <i>with over 70 points</i> )	Vacant SMB positions
1	2	2	1	-

From the monitoring of the competition procedure announced on the Department of Public Administration portal, it is ascertained that the responsible unit has implemented the procedures defined in article 27, 29, 30 and 31, of law no. 152/2013, “*On the civil servant*”, amended and in decision no. 118, dated 05.03.2014, of the Council of Ministers, “*On the procedures of appointment, recruitment, management and termination of the relationship in the civil service of senior management civil servants and members of the SMB*”, amended, regarding:

- ❏ publication of the announcement act for filling the senior management positions, 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 specific conditions and requirements, skills, knowledge and qualities that candidates must possess in order to apply for the competition for admission to the senior management body (SMB);
- ❏ publication of the preliminary list and the final list of qualified candidates to proceed 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 evaluation procedure with points, 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 oriented oversight process focused on the collection of information regarding the functioning of the recruitment process carried out by DOPA, in state administration institutions, during 2020.

At the end of the supervision, in the decision sent to this institution, the Commissioner has left concrete tasks for the Department of Public Administration, in the capacity of the responsible unit, and other actors of the process involved in conducting competitions, to improve their work in these areas:

- a) In the implementation of competition procedures for executive level positions, in accordance with the principles set out in the civil service legislation, by efficiently building the general and special administration groups, in order to guarantee a selection process of civil servants which is transparent, fair and objective, as well as performing recruitment procedures as effectively as possible.
- b) In the preparation of the annual recruitment 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*”, assisting and instructing state administration institutions part of the civil service, to properly perform their duties in this aspect of civil service administration, as well as to pay attention to reflect in this act also the changes that may occur during the calendar year, as a result of the creation of vacancies, due to resignation, dismissal or release from the civil service, according to legal provisions.

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 body of recruited civil servants, through interaction with citizens, in order to increase the number of competitors, by publishing on the “*online*” portal of the application, 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 merit-based employment, which is achieved by guaranteeing and developing a transparent and fair competition process, as well as through the creation of special mechanisms that carry out this process (*relevant recruitment commissions*) with impartial participants with high professional skills 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 vacancies, to ensure increased effectiveness in the implementation of recruitment procedures in accordance with legal provisions.

## CHAPTER IV

### PLANNED GENERAL SUPERVISIONS AND THEMATIC INSPECTIONS CARRIED OUT IN STATE ADMINISTRATION INSTITUTIONS

The general supervision during this year has continued with the subordinate institutions and specifically with those under the Ministry of Health and Social Protection (5 institutions). Further, in this process have been involved institutions under the Ministry of Infrastructure and Energy (3 institutions), as well as the Ministry of Finance and Economy (1 institution).

*Table no. 4.1 Supervised institutions during 2020*

General supervisions of institutions under the Ministry of Health and Social Welfare
Institute for the Integration of the Politically Persecuted
National Center for Continuing Education
State Agency for Child Rights and Protection
National Center for Quality, Safety and Accreditation of Health Institutions
General Directorate of State Social Service
General supervisions of institutions under the Ministry of Infrastructure and Energy
National Authority of Mining Safety and Emergencies
Central Technical Archive of Construction
Hazardous Chemicals Collection and Treatment Center
Supervisions/Thematic Inspection Institution under the Ministry of Finance and Economy
Tax Administration
TOTAL 9 Subordinate institutions

The supervision process has been oriented towards these institutions due to the problems with civil service administration that have been ascertained and reported to such institutions during the supervision process carried out during the previous year (*see the Commissioner’s report for 2019*), in cases where their structure lacks structured human resource management units and this role is performed by the human resource units of the ministries on which they report. As a typical case we can mention the State Agency for Child Rights and Protection, as well as the National Center for Quality, Safety and Accreditation of Health Institutions, where their structure does not provide a job position for human resource management.

The lack of this position in the structure of the institution brings problems in resolving various situations of civil service administration in these institutions and in these cases, a task has been assigned for institutions identified with this issue, to cooperate with the human resources unit at the line ministry and at 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 the auxiliary cabinets, of the internal organization of the state administration institutions, as well as on the detailed procedures for the preparation, proposal, consultation and approval of internal organization”* in planning the job position for human resource management.

In subordinate institutions in the Ministry of Health and Social Welfare (MHSW), as well as in the Ministry of Infrastructure and Energy (MIE), the oversight process has been planned and has included all administrative actions performed by the responsible unit and the units in charge for the management of human resources, regarding the civil service administration processes, carried out from the moment of the beginning of the legal effects of law no. 152/2013, “*On the civil servant*”, amended, and following.

During 2020, the Commissioner has included in a thematic supervision process also the Tax Administration, in order to assess how the entities charged by law have complied with the requirements of Article 50 of the civil servants law, which is related to the placement of civil servants after restructuring of the institution, as well as the requirements of article 66/1 of the law in question, which provides that final court decisions for the reinstatement of civil servants in office, are implemented immediately by the responsible unit.

The oversight process currently has involved the entire tax administration, both central and regional, as well as the Department of Public Administration, in the role of the responsible unit, in terms of law, with a thematic direction, oriented to the two aspects identified above, restructuring and the level of enforcement of court decisions.

This process, which was not planned in the work plan for 2020, started with work program no. 636/2, dated 17.07.2020, when the institution was still in the process of restructuring and the oversight group has followed the actions performed by the restructuring bodies in the entity, in real time.

Complaints that have come to the Commissioner from employees of the tax administration regarding the restructuring process have served as an indication for starting this process.

Also, in this case the Commissioner has assessed the high level of risk for irregularities to occur, in the implementation of the law on civil servants, also due to the fact that the process of restructuring in the tax system includes a large number of positions that are part of the civil service.

During this process, the Commissioner supervised a series of administrative actions that materialize the procedures and activity of the Restructuring Commission and of the Department of Public Administration in the proposal phase for the placement of employees in a civil service position and further, in the phase of exercising the right of assessment of DOPA on the legality of the activity of the Restructuring Commission, as well as exercising the right of appeal of employees affected by restructuring. This

includes 1450 job positions that are part of the civil service in the tax system.

Another direction of the supervision of the Commissioner in the Tax Administration is the supervision of the execution of court decisions that have become final in favor of the winning civil servants, by the responsible unit. This is a process that is carried out in combination between the human resources unit and the Special Commission set up in the General Directorate of Taxes and the Department of Public Administration, as the responsible unit.

In the preparatory phase of this process, which started in 2018, for the entire civil service system, as a request of the Assembly in the Resolution of the evaluation of the activity of the Commissioner, the aim was to create a database for non-executed court decisions for positions belonging to the civil service, which did not exist before. During this phase, about 140 such decisions were identified in the tax administration. For this reason, in the conditions when this high number of unenforced decisions was assessed as a worrying problem by the Commissioner, as well as given the fact that during the restructuring, vacancies could be created to accommodate the winning civil servants, the Commissioner included in the process of supervision also this aspect, linking it with the restructuring process.

The practice administered by the Commissioner during this oversight process, consists of a large volume of joint and individual administrative acts, issued by the restructuring bodies and those of execution of court decisions, (*only the Restructuring Commission has been involved 4 times in general decision making and further individual, case by case, after complaints*), as well as acts to be compared (*job descriptions for reorganized and newly created positions*). Currently the material is being elaborated by the oversight team and we are in the final stage of the preparation of the draft report. The situation identified in this supervision will be reported in the following year.

**Table no. 4.2** General and thematic oversights reflected by level of administration and level of process implementation

Institution	General supervisions	
	Completed process with Decision of the Commissioner	In process
Institutions under the Ministry of Health and Social Welfare	5	0
Institutions under the Ministry of Infrastructure and Energy	2	1
<b>Thematic Supervisions/Inspections</b>		
Institutions under the Ministry of Finance and Economy	0	1
<b>TOTAL</b>	<b>7</b>	<b>2</b>

Following this section, we will reflect the findings and problems that have been identified in the subordinate institutions of the state administration, where a general

supervision has been carried out, which, based on the competencies and functions they perform, are organized in agencies, centers, general directorates and institutes, with various objects of activity.

During the general supervision process carried out during this year were analyzed **842** job positions, part of the structure and staff in force of the **7** supervised institutions, of which, **134** positions are included in the civil service scheme, 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*

Classification of job positions according to division	Job positions for each classification
Political Officer	0
Administrative Employee	708
Civil service job positions	134
<b>TOTAL</b>	<b>842</b>

### 1. Law enforcement situation in supervised institutions

In the process of supervisions carried out in 2020, the situation of civil service administration in controlled entities, according to the institutes of the law on civil servants applied by the human resources management unit and the responsible unit (DOPA), resulted as follows:

#### 1.1 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 is focused on verifying the implementation of the legal framework regarding the organization and functioning of the institution.

It was found that in some institutions, the bylaws which determine their establishment and functioning, as well as the manner of appointment of employees in civil service positions, have not been brought in coherence with the law and bylaws on civil service.

The legal changes that brought the inclusion of subordinate institutions in the civil service, have provided that the appointment of the director/head of the institution is no longer in the competence of the relevant minister, just as the appointment of civil servants is not in the competence of the head of the institution, a process which pursuant to law no. 152/2013, “*On civil servants*”, amended, is carried out through competition procedures by the responsible unit, the Department of Public Administration.

In these cases, in order to reflect the change of competencies in the bylaws that regulate the establishment and functioning of subordinate institutions, the Commissioner has

assigned the task to the Department of Public Administration, pursuant to article 7, point 2/b and 2/ç, of law no. 152/2013, “*On the civil servant*”, amended, to take measures to materialize the relevant changes in these acts, regarding the employment relationship for the civil servants of this institution, as well as the administration of the civil service as a whole.

In some cases, it was found that in the content of the bylaw that determines the structure and staff of the institution, the salary level for each category of job position provided for the relevant institution, has not been defined. As an example of this, we can mention the National Center for Continuing Education, an institution under the Ministry of Health and Social Welfare. Regarding this finding, the Department of Public Administration has been asked to determine the salary level for each job position category, since the drafting and approval of the successive structure and staff of the institution, in accordance with the requirements of the law in force.

During the oversight process in these institutions, cases were found where the job position name does not match with the category of salaries applied in other central and independent institutions that are part of the civil service. Specifically, it was found that for the position of “*director of directorate*” in institutions under the line ministry, has been provided the salary category of III-a, and for the position of “*sector supervisor*” has been provided the salary category of III-a/1, which do not correspond to the civil service category with the same name, provided in article 19 of law no. 152/2013, “*On the civil servant*”, amended, as employees of these categories in other civil service institutions get paid.

In this case, in order to improve the law enforcement situation in the administration of the civil service, the Department of Public Administration in the role of the responsible unit, has been assigned the duty to unify the categorization of job positions in the civil service, in subordinate institutions for the job positions of “*Director of Directorate*” 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 that the process is carried out by assessing their inclusion in one of the categories defined in this provision: senior management, middle management, lower 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 the payment method of the civil servant, in accordance with the responsibilities and duties that he accomplishes during his activity, as well as the application of the principle of equal pay for equal work throughout the civil service.

In order to regulate the legality regarding this aspect, even during 2020, the cooperation of the Department of Public Administration with the experts of the IPA 2014 Project “*Implementation of the Civil Service Reform in Public Administration*” has continued, to review the job descriptions, in order to clearly define the responsibilities and importance of the job position, further defining the position of the job in the administrative hierarchy provided in article 19 of the civil servant law.

## 1.2 Drafting job descriptions for positions in the civil service

Drafting job descriptions for each job position approved in the structure and staff of the institution is a process which is carried out by analyzing and evaluating the administrative functions performed by the subordinate institutions in the state administration and their competencies.

During the supervision conducted this year, the object of control were 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, to determine if these acts are drafted in compliance with the requirements of the law and bylaws that have been issued in its implementation. It is further verified whether the employees appointed to civil service positions meet the special requirements set out in the job description.

At the end of this process, the Commissioner has found that in **3** institutions the process of drafting job descriptions has been completed, in **3** institutions job descriptions have been drafted but not approved by the Department of Public Administration and in **1** institution this process has not started. From the analysis of the content of the job description form, as well as after the verification of the procedure followed for their drafting, some problems have been identified, which have consisted in the ambiguity of the tasks that the employee must perform in the job position; shortcomings in identifying special requirements; cases when the process of drafting job descriptions has not been completed with their approval by the Department of Public Administration and further, with the submission of these acts to this institution, in order to reflect them in the central staff register.

Pursuant to point 19, 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, the Department of Public Administration should check whether the job descriptions are drafted on the basis of and in accordance with the specific legislation of the field or the approved standard format.

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

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

The civil service administration is based on the annual admission plan. Pursuant to this legal obligation, the recruitment procedures in the civil service for executive, lower, middle and senior management positions are carried out on the basis of the “*Annual civil service admission plan*”. This obligation stipulates that the responsible unit in the local and independent administration institutions, as well as the Department of Public

Administration for the state administration institutions, cannot notify the announcement of a recruitment procedure in the civil service, if the respective 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*”.

In the supervisions carried out during this year has been included the manner of implementation of this legal obligation by the subordinate institutions of the state administration, for which the situation is presented as follows:

**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 (MHSW)	4	1
Subordinate institutions of state administration (MIE)	2	0
<b>TOTAL</b>	<b>6</b>	<b>1</b>

From the presented data it results that **6** supervised institutions have drafted the annual plan of admission to the civil service, while in **1** institution it is ascertained that this act has not been drafted and approved.

From the analysis of this process it was concluded that, **85%** of the supervised subordinate institutions have prepared the plan of needs for recruitment in electronic format, which they have communicated to the central institution by electronic means. It was also found that the human resources unit of these institutions reports to the responsible unit electronically every month, the number of vacancies and the number of dismissals, according to the reasons set by law.

In the conditions when the recruitment needs plan should reflect not only the vacancies, but also those that may be created during the following year, as a result of reaching the retirement age, the Commissioner, through warning decisions, has brought to the attention of the human resources unit of the supervised institutions and of the responsible unit, the importance of materializing this process in written form, in order to prepare an effective annual plan, in the framework of the implementation of the competition procedures on time.

**1.4 Application of legal procedures for the commencement of employment relations in the civil service**

In the state administration institutions under the Ministry of Health and Social Welfare, as well as the Ministry of Infrastructure and Energy, employment relations were verified for **134** positions in the civil service, out of which have been ascertained **107** cases of appointments through competition procedures and **4** cases where these positions were filled with students of high honors.

According to the administered data, it is evidenced that **23** civil service positions, which occupy **17%** of the total number of job positions that are part of the civil service, were vacant at the time of supervision. The Commissioner estimates that this is a high figure, which negatively affects the performance of institutions in providing service to citizens (*where we can mention the case of the General Directorate of State Social Service, where the number of vacancies at the time of supervision accounted for 31% of civil service positions*). In these conditions, the Department of Public Administration has been warned to continue the process of completing them through the implementation of competition procedures.

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

From the verification of the appointment procedure in the civil service it was found that in **67** cases, the civil service positions were filled with civil servants, for whom the relationship in the civil service has started in compliance with the provisions of article 67, point 3 and 4, of the law no. 152/2013, "*On the civil servant*", amended, a provision which has regulated the employment relations for existing employees, at the time of entry into force of the law on civil servant.

In all verified cases it has resulted that the procedure of declaring the employment status by the responsible unit (DOPA) has been performed within the deadline defined in point 1, of chapter IV, of decision no. 116, dated 5.3.2014 of the Council of Ministers "*On the status of civil servants and current employees who receive the civil servant status according to law no. 152/2013, "On the civil servant", amended.*

During the oversight process in the subordinate institutions under the supervised ministries, it resulted that in **23** cases, civil service positions were filled with civil servants appointed through the open competition procedure, admission to the civil service in the executive category.

Filling vacancies in the lower or middle management category, within the civil service system, has resulted that in **15** cases, it has been realized through the parallel movement procedure, the promotion procedure or the promotion procedure through external admission (*4 cases through parallel movement, 8 cases through promotion procedure and 3 cases through promotion procedure through external admission (20%)*). Meanwhile, **2** senior management positions turn out to have been filled by the Department of Public Administration with civil servants of the senior management body (SMB).

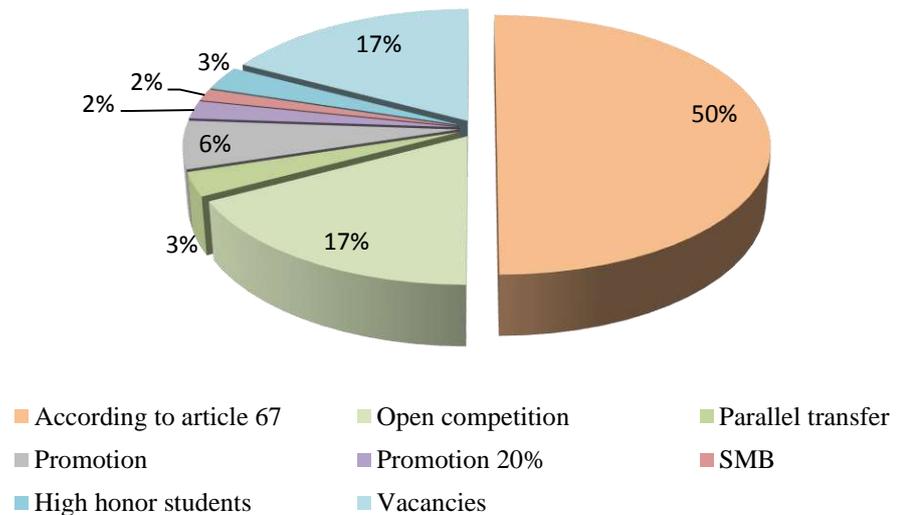
Pursuant to decision 766, dated 26.12.2018, of the Council of Ministers, "*On the employment of high honor students in state administration institutions, part of the civil service, for 2019*", it results that **4** civil service positions in these institutions are completed with students of excellence. Below, we are presenting some data related to

the way of filling job positions in institutions that are involved in general supervision during 2020.

**Table no. 4.5** Way of filling civil service positions in institutions under the MHSW and MIE, part of the civil service

Way of filling job positions in the civil service	Number of positions
Employees appointed under article 67 of the law	67
Employees appointed to the executive category with open competition	23
Employees appointed through parallel transfer	4
Employees appointed through promotion	8
Employees appointed through promotion (20%)	3
Job positions completed with SMB	2
Job positions completed with high honor students	4
Vacant civil service positions	23
<b>TOTAL</b>	<b>134</b>

**Graph no. 4.1** Filling of civil service positions in institutions under the Ministry of Health and Social Welfare and the Ministry of Infrastructure and Energy



### 1.6 Job performance evaluation

Job performance evaluation of civil servants, as a difficult but also important process, has been one of the main directions of supervision throughout 2020.

Law no. 152/2013, “On the civil servant”, amended, regulates this institute in its article 62, of Chapter XI, which explicitly provides for the obligation of institutions that employ civil servants to carry out the job performance evaluation procedures for civil servants, every 6 months. In addition to this assessment, employees are subject to a periodic evaluation, also for the acquisition and updating of additional knowledge and in this case it is intended to train and equip them with the necessary additional

knowledge, according to the functions and field where 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 servant stipulates that the civil servant can be assessed at one of four levels as: **a)** very good **(1)**; **b)** good **(2)**; **c)** satisfactory **(3)** and **d)** unsatisfactory **(4)**.

The process of general supervisions carried out in the institutions we are analyzing, had as its object the job performance evaluation for the period January - June 2020 and July - December 2020. During this process, standard evaluation forms were analyzed, in order to identify the levels of evaluation and verification of procedural elements of the implementation of this process. These data are presented in detail in the following tables:

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

For the period January - June 2020	Number of employees evaluated for each level				
	Very good	Good	Satisfactory	Unsatisfactory	Not evaluated
Subordinate institutions of MHSW and MIE	59	31	2	0	14
<b>TOTAL</b>	<b>106</b>				

**Note:** *We clarify that the number of employees involved in the evaluation process does not match with the number of civil service positions identified at the time of the general supervision (2020), due to the fact of mobility (transfer) of employees from institutions or dismissal from the civil service.*

According to the data reflected in the table above, it results that, during the period of January - June 2020, **106** employees were involved in the evaluation procedures, of which, **56%** of them were rated as “*very good*”, **29%** were rated “*good*”, **2%** were rated “*satisfactory*” and **13%** were not evaluated at all. It was ascertained that, during the first half of 2020, no cases of evaluation of civil servants with level 4, “*unsatisfactory*” were found.

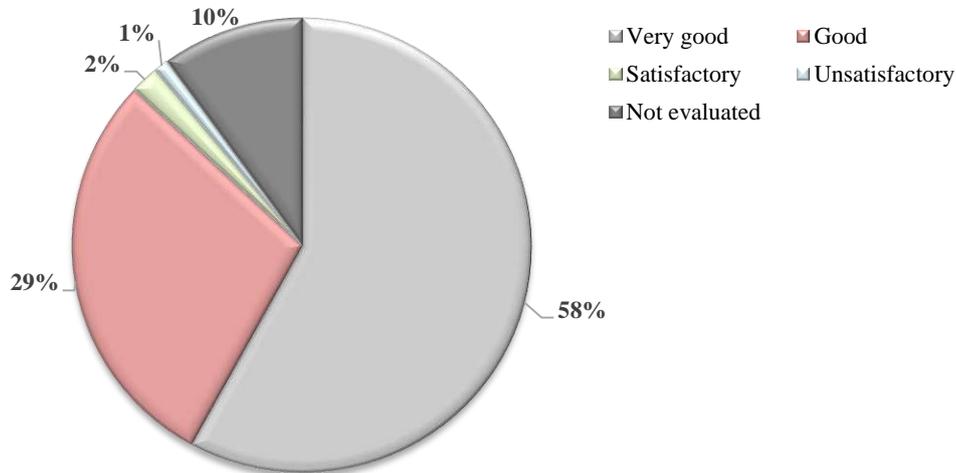
**Table no. 4.7** *Classification of job performance evaluations according to evaluation levels*

For the period July – December 2020	Number of employees evaluated for each level				
	Very good	Good	Satisfactory	Unsatisfactory	Not evaluated
Subordinate institutions of MHSW and MIE	63	30	1	1	8
<b>TOTAL</b>	<b>103</b>				

Meanwhile, during the second half of 2020, it turns out that **103** civil servants who were appointed to civil service positions were involved in the re-evaluation procedures. From the analysis of the standard evaluation forms it results that, **61%** of these employees are evaluated at the level “*very good*”, **29%** of them are evaluated at the level “*good*”, **1%** are evaluated at the level “*satisfactory*”, **1%** are evaluated at the level “*unsatisfactory*” and **8%** are not evaluated at all.

Comparing the two evaluation periods, the tendency towards evaluation at high levels is again evident. In summary (*the average for each evaluation level*), the job performance evaluation process for 2020 is presented in the graph below:

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



In order to improve the process and eliminate subjective evaluations, the Commissioner, through warning decisions, has oriented the subjects, especially the personnel units and the persons in charge of conducting the evaluation, to keep records of the achievements of civil servants during the evaluation year and to file the evaluation process. At the same time, the Commissioner has highlighted the importance of planning trainings in this area, for employees charged by law with the evaluation process, in order to carry out an evaluation as effective as possible, based on evidence and in accordance with legal provisions.

In cases where the evaluation level of “Satisfactory” and “Unsatisfactory” has been identified, the Commissioner has requested guarantee of the right of employees to undergo mandatory trainings, in accordance with the specifics of the job position, in order to gain the necessary knowledge and increase its performance in carrying out functional tasks.

During the supervision process in these institutions were found cases where the evaluation process of civil servants was not conducted. It turns out that, in some cases, the failure to carry out the assessment was justified, due to maternity leave obtained from the civil servant or due to their being on probationary period (*for whom the evaluation period is one year from the date of appointment*).

Meanwhile, it was noted that in 2 cases, the evaluation procedure was not performed for senior management level employees (*SML member*). In these cases, with a warning decision of the Commissioner, the supervised institution has been tasked to formally send the job evaluation form to the Secretary General of the Ministry of Health and Social Welfare, and then, the Secretary General should forward the acts for the performance evaluation to the responsible unit/National Selection Commission (NSC),

in order to continue with further procedures provided in detail in decision no. 109, dated 26.2.2014 of the Council of Ministers, “*On the job performance evaluation of civil servants*”, amended, in order to finalize the performance evaluation for senior management.

### 1.7 Termination of employment in the civil service

Termination of employment in the civil service is an institute 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 law and dismissal from the civil service as a disciplinary measure. From the supervision in the institutions under the Ministry of Health and Social Welfare and the Ministry of Infrastructure and Energy, **24** such cases have been ascertained, of which **14** cases due to dismissal from the civil service and **10** cases due to the law.

*Table no. 4.8 Termination of employment in the civil service*

Reasons for termination of employment in the civil service	Cases in institutions under the MIE	TOTAL  24
Release from civil service	14	
Termination of employment in the civil service, due to the law	10	

### 1.8 Discipline in the civil service in relation to the type of measures 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.

During the general supervision carried out in the institutions under the MHSW and MIE, a low number of disciplinary measures were found. Specifically, **10** cases of disciplinary proceedings were ascertained, out of which in **7** cases the disciplinary measure “Reprimand” was given for minor violations; in **1** case, the disciplinary measure “*suspension from the right to promotion, including a salary increase for a period of up to two years*” was applied, for serious violations and in **2** cases, the disciplinary measure “*dismissal from the civil service*” was applied, for very serious violations.

**Table no. 4.9** *Disciplinary action in relation to the type of measures applied*

Type of violations	Disciplinary measures in institutions under the MHSW and MIE	Cases appealed in court
<b>Very serious violations</b> <i>(Release from the civil service)</i>	2	1
<b>Serious violations</b> <i>(deprivation of the right to promotion for 2 years)</i>	1	0
<b>Minor violations</b> <i>(reprimand)</i>	7	1
<b>TOTAL</b>	<b>10</b>	<b>2</b>

From the analysis of the acts that materialize the disciplinary procedures, it was concluded that in two cases, the employees have exercised the right to appeal to the competent court, where it is concluded that in **1** case, the court has dismissed the appeal by considering the disciplinary measure given in proportion to the violation found and in **1** case, has decided to cancel the disciplinary measure “*Release from the civil service*” and return the employee to the previous job position.

### 1.9 Personnel files and the central personnel register

#### Personnel file

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

The data related to the fulfillment of legal requirements are reflected and administered in the employment 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 appointed to a position, which is included in the civil service field. During the verification process of the documentation administered in the personnel file, the Commissioner has ascertained shortcomings of various natures in them.

**Table no. 4.10** *Lack of documents found in personnel files*

Lack of documentation		
Identity card	Criminal record	Medical report
2	0	30

As it results from the data presented, deficiencies were found in the completion of the relevant documentation in the personnel file, in terms of lack of medical reports which certify the health condition of the employee, identified in **30** cases and in terms of lack

In all supervised institutions were left concrete tasks through the final supervision report, as well as in the content of the warning decisions of the Commissioner, to regulate the situation. During the verification of the documentation contained in the personnel file, various data were collected, regarding education, age, gender, some of which we are presenting below, analyzed in the social aspect.

Under the conditions when, decision no. 117, dated 05.03.2014, of the Council of Ministers, *“On the maintenance, procedure and administration of personnel files and of the Central Personnel Register”*, was repealed, with decision no. 833, dated 28.10.2020, of the Council of Ministers, the Commissioner, through the general supervisions that he will carry out during 2021, will aim at verifying the implementation of this bylaw, which has brought substantial changes in the administration of the personnel file, through checking the administrative actions that will be carried out by human resource management units, for the creation of personnel files in accordance with the provisions of this bylaw.

### **Central Personnel Register**

The Central Personnel Register (CPR) 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 Register, which is administered by the Department of Public Administration, has become functional in all institutions under the ministries.

With the approval of decision no. 833, dated 28.10.2020, of the Council of Ministers, *“On the maintenance, procedure and administration of personnel files and of the Central Personnel Register”*, (which has repealed DCM no. 117, dated 05.03.2014), the Department of Public Administration, in support of the functioning of the CPR, is charged with the task of creating and administering the cooperation platform *“administration.al”*, through which the management procedures of the institutions will be carried out, along with the administration of the full cycle of human resource management.

According to the provisions of this bylaw, the Central Personnel Register and the cooperation platform *“administration.al”*, will serve as a source of information and will be the means through which the Commissioner for Civil Service Oversight will exercise the legal authority of the control with regards to the implementation of the civil service legislation.

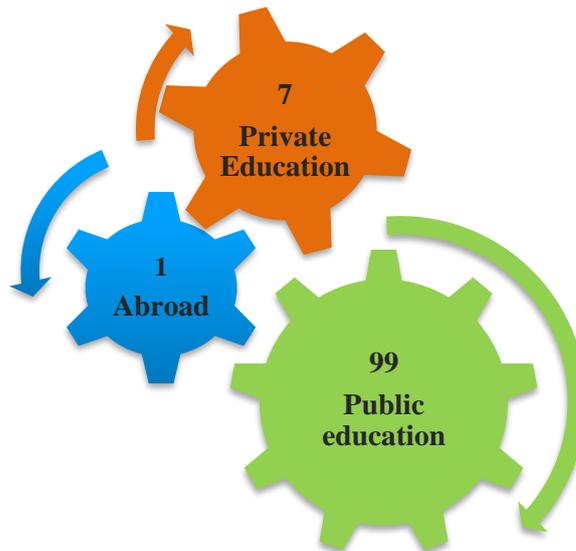
## 2. Some statistical aspects related to gender balance and educational institutions where civil servants have completed their studies in supervised entities

Based on a sample of **107** civil servants, of which **76** of them are employed in state administration institutions under the Ministry of Health and Social Welfare and **31** others employed in state administration institutions under the Ministry of Infrastructure and Energy, it turns out that the total number of female employees is **75** or **70%** and of males **32** or **30%**.

Meanwhile, regarding the educational institution where **107** verified cases were graduated, it has resulted that, **99** employees have studied in public education institutions; **7** others in private education institutions and **1** employee has studied abroad.

In these figures, **92%** are civil servants who have studied in public education, **7%** in private education and **1%** abroad.

**Graph no. 4.3** *Graduation of civil servants in public and private educational institution and abroad*



## CHAPTER V

### **ORIENTED SUPERVISION ON THE IMPLEMENTATION OF THE CIVIL SERVANT LAW IN LOCAL SELF-GOVERNMENT UNITS**

Pursuant to the efforts of the Commissioner to unify the implementation of the law on civil servants in the local administration and in order to recognize the situation of civil service administration, through the actions performed by the responsible units and other entities charged by law with tasks of various natures, in the second half of 2020, the process of oriented supervision has started, which has included all these institutions (*61 Municipalities and 12 District Councils*).

The process has included the activity of these entities, for the period of January - December 2020, regarding the administration and implementation of legal standards in structuring the civil service, as part of the organizational structure of the institution, as well as compliance with the legal requirements for some of the institutes of the law on civil servants. In order to achieve the objective of verifying legality and being unable of exercising physical supervision in the institution, as a result of the situation created by the Covid-19 pandemic, they were asked to send specific data regarding civil servants, organized according to some standard forms sent by the Commissioner, along with the administrative acts which materialize the procedures followed by these institutions, during the implementation of the law for this period, electronically and by mail.

During this process, a database has been created, which reflects the data regarding the structure, the civil service positions, data on the civil servants of the institution, the recruitment procedures carried out for civil service positions, as well as each institute of law no. 152/2013, "*On the civil servant*", amended.

Local self-government institutions have shown a willingness to cooperate with the Commissioner, despite the problems that they have encountered, such as lack of employees of the responsible unit due to health reasons or part-time work due to conditions dictated by the pandemic.

At the end of this process, all information has been treated and analyzed, according to the data sent by these institutions and the situation will be presented below.

#### **1. Verification of the application of organizational standards in the civil service structure, as an important part of the structure of the institution, in accordance with the principles of the law on civil servants**

Local self-government bodies, including Municipalities and District Councils, exercise their activity based on law no. 139/2015, "*On local self-government*", amended, which sets out the rules regarding their organization and functioning, as well as the level of salaries of employees exercising their duties in these institutions. Specifically, Article 54, point ç) and dh) of the above law, stipulates that the Municipal Council is the

competent body, which through the approval of the budget for the following year, approves the maximum number of employees of the municipality and the level of salaries for employees and other persons, elected or appointed, in accordance with the legislation in force. Further, in article 64, letter j), of the same law, it is determined that the Mayor, pursuant to the decision of the Municipal Council, approves the structure, staff and salary categories/classes for each civil service position.

While regarding District Councils, article 77, of law no. 139/2015, “*On local self-government*”, amended, stipulates that the structure, staff and salary categories/classes for each civil service position, are approved by the District Council itself.

In relation to the above, local self-government institutions have sent to the Commissioner the administrative acts which have been used to approve the structure and staff in force for these institutions for 2020. From the verification of these acts, as well as based on the submitted data by institutions, the number of civil service employees in relation to other employees of the institution, at the national level and by regions, is presented as follows:

**Table no. 5.1** *Civil servants in relation to other employees of the institution*

District	General no. of job positions in the institution	No. of positions in the civil service	No. of functional positions of the Cabinet	No. of positions of administrative employees
Lezhë	723	281	19	423
Gjirokastrë	1609	267	29	1313
Kukës	1331	255	36	1040
Elbasan	2039	616	76	1347
Fier	2820	622	39	2159
Berat	1453	297	40	1116
Korcë	1739	556	67	1116
Durrës	1106	404	31	671
Vlorë	1370	423	51	896
Shkodër	1250	462	32	756
Tiranë	2891	1588	103	1200
Dibër	1891	319	35	1537
<b>TOTAL</b>	<b>20222</b>	<b>6090</b>	<b>558</b>	<b>13574</b>

From the above, it results that for 2020, in the organizational structure of the local administration are foreseen a total of **20222** job positions, which according to the classification evidenced in the table, are divided as follows:

- 📌 **6090** civil service positions, or **30.1%** of all job positions;
- 📌 **558** functional positions of the Cabinet, or **2.8%** of all positions;

**13574** administrative positions or **67.1%** of all positions.

According to the categorization defined in article 19, of law no. 152/2013, “*On the civil servant*”, amended, the job positions belonging to the class of civil servants for each district, are presented below:

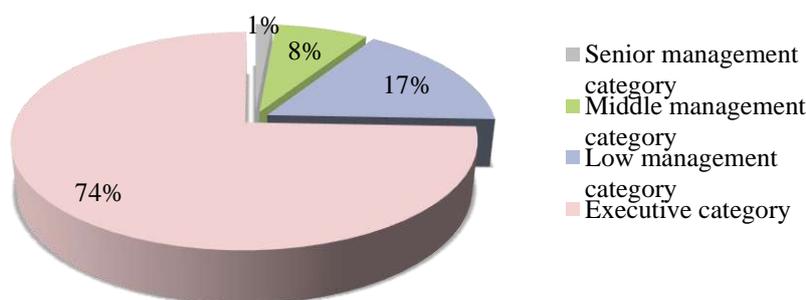
*Table no. 5.2 Categorization of civil servants according to article 19 of the law*

District	Positions in the civil service	Senior management	Middle management	Low management	Executive
Lezhë	281	3	26	56	196
Gjirokastrë	267	5	22	52	188
Kukës	255	2	21	39	193
Elbasan	616	32	55	129	400
Fier	622	5	52	74	491
Berat	297	4	30	47	216
Durrës	404	2	25	47	330
Vlorë	423	6	54	53	310
Shkodër	462	1	30	85	346
Tiranë	1588	20	99	291	1178
Dibër	319	4	25	66	224
Korçë	556	4	32	67	453
<b>TOTAL</b>	<b>6090</b>	<b>88</b>	<b>471</b>	<b>1006</b>	<b>4525</b>

In the interpretation of the numerical data reflected in the table above, the distribution of job positions in the civil service is presented in the following ratios:

- 88** job positions, or **1%** are senior management positions;
- 471** job positions, or **8%** are middle management positions;
- 1006** job positions, or **17%** are low management positions;
- 4525** job positions or **74%** are executive category job positions.

*Graph no. 5.1 Graphic presentation of the categorization of job positions according to article 19 of the law on civil servants*



Evaluating the data sent by the institutions involved in this supervision, it is concluded that, even during this year, as it was ascertained a year ago, in some cases the principles

of the law on civil servants were not respected, in the scheme of the functioning and organization of the civil service.

This is due to the fact that in some institutions, such as the Municipality of Fier, the Municipality of Divjaka, the Municipality of Mallakastër, the Municipality of Berat, as well as in institutions such as the Fier District Council, Berat District Council, Lezha District Council, Dibër District Council, and other cases, the senior management positions are not provided, which according to the provisions of law no. 152/2013, “*On the civil servant*”, amended and Decision no. 165, dated 02.03.2016, of the Council of Ministers, “*On the grouping of local self-government units, for salary reasons, and setting the salary limits of elected and appointed officials, civil servants and administrative employees of local self-government units*”, amended, appear under the title “*Secretary General*” or “*General Director*”.

Lack of these positions in the structure of local self-government units is an obstacle in the application of legal procedures that must be followed during the implementation of the institutes defined in the law on civil service, such as the composition of the Disciplinary Commission; the composition of the Restructuring Commission; drafting and approving the job description; or the appointment of a direct supervisor for middle management positions, who by law has the obligation to conduct the job performance appraisal for these positions.

Also, referring to the organizational structure presented by the institutions during this supervision, it was found that, in the structure, in addition to senior management positions, in some cases, middle management positions are also missing, therefore bringing the organization to the sector level, as is the case of the Berat District Council or Lezha District Council, which is contrary to the rules established in Decision no. 893, dated 17.12.2014, “*On the approval of the rules of organization and functioning of auxiliary cabinets, internal organization of state administration institutions, as well as on the detailed procedures for the preparation, proposal, consultation and approval of internal organization*”, which although addressed to the state administration, can be used for analogy for local administration institutions as well.

Furthermore, in reference to the documentation made available by the supervised entities, the phenomenon of frequent change of organizational structures within a calendar year is evidenced again in some cases, thus not respecting the principle of sustainability of the civil service in general and of the civil servant in particular, provided in article 5, of law 152/2013, “*On the civil servant*”, amended. To concretize this fact, it is worth mentioning as an example the Municipality of Roskovec, whose structure has undergone changes **4** times during 2020, or the Municipality of Ura Vajgurore, whose structure has undergone changes **14** times during 2020, from which it is ascertained that, civil service positions have been affected, through the change of the title of the position or the reorganization of the organizational units. The same phenomenon has been observed in the institutions of district councils, as is the case of the Dibra District Council.

On the other hand, despite the recommendations given by the Commissioner through warning decisions to regulate illegality in the administration of the civil service, it is found that in the structure of the local self-government institutions of Fier district and Tirana district, there are cases where civil service positions do not appear in accordance with the title defined in article 19, of law no. 152/2013, “*On the civil servant*”, amended. Specifically, this phenomenon is found in the *Municipality of Mallakastër*, in the *Municipality of Rrogozhina* and in the *Municipality of Kavaja*, where the executive level positions are not named with the title “*Specialist*” or “*Inspector*”, but are named according to the profession.

At the same time, in the structure of these institutions there are cases where, the positions in terms of the functions they perform are positions with administrative functions, but which are included in the civil service scheme by the institutions.

The Commissioner has continuously oriented institutions that in order to achieve sustainable and effective structures, they must take into account several objectives during their drafting process:

- ❖ 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 actual institution involved in this process.
- ❖ Identifying redundant functions and overlaps in the institution subject to restructuring.
- ❖ Strengthening the capacities in the personnel unit in order to make it possible to perform functional analyzes in the actual 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 governing specific aspects for all its institutes, as well as efficiency in the activity of the human resources of the institution.

## **2. Way of filling civil service positions at the moment of verification of the legality of administrative actions performed by the local self-government institutions**

According to the administered data, as well as referring to the written acts made available by the human resource management units, regarding aspects of human resource management, we will present below the legal situation regarding recruitments, highlighting with figures appointments to civil service positions in accordance with the requirements of law no. 152/2013, “*On the civil servant*”, amended (*according to the competition procedure or article 64, of this law*); employees appointed to civil service

positions with temporary appointment acts, by not conducting competition procedures, as well as positions that are still vacant.

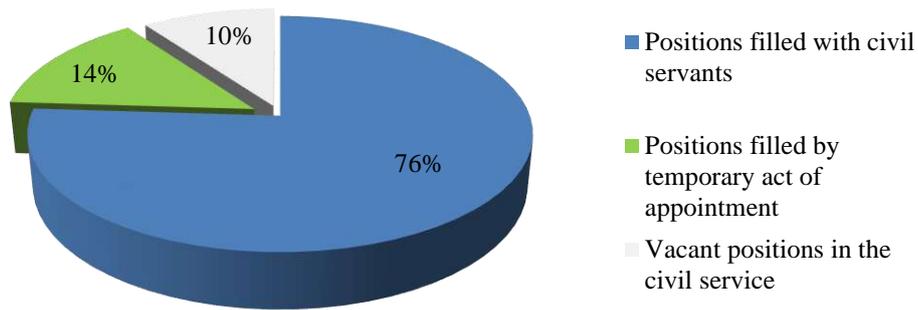
*Table no. 5.3 Filling of civil service positions by district*

District	No. of civil service positions by structure	No. of positions filled with civil servants (competition procedure or declaration according to article 64, law no. 152/2013)	No. of positions filled with employees appointed by a temporary act of appointment by the Mayor	No. of vacancies in the civil service
Lezhë	281	221	38 (13.5%)	22 (8%)
Fier	622	497	63 (10.1%)	62 (10%)
Tiranë	1588	1361	110 (7%)	117 (7%)
Shkodër	462	314	95 (21%)	53 (11%)
Berat	297	225	42 (14%)	30 (10%)
Gjirokastrë	267	157	100 (37%)	10 (4%)
Durrës	404	361	17 (4%)	26 (7%)
Kukës	255	119	113 (44%)	23 (9%)
Dibër	319	232	59 (18%)	28 (9%)
Elbasan	616	398	173 (28%)	45 (7%)
Vlorë	423	268	73 (17%)	82 (19%)
Korçë	556	458	8 (1.4%)	90 (16%)
<b>TOTAL</b>	<b>6090</b>	<b>4611 (76%)</b>	<b>891 (14%)</b>	<b>588 (10%)</b>

From the above data, it results that civil service positions in the local self-government institutions turn out to have been filled in this way:

- a) **4611** positions or **76%** of the total number of job positions in the civil service, completed with a competition procedure or declaration of status according to article 64, of law no. 152/2013;
- b) **891** job positions or **14%** of the total number of job positions in the civil service, filled with employees appointed by temporary appointment act, contrary to the competition procedures, defined in law no. 152/2013, “*On the civil servant*”, amended;
- c) **588** job positions or **10%** of the total number of job positions in the civil service are vacancies in the civil service.

**Table no. 5.2** *Filling of positions in the civil service throughout the local administration*



Referring to the data for which we are reporting, the most significant cases of illegality were found in some entities, among which we mention as an example: Elbasan Region, where **173** cases of contract appointments were found (*which occupy about 28% of positions in the civil service at district level and about 19.4% of the total number of civil service positions in the local administration filled by a temporary appointment act*); Kukës Region, **113** cases of contract appointments (*which occupy about 44% of the civil service positions in the region and about 12.7% of the total number of civil service positions filled with a temporary appointment in the local administration*); Gjirokastra Region, **100** cases of contract appointments (*occupying about 37% of the civil service positions in the region and about 11.2% of the total number of civil service positions in the local administration*); Shkodra Region, **95** cases of contract appointments (*occupying about 21% of civil service positions at the district level and about 10.7% of the total number of civil service positions filled with a temporary appointment act*), and other cases which are identified in the table above.

As for the municipalities in each region, in which a significant problematic situation was found, due to the high number of appointments contrary to the law, we mention the Municipality of Këlcyrë, in which it was found that all job positions in the civil service, about **44** job positions, are filled with temporary acts of appointment by the Mayor; Municipality of Kavaja, **64** cases of contract appointments; Municipality of Rrogozhina, **37** cases of contract appointments; Lezha Municipality, **30** cases of contract appointments; Municipality of Malësi e Madhe, **58** cases of contract appointments; Ura Vajgurore Municipality, **22** cases of contract appointments; Municipality of Kukës, **89** cases of contract appointments; Mat Municipality, **26** cases of contract appointments; Librazhd Municipality and Prrenjas Municipality, with **50** cases of contract appointments each; Municipality of Finiq and Municipality of Saranda, with **50** cases of contract appointments each.

It is worth mentioning that, in some of the Local Government Units which present the highest number of appointments contrary to the law, the same problem has been identified also in the previous supervisions carried out by the Commissioner previously in these institutions. In order to regulate the situation of legality, during 2019, through warning decisions, the subjects found in violation of the law were asked to immediately ascertain as absolutely invalid administrative acts, the acts issued by the head of the

institution, for the temporary appointment of employees in positions that are part of the civil service and to regulate the consequences by terminating the employment relationship entered in violation of the law. The responsible unit has been asked to immediately announce as vacancies the civil service positions that will remain vacant and to fill them in accordance with the law on civil servants.

Following the verification of the implementation of the tasks left by the Commissioner, within the warning deadlines, during 2020, it is concluded that the responsible units have continued to work to resolve the situation of illegality, a fact proven in the significant reduction of the number of appointments in violation of the law in those Municipalities, where this issue has been present for years, although they still remain among institutions with higher figures in this regard. As an example we can take the *Municipality of Lezha*, where in 2019 were found **143** cases of appointments in violation of the law, while for 2020 the number of appointments with temporary appointment acts is **30**. This institution is continuing to work in cooperation with the Commissioner, to proceed in a planned manner with the filling of positions according to law. In the *Municipality of Klos*, **32** cases of contract appointments have been ascertained for 2019, while for 2020 the number of appointments contrary to the law has decreased to **10** cases, and other cases that follow this trend.

Despite the improvement of the situation year after year, the high number of employees appointed by temporary appointment acts in contradiction with the requirements of the civil service legislation remains a problem in some local administration units such as the Municipality of Kavaja, the Municipality of Malësi e Madhe, the Municipality Këlcyrë or the Municipality of Kukës.

The situation mentioned above is the one ascertained until 31.12.2020, while this situation has changed and is changing at any moment, as the responsible units for regulating the legality, in cooperation with the Commissioner, continue to work for the accomplishment of the concrete tasks which are left in the content of the warning decisions that have been issued for these subjects.

During the supervision in these institutions, even during this year, a high number of vacancies were found, a total of **588** positions, which occupy about **10%** of the total number of positions in the civil service. Adding to these positions, also positions filled contrary to the law, which in the sense of the law are considered as vacant positions, the total number of positions to be filled according to the civil servant law is **1479** positions, or **24%** of positions in the civil service throughout the local administration.

On the one hand, this can be considered as an inability to fill positions through competition, but on the other hand, this figure can also be presented as a shortcoming in the planning of necessary positions in the structure of the institution, as long as the institution performs tasks with that capacity. In this case, there is room for reviewing the structure, starting by reviewing the job description form, for all categories of civil servants of the institution, which provides the requirements for appointment to a civil

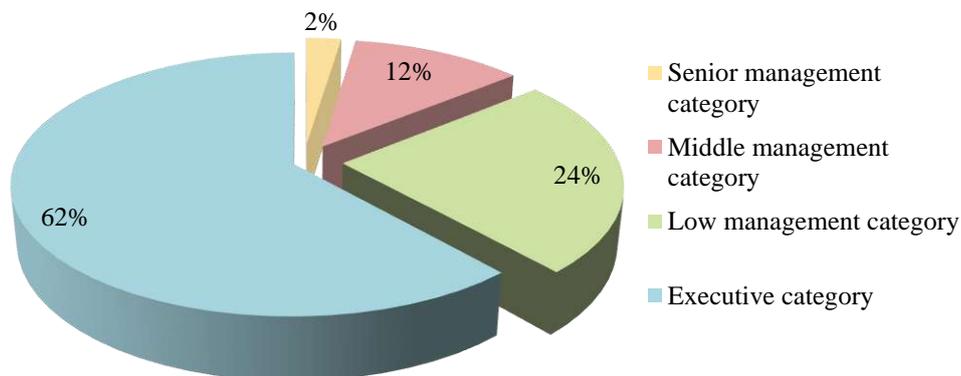
service position, as well as the duties and functions performed by this position, in accordance with law no. 152/2013, “*On the civil servant*”, amended and the bylaw that regulates this aspect, and also with the laws that regulate each sector of the municipality.

Regarding the **588** civil service positions, which at the end of the 2020 calendar year appear as vacant positions, the situation at the district level is as follows:

**Table no. 5.4** *Categorization of vacancies by district, until 31.12.2020*

District	No. of vacant positions in the civil service	Senior management	Middle management	Low management	Executive
Lezhë	22	0	0	8	14
Fier	62	1	10	13	38
Shkodër	53	1	10	20	22
Berat	30	0	6	8	16
Durrës	26	1	5	2	18
Kukës	23	0	2	7	14
Dibër	28	1	1	9	17
Tiranë	117	5	18	32	62
Elbasan	45	3	3	7	32
Vlorë	82	2	10	28	42
Gjirokastër	10	-	-	-	10
Korçë	90	-	4	9	77
<b>TOTAL</b>	<b>588</b>	<b>14 (2%)</b>	<b>69 (12%)</b>	<b>143 (24%)</b>	<b>362 (62%)</b>

**Graph no. 5.3** *Categorization of vacancies by district, until 31.12.2020*



In relation to these positions, the responsible units of local self-government institutions should take measures to fill them through competition procedures, including them in the annual recruitment plan for the 2021 calendar year.

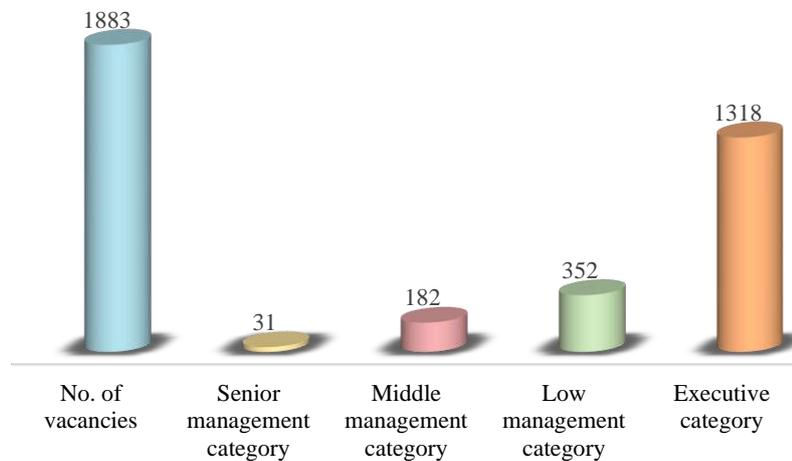
On the other hand, local self-government institutions which have cases of final court decisions for winning civil servants, should first take measures for the reappointment of these officials in these positions, by analyzing the special and general requirements of the vacant positions, as well as the data of the winning civil servant, and further to continue with the announcement of vacancies.

### 3. Procedures followed regarding filling of civil service positions through the competition procedure

Pursuant to the provisions of article 18 of law no. 152/2013, “*On the civil servant*”, amended, local self-government institutions must draft the annual admission plan within February, defining vacancies and the way of filling them. In order to verify the implementation of this legal requirement, the institutions were requested to send the annual recruitment plan for 2020 and the situation is presented below according to graph no. 5.4, “*Civil service recruitment plan*”.

Based on the administered data, it results that in general, the institutions have approved the annual recruitment plan for 2020, while in some cases the lack of this act has come as a result of the lack of vacancies in the civil service in the institution, as is the case of the institution of the Fier Regional Council.

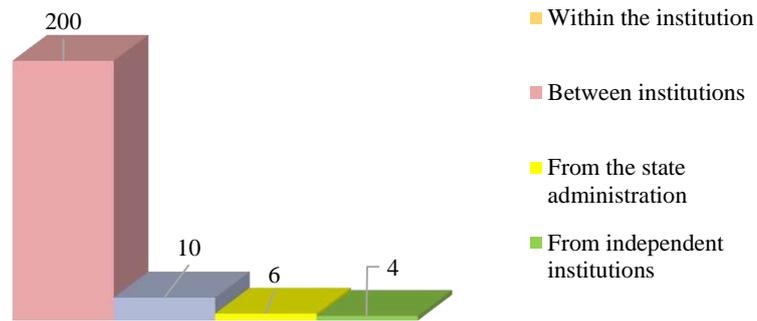
**Graph no. 5.4** *Civil service recruitment plan (number of positions to be filled according to the plan)*



Evaluating the data presented in this table, it is concluded that, for 2020, the responsible units of these institutions have foreseen the development of competition procedures for filling **1883** vacancies in the civil service, which according to the classification are divided into **31** senior management positions, **182** middle management positions, **352** lower management positions and **1318** executive level positions.

Following the analysis and processing of data regarding the way of filling vacancies in the civil service, these institutions were requested to provide data on mobility, through parallel movement and promotion and the situation is presented according to graph no. 9 below.

**Graph no.5.5** Mobility in the civil service through parallel movement and promotion in LGUs



Referring to these data, for 2020 are declared **220** cases of mobility, change of job position through the procedure of parallel movement or promotion, of which:

- ❏ in **200** cases, it is evidenced that they were existing employees within the institution;
- ❏ in **10** cases, it is evidenced that these employees have come from other institutions of local self-government;
- ❏ in **6** cases, it is evidenced that these employees have come from the state administration;
- ❏ in **4** cases, it is evidenced that these employees have come from independent institutions.

From the above, it is estimated that mobility in the civil service has occurred within the structure of local self-government institutions and there are very few cases of normal transfers of civil servants throughout the civil service system (*including state administration, local and independent institutions*).

Data regarding the procedures carried out by the local self-government institutions, in order to fill the civil service positions in accordance with the provisions of law no. 152/2013, “*On the civil servant*”, amended, are presented in detail in the following table of the report.

**Table no. 5.5** Filling of vacancies according to appointment procedures in the civil service

Executive level category		High, middle and lower management category		
Parallel transfer	Admission to the civil service	Parallel transfer	Promotion	Admission from outside the civil service (20%)
45	842	50	125	149
<b>TOTAL</b>		<b>1211</b>		

Analyzing the data in the above table, declared by the local self-government institutions, specifically 61 Municipalities and 12 Regional Councils, it is concluded that during

2020, a total of **1211** appointments were made through competition procedures, which are categorized as follows:

- ❏ **45** employees have been appointed through the parallel movement procedure, to executive level positions;
- ❏ **842** employees have been appointed through the admission in the civil service procedure, to executive level positions;
- ❏ **50** employees have been appointed through the parallel transfer procedure, in senior, middle and lower management positions;
- ❏ **125** employees have been appointed through the promotion procedure, to senior, middle and lower management positions;
- ❏ **149** employees have been appointed through the promotion/admission from outside the civil service procedure (20%).

Comparing the cases of appointments made during this period (*a total of 1211 appointments*), with the number of vacancies defined in the annual recruitment plan (*a total of 1883 vacancies*), it is estimated that, the annual recruitment plan for local self-government institutions is accomplished to the extent of **64%**.

Although, from the above data, which show a commitment of the responsible units of institutions to fill vacancies through competition procedures, it cannot be assessed whether these procedures are carried out according to the requirements of law no. 152/2013, “*On the civil servant*”, amended.

During the communication with the persons in charge of the data reporting task, an erroneous interpretation and application of the law on civil service was ascertained, regarding the filling of the middle or lower management positions, through the promotion procedure, also for candidates from outside the civil service.

Specifically, it has resulted that the responsible units of these institutions have conducted these competition procedures, without first conducting the parallel transfer procedure, according to the provisions of article 26, point 1, of law no. 152/2013, “*On the civil servant*”, amended, which stipulates that filling vacancies in the lower or middle management category is done, first, through the procedure of parallel transfer and, in case of not being able to fill the vacant position, with the promotion procedure, where the latter, according to the provisions of article 26, point 4, of the same law may be open also to candidates from outside the civil service.

Based on this issue, it is estimated that, in the following oversights that will take place in these institutions, one of the directions of the supervision will be to verify the legality of the competition procedures, as well as providing technical assistance in understanding and developing them, in accordance with the requirements set out in the civil service law (*principally we can mention the Municipality of Mallakastër, the Municipality of Kurbin, the Municipality of Mirditë, where during the communication*

with them, difficulties were found in the understanding and implementation of the competition procedures).

#### 4. Civil servant personnel file data

Regarding civil servants, who turn out to be appointed to civil service positions according to the requirements of law no. 152/2013, “*On the civil servant*”, amended, data on generalities were requested, such as age, gender, salary category for the job position where they exercise the duty, data related to the act of appointment for the current position and the act of confirmation of the civil servant status.

From the processing of data sent by local self-government institutions, it is noticed that, these institutions have declared data for **5502** civil servants (*who turn out to be appointed to civil service positions through the competition procedure, out of 6090 civil servants in total, since 588 positions are vacant*), whose indicators are analyzed and are presented below:

**Table no. 5.6** *Reported data related to the civil servant personnel file*

Total no. of civil servants reported	Females	Males	Average age for females	Average age for males	Average age for civil servants
5502	2995	2507	39	43	41

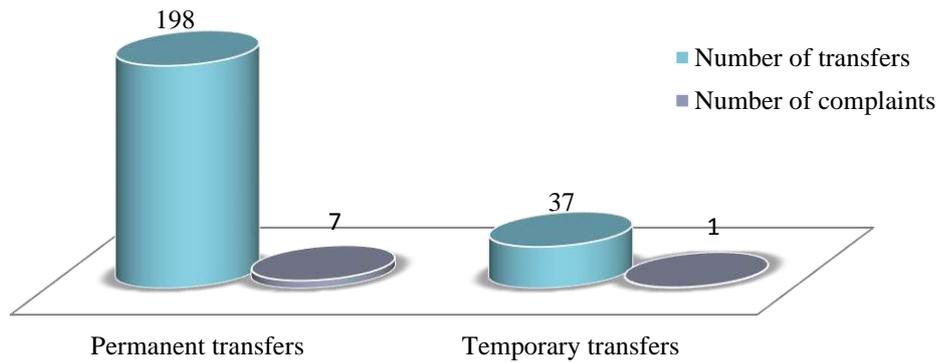
From the above table, it results that, in 2020, local self-government institutions are moving towards a gender balance, with a slight upward tendency towards female gender, which is presented in the figure of **54%** of civil servants and male gender at the level of **46%**. The average age of women is **39** years old and that of men is **43** years old, while that of civil servants is **41** years old.

#### 5. Cases of application of civil service law institutes, such as permanent or temporary transfer, disciplinary measures, dismissal from civil service and others

Law no. 152/2013, “*On the civil servant*”, amended, defines in detail the procedures to be followed by the human resources management unit, within the application of civil service institutes, such as, temporary or permanent transfer of a civil servant, taking disciplinary action, dismissal from the civil service, termination of the employment relationship in the civil service.

Regarding these legal aspects, local self-government institutions have been requested to send data that reflect cases of application of these institutes during the 2020 calendar year, which are presented as follows:

**Graph no.5.6** *Complaints in relation to transfers in the civil service*



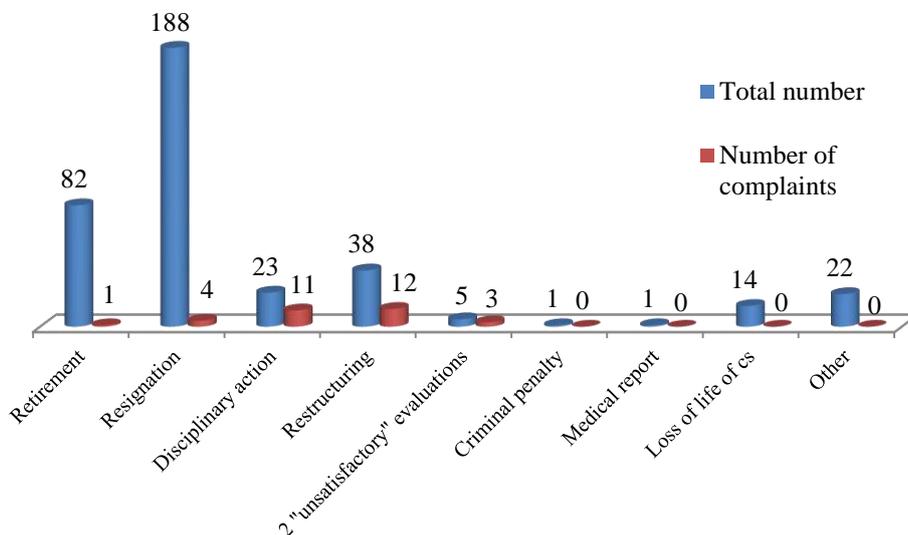
From the above data, it results that, the monitored institutions have applied the institute of permanent transfer in **198** cases, including permanent transfer due to restructuring, to avoid conflict of interest or for health reasons. It turns out that, the right of appeal against the acts of permanent transfer, has been exercised by the transferred employees only in **7** (seven) cases.

While regarding the temporary transfer, which is regulated in article 48, of law no. 152/2013, “*On the civil servant*”, amended, were declared **37** cases of its application during 2020, for which it turns out that the right to appeal has been exercised only in **1** (one) case.

From the documentation sent by the local self-government institutions, it has been ascertained that at the beginning of 2020, these institutions have approved the change of structure, but it does not result that these institutions, in most cases, have carried out the procedure of permanent transfer in the framework of restructuring.

The following graph shows the complaints in relation to the cases of dismissal from the civil service according to the provisions of the law on civil servants.

**Graph no. 5.7** *Complaints in relation to dismissal from the civil service*



Pursuant to article 63, of law no. 152/2013, “*On the civil servant*”, amended, the employment relationship in the civil service ends through:

- ❖ release from the civil service;
- ❖ dismissal from the civil service as a disciplinary measure and;
- ❖ the presence of a cause provided by article 65 of this law.

From the data reflected in the above graph, it is concluded that, during the monitored period, the civil service relationship in the local self-government institutions has ended for **374** civil servants, and of these cases only **31** employees have complained and the situation is as follows:

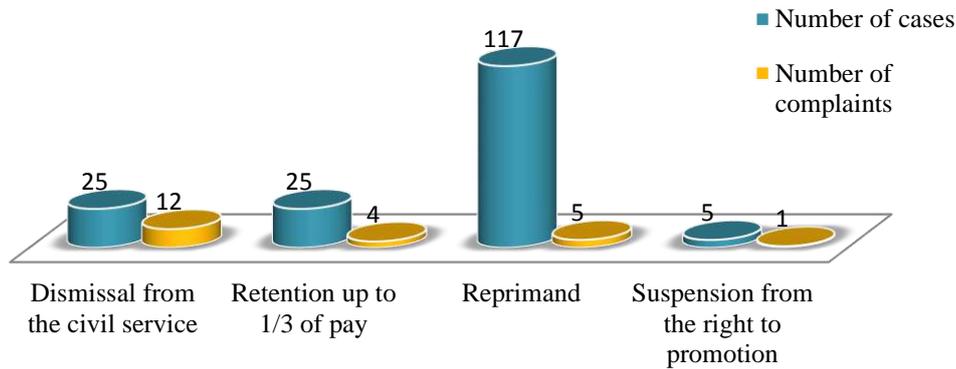
- a) in **82** cases, the relationship in the civil service has ended due to the law, according to the requirements of article 65 of the law on civil servants (*cases of reaching the full retirement age pension*);
- b) in **226** cases, the relationship in the civil service has ended due to dismissal, according to the requirements of article 66, of the civil service law, which includes **188** cases of resignation, as well as **38** cases of restructuring;
- c) in **23** cases, the relationship in the civil service has ended due to disciplinary measures;
- d) in **5** cases, the relationship in the civil service has ended due to dismissal, after two “*unsatisfactory*” assessments;
- e) in **1** case, the relationship in the civil service has ended due to dismissal, after the employee has been convicted by a final decision;
- f) in **1** case, the relationship in the civil service has ended due to dismissal, after the employee has been declared medically incapacitated;
- g) in **14** cases, the relationship in the civil service has ended due to the loss of life of the civil servant;
- h) in **22** cases, for other reasons.

## 6. Discipline in the civil service

The institute of discipline is regulated in articles 57 to 61, of law no. 152/2013, “*On the civil servant*”, amended, where in article 58 of the same law, are defined the types of disciplinary measures that can be taken against the civil servant, depending on the classification of the alleged violation, which are;

- a) *reprimand*;
- b) *retention up to 1/3 of the full salary for a period of up to six months*;
- c) *suspension from the right to promotion, including an increase in the salary scale for a period of up to two years*;
- c) *dismissal from the civil service*.

**Graph no.5.8** Complaints in relation to disciplinary measures



According to the graph presented above, it is noticed that **172** disciplinary measures have been taken, for which it turns out that the right to appeal has been exercised in **22** cases.

The most frequent disciplinary measure taken against civil servants is “*reprimand*”, given by the direct supervisor of the employee in **117** cases, which was appealed only in **5** cases.

The measure of dismissal from the civil service was taken in **25** cases and it was appealed in **12** cases.

**7. Observance of the civil servants’ right for vocational training, through involvement in various training programs**

Article 9, of law no. 152/2013, “*On the civil servant*”, amended defines the right of the civil servant for vocational training, in order to gain the necessary knowledge to perform functional duties in the positions where they exercise the duty. In the content of this provision, it is determined that the Albanian School of Public Administration (ASPA), is the competent body for providing these trainings. An important role in this process is played by the direct supervisor of the civil servant together with the human resources management unit, who determine the relevant areas for which the civil servant needs to be trained.

Regarding this institute, data are declared in relation to the number of trainings conducted during 2020; the relevant areas of trainings conducted, as well as the number of trainings that are expected to be further conducted, which are presented in the table below:

**Table no. 5.7** *Trainings already conducted or to be conducted*

For the responsible unit		For Standing Admission Commissions		For civil servants		ASPA's request for trainings	Requests received and conducted by ASPA	Requests received and pending to be conducted by ASPA
Topic	Trained	Topic	Trained	Topic	Trained			
92	150	4	40	163	699	393	241	152

From the above, it results that during 2020, **259** training topics were provided for civil servants of local self-government institutions, of which **92** topics were provided for employees exercising the functions of the responsible unit of the institution, in which have participated **150** employees of these units.

From the Permanent Admission Commissions are participating **40** civil servants, in **4** training topics conducted by ASPA for this civil service body.

Also, referring to the above data, ASPA has provided **163** different training topics, in which **699** civil servants were registered as participants. It is noted that during 2020 the trainings conducted consisted of the following areas and topics:

- a) *“Introduction to public administration”*, which is provided to civil servants on probation, in the framework of fulfilling the legal obligation set out in article 24 of the law on civil service;
- b) Topics on getting acquainted with the way of implementation and application of the civil service law institutes, such as disciplinary proceedings, performance at work, etc.;
- c) Civil servants have undergone trainings aimed at recognizing and identifying difficulties and managing economic resources, in the framework of the implementation of fiscal and budgetary policies of local self-government institutions.
- d) Civil servants have undergone various trainings, which are mainly related to the exercise of competencies of local self-government units, as well as to the main principles that guide the civil servant during the exercise of functional duties.

Given the above, comparing the number of trainings conducted with the total number of civil servants exercising their duties in local self-government institutions, it is concluded that this number is relatively low, also due to the situation created by the Covid-19 pandemic, which has brought difficulties in the realization of vocational trainings which during this year have been conducted *“online”* by ASPA.

We bring to the attention of the subjects charged by law for the application of this important institute, such as the direct supervisor, the responsible unit and the School of Public Administration (ASPA), especially the importance of training civil servants who perform functions in the human resources management unit, in local self-government

institutions, with the aim of gaining knowledge on how to implement the law on civil service and providing concrete practices on how to carry out procedures required by various institutes of the law on civil servant.

For these reasons, due to the competencies that the human resources management unit has, as the responsible unit in these institutions, they must continuously guarantee the possibility of training the employees who exercise these functions.

Some of the institutions have not reported data related to this institute of law, such as the case of the institution of *Kukës Regional Council*, *Shkodër Regional Council* and *Lezha Regional Council*, or *Mirditë Municipality*, etc., as well as in the case of municipalities of Shkodra region, who did not participate in the trainings, claiming as cause the situation created by the pandemic.

From all that we analyzed in the content of this section, it results that, despite the efforts to be appreciated, by the institutions of local self-government, in the framework of observance of the requirements of law no. 152/2013, “*On the civil servant*”, amended, problems are again identified during the application of the institutes of this law.

This oriented supervision has served the Commissioner to include in the annual work plan for 2021 the institutions that have shown the most typical cases of legal violations, envisaging thematic supervisions in these aspects:

- a) Creating the structure and staff of the institution, in order to respect the principle of hierarchy, creating organizational units in an efficient manner and according to the composition defined in the legal provisions, as well as creating stable structures in time;
- b) Compliance with the requirements of article 50, of law no. 152/2013, “*On the civil servant*”, amended, during the procedure of permanent transfer of civil servants as a result of the restructuring of the institution;
- c) Compliance with the requirements of article 48, of law no. 152/2013, “*On the civil servant*”, amended, regarding the institute of temporary transfer;
- d) Compliance with the requirements of law no. 152/2013, “*On the civil servant*”, amended, during the implementation of the competition procedures, through admission to the civil service, parallel movement, promotion and mainly promotion through admission from outside the civil service;
- e) Filling civil service positions with employees appointed by a temporary act of appointment of the Mayor;
- f) Compliance with the requirements of article 24, of law no. 152/2013, “*On the civil servant*”, amended, regarding the fulfillment of obligations within the probationary period;

For some institutions such as the *Municipality of Këlcyrë*, *the Municipality of Tropojë*, *the Municipality of Malësi e Madhe*, etc., the Commissioner has planned general oversight, in order to check the implementation of the law in all its institutes. The need

for such oversight is dictated by assessing the difficulties reflected by the employees exercising their duty at the human resources unit, in the reflection of the data, which have been sent several times, electronically or in writing, with obvious conceptual errors, which needed the intervention of the Commissioner to clarify them.

Since the employees exercising the duty of human resources specialist at the local self-government institutions, face difficulties during the interpretation of the legal provisions and realization of legal practices, the Commissioner seeks to draw attention to the importance of continuous training of these employees, which should not be performed only by the Albanian School of Public Administration.

The changes of the bylaw that regulates the administration of the personnel file and the Central Personnel Register, which determined also the legal basis for the functioning of the cooperation platform “administr.al”, will bring tangible improvements in the unification of law enforcement as well as in facilitating the work of the responsible unit due to the standard documents published on this platform for use by all entities of the civil service system.

The Commissioner will request from all institutions to populate this platform with data, which will also serve him to monitor the situation of the civil service in real time.

## CHAPTER VI

### OBSERVANCE OF DISMISSAL PROCEDURES FROM THE CIVIL SERVICE FOR EMPLOYEES REACHING THE FULL RETIREMENT AGE

Based on the legal competencies of the Commissioner as well as on the implementation of the tasks defined in:

- The Assembly Resolution “*On the evaluation of the activity of the Commissioner for Civil Service Oversight for 2018*”, which requests to review with priority all cases of individuals part of the civil service, in the central and local administration, who continue to work, although they have reached the full retirement age;
- The Assembly Resolution of 2019, where it was requested to intensify the process of verification of the implementation of decisions after the expiration of the notice period, to regulate the legality of institutions that have employees who have reached retirement age and who should have terminated on time their legal and financial relations, thus increasing the interaction on time also with the Department of Public Administration to enable the non-recurrence of such situations,

The Commissioner has verified throughout the year the activity of the responsible unit in terms of compliance with the requirements of article 65, letter “c”, of the civil servant law, a provision which provides for cases of termination of employment in the civil service due to law and orders the release from the civil service of employees who have reached the age for full retirement pension, and has issued decisions in cases where it has found irregularities. Also, special attention has been paid to the verification of the execution of the warning decisions of the Commissioner, which have been issued for the restoration of legality in this institute of law.

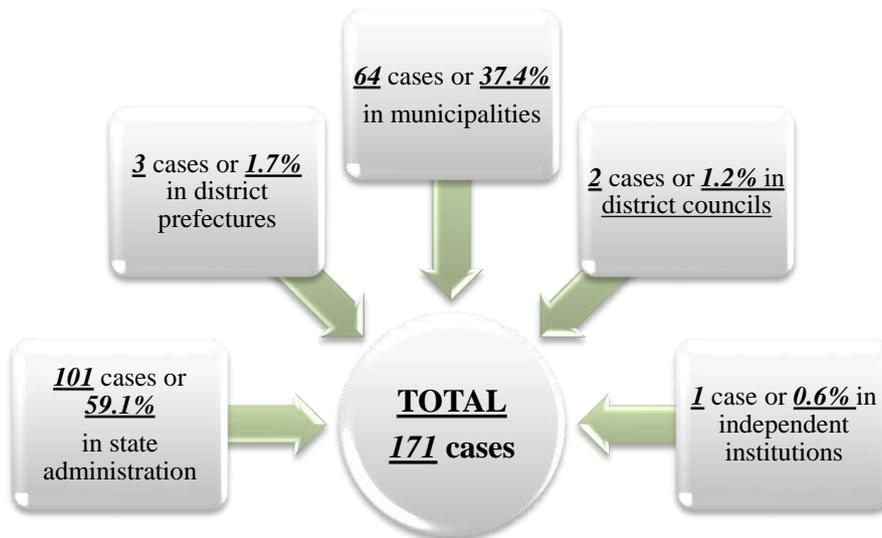
For the realization of this process, the Commissioner has communicated with 173 institutions, asking the responsible units to report on the employees who are still working, even though they have reached the age for full retirement pension, throughout the year 2020. Divided by typology, there are 82 state administration institutions (*Prime Ministry, 11 line ministries which have reported also for their subordinate institutions*); 73 local administration institutions (*municipalities and district councils*) and 18 independent institutions.

It is worth mentioning 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, were identified 171 cases of employment exceeding the legal deadline set for dismissal from civil service due to reaching the age for full retirement pension, of which: 101 cases or 59.1% of them

belong to the state administration (*31 cases in ministries and 70 cases in subordinate institutions*); 3 cases or 1.7% of them to district prefectures; 64 cases or 37.4% of them to municipalities; 2 cases or 1.2% of them to district councils and 1 case or 0.6% of them to independent institutions.

**Graph no. 6.1** No. of cases of employment exceeding the legal deadline set by article 65, letter “c” of law no. 152/2013, according to the typology of institutions



The situation will be presented in detail below.

**1. The situation ascertained in the state administration**

*a. Prime Ministry and 11 line ministries*

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

**Table no. 6.1** Situation regarding the employees who have reached the age for full retirement pension until 31.12.2020, for the staff of the Prime Ministry and the ministries

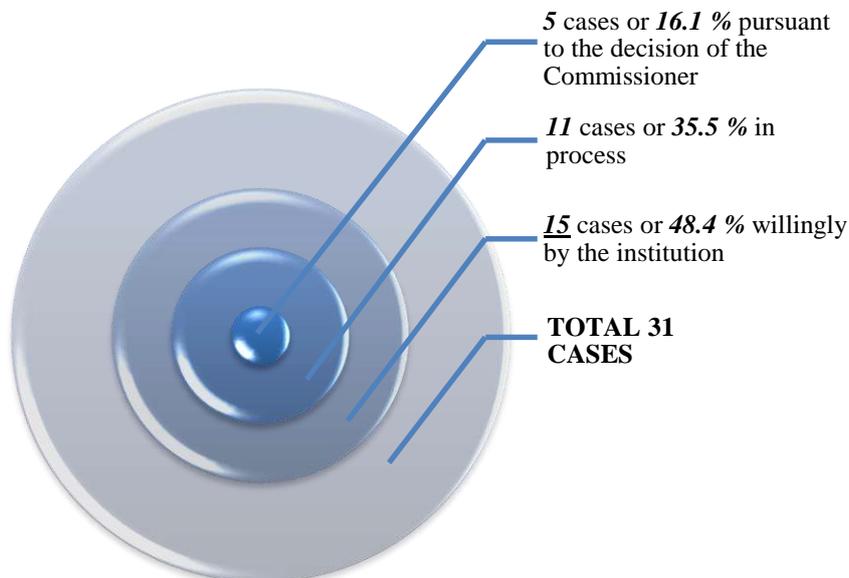
Institution	Employees under the conditions of article 65, point 1/c, of law no. 152/2013
Ministry of Justice	1
Ministry of Finance and Economy	16
Ministry of Internal Affairs	1
Ministry of Culture	2
Ministry of Infrastructure and Energy	3
Ministry of Education, Sports and Youth	4
Ministry of Defense	3
Ministry of Agriculture and Rural Development	1
<b>TOTAL</b>	<b>31</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 terminating the employment in the civil service due to the law, for **16** employees (*since for 15 employees, the relationship in the civil service was terminated voluntarily by the institutions*) who had reached the age of full retirement pension, as well as reflecting these acts in the Human Resource Management Information System (HRMIS).

After the expiration of the procedural deadline, left in the ordering part of the decision, the human resource 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 **5** cases or **16.1%** of them, the employment relationship was terminated due to reaching full retirement age pursuant to the decision of the Commissioner;
- ⇒ For **15** cases or **48.4%** of them, the relationship in the civil service was terminated willingly by the institution, in accordance with article 65 of the law, without the need for the intervention of the Commissioner with a decision;
- ⇒ For **11** cases or **35.5%** of them, the responsible units are in the process of fulfilling the legal obligation, as in most cases, they are related to the completion of the competition process, because the immediate termination of employment brings problems in the smooth running of the work of the institution.

**Graph no. 6.2** Situation of restoring legality in relation to employees who have reached the age for full retirement pension until 31.12.2020, for the administrative body of the Prime Minister and the ministries



**b. Institutions under the Prime Minister and ministries**

In fulfillment of the above legal obligation, the Prime Minister and the ministries have reported also on the institutions under their jurisdiction, part of the civil service. From the collection and processing of information it is noticed that **73** employees had already

reached or were reaching the age for full retirement pension by the end of the calendar year 2020.

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

**Table no. 6.2** *Situation regarding the employees who have reached the age for full retirement pension until 31.12.2020, for the institutions of dependence of the state administration*

No.	Institution	Employees under the terms of article 65, point 1/c, of law no. 152/2013
1.	National Business Center	1
2.	Public Procurement Agency	1
3.	General Directorate of Archives	1
4.	General Directorate of Taxes	14
5.	General Directorate of Customs	15
6.	General Directorate of Prisons	2
7.	Directorate of Fisheries and Aquaculture Service	1
8.	Agricultural and Rural Development Agency	1
9.	Regional Agency of Veterinary Service and Plant Protection, Vlorë	2
10.	Regional Agency of Veterinary Service and Plant Protection, Tiranë	4
11.	Regional Agency of Veterinary Service and Plant Protection, Elbasan	4
12.	Regional Agency for Agricultural Extension, Tiranë	2
13.	Regional Agency for Agricultural Extension, Lushnjë	1
14.	Regional Agency for Agricultural Extension, Korçë	1
15.	Agricultural Technology Transfer Center, Fushë-Krujë	3
16.	Agricultural Technology Transfer Center, Korçë	1
17.	Food Safety and Veterinary Inspectorate	1
18.	Police General Directorate	3
19.	National Authority for Safety and Emergencies in Mines	2
20.	Agency for Quality Assurance of Pre-University Education	1
21.	Institute of Transportation	1
22.	Albanian Geological Service	5
23.	State Inspectorate of Market Surveillance	1
24.	National Employment and Skills Agency	1
25.	State Inspectorate of Labor and Social Services	1
26.	District Prefectures	3
<b>TOTAL</b>		<b>73</b>

The Commissioner has followed the situation and has requested through warning decisions that the human resources units of these institutions should take immediate measures to restore the status of legality, by ending the employment in the civil service due to the law, for **63** employees identified by the job position and the moment of

reaching the age to receive the full retirement pension.

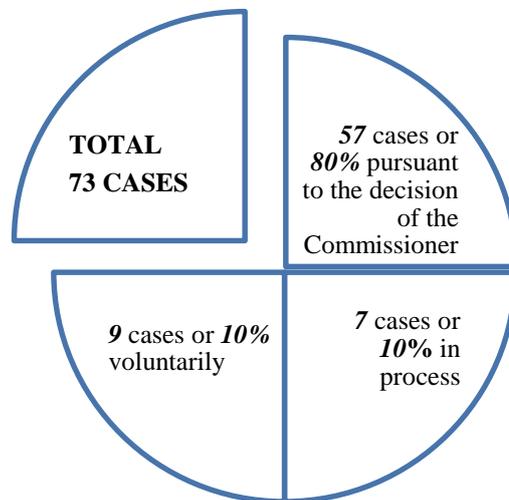
Subsequently, it was requested from the Department of Public Administration, as the responsible unit of these institutions, that the job positions which will remain vacant after ascertaining the circumstances of article 65, point 1/c, should be declared vacant, to be completed through competition procedures, in order not to create obstacles in the continuity of the work of institutions.

After the end of the procedural deadline, left in the ordering part of the decision, the human resource 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 **57** cases or **80%** of them, employment was terminated due to reaching the age of full retirement pension pursuant to the decision of the Commissioner;
- ⇒ In **7** cases or **10%** of them, the responsible units are in the process of fulfilling the legal obligation, because it is related to the smooth running of the institution, as we explained above, until the moment of completion of the competition process for filling the job position;
- ⇒ In **9** cases or **10%**, the state of legality has been restored by the institution itself.

**Graph no. 6.3** The situation regarding employees who have reached the age for full retirement pension until 31.12.2020, for institutions under the Prime Minister and the ministries



## 2. The situation found in local self-government units, municipalities and district councils

The responsible units of the municipalities have reported 64 employees, while the district councils have reported 2 cases, of employees who had reached or meet the age for full retirement pension by the end of the calendar year 2020, a total of 66 cases.

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

**Table no. 6.3** *The situation regarding the employees who have reached the age for full retirement pension until 31.12.2020, for the municipalities*

No.	Municipalities	Employees under the terms of article 65, point 1/c, of law no. 152/2013
1.	Skrapar	1
2.	Durrës	4
3.	Shijak	1
4.	Krujë	2
5.	Elbasan	2
6.	Dopull	1
7.	Belsh	2
8.	Tropojë	1
9.	Përmet	1
10.	Gjirokastër	2
11.	Himarë	1
12.	Pogradec	3
13.	Tiranë	8
14.	Ura Vajgurore	2
15.	Patos	6
16.	Finiq	2
17.	Sarandë	1
18.	Shkodër	3
19.	Vau Dejës	3
20.	Lushnjë	3
21.	Lezhë	2
22.	Këlcyrë	5
23.	Vorë	2
24.	Devoll	1
25.	Mirditë	1
26.	Malësi e Madhe	1
27.	Konispol	1
28.	Delvinë	1
29.	Maliq	1
30.	District Council of Korçë	2
<b>TOTAL</b>		<b>66</b>

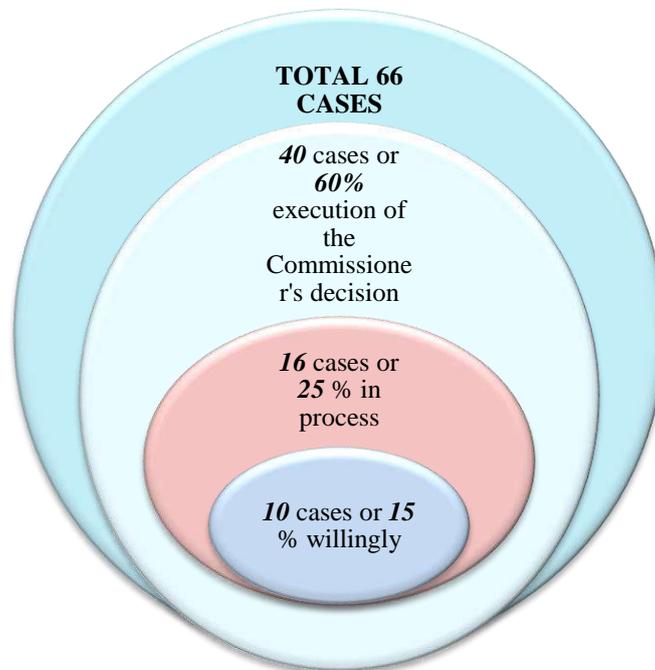
The Commissioner has requested from the human resources units of these institutions to take immediate measures to restore the state of legality, by terminating the employment in the civil service due to the law, for 57 employees and their job positions to be declared vacant, to be completed through competition procedures.

After the procedural deadline, left in the ordering part of the decision, the human resource management units have reported about the measures taken for the implementation of the warning decision.

Up to the moment of reporting, the situation is presented as follows:

- ⇒ In **40** cases or **60 %** of them the employment relationship was terminated due to reaching the full retirement age pension pursuant to the decision of the Commissioner;
- ⇒ In **16** cases or **25 %** of them the responsible units are in the process of fulfilling the legal obligation (*as they are in the recruitment process and the termination of employment in the civil service for these employees is related to the completion of the competition procedures, in order not to hinder the smooth running of the institution*);
- ⇒ In **10** cases or **15 %** of them, the state of legality has been restored by the institution itself without the need for the intervention of the Commissioner.

**Table no.6.4** The situation regarding the employees who have reached the age for full retirement pension until 31.12.2020, for the municipalities and the district councils



### 3. 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 18 independent institutions, in which the situation is presented as follows:

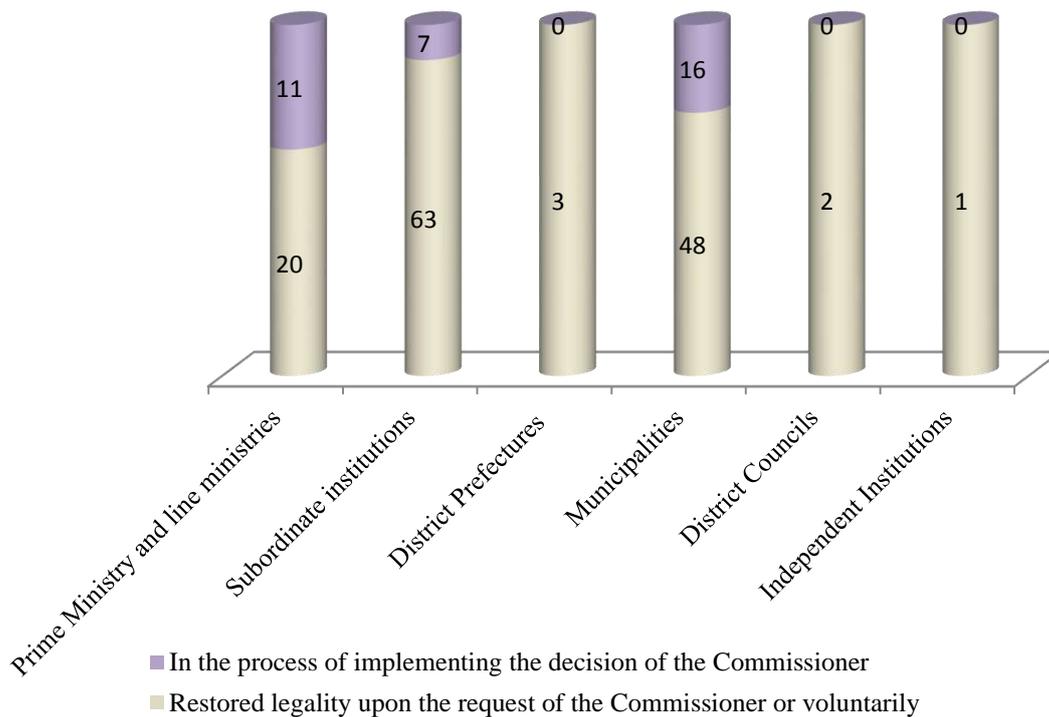
From the information sent, it results that 1 employee had reached the age for full retirement pension by the end of the calendar year 2020, in the institution of the Academy of Sciences.

The Commissioner has asked the human resources unit of this institution to take measures to restore the state of legality, by ending the employment of the above employees in the civil service, due to the law, and their job positions to be declared

vacant and be completed through competition procedures and this decision of the Commissioner was executed, within the deadline left to the institution to regulate legality.

Analyzing the data reflected above, the general situation regarding restoring 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. 6.5** The general situation of restoring legality in the cases of employees under the conditions of article 65, point 1, letter “c”, of law no. 152/2013



Out of **171** cases identified during 2020, it turns that in **137 cases** or **80.1%** of them the employment relationship in the civil service has been terminated (*of which 103 cases pursuant to the decision of the Commissioner and 34 cases the employment relationship has been terminated by the institutions themselves at the moment of reaching the age for full retirement pension by employees*), while **34 cases** or **19.9%** (*about 11 cases in the structure of the Prime Minister and ministries, 7 cases in their subordinate institutions and 16 cases in municipalities*) are in the process of restoring legality and at the end of the deadline left in the warning decisions, will notify the Commissioner.

As proved 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 has included in the annual plan of his activity for 2021, the monitoring of the implementation of the law by the responsible units of the institutions that are included in the civil service system.

## CHAPTER VII

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

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

According to the provisions set out in article 66/1, point 1, of law no. 152/2013, “*On the civil servant*”, amended, every institution which employs civil servants, 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 period of being unemployed.

The responsible unit, pursuant to the content of this provision, in order to execute court decisions in a timely manner, in order to respect the rights of the civil servant, as well as to reduce the financial damage to the state budget, must reinstate the beneficiary or create a court database and compile a waiting list for civil servants, for whom returning 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 in 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 specific task has been assigned for the Commissioner in the Resolution of the Assembly of Albania “*On the evaluation of the activity of the Commissioner for Civil Service Oversight for 2019*”.

Regarding this aspect of law enforcement, its importance has been discussed at length, 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 data base was missing and consequently, also the waiting list to determine the cases and the order of implementation of court decisions.

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 regulate the legality in this case, which are reflected in the high number of unenforced decisions as well as of institutions found with such cases; in the lack of a 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 each court decision contains different circumstances, which in some cases present objective problems to be executed, as will be analyzed in detail in the following 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 and according to the typology of institutions.

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

Further, the process has continued during 2019 with order no. 10, dated 21.01.2019, of the Commissioner *“On the initiation of the inspection for cases of non-executed final court decisions, for the return of civil servants in office, in institutions that are subject to the civil service law”*, starting the administrative investigation for each case found in violation of the law, an act which has extended its effects also during 2020.

As in the first stages, even during this year, inaccurate and often contradictory information, which comes from institutions, continues to be a problem, and for this reason the process has progressed with the request to reorganize, update and reconcile the data as well sending all the documentation administered by them during the process of execution of court decisions, including court decisions and the analysis of the activity of the Special Commission, as a mechanism set up to find a solution for this problem.

The Commissioner, after analyzing the database, concluded that the highest number of unexecuted court decisions belonged to the state administration and for this reason during 2019 has identified and reviewed case by case all court decisions not executed by them, on which he has reported a year ago. In these conditions, during 2020, the Commissioner has worked intensively with the institutions of local government units.

Initially, each LGU and District Council were requested to send to the Commissioner, information regarding the progress of this process; the problems encountered as well as the concrete proposals of the Special Commission, for placement in civil service positions, according to the enacting clause of the final decision of the Court, of the employees on the waiting list. At the same time, these institutions have been asked to apply by analogy the regulations provided 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”*, for the establishment of the Special Commission, as well as the regulatory acts, among which instruction no. 1, dated 04.06.2014, of the Council of Ministers, *“On the way of execution of monetary obligations of General Government Units on the treasury account”*.

The process of reinstating the winning civil servants in vacant positions is not simple, as each case that has remained unenforced, presents a specific problem. For this reason, representatives of the institutions have been guided towards the legal ways for solving the problems, analyzing the concrete cases presented by them. In this process, the Commissioner intends to support the institutions by all means, for a solution as soon as

possible and in accordance with the requirements of the law.

**2. Data on the level of execution of final court decisions for reinstatement in the civil service of winning civil servants by the institutions of local government units from 26.02.2016 to 31.12.2020**

Due to the pandemic, the verification was carried out only through electronic communications, which has led to difficulties in monitoring this process step by step. Despite this difficulty, intensive work has been done in collaboration with the human resource management units of local government institutions, guiding them for any administrative action during the implementation of final court decisions. Any information provided by local government units has been carefully analyzed, highlighting both technical inaccuracies as well as problems raised by institutions that have become serious obstacles to the resettlement of court-winning civil servants.

The table below summarizes the entire process of execution of final court decisions by local government institutions. In the “*phase I*” section are the data administered at the beginning of the verification process that corresponds to the period of December 2018 - June 2019, while in the “*phase II*” section, are the data administered until December 2020.

From the analysis of the acts sent by the local government institutions, the situation is presented as follows:

**Table no. 7.1** Data reported according to the stages of the process

1		2 (3+4+5)	3 (6+7)	4	5	6	7
Institution	Reporting by stages	Number of acts appealed in court	Final court decisions on reinstatement in the civil service ( <i>executed or on the waiting list</i> )	Final court decisions for dismissal of claim	Court cases at trial	Winning civil servants returned to a regular civil service position	Winning civil servants on the waiting list
Municipalities	I	192	92	23	77	26	66
	II	260	143	33	84	57	86
District Councils	I	123	65	33	25	52	13
	II	133	79	36	18	56	23
<b>TOTAL</b> ( <i>phase II</i> )	Currently	<b>393</b>	<b>222</b>	<b>69</b>	<b>102</b>	<b>113</b>	<b>109</b>

**Table no. 7.2** Data on the situation of execution of court decisions that have become final, related 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) <b>Final court decisions for reinstatement in the civil service, until December 31<sup>st</sup>, 2020</b> <i>(executed or on the waiting list)</i> (2+3)	(2) <b>Winning civil servants returned to a regular civil service position, 31 December 31<sup>st</sup>, 2020</b>	(3) <b>Winning civil servants on the waiting list, 31 December 31<sup>st</sup>, 2020</b>
Municipalities	<b>143 (100%)</b>	<b>57 (40%)</b>	<b>86 (60%)</b>
District Councils	<b>79 (100%)</b>	<b>56 (71%)</b>	<b>23 (29%)</b>
<b>TOTAL (LGU+DC)</b>	<b>222 (100%)</b>	<b>113 (51%)</b>	<b>109 (49%)</b>

As shown in this table, until December 31<sup>st</sup>, 2020, **143** final court decisions have been identified in the municipalities, pursuant to which, the civil servants are registered in the waiting list and their current financial obligation arising from the court decision has begun to be liquidated. In **57** cases, the winning civil servants have been reappointed to a civil service position and **86** cases are still on the waiting list.

We highlight the fact that out of **61** Local Government Units, **50** of them do not have in any case the obligation to execute final court decisions, of the nature we are discussing. Whereas in the District Council institutions, **79** final court decisions have been identified, pursuant to which, civil servants have been registered on the waiting list and their financial obligation arising from the court decision has begun to be liquidated. In **56** cases the winning employees have been reappointed to a civil service position and **23** cases still remain on the waiting list. Of the **12** District Council institutions, currently 6 of them have no obligation to execute final court decisions.

If we were to evaluate the situation for the Municipalities, distinguishing the Municipality of Tirana, as an institution with special specifications, the organization of which is regulated by a special law, as it has a high number of civil servants and therefore the restructuring process affects more positions, it turns out that the other Local Government Units have doubled the number of cases of execution of final court decisions, compared to the first stages of the process.

These municipalities have executed **50** final court decisions, while at the beginning of this process they had executed only **25** of such.

In a general analysis, out of **73** institutions of the local government unit monitored during 2020, it was found that **56** of them or **77%** have no obligation to execute final court decisions for the reinstatement of winning civil servants.

### 3. Some findings regarding the activity of entities that are legally charged with the execution of court decisions for the reinstatement of winning civil servants in office

- In some cases, the Special Commissions have not investigated and consequently have not analyzed the facts that occurred after the termination of employment of civil servants, facts that are related to the activity of the employee during the unemployment period.

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 law on civil servant.

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 public administration institutions, as it is ascertained that the institutions have made full payments to the beneficiaries, while they have been employed in other public administration institutions. To prove this fact, a statement must be required from the winning employee.
- ❖ Does he meet the general criteria to be a civil servant, for 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 officials 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 of conflict of interest, in cases when the civil servant is of middle or senior management level? He must be required to submit in advance the declaration of private interests in compliance with law no. 9049, dated 10.04.2003, *“On the declaration and checking of assets, of financial obligations of elected officials and some public servants”* as well as the statement on conflict of interest referring to law no. 9367, dated 7.4.2005, *“On the prevention of conflict 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 being re-employed in the institution, or does he only ask for the unpaid salaries. It may be that the employee 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 has been lost by the state institutions, no attempt has been made to cooperate with other competent institutions to find his place of residence, in order to notify the

civil servant of all the administrative actions that are being carried out regarding him.

- In some cases, when the winning civil servant, without reasonable causes, has refused to be placed in the position proposed by the Special Commission, the latter has not followed further with the appointment procedure, but has continued to propose new positions, thus not finalizing the process even at the moment that we are reporting.

In these cases, the Special Commissions must continue the procedure following all legal avenues to resolve the issue. After analyzing the obligations deriving from the executive title, which in our case is the decision of the court (*summarized in the enacting clause of the decision*), it is acted upon by correctly implementing it. In case, the job position held by the employee at the time of termination of employment does not 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 corresponds to the special criteria required by the job position.

In this procedure, special attention must be given to the notices and deadlines. After acting in full compliance with the law and the court decision and still the civil servant refuses without justified reasons to be placed in office, then the bailiff is asked first and then the court, to cease the execution of the obligation of the institution to resettle the civil servant in the civil service. At that moment, the payment should be terminated as well, since it is considered that the employment relationship has been terminated.

It is important to note at this point that, in this procedure, special attention must be paid in the reappointment of the employee, who must be in the same civil service category that the employee held at the time of release or dismissal from work. Only if the Court in the final decision has ordered resettlement in a lower category, a lower category position can be proposed to the employee. This fact is emphasized because it has been found that in many cases, the civil servant has been proposed for appointment to one or two categories lower than what he previously held. This action is considered 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 the observance of the order of payment of the obligation, are not carried out according to a unified procedure by the institutions that have such obligations.

Compared to a year ago, when there were rare cases of settlement of obligations, during this year the number of cases of payment of the obligation value 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 an indemnity, which is paid in different periods of time and not as salaries, which have in their structure also tax obligations, social and health insurance, or seniority at work.

According to the data reported by the local institutions, it turns out that currently has been paid by the local government institutions in favor of the winning civil servants, the amount of 149,807,762 ALL for the municipalities and 5,745,861 ALL for the District Councils. In total, 155,553,623 ALL were paid, pursuant to the final 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 must be issued by the Ministry of Finance and Economy, but also the recommendations left during the audits by the Supreme State Audit.

To assist in this process, in the framework of institutional cooperation, as well as 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 the stance in this case.

The Supreme State Audit has responded to this request by drafting an instruction for the SSA inspectors, on how they should act during the control exercised by them in the institutions where these cases are found. The Commissioner was informed by the Department of Public Administration that they have 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 the moment of reporting, serious efforts have been made by local institutions in terms of regulating the legality and improving the situation of civil service administration, which is reflected in the following directions:

- ❏ A Special Commission has been set up at each local 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 within each institution, a list which is also administered by the Commissioner.
- ❏ In most local administration institutions, a considerable portion of the arrears of salaries has been paid to the winning civil servants.
- ❏ The Special Commissions have made efforts to accommodate the civil servants who have won the trial, proposing to them positions which have been vacant in the institution, thus achieving to accommodate a significant part of them.

Likewise, in case 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 expressly provides:

2. *“If the reinstatement of civil servants in office, 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 the stay on the list, civil servants are paid according to the last position they held in the civil service”*,

we estimate that, in general, the state administration institutions administer the waiting list and continue to pay the salary as provided by the court decision.

But, on the other hand, despite this fact, local institutions, in the role of the responsible unit and the responsible institution for the management of the waiting list, must continue the process until the final settlement of the winning civil servant, in a regular position of the civil service, to avoid paying the employee due to a court decision, without working. As long as there are vacancies in the structures of the institutions, they should be offered first to civil servants from the waiting list, who meet the criteria to work in them.

As annexes to this section, we will present some tables attached to the report (*as part of annex 4*), through which the whole process is materialized, where the administrative actions performed by special bodies are recorded in detail, and where it is nominally reflected every employee who has won the right to return to the civil service, in the local administration institutions (*61 Municipalities and 12 District Councils*).

Overseeing the execution of court decisions is a dynamic process, where the data are updated at every moment, as new court proceedings begin and previously initiated court proceedings continue to end, and consequently new court decisions are added for execution. Also, on the other hand, court decisions are executed which have been in process during previous reports, which causes the reported figures to change frequently in different time periods. The situation until December 31<sup>st</sup>, 2020 is presented in the tables attached to this material.

Following this process, the Commissioner will continue to work to monitor the implementation of the law during the activity of the Special Commissions, participating in these meetings in order to speed up the process and ensure proper and unified implementation of the law.

Likewise, during 2021, local administration institutions and independent institutions, which still have unenforced decisions, will also be included in the hearings.

#### 4. Difficulties encountered in terms of carrying out the process of execution of decisions by institutions and the need for legal changes

As it was pointed out a year ago, the Commissioner estimates that a serious impediment to the execution of final court decisions is the fact that law no. 152/2013, “*On the civil servant*”, amended, allows a lot of room for misinterpretation of this particular institute.

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 a regulatory character, which are Instruction no. 1, dated 04.06.2014, of the Council of Ministers, “*On the manner of execution of monetary obligations of General Government Units to 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 civil service law enforcement*”, which is a bylaw 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 determining in any case also 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, given that 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, when the final court decision is executed by them, the employee 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 dismissal 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, has sanctioned that:

**4. “The responsible unit is obliged that at the moment a vacancy is created in the civil service, to appoint, initially, with their consent, the civil servants registered in the list, according to the relevant 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 charge in this case makes the temporary appointment of these civil servants.”**

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 dismissal** and **b) to ensure that this employee meets the criteria of the job position offered to him.**

Law no. 152/2013, “*On the civil servant*”, amended, in its 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; low 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)** the 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 the special administration groups;
- c)** the general requirements for admission to each category, class and groups under this article;
- d)** the title of the 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 the state administration institutions and independent institutions*”, which defines in detail all the points presented above.

This bylaw defines the classes of each category and further, also the methodology of classification of job positions, unifying the 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-mentioned bylaws, the employment of employees in the same category (*e.g. the executive one*) and in a job position where the employees met the special requirements of the job has been done, but the appointment has been refused from their part, on the grounds that the position offered is not of the same title or is not of the same class.

Likewise, there have been cases when there have been claims regarding also the level of salary, although this element of the employment relationship is variable.

Not being clearly defined in article 66/1 of law no. 152/2013, “*On the civil servant*”, amended, that what is meant by “*equivalent position*”, what should these job positions have in common, and in case there is movement in the class category, will the decision be considered executed, then 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 of 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 issued before the onset of 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 civil servant status, as it considers the status 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*", already repealed, provided for the status of the employee as related to the job position where he had competed and was confirmed as a civil servant. This law did not foresee at any time the concept of the Top 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 court decision practically unenforceable, if the winning employee will take a stand and ask to be appointed only in the same job position where he was before and where the court reinstated him, by decision. This has been also one of the main reasons which have led to the non-execution of court decisions and consequently, civil servants are paid every month and for a relatively long time, while being employed in other institutions at the same time.

Another specification that should be made in the law is also the determination of the importance of the "*salary*" element in the equivalence of job positions. This is 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 distinction 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 job position category and not to the level of salary.

Based on the above, the Commissioner has proposed amendments to law no. 152/2013, "*On the civil servant*", amended, seeking 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 civil service law the concept of job position category is different from the salary level. Since 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 as well, in order to enable the correct execution of court decisions.

- ❏ How institutions should act, when the employee unjustifiably refuses the job position offered. 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 civil service law enforcement*”, have been defined some general rules, but they do not guide the institutions on the further legal steps to be taken. Moreover, this act, as we explained, has been issued from 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 have civil servants employed and have cases when they have to execute court decisions of the nature we are discussing.
- ❏ How should the institutions act if the civil servant, from the time of release or dismissal from the civil service, until the moment of execution of the court decision, has been employed by another state or private institution.
- ❏ How the value of the indemnity should be calculated. How will the civil servants who during the period of court proceedings, and then in the period after the execution live and work abroad, be treated financially, and will they be registered on the waiting list afterwards?

To resolve these issues, the Commissioner is collaborating with the Department of Public Administration for changes in the law and bylaws related to this aspect, which are planned to be submitted as drafts for approval to the Assembly, within the last four months of 2021, as we have explained in detail in a special section of the annual report.

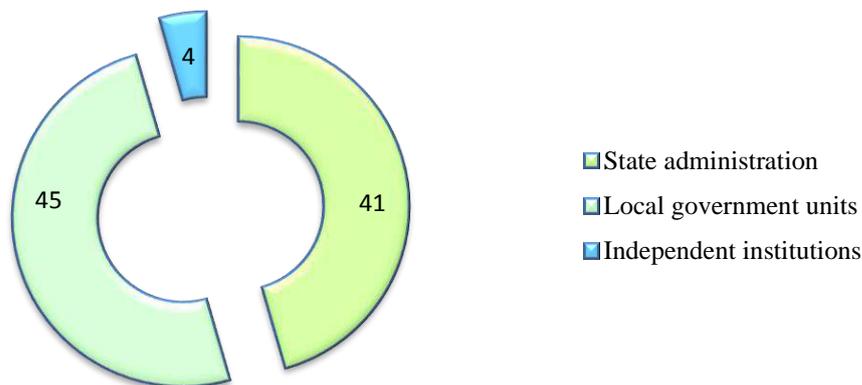
## CHAPTER VIII

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

#### 1. Level of implementation of the Commissioner’s warning decisions

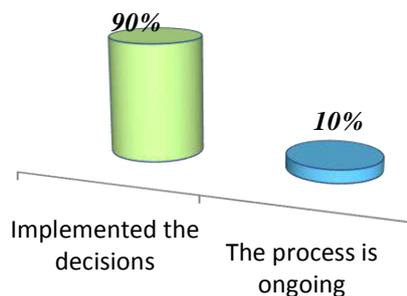
For the period of January - December 2020, after the expiration of the deadline left by the Commissioner in the warning decisions, the ongoing supervision process (*the process of verification of the implementation of the warning decisions*) was carried out in **90** institutions, of which **41** or **46%** of them belong to the state administration (*4 ministries and 37 subordinate institutions*), **45** or **50%** of them to local government units (*1 district council and 44 municipalities*) and **4** or **4%** to independent institutions. Graphically, this situation is presented as follows:

*Graph no. 8.1 The ongoing supervision process by typology of institutions*



At the end of the verification, it turns out that the tasks left by the Commissioner in the warning decisions have been fully implemented by **81** institutions or **90%** of them (*concerning 35 state administration institutions, of which 4 ministries and 31 subordinate institutions; 42 local government units, of which 41 municipalities and 1 district council; and 4 independent institutions*) and in **9** cases or in **10%** of them, the process is continuing in different phases (*concerning 6 subordinate institutions in the state administration and 3 municipalities*). Graphically, this situation is presented as follows:

*Graph nr. 8.2 Situation at the end of the ongoing supervision process*



In numerical terms, regarding the tasks set out in the enacting clause of the warning decision of the Commissioner for regulating the state of legality in the administration of the civil service, this situation is presented as follows:

In **81** entities (of which 35 state administration institutions, of which 4 ministries and 31 subordinate institutions; 42 local government units, of which 41 municipalities and 1 district council; and 4 independent institutions) the verification process of the warning decision has been completed and it turns out that the tasks left by the Commissioner have been fully accomplished:

In the state administration:

- ⇒ The Human Resources Unit has taken immediate measures to restore the state of legality, by terminating the employment relations in the civil service due to the law (article 65, point 1/c) in **61** cases.
- ⇒ In **2** cases, the administrative acts for appointments made in violation of the law, have been revoked/annulled and the employment relations were terminated.
- ⇒ The probation period has been extended up to 6 months for **1** case, in accordance with the provisions of article 24 of law no. 152/2013, “On the civil servant”, amended.
- ⇒ The process of job performance evaluation has been finalized for **1** case, after the assignment left to review the evaluation, which was reasonably conducted on the standard evaluation form.
- ⇒ The personnel files of each civil servant have been completed, including in them, all documents and data according to attachments 1 and 2, part of DCM no. 117, dated 05.03.2014, as well as those identified as missing by the Commissioner (concerning 8 subordinate institutions).
- ⇒ The job description forms have been submitted for approval to the Department of Public Administration (concerning 5 subordinate institutions).
- ⇒ The internal regulation of the institution has been approved, taking into account the recommendations left in the warning decision of the Commissioner (concerning 2 subordinate institutions).
- ⇒ The institution has approved its organizational structure, including in it a job position for human resource management (concerning 1 dependent institution).
- ⇒ The job performance evaluation forms for 2 members of the TMC have been sent to DOPA, pursuant to the task left by the Commissioner (concerning 2 subordinate institutions).
- ⇒ The employment relationship has ended due to non-compliance with the special criteria of the job position for **1** case.
- ⇒ The act of declaration of the civil servant status was issued in **3** cases.



- ⇒ The Human Resources Unit has taken immediate measures to restore the state of legality, by terminating the employment relation in the civil service due to the law (*article 65, point 1/c*) in **42** cases.
- ⇒ In **144** cases, the administrative acts for appointments made in violation of the law, were revoked/annulled and the employment relations were terminated.
- ⇒ The employment status was declared in **2** cases.
- ⇒ The job positions of “NBC Specialist” were included in the category of civil servants, for **3** cases identified in 1 municipality.
- ⇒ The process of drafting the job descriptions for those job positions, part of the civil service, has been completed, for those cases where they have been found to be missing (*belonging to 1 municipality*).

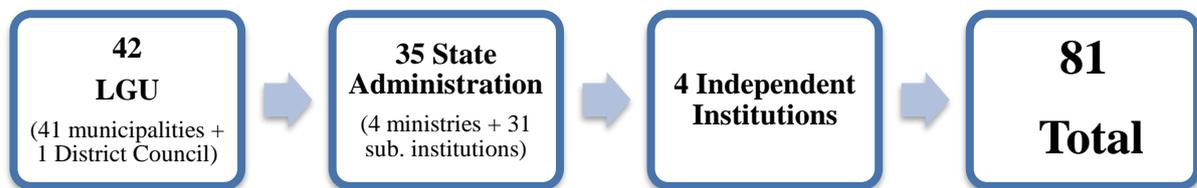


- ⇒ The Human Resources Unit has taken immediate measures to restore the state of legality, by terminating the employment relationship in the civil service due to the law (*article 65, point 1/c*) in **5** cases.

Graphically, this situation is presented as follows:

*Graph no. 8.3*

*Implementation of recommendations by typology of institutions*



The situation of implementation of the Commissioner’s recommendations identified above is summarized in the following table:

*Table no. 8.1*

*Implementation of the Commissioner’s recommendations (cases of general/thematic supervisions/inspections)*

INSTITUTIONS	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED
State administration	35 (43%)	-
Local government units	42 (52%)	-
Independent institutions	4 (5%)	-
<b>TOTAL</b>	<b>81 (100%)</b>	-

In **2** entities (*concerning 6 subordinate institutions of the state administration and 3 local government units, municipalities*), for which the process of verification of the warning decision of the Commissioner is ongoing, it results that:

In the state administration, the Commissioner has requested:

- ⇒ The job description approval process should be completed, 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, amended (*regarding 3 subordinate institutions*).
- ⇒ The personnel file should be completed with the job performance evaluation form for the probationary period, as well as with the decision of the direct supervisor on the confirmation as civil servants, of 2 employees, for whom the probationary period has ended (*regarding 1 subordinate institution*).
- ⇒ The job performance evaluation should be done for the members of the TMC (*concerning 3 subordinate institutions*).
- ⇒ The employment relationship in the civil service should be terminated for **8** cases, due to reaching the age for receiving the full retirement pension (*concerning 2 subordinate institutions*).
- ⇒ The personnel file of each civil servant should be completed, including in it, all documents and data according to attachments 1 and 2, of DCM no. 117, dated 05.03.2014, as well as those identified as missing by the Commissioner (*regarding 1 subordinate institution*).
- ⇒ Measures should be taken to materialize the relevant changes in the bylaw of establishment of the institution, regarding the employment relationship for civil servants and the administration of the civil service as a whole (*concerning 2 subordinate institutions*).
- ⇒ The administrative acts that have been issued in violation of the law, during the job performance evaluation process for the second half of 2019, should be annulled, and the evaluation process should be performed from scratch (*concerning 1 subordinate institution*).
- ⇒ The principle of administrative hierarchy in the civil service should be materialized in the structure of the institution, proposing in the successor structure, the creation of an organizational unit with the title “Directorate”, in order to ensure the reporting line from lower levels, to the highest level (*concerning 1 subordinate institution*).
- ⇒ The procedures related to the civil service management and which have been carried out only electronically, should be materialized in writing, respecting the elements that must be contained in the paper copy of the electronic document (*concerning 1 subordinate institution*).

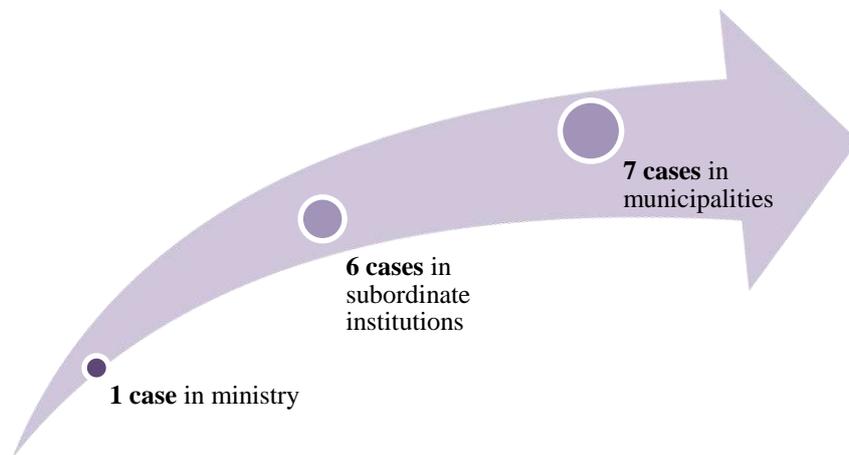
**In the LGUs, the Commissioner has requested:**

⇒ Immediate action to be taken to restore the state of legality, by terminating the employment relationship in the civil service due to the law (*article 65, point 1/c*) in **12** cases.

**2. Implementation of the Commissioner’s warning decisions at the end of the administrative investigation process for individual cases**

During the reporting period, simultaneously 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-up also the implementation of the warning decisions issued at the end of the administrative investigation for individual cases. For the period of January - December 2020, in the ongoing supervision process (*the process of verifying the implementation of warning decisions*) are included **14** individual cases (*of which, 1 case belongs to the structure of ministries, 6 to subordinate institutions and 7 to municipalities*). Graphically this situation is presented as follows:

*Graph no. 8.4 Institutions involved in the ongoing supervision process for individual cases, divided according to the typology of institutions and the number of cases*



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 assigned in the warning decision.

As we have noted also in previous reports, given the serious efforts of supervised institutions to regulate the situation of illegality in accordance with the tasks left by the

Commissioner in warning decisions, it can be said with confidence 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 and professional civil service, based on merit, moral integrity and political impartiality.

### **3. The commissioner as a party to litigation**

The Commissioner, also throughout 2020, has continued to participate in trials conducted by administrative courts in various districts of the country, summoned as a defendant or a third party by them, in cases where the trial was on disputes related to various institutes of law no. 152/2013, “*On the civil servant*”, amended, regardless of whether or not there was a decision on his part, for **59** cases.

As we have pointed out before, the recommendations of the Commissioner, or the submissions made by him to the court, have continued to be valued fair and have been taken into consideration by the latter, in resolving administrative disputes.

**Participation 59 in litigation**

## CHAPTER IX

### INSTITUTIONAL COLLABORATION AND FOREIGN RELATIONS

The cross-institutional cooperation of the Commissioner has been developed not only in the framework of the activity of the institution pursuant to law no. 152/2013, “*On the civil servant*”, amended, but an important part of this cooperation has been also the fulfillment of obligations within the application of the principle of accountability, to the Albanian Parliament, as well as the realization of the duties of the Albanian government regarding the country’s membership in the European Union.

Specifically, the Commissioner has made a significant contribution through the following reports:

1. Annual report to the Albanian Parliament regarding the activity of the institution
2. Reporting in the framework of the implementation of the Resolution of the Albanian Parliament on the evaluation of the activity of the Commissioner for the Civil Service Oversight for 2019
3. Periodic reports within the mechanism set up by the Albanian Parliament to monitor the implementation of the recommendations of independent institutions (*weekly reports for the period of May - July, reports on a quarterly basis, semi-annual basis*)
4. Periodic reporting in the framework of the implementation of the Action Plan of the Cross-Sector Strategy of the Public Administration Reform 2015-2022
5. Reporting in the framework of the 9<sup>th</sup> meeting of the Special Group for Public Administration Reform
6. Reporting in the framework of drafting the contribution of the Albanian Government on the Progress Report of the European Commission for Albania
7. Reporting in the framework of the 11<sup>th</sup> meeting of the Stabilization and Association Committee of the European Union – Albania

## CHAPTER X

### HUMAN RESOURCES AND FINANCIAL MANAGEMENT DURING 2020

#### 1. Human resource management

The Secretariat of the Commissioner for Civil Service Oversight is the supporting structure of the Commissioner, in fulfilling the duties assigned by law. This structure operates to the full capacity of the human resources approved by Assembly Decision no. 98, dated December 4<sup>th</sup>, 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 provides for 31 job positions, of which 25 positions are part of the civil service.

During the six-year period, since the beginning of operation, this institution has continuously strived to fulfill all the tasks assigned by law with professionalism, impartiality and within reasonable deadlines, despite the fact that human resources, logistical capacities (*currently operating with 1 vehicle*) and the budget for allowances and business trips have been limited, compared to the large volume of work that has been done by this institution, and which continues to grow rapidly, in coherence with the high dynamics of actions towards the reform on public administration in general and 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 improvement of standards towards those of the European Union.

Although with limited staff and logistics, the Commissioner has managed to extend his activity pursuant to the substantive and territorial competencies, throughout the territory of the country, thus enabling communication and interaction with all responsible units, of all institutions that are part of the civil service system.

These tasks were accomplished 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 middle and senior management directors, who manage all the initiated supervision and inspection processes, apply a reasonable deadline for their timely completion, follow up and verify the information addressed to the Commissioner, pursue cases in Court, as well as check the implementation of the tasks assigned by the Commissioner in the warning decisions.

Enforcement and observance of civil service legislation has been and remains one of the main aspects of the overall human resource management of the institution. During 2020,

two recruitment procedures were successfully completed in the category “*Admission to the civil service*”, to fill 1 (one) vacancy in the Directorate of Inspection and Administrative Investigation and 1 (one) vacancy in the Directorate of Legal Affairs and Foreign Relations, as well as a recruitment procedure in the category “*Parallel transfer*”, filling 1 (one) vacancy in the Directorate of Inspection and Administrative Investigation.

Pursuant to the Annual Training Plan, at the Albanian School of Public Administration has been conducted: 1 (one) mandatory training in the framework of training “*Introduction to Public Administration*”, for one civil servant on probation.

The institution of the Commissioner, in its current structure, is represented at significant 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 2020**

During 2020, the Commissioner has administered effectively and efficiently the funds allocated from the State Budget, strictly complying with the principles and rules of financial management, in accordance with the applicable law, taking into account:

- Accomplishing the mission of the Commissioner, who, as a guarantor for the implementation of legality in the administration of the civil service, oversees the implementation of 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.
- Carrying out the supervision of the civil service management to enforce the same standards in the implementation of the civil servant law.
- 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 smooth running of the work in the institution of the Commissioner.

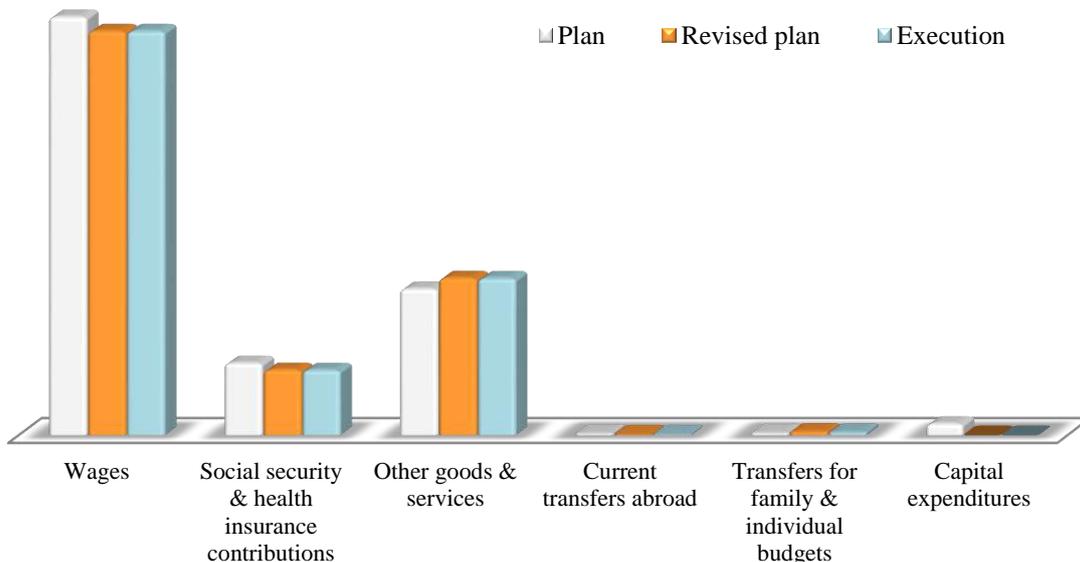
During 2020 have been successfully completed 20 procedures regarding public procurement procedures; 2 (two) small value procurements and 18 (eighteen) purchases with a value below 100,000 ALL (excluding VAT). The procedures are carried out according to the legislation drafted and approved by the Public Procurement Agency, as well as the orders, manuals, instructions and recommendations published on the official website throughout 2020.

Pursuant to law no. 88/2019 “On the 2020 budget”, Instruction of the Minister of Finance no. 9, dated 20.03.2018 “On standard budget implementation procedures”, amended, supplementary Instruction of the Minister of Finance no. 2, dated 20.01.2020 “On the implementation of the 2020 budget”, amended, Normative Act no. 15, dated 15.04.2020 “On some changes and additions to Law 88/2019 “On the 2020 budget”, the budget funds approved, allocated and executed by the Commissioner for Civil Service Oversight for 2020 are presented as follows:

*Table no. 10.1 Budget Planning and Execution for 2020*

Accounting items	Description	Budget plan for 2020 (in thousand ALL)	Revised budget plan for 2020 (in thousand ALL)	Budget execution for 2020 (in thousand ALL)
600	Wages	36,100.0	34,870.0	34,869.1
601	Social security and Health Insurance Contributions	6,250.0	5,649.0	5,638.7
602	Other goods and services	12,676.0	13,600.3	13,583.7
605	Current transfers abroad	200.0	106.7	106.7
606	Transfers for Family and Individual Budgets	240.0	340.0	300.0
230-231	Capital expenditures	1,000.0	0	0
	Office and electronic equipment	1,000.0	0	0
	<b>TOTAL</b>	<b>56,466.0</b>	<b>54,566.0</b>	<b>54,498.2</b>
	<b>In % versus the total</b>			<b>99.87 %</b>

*Graph no. 10.1 Budget plan and execution for 2020*



According to the accounting items, the execution of funds is presented as follows:

- ⇒ Wages and Social Security & Health Insurance Fund, (600-601), in the amount of 40,507.8 thousand ALL, or 99.98% of the allocated funds.
  
- ⇒ Other Current Expenditures Fund (602-606), in the amount of 13,499.4 thousand ALL, or 99.6% of the allocated funds. This fund has been used for:
  - Repayment of liabilities to the state, such as electricity, water, banking, postal and telephone services.
  - Expenses for various purchases and supplies, such as stationery materials, cleaning materials, ink and toners for the operation of equipments such as printers, photocopiers, etc.
  - Expenses related to the execution of court decisions.
  - Expenditures incurred in order to achieve the goal of the Commissioner, which is to ensure the same standards in the implementation of the civil service law, in all institutions operating under this law, through supervision of the civil service management.

## CHAPTER XI

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

Based on the experience created during the exercise of the legal competence of supervision of the civil service administration, provided in law no. 152/2013, “*On the civil servant*”, the Commissioner has continuously reported that the time has come to intervene in the content of the civil servant law, in terms of clarifying and supplementing certain specific provisions, in order to ensure an increase in the level of its implementation in practice, while identifying at the same time also the arguments that support the need for change, as well as concrete proposals.

Since this legal change has not yet occurred, in the Assembly resolution on the approval of the activity of CCSO during 2019, it is left as a task that during 2020, the Commissioner should find the necessary mechanisms to present to the Assembly, the proposals for changes in this law.

To ensure the implementation of this recommendation, immediately after the publication of the Resolution of the Assembly, the Commissioner, through letter no. 567, dated 26.06.2020, has started the cooperation with the Department of Public Administration, bearing in mind the provisions of point 1 of article 7 of law no. 152/2013 “*On the civil servant*”, amended, which explicitly provides that this institution, among others a) prepares and supervises the implementation of state policies in the civil service; b) prepares legal draft-acts and bylaws for the civil service.

This process was conducted in close cooperation also with the experts of the IPA 2014 project, since an important objective of this project in support of civil service reform, is to identify the needs for legal changes in the legislation governing the employment relationship in the civil service, which includes the law on civil servants and bylaws that have been issued on the basis and for its implementation.

During 2020, the approval of Decision no. 833, dated 28/10/2020, of the Council of Ministers “*On the detailed rules of the content, procedure and administration of personnel files and the Central Personnel Register*”, an act which abrogated the DCM no. 117, dated 05/03/2014, marked a significant change in the rules of content and administration of personnel files and the management of the central personnel register.

Through this decision, among other things, in addition to addressing the problems that were observed in relation to the personnel file or addressing the changes that occurred in relation to the interaction of HRMIS with other systems, mainly the treasury system, an innovation is the approval of the legal basis for the cooperation platform “*administrata.al*”, as a very important element towards the unified implementation of human resource management procedures in all institutions that are part of the civil

service, which has been a constant concern of the Commissioner, raised during reporting over the years.

Also, this act has already established the obligation of all institutions that are part of the civil service to report human resource management indicators through the platform, and in addition, HRMIS and the cooperation platform “*administrata.al*” have been legally recognized as a control tool for the Commissioner and DOPA, to exercise their functions related to the implementation of legislation on civil servants.

The implementation of the platform is a difficult challenge, both for the institutions that have to populate it with data and use its facilities as it requires prepared and trained staff, as well as for DOPA, which has to consolidate and further administer it, and for the Commissioner as well, who must be the coordinator of institutions with different typologies, independent of each other in their human resource management activity, to make it efficient.

Following the approval of the legal basis for the operation of the platform and after the completion by the IPA 2014 project, of the set of indicators and passport for each indicator, which is an ongoing process, DOPA is working on their inclusion in the platform, with the aim that during 2021, institutions begin to report through it.

Regarding the changes in the civil servant law, it is foreseen by the Department of Public Administration, that they should be presented as a draft to be approved by the Assembly, in the last four months of 2021.

In the joint meetings held during 2020, we have worked to clearly define what needs to be changed, focusing especially on the provisions that the Commissioner has identified with problems during the supervision. The focus of the discussion has been on the legal institutes that regulate the implementation of court decisions, as well as the evaluation of job performance. These changes are already planned by DOPA to be implemented in the last four months of 2021.

Likewise, during the last four months of 2021, DOPA has planned changes also in two bylaws that regulate important aspects of civil service administration:

- Decision no. 142/2014, of the Council of Ministers, amended, which regulates the job descriptions format and the methodology of evaluation of job positions for the purpose of classification;
- Decision no. 109/2014, of the Council of Ministers, regarding the process of job performance evaluation.

These have been two important aspects, for which the Commissioner has identified over the years, the need for change in the legal basis governing them and along with the relevant provisions in the draft of new acts, are found also the concrete proposals of the

Commissioner for their change.

In these circumstances, the Commissioner reports that DOPA is working to apply in various directions , amendments to the civil servant law and the bylaws implementing it, which are conditioned by the completion of all IPA project products, which may imply other changes to the law at first, and then to its bylaws.

Our two institutions, DOPA and CCSO, are working intensively to identify all the changes that need to be made, in order to arrive at a draft amendment and to submit it for approval to the Council of Ministers (as a draft to be sent to the Assembly ), within the last four months of 2021.

## CHAPTER XII

### LEVEL OF IMPLEMENTATION OF THE 2019 ASSEMBLY RESOLUTION

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 the context of the implementation of Decision no. 49/2017 of the Assembly “*On the monitoring of independent constitutional institutions and of those established by special law*”, lists below the implementation of the recommendations of the 2019 Assembly Resolution, on the evaluation of the activity of the institution.

For 2019, the Albanian Parliament requests from the Commissioner for Civil Service Oversight:

1. - *To find the necessary mechanisms to address to the Assembly of Albania the initiative for legal changes in law no. 152/2013 “On the civil servant”, amended.*

#### **This point of the resolution is fully realized:**

To ensure the implementation of this recommendation, immediately after the publication of the Assembly Resolution, the Commissioner, through letter no. 567, dated 26.06.2020, has started the cooperation with the Department of Public Administration, taking into consideration the provisions of point 1 of article 7 of law no. 152/2013 “*On the civil servant*”, amended, which explicitly provides that this institution, among others **a)** prepares and supervises the implementation of state policies in the civil service; **b)** prepares draft laws and bylaws for the civil service.

This process was conducted in close cooperation also with the experts of the IPA 2014 project, since an important objective of this project is to identify the needs for legal changes in the legislation governing the employment relationship in the civil service, which includes the law on civil servants and the bylaws that have been issued on the basis and for its implementation.

During 2020, the approval of Decision no. 833, dated 28/10/2020, of the Council of Ministers “*On the detailed rules of the content, procedure and administration of personnel files and the Central Personnel Register*”, an act which abrogated the DCM no. 117, dated 05/03/2014, marked a significant change in the rules of content and administration of personnel files and the management of the central personnel register.

Through this decision, among other things, in addition to addressing the problems that were observed in relation to the personnel file or addressing the changes that occurred

in relation to the interaction of HRMIS with other systems, mainly the treasury system, an innovation is the approval of the legal basis for the cooperation platform “*administrata.al*”, as a very important element towards the unified implementation of human resource management procedures in all institutions that are part of the civil service.

Regarding the changes in the civil servant law, it is foreseen by the Department of Public Administration, to be submitted as a draft for approval by the Council of Ministers (*to be further presented to the Assembly*), in the last four months of 2021.

In detail, the activity of our institutions in relation to legal changes is presented in the content of the report, in the section where legal changes are analyzed.

*2. - To start with priority, the administration of data from the implementation of DCM no. 766, dated 26.12.2018, “On the employment of excellent students in state administration institutions, part of the civil service”, for 2019, in order to assess the impact of this act on the civil service.*

***This point of the resolution is fully accomplished:***

The Commissioner, pursuant to this task, through letter no. 568, dated 26.06.2020, has requested from the Department of Public Administration, data regarding the employment of students of excellence in state administration institutions, part of the civil service, according to the bylaws that regulate this aspect (*DCM no. 766, dated 26.12.2018, etc.*), for 2019, extending this process also throughout 2020.

After administering the data given from the Department of Public Administration, the Commissioner has drafted an evaluation report on the impact of this bylaw on the civil service and has approved it with decision no. 18, dated 25.02.2021, which he also sent as a notification to the Department of Public Administration. This report will be sent to the Assembly as an annex to the annual report.

*3. - To intensify the verification process of the implementation of decisions after the expiration of the deadline for the regulation of legality for institutions that have employees who have reached the retirement age and should have terminated on time the legal and financial relations, thus increasing timely interaction also with the Department of Public Administration, to avoid the recurrence of such situations.*

***This point of the resolutions has been fully accomplished:***

During 2020, the Commissioner has communicated with **173** institutions, which have responded 100% to the his request for information regarding the cases of employees who have reached the retirement age and should have terminated their legal and financial relations in time and **171** such cases have been identified.

From these cases, it results that in 137 cases or 80.1% of them, the employment relationship in the civil service is currently terminated, while 34 cases or 19.9%, are in the process of restoring legality and at the end of the term left in the warning decisions, will notify the Commissioner on the progress of the process.

The cooperation with the Department of Public Administration has been at high levels and the reaction of the institutions has been immediate both in terms of the initial communication with the Commissioner, as well as for the correction of violations found in relation to this aspect of civil service administration, implementing voluntarily all warning decisions, within the set deadline.

The Commissioner has included in the annual plan of his activity also for 2021, the monitoring law enforcement in this field of civil service administration, for all subjects that are part of this system, which already report live on the situation.

*4. - To continue the administrative investigation process for individual cases found in violation of the law on the processes of reinstatement of winning civil servants in office, as well as to assess the possibility of creating a general database of historical records, which would include the dismissal acts of winning civil servants from the civil service.*

***This point of the resolution has been fully accomplished:***

This task was assigned to the Commissioner by the Assembly initially in 2018, and has continued throughout 2020, giving special attention to the development of the process in local administration institutions, including municipalities and district councils, since during 2019, this process has been followed with priority in state administration institutions.

Until December 31<sup>st</sup>, 2020, **222** court decisions of the local administration have been identified and analyzed, in favor of the employees, who have gained the right to return to the civil service, divided as follows according to the typology of institutions:

- in 61 municipalities of the country, **143** final court decisions have been identified, in accordance with which, civil servants have been registered in the

waiting list and their financial obligation arising from the court decision has begun to be liquidated.

For these decisions the responsible unit has acted in 50 cases, reappointing the winning civil servants to a civil service position and the other cases (93 cases) are still on the waiting list. We highlight the fact that out of 61 Municipalities of the country, currently 50 of them have executed all court decisions and in 11 institutions the process continues.

🌐 in 12 district councils, 79 final court decisions have been identified, in accordance with which civil servants have been registered in the waiting list and their financial obligation deriving from the court decision has begun to be liquidated.

Regarding these decisions, the responsible unit has acted in 56 cases, by reappointing the winning civil servants to a civil service position and the other cases (23 cases) are still on the waiting list. In relation to these institutions (12 district councils), currently 6 of them have executed all court decisions and 6 other institutions are continuing with the process.

As presented above, it is ascertained that the institutions have taken concrete actions to recognize and settle their legal obligations, which is materialized in the fact that the winning civil servants have already been identified and registered in the waiting list, and further, they have been reappointed to positions where they meet the requirements of the job, while the payment of financial obligations to employees that have not yet been able to be accommodated to a regular position in the civil service, continues.

The Commissioner is working intensively, in close cooperation with the relevant institutions, to enable the appointment of all employees who have gained the right to return to the civil service, in order for them to be paid for a concrete job that they will perform and not due to a court decision.

This is a process that during its application in practice has reflected problems which have not allowed its progress at a faster pace, the solution of which requires rapid intervention for the improvement and development of laws and bylaws, which is already planned to be submitted as a draft to the Assembly by DOPA, within the last 4 months of 2021.

The process is presented in permanent dynamics due to the administrative actions performed daily by the entities charged by law for the implementation of court decisions (*Special Commissions and the responsible unit*), as well as due to the ongoing decisions issued by the courts. For this reason, this process is included in the Commissioner's work plan for 2021 and is followed in real time through reporting of institutions.

Regarding the request of the Assembly to build a general database of historical records, which would include acts of dismissal from the civil service of winning civil servants, currently the Commissioner has created one, which he is adapting to the requirements of a special column in the cooperation platform “administrata.al”, which is already, due to the changes of the bylaw, obligatory to be populated with data from all subjects of the civil service system.

The Commissioner will support the institutions in this case, in order to understand and apply the requirements for data entry correctly, to enable the creation of a database as accurate as possible, to create access also for the recognition of the historical aspect of records.

*5. - To work on establishing the methodology for setting deadlines, as part of the enacting provisions of the decisions for the restoration of legality, in order to reduce budget costs.*

***This point of the resolution has been fully accomplished:***

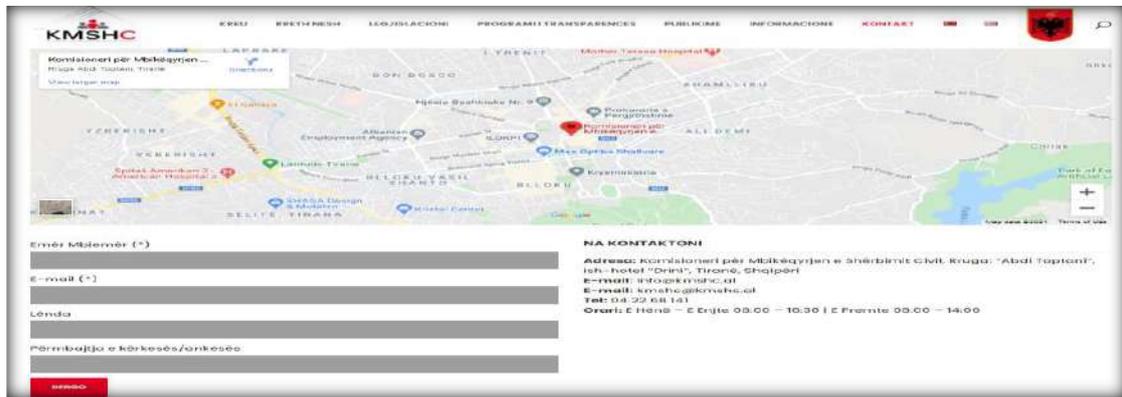
With decision no. 951, dated 29.12.2020, the Commissioner has approved the Methodology for setting the deadline as part of the enacting provision of the decision to restore legality, which is already mandatory and will be applied during the supervisory activity of the institution. This act will be sent to the Assembly as an annex to the annual report.

*6. - To increase transparency by enabling the development of an interactive communication with the citizen through the official website, as one of the means of filing complaints/information.*

**This point of the resolution has been fully accomplished:**

The section for interactive communication with the citizen has already been formalized on the official website of the institution.

*Figure 12.1. The form of interactive communication with the citizen, as it appears on the main page*



*Figure 12.2 The form of interactive communication with the citizen, specific rubric*



7. - To create and make public, no later than 6 months from the date of adoption of this resolution, a register of complaints/information received from the institution, in which their status is also identified, while respecting the rules of transparency and personal data protection.

**This point of the resolution has been fully implemented:**

The Commissioner has already created and published on the official website a register with information/complaints that have come to the address of the Commissioner where their status is identified, respecting the rules of transparency and protection of personal data.

**Figure 12.3** *Register of complaints/information received from the institution for 2020*



Nr.	Data e regjistrimit	Ankuesi/kërkuesi	Institucioni	Lënda	Akti i përfundimit
1	06.01.2020	M.B.	Drejtoria Vendore e Policisë	Ankesë për procedurën e konkurrimit	Arkivohet
2	07.01.2020	M.H	Bashkia Lezhë	Verifikim i ligjshmërisë së marrëdhënies së punësimit	Vendim Nr.29 datë 27.02.2020
3	07.01.2020	A.G.	Drejtoria e Përgjithshme e Doganave	Transferim i përkohshëm	Arkivohet
4	07.01.2020	V.C.	Autoriteti i Mbikëqyrjes së Lajrave të Fatit	Verifikim i pretendimeve se ndaj saj janë kryer veprime që kanë cenuar dinjitetin personal dhe profesional	Arkivohet
5	10.01.2020	Xh.L.	Bashkia Kamëz	Verifikim për konfirmim statusi	Arkivohet
6	13.01.2020	A.L.	Akademia e Shkencave	Masë disiplinore largim nga shërbimi civil	Arkivohet
7	13.01.2020	G.Sh.	Autoriteti i Aviacionit Civil	Denoncim për rregullsinë e pozicionit të punës	Arkivohet

*8. - To re-conceptualize the “Decisions” and “Supervision-inspection report” sections, enabling the creation of a database in order to facilitate access and acquaintance with the continuity of inspections performed and decisions issued for these inspections within 2020.*

**This point of the resolution has been fully realized:**

The sections “Decisions” and “Supervision-inspection report” have been re-conceptualized in order to create a database to facilitate access and acquaintance with the continuity of inspections performed and decisions issued for these inspections.

**Figure 12.4** *Database of Commissioner's decisions during supervision/inspection for 2020*

MBIKËQYRJE/INSPEKTIME 2020				
Nr.	Vendim për fillimin e mbikëqyrjes	Reporti Përfundimtar i institucionit	Vendim paralojmërimi	Vendim për përfundimin e mbikëqyrjes
1	Bazuar në Rezolutën e Kuvendit	Bashkia Fier	Vendim Nr.2 datë 21.01.2020 Vendim Nr.9 datë 07.02.2020	Zbatuar pjesërisht, në vijim për proceset që për arsye objektive kanë nevojë për kohë
2	Bazuar në Rezolutën e Kuvendit	Ministria e Financave dhe Ekonomisë	Vendim Nr.3 datë 21.01.2020	Zbatuar plotësisht
3	Bazuar në Rezolutën e Kuvendit	Autoriteti i Konkurrencës	Vendim Nr.4 datë 21.01.2020	Zbatuar plotësisht
4	Bazuar në Rezolutën e Kuvendit	Këshilli i Lartë Gjyqësor	Vendim Nr.5 datë 21.01.2020	Zbatuar plotësisht
5	Bazuar në Rezolutën e Kuvendit	Kontrolli i Lartë i Shtetit	Vendim Nr.6 datë 21.01.2020	Zbatuar plotësisht
6	Bazuar në Rezolutën e Kuvendit	Drejtoria e Përgjithshme e Doganave	Vendim Nr.7 datë 21.01.2020	Zbatuar plotësisht

## CHAPTER XIII

### CONCLUSIONS AND RECOMMENDATIONS

The activity of the Commissioner during 2020 has been adapted to the conditions and circumstances created due to the Covid-19 pandemic, while being careful not to disrupt the normal functioning of the institution and to exercise the legal competencies in supervising the administration of the civil service in institutions employing civil servants.

During this year the work has been focused on various aspects of civil service administration related to the observance of procedures when applying the law institutes for the civil servant. Likewise, the work has continued in terms of monitoring the implementation of the Commissioner's decisions, after the expiration of the warning deadline to rectify the situation.

Some of the main directions of activity have been the coordination and checking of administrative actions carried out during the process of execution of court decisions for the return to the civil service of winning civil servants in the local administration; verification of the implementation of the law on the termination of employment in the civil service for cases when employees reach the age for retirement; various aspects related to the increase of transparency in terms of public awareness of the activity of the Commissioner and other issues related to the exercise of the oversight competence and the implementation of the tasks left in the Assembly Resolution.

During his activity, the Commissioner has identified the difficulties encountered during the activity of the responsible units, which are charged to carry out difficult legal processes that require high professional training and experience in solving problems, while lacking the tools that will help these bodies to perform their functions, such as explanatory manuals or exhaustive bylaws that regulate various aspects of their work during the administration of the civil service. The strengthening of the responsible unit continues to be a problem, as an organism that faces a large volume of work, done with a very limited staff in number, and which is often charged with other tasks that are not within the scope of human resource management.

According to the employees who perform the duties within the responsible unit, in many cases, their work is hampered by the delayed reaction of managers charged by law with specific tasks such as job evaluation, job description, acts that conclude the confirmation process, etc., waiting for the responsible unit to carry out their duties.

On the other hand, even during this year, there is progress in various aspects of law administration, 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 in the local administration have been identified and in all cases the winning civil servants have been 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.

In the local administration there are still problems related to the administration of the civil service, although there are significant developments, especially in terms of announcing job vacancies to be filled through competition, as well as introducing civil service administration processes in procedural frameworks.

The problems in this field, in general on the implementation of the civil service legislation and in specific aspects of it remain as follows:

*In general, in the implementation of the civil service legislation:*

- Enforcement of civil service legislation at the local level, especially in municipalities with a limited number of inhabitants, still remains at low levels, although good and promising practices can be identified in some of the municipalities, mainly those categorized as first tier municipalities;
- The number of HRM staff in the municipalities and their capacities are limited;
- The level of awareness and knowledge on specific elements of human resource management on the implementation of civil service legislation needs to be improved among the HRM staff;
- Implementation of appropriate competitive procedures for recruitment or promotion has started to appear in positive trends, but there are still cases when municipalities do 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 hiring using an employment contract for civil service positions is still evident, although lower than in previous years.
- Municipalities complain about the impossibility of recruiting/retaining staff for certain positions/professions, due to the required level of education (*higher education/university*) imposed by the secondary legislation on civil service (*bylaws governing the field of recruitment, salary and job description*).

*Regarding the structures and functions:*

- Implementation of existing legal provisions and legal standards for the preparation of organizational structures of the municipal administration is deficient;
- The structures of the municipal administration are involved in frequent unjustified changes, which seriously affect the process of preparing the job descriptions or the proper implementation of the civil service legislation. There are cases when the organizational structure is changed once it is created, 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 performed 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 (*deriving from sectional legislation, e.g. urban planning, etc.*) on the organization of local administration, especially in the municipalities of third tier and beyond, are very rigid and difficult to apply by the current capacities of the 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 municipalities 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 legal standards deriving from sectional legislation is really deficient;
- Implementation tools for organizational efficiency and effectiveness of the administration and services of the municipality (*manuals or guides*) are generally missing.

*Regarding the job description:*

The accomplishment of the organization process of 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. In relation to this, the following situation is ascertained:

- Preparing the job description for most positions is at an early stage, despite all the 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 flaws are evident in the job description part which is related to “*job requirements*”. These flaws lead to the inability to group positions into “*working groups*” (*special administration groups*) as required by the civil service legislation and consequently hinder the organization of “*group recruitments*”, for entry-level positions. This also leads to the inability of carrying out quality recruitment procedures or evaluating candidates for other levels of management (*low, medium and high category*);
- HRM staff in the municipalities 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 lacking;
- HRM staff recognizes the importance of legal acts and formats to be implemented, but generally finds them too complicated and difficult to adapt to the needs and specifics of local government units;
- The available law enforcement tools, in the case of job descriptions, are scarce, 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 these issues.

## RECOMMENDATIONS

In these circumstances, it is ascertained 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 the civil service legislation is crucial for LGUs in our country. While, on the one hand, HRM staff in local government administration is generally aware and has a fair level of understanding of the legislation, the existing enforcement tools (*manuals, guides and forms prepared for various procedures*) to support the HRM staff in their daily work are few and do not fit the specifics of LGUs. On the other hand, the level of specific skills for implementing a modern human resource management in accordance with the civil service legislation is significantly problematic and needs to be considerably improved in the near future.

In order to help rectify the situation in the local government units, the Commissioner considers as an immediate need, providing methodological support to them and revising the civil service legislation in several directions, which will be presented below:

- ▶ Increasing the number of trainings of the LGU staff, in the field of human resource management in accordance with civil service legislation;

- ▶ Establishment of 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.*) on the organization and functioning of the LGU administration (*including the grouping of legal standards, best practices / standards and structures and standards for all essential LGU functions*). 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) internal organization/unit standards (*management, hierarchy and accountability, etc.*); as well as
  - d) to suggest the standards of 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 an approach of setting standards 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 municipal administration;
- ▶ Adapting existing tools of human resource law enforcement prepared by DOPA to the features identified at the local level, taking into account the possibility of simplifying their use for municipalities;
- ▶ Preparation of manuals and instructions on civil service procedures related to recruitment, career development, mobility, job descriptions, job performance appraisal, discipline, restructuring and personnel files, etc .;
- ▶ Further development of HRM tools and procedures for the implementation of civil servants legislation tailored to the needs of the local government unit;
- ▶ Assessing the possibility of simplifying part of the legal procedures for local needs (*recruitment procedures, educational requirements for certain positions and levels of administration, job description forms, etc.*);
- ▶ assesses the need for new legislation on the organization of local administration, in particular the need for legislation on “*municipal enterprises*”;

What we presented above have been evident also in the previous reports of the Commissioner and still remain coherent and should guide the organization of various projects at national and international level to help strengthen capacity building and good governance in local self-government units.

It is worth mentioning at this moment as an important achievement, which will help solve some essential problems in the administration of the civil service, the approval of the legal basis on the functioning of the cooperation platform “*administrata.al*”.

Amendments to the bylaw that regulates the administration of the personnel file and the

Central Personnel Register will bring tangible improvements in the unification of law enforcement, as well as facilitating the work of the responsible unit, due to the standard documents published on this platform, for use by all subjects of the civil service system. This platform will be developed, maintained and updated gradually, reorganizing the full range of human resource management tools and procedures for the implementation of civil service legislation in local government units.

The Commissioner appreciates the increasing level of work of the Department of Public Administration in various aspects of civil service administration, specifying in particular 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.

At the end of the supervision carried out during this year, in the decision sent to this institution, the Commissioner has left concrete tasks for the Department of Public Administration as the responsible unit and other actors of the process, involved in conducting competitions, to improve their work in these directions:

- a) In the implementation of competition procedures for executive level positions, in accordance with the principles set out in the civil service legislation, by efficiently establishing the general and special administration groups, in order to guarantee a transparent, fair and objective selection process of civil servants, as well as conducting recruitment procedures as effectively as possible.
- b) In the preparation of the annual recruitment 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*”, by assisting and instructing state administration institutions part of the civil service, to properly perform their duties in this aspect of civil service administration, as well as to make sure that this act reflects the changes that may occur during the calendar year, as a result of the creation of vacancies, due to resignation, dismissal or release from the civil service, according to legal provisions.

The challenge which will always be evident in the work of the Department of Public Administration, is the perfection of the content of the process, making sure to create the conditions to expand the participation of highly qualified candidates in the process, and to manage the process in terms of reducing the number of competitions, achieving 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 an objective evaluation of the candidates participating in the competition. The last aspect has marked a significant development, as currently, the Department of Public Administration continues to conduct recruitment procedures, using the electronic questions bank and further, including the process in an electronic system that does not allow subjectivity in terms of correcting the tests.

Regarding *mobility in the civil service*, the Commissioner estimates that there is a positive development of the process in state administration institutions, but this trend is not reflected in the entirety of the civil service system, as the movement of civil servants is not easily realized within institutions of different typologies (*local administration, state administration, independent institutions*) is not easily realized.

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 payroll 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, while disregarding that the salary level needs to correspond to the responsibility of the job position. This means that the salary limit is always at the minimum allowed through the bylaw that regulates salaries for these institutions, thus 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 run for job positions at senior management levels that need specialized higher education in the field of engineering, jurisprudence, economics, etc.

In these conditions, the Commissioner deems that the entire part of the legislation related to the civil service in the local administration should be reviewed, in order to set clear and binding rules to be implemented, which are often left to their own willpower, on the reasoning that they are independent institutions. The civil service system should have 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 also this part of the system, and bring it to the level of state administration developments.

Regarding the *institute of discipline in the civil service*, even for this year, there is a decreasing tendency of their application, 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.

With regard to the *job performance appraisal 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 field for employees in charge of implementing the evaluation scheme, as well as through checking on the supervisors who need to oversee the evaluation process, extended throughout the calendar year.

The Commissioner estimates that the time has come to find efficient mechanisms to orient this institute of law towards achieving its goal. 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 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 performance evaluation levels in order to enable choices as close to reality as possible.

This process is being evaluated for amendments in its legal basis by the Department of Public Administration and is planned to be approved during 2021.

 The Commissioner assesses the situation of *the execution of final court decisions*, in the field of reinstatement of winning civil servants, with significant progress, as all court decisions have already been identified; the winners are registered in the waiting list; financial obligations are being settled and efforts are being made to appoint them to a position in the civil service where they meet the specific requirements.

The Commissioner deems that obstacles continue to be a problem, both of a financial nature and 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 be reviewed and supplemented, in order to help the progress of the process and not to create room for subjective attitudes.

The Department of Public Administration has included in the work plan for 2021, the submission to the Assembly of the draft amendments to the provision that regulates this aspect of the civil servant law, in order to enable a normal progress of the process to settle the winning civil servants in the civil service.

Regarding the process of terminating the employment relationship in the civil service, due to reaching the age for full retirement pension, the Commissioner requests from the institutions, to report these cases in time to the Department of Public Administration, in order to enable the completion of these positions 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, it should have information on the civil service situation in the state

administration. The same is worth noting also for the responsible units in the local administration and independent institutions, which must be careful in performing their duties on time, as provided in the law on ascertaining these cases.

## CHAPTER XIV

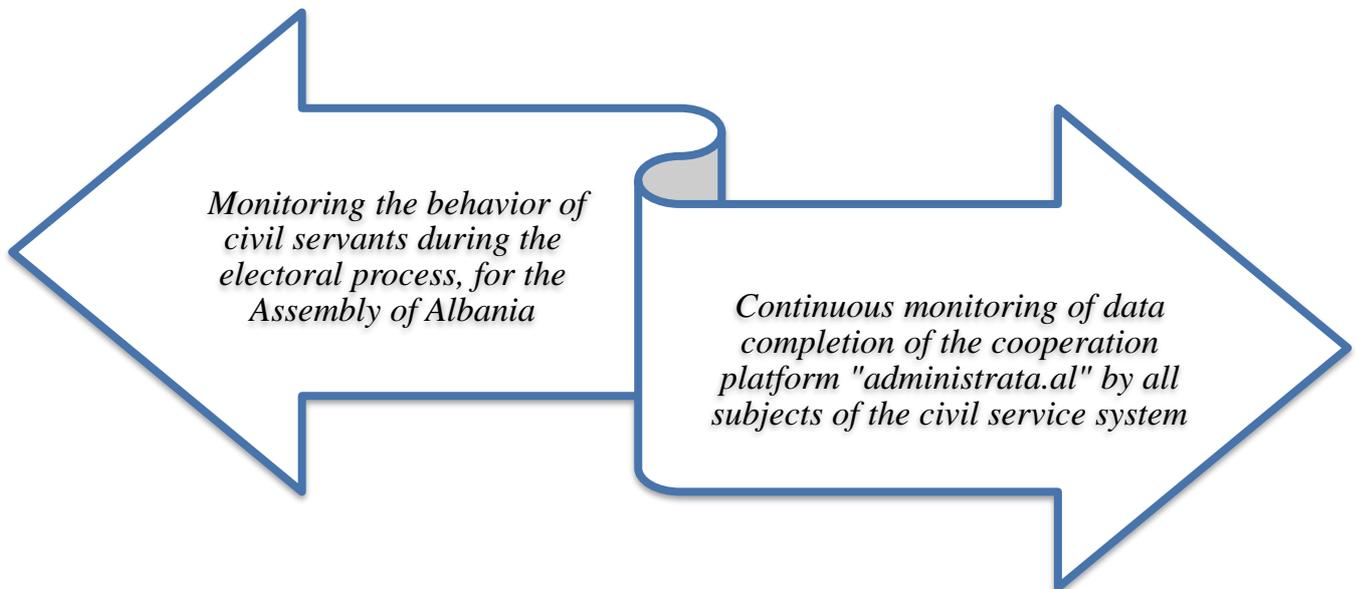
### PRIORITIES OF THE COMMISSIONER'S ACTIVITY FOR 2021

For drafting the work plan for 2021, the Commissioner has analyzed the issues identified in this report, and then, has included in his activity work processes that are related to the fulfillment of his legal competencies in the field of civil service administration oversight.

Considering the fact that in the first part of 2021, the country was involved in an electoral process, the Commissioner has considered as a priority, monitoring the behavior of the civil servants during this process. In this aspect, the Commissioner has already established a consolidated practice and will continue to follow the process in cooperation with institutions that employ civil servants.

Taking into account the fact that the legal basis of the operation of the cooperation platform "administrata.al" has already been approved, the Commissioner has included in the priorities of his work, encouraging entities involved in the civil service system to populate this platform with data, which will bring substantial developments towards the unification of law enforcement and at the same time will help the Commissioner to oversee in real time the administration of the civil service in these institutions.

These aspects are foreseen 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, which is an experience already established, that will be accomplished through technical assistance provided by his staff, directed to the responsible units for the administration of the civil service, in these institutions.

This initiated work will continue with advising 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.

On the other hand, strengthening the capacities as well as increasing the institutional performance of the Commissioner, will be in the focus of his activity, as they directly affect the independence of the institution, as well as in the realization of all the tasks listed above, taking into account the expansion of the field and scope of the law. This aspect is ensured by the necessary budget detailing by the Ministry of Finance and further with its approval by the Albanian Parliament, in terms of *increasing the staff of the institution*, as well as *logistical capacity* in aid of fast 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 has a special role in the progress of public administration reform, which is one of the important indicators to move towards the standards of the European Union.

Increasing and strengthening the institutional capacities of CCSO has been and will be a continuous request of the Commissioner, submitted 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 Resolutions for the approval of the activity of CCSO, but it has not yet been fulfilled, on 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;
- requests for reporting on public administration reform in the framework of EU integration have increased;
- clear additional tasks have been assigned to the institution, in relation to increasing the number of supervisions; monitoring the conduct of civil servants in election campaigns; as well as coordinating the activity for the execution of final court decisions in the entire field of civil service.

Strengthening the capacities of the Commissioner and supporting it with funds, is a task that is left in the Progress Report of 2020 of the European Commission, for Albania, and therefore its fulfillment should be in the focus of the responsible financial institutions of the government, since the response and commitment of the Law Commission has been utmost and approving.

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 reform. 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 2020, we thank You for your understanding and support,

Respectfully,

**THE COMMISSIONER**

**Pranvera STRAKOSHA**