

SPECIAL REPORT

3

PUBLIC ADMINISTRATION AND REGULATION OF LABOR RELATIONS



March 2016



Pursuant to article 27 of Law no. 8454/1999, "*On People's Advocate*", as amended, the People's Advocate Institution, presents its 3rd Special Report associated with Public Administration and regulation of labor relations.

In this report, in continuation of monitoring, we shall present issues related to the implementation and observance of the rights of employees and civil servants of every organ of the central and local Public Administration in Albania.

For more information related to the activity of the People's Advocate Institution on monitoring the reform in Public Administration and protecting the labor social right, please contact:

People's Advocate Institution

Blvd: "Zhan D'Ark" No. 2, Tirana, Albania,

Tel./Fax: +355 (4) 2380 300/ +355 (4) 2380 315

Web: www.avokatipopullit.gov.al

CONTENT:

1. Introduction

2. Methodology

3. Legal framework governing labor relations in Albania

4. Albania's commitment within the framework of Stabilization and Association Agreement and the progress of reform in Public Administration according to international progress reports.

5. Summary of statistics according to reports collected by central and subsidiary institutions. In comparison with statistics of two previous reports and the trend of layoff motivations.

6. Challenges of the People's Advocate Institution regarding the Public Administration and issues of complaints filed concerning the regulation of labor relations.

7. Statistics on cases of dismissals, subject to judicial review at the Administrative Court. Issues related to the execution and implementation of final judicial decisions.

8. Conclusions and Recommendations

List of Abbreviations

PA	People's Advocate
DPA	Department of Public Administration
ACFI	Administrative Court of First Instance
ACA	Administrative Court of Appeal
CM	Council of Ministers
LCS	Law on Civil Service
CO	Civil Officer
DCM	Decision of Council of Ministers
CMG	Council of Ministers' Guideline
SAA	Stabilization and Association Agreement
ECHR	European Convention on Human Rights

1. INTRODUCTION

The EU integration process is a process in which Albania needs to demonstrate its value and the fact that it deserves to be part of the European family. In this context, the People's Advocate Institution as part of independent institutions, has its role and responsibility to contribute in accordance with the scope of competence to meet the obligations imposed during this process by the EU institutions.

The People's Advocate is committed to give its institutional contribution to any initiative, analysis or issue that seeks to extend or guarantee the scope of individuals in exercising their rights and their fundamental freedoms in accordance with the Constitution, international treaties and legislation in force.

The People's Advocate institution has continuously contributed through its initiatives, activities and recommendations in terms of meeting the obligations provided for in the guideline adopted to implement the 5 priorities set for Albania.

In the framework of this commitment, today we present to you the third Special Report "*On Public Administration and regulation of labor relations*", in sequence of two special reports previously submitted to the Parliament of the Republic of Albania in June 2014, and March 2015, to reflect the specific issues and recommendations identified while monitoring the public administration which is part of our work and with the only purpose of creating an efficient administration for all the employees who are part of it.

2. METHODOLOGY

The 3 Special Report "On public administration and regulation of labor relations", aims to identify and reflect issues in continuity of two other previous reports regarding the implementation of legislation regulating labor relations and in particular for finding mechanisms for the control, implementation and observance of the rights of workers and employees of any organ of Public Administration in Albania.

The Civil service legislation and Labor Code serve as a reference point in preparing the report, concerning the problems encountered by the PA, through reviewing complaints and making concrete recommendations for the effective implementation of their rights.

Also, the selected methodology for drafting this report, is combined even with quantitative data, not only from complaints filed at the PA for the period of September 2014 - May 2015.

PA institution in order to monitor the activity and well functioning of the Public Administration has sent official letters¹, addressed to 17 central institutions (ministries + subsidiary institutions), 6 Administrative Courts and Administrative Courts of Appeal.

The information required by central and subsidiary institutions associated with quantitative data for:

1. The number of employees currently employed after the adoption of organic structures, by specifying the number of employees who are treated under the provisions of the Labor Code and the number of employees who enjoy the status of the civil servant.
2. The number of employees who have been dismissed for the period of September 2014 -May 2015, by specifying the civil servants and employees treated under the Labor Code.
3. The number of people who have been dismissed due to disciplinary action at work and the number of those, whose Labor Contract has been terminated immediately?
4. The number of employees dismissed due to restructuring of the institution.
5. Number of employees recruited to work for the period of September 2014 - May 2015.
6. Number of dismissal cases that have become subject to judicial reviews.

At the same time, it is required information even by the Administrative Courts in Tirana and other districts so as to identify statistics concerning:

1. Number of application-lawsuits filed at the ACFI for the period of September 2014 - May 2015, related to dismissals in the Public Administration.

¹ Letter with no. K3/I40-2 and the following up to protocol no. K3/I40-27

2. Number of cases on which a decision was made, by specifying in particular how many cases deal with monetary compensation, in how many cases it is decided to return in the job people who were dismissed, or both.

3. Institutions which refer specifically to application-lawsuits filed at the ACFI.

3. LEGAL FRAMEWORK ON REGULATION OF LABOR RELATIONS

Guarantees of keeping the job and legal treatment of public employees, are regulated by laws as the Law no. 152/2013 *"On Civil Servant"*, as amended, and the Labor Code of the Republic of Albania.

Law on the status of civil servants is a law which provides for a set of rules that aim and ensure sustainability, professionalism, and career as well. Despite these regulations, the method of implementation and interpretation of the law itself.

However in order to analyze the level of implementation of the law, it is necessary to analyze their structures and changes over a period of time, any movements in labor relations, any recruitment, dismissal and appeal of the employees themselves for dismissal and other measures that can be taken against them, the level of implementation of the final decisions related to the civil service, etc.²

Institutions subject to this law

Extending the scope of the law on the status of the civil servant, includes institutions, which are defined in Article 2 of this law and includes any Civil Servant exercising a public function in any institution of administration, subsidiary or local institution with the exception of:

- a) The elected
- b) The Minister and Deputy Minister
- c) The officials appointed by the Parliament, the President of the Republic or the Council of Ministers;
- d) The judge and prosecutor;
- e) The employee of the judicial administration;
- f) The military of the armed forces;
- g) The personnel of the National Intelligence Service;
- h) The personnel of direct public service units;
- i) A member and the chairman of the leading collegial bodies of committees or institutions under the Prime Minister or a Ministry;
- j) The Administrative Employee
- k) The official of the Cabinet;
- l) Employees who carry out the attributes of the agent / Judicial Police officer and who by law are allowed to carry arms;

² Nowadays there are approximately 20.000 employees who enjoy the status of the civil servant, including the subsidiary and local institutions.

- m) Civilians in the structures of the Armed Forces;
- n) Employees of the financial supervisory authority;
- o) An employee of the drainage boards;
- p) Lawyers at the State Attorney.

Institutions are organized into two major groups: the central institutions, involving the Council of Ministers and the Ministries, and the independent ones, which include municipalities, districts, the Parliament, the Presidency, as well as independent constitutional institutions. For central institutions, the civil service management is conducted by the Department of Public Administration (DPA), while for the independent ones by departments of the staff of these institutions themselves.³

So, the civil service, and consequently its legal regulations concerning labor relations, apply only to a part of the employees.

Admission to the Civil Service⁴

According to Law no. 152/2013, admission to the executive level in the civil service is done through an open competition, periodically by the units in charge and it goes through two stages.

First: It is carried out the preliminary verification, whether candidates meet the general and specific requirements, according to the announcement of the competition and secondly, the assessment of candidates.

Winning candidates, who receive more than 70 percent of the total evaluation score, are ranked by the Standing Committee of Accession, according to the points obtained in the list of the successful candidates.

Regarding the procedure of admission to the executive level, the Council of Ministers with Decision no. 243, dated 18.03.2015, *"On admission, parallel movement, probation period and appointment in the executive category"* has adopted detailed rules for the establishment, composition and operation of the permanent committees of admission, as well as the detailed rules for the admission procedure and assessment of candidates.

Probationary period

The employee, who is appointed for the first time in the civil service, is subject to a probation period lasting for one year from the date of the appointment act. During the probation period the employee has the obligation of performing the cycle of mandatory training at ASPA and performs tasks under the supervision of a senior civil servant of the same category or a higher category.

At the end of the probation period, the institution where the employee is appointed, decides on:

³ Article 2 of Law no. 152/2013 "On the civil servant" as amended.

⁴ Articles 20,21,22,23 of Law no. 152/2013 "On the Civil Servant" as amended.

- a) Confirming the employee;
- b) Extending the probation period once, up to 6 months if justified because it has been impossible to complete the assessment of employees;
- c) Not confirming the employee.

Regarding the period of probation, the Council of Ministers with Decision No. 243, dated 18.03.2015, *"On admission, parallel movement, probation period and appointment in the executive category"* has defined the obligations of civil servants on probation, and the criteria of decision-making procedure.

Performance Evaluation

The law provides for that at the end of each year, civil servants shall be evaluated. This evaluation is made in accordance with relevant guidelines. If a civil servant takes two negative evaluations in a row, he leaves the civil service. The Council of Ministers with Decision no.109 dated 26.02.2014 *"On the evaluation of the performance results of the civil servants"*, and the relevant guidance, has defined procedures and relevant forms of the performance evaluation.

Following the recent changes in the law no. 152/2013 *"On the Civil Servant"*, in Chapter XI *"Assessing the employee"*, section 1.1 has been added to Article 62 *"Performance evaluation"* in which it is stated that:

In addition to evaluation, under Article 2 of this material, employees are evaluated periodically, according to evaluations by Decision of the Council of Ministers, and for obtaining and updating additional knowledge required to carry out their functions in accordance with the category / group of general/ special administration where they belong. In any case, the evaluation process conducted under this section, shall guarantee the anonymity of the civil servants evaluated.

Pursuant to this provision, the Council of Ministers on 12.16.2015 approved Decision no.1307 *"On the evaluation of the civil servants for acquiring and updating additional knowledge"*.

This decision aims to train civil servants and provide them with additional knowledge needed according to function and area in which they operate, in order to raise the quality of services and work in institutions of public administration, part of the civil service.

This process includes preliminary testing and, where necessary, training of the civil servants for new knowledge affecting their area. At the end of the training, they are subject to a written test and oral interview, in terms of the knowledge acquired during the training.

Referring to DCM *"On the evaluation of civil servants for acquiring and updating additional knowledge"*, the evaluation process will undergo several phases:

First: In categories/ group of employees forced to be periodically subject to preliminary testing and where necessary, training procedure, every four years, and when it is not possible, this evaluation may be extended to six years;

Secondly: In preliminary testing, the evaluation system will be based on a written test which has 70 points and an oral interview, which has 30 points;

Thirdly: In accordance with the test results, employees who are assessed as *"not satisfactory"*, shall be considered as not suitable for the job position where they are and have the obligation to attend trainings at the ASPA for obtaining and updating additional knowledge;

Fourthly: Employees assessed as *"not satisfactory"*, in the first evaluation procedure subject to an evaluation period of 3 months by the superior and the training procedures for obtaining and updating additional knowledge.

Fifthly: If assessed as *"not satisfactory"*, the employee is subject to a test again, and employees assessed as *"not satisfactory"*, are considered as failing the test;

At the end of the proceedings, based on the results of testing and evaluation score of three months, the superior directly decides on the adaptability or inadequacy of the civil servant working in the position;

If the employee is evaluated as not suitable, then the department of human resources declares the termination of relations in the civil service.

Career in the civil service⁵

Career in the civil service is enabled by the current law on civil service. This law provides for cases when a vacancy in the category of mid-level or low-level management is not filled through parallel transfer procedure, the department in charge announces the procedure for promotion to employees part of the civil service whenever there are vacancies in the civil service.

Regarding promotion, the Council of Ministers issued a decision no. 242, dated 18.03.2015, *"For the filling of vacancies in the mid-level or low-level management"* and further in details and with Guideline no. 2 dated 27.03.2015 *"On the process of filling the vacancies in the civil service through parallel transfer procedure, promotion to the category of medium and low-level management and admission to the civil service in the executive category through open competition."*

Although the law provides for that before starting the procedures of admission in the civil service, the vacancy is offered to the existing civil servants initially through the procedures of parallel movement and later of promotion, we encountered problems at independent institutions regarding promotion or career system because the organic structures of the independent institutions in some cases are limited and do not enable promotion to certain positions.

⁵ Article 26 of law no. 152/2013 "On the Civil Servant"

Transfer in case of closure and restructuring of the institution⁶

Current legislation provides for that if because of closure or restructuring of the institution, the previous position of a civil servant does no longer exist, he is transferred to another position in the civil service of the same category.

In case of closure of institutions of public administration, a civil servant whose country is declared redundant, shall be dismissed from the civil service. Also in cases of restructuring of the institution, to civil servants, whose country has been declared redundant, shall be offered a place at the same level in a ministry or any other institution of public administration or in case this is not possible, in a lower position.

With the amendments made to the law on civil servants in paragraph 6 of Article 50, it was determined that the end of relationship in the civil service, due to restructuring or closure of an institution, is not permitted, except when, as a result of these procedures, there is a shortening in the total number of civil servants and transfer under paragraph 2 of this article, is impossible.

In the continuance of the procedures to be followed in case there are no job vacancies.

According to paragraph 7 of Article 50 of Law no. 152/2013 "On the civil servant", as amended, employees belonging to the institution to be restructured or closed, are notified 1 month in advance for the start of the procedure and in the case provided for in paragraph 6 of this Article, the civil servant is entitled to an indemnification, in accordance with his seniority at work, in the following cases: a) up to one year of experience as a civil servant, 1 month's salary; b) 1-3 years of experience as a civil servant, 3 months' salary; c) from 3-6 years of experience as a civil servant, 6 months' salary; d) from 6-9 years of experience as a civil servant, 9 months' salary; d) over 9 years of experience as a civil servant, *12 months'* salary.

Civil servants who have left the civil service as a result of restructuring or closure of the institution, have the right, within a period of 2 years after the end of the relationship in the civil service: a) to compete as civil servants in the procedures of parallel movement or promotion, according to Articles 25 and 26 of this law; b) to be appointed temporarily by the department in charge, with their consent, in any position of the civil service.

Regarding this article of the Law "On the civil servant", the Council of Ministers issued Decision no. 171 dated 26.03.2014, *"On the permanent and temporary transfer of civil servants, their suspension and dismissal"*, further detailed by Guideline No. 3, dated 14.04.2014 *"On the establishment, functioning and powers of the restructuring commission due to closure or restructuring"*.

⁶ Article 50 of Law no. 152/2013 "On the Civil Servant"

Disciplinary measures

Law in its Chapter X (Articles 57-61) provides for civil service discipline, responsibilities on disciplinary measures for civil servants in the exercise of their duties in failing to fulfill the duties, breach of work discipline and rules of ethics, and in other cases provided for by law, by classifying them into:

- a) Very serious violations;
- b) Serious violations;
- c) Slight violations.

Discipline in the civil service is further detailed by DCM no. 115 dated 05.03.2014 "On the determination of disciplinary procedure and rules for the establishment of the disciplinary commission in the civil service.

Labor relations are regulated even by the Public Administration Law no. 7961, dated 12.07.1995, **"Labor Code of the Republic of Albania"** as amended.

Therefore, the employment of people regulated under a special law is excluded from the scope of implementing this code even if this special law does not provide solutions to the problems related to labor relations.

The Labor Code does not provide for specific criteria for employment, as provided for above in Law no. 152/2013 *"On the civil servant"*, but for the existence of labor relations, a necessary condition is signing the individual contract or the collective one.

Labor relations under the Labor Code related to a specific or indefinite⁷ time. The Code, in order to create stable employment relationships, provides for that *"as a rule, labor contract is signed for an indefinite period."*

The Code provides for termination of the labor relationship in situations justified and provides for that whenever there will be a termination of the contract, of course that this shall be even because of a "reasonable" or "justified" reason⁸.

For this, Article 146 of the Labor Code provides for situations considered as reasonable causes, but even situations considered as unreasonable causes for the termination of Labor contract.

Article 146 provides for as such for example, when this is done due to undivided motives by personality of the employee as race, color, sex, age, marital status, etc., or the employee membership in the union created under the law, or when there are claims arising from contracts, etc.

Also, Article 153 considers as justifiable causes the circumstances that are "serious and do not allow, under the principle of mutual trust, to ask the one who has terminated the contract, the continuation of labor relations" or when "the employee violates the contractual obligations

⁷ Article 140 of the Labor Code

⁸ Article 153 of the Labor Code.

slightly, repeatedly, with the employer's written warning". Parties shall have to interpret according to the case the meaning of "serious circumstances" or "slight repeated guilt" and it is the court, which under Article 153, determines whether there are such justified grounds to terminate the contract.

Besides the domestic legislation, labor relations are regulated even by a number of international instruments as ILO conventions ratified by Albania, which at the same time reflect many of the EU directives.

Thus, we can mention:

- **Law no. 8829, dated 05.11.2001** *"On the ratification of the Maternity Protection Convention No. 183, 2000, of the International Labor Organization"*.
- **Law no. 9147, dated 30.10.2003** *"On the ratification of Convention no. 155 of the International Labor Organization for ensuring safety, health and environment at work"*.
- **Law no. 9547, 01.06.2006** *"On the ratification of Convention no. 168 of the International Labor Organization for the promotion of employment and protection against unemployment, 1988 "*.
- **Council Directive 91/533 / EEC**, dated 14.10.1991, *"On the obligation of the employer to inform the employee about the terms of the contract or employment relationship,"* which provides for that the employer has obligations for informing the employee.

4. COMMITMENTS OF ALBANIA IN THE FRAMEWORK OF STABILIZATION AND ASSOCIATION AGREEMENT AND THE PROGRESS OF REFORM IN PUBLIC ADMINISTRATION ACCORDING TO PROGRESS-REPORTS BY INTERNATIONALS

Being part of the EU means among others a civil service by professional civil servants who guarantee independence, integrity, transparency, enforcement of the principle of service to the public, but at the same time it is necessary to implement and observe any right provided for in the legislation of the field and in case these rights are violated, they can be protected and restored by special organs of the state.

In April 2009, Albania implemented the Stabilization and Association Agreement after its ratification by 25 member states of the EU which were part of the EU at the time of its signing and approval by the Albanian Parliament.

The ratification process was carried out in less than 3 years and was concluded with the ratification of the agreement by the Greek Parliament in January 2009, paving the way for Albania to the EU application and obtaining the candidate status in June 2014.

In Chapter VIII of the SAA "Policy of cooperation", Article 111 is focused on public administration. The aim of this provision is to develop within the country an effective and

responsible public administration, which supports the implementation of the principles of the rule of law.

Thus, the cooperation between the EU and Albania within the SAA is focused on the scope of the transparent and impartial procedures of recruitment, human resources management, career development in public services and in central and local administration.

As cited in the Progress Report for Albania in 2015, the main emphasis continues to be on Public Administration Reform, regarding which Albania, in particular, should:

- Continue to demonstrate a transparent and merit-based recruitment and dismissal of civil servants in all state institutions, in order to achieve the objective of a professional and depoliticized public administration;
- Make public accurate information about the public service through the Information System on Human Resources Management, and connect it with the treasury system;

Public service and human resource management

The law of 2013 on the status of civil servants is in line with the principles of public administration. The law provides for **the recruitment, promotion and dismissal from the civil service based on merit**. During 2014 and 2015, some open recruitment with reserve list was carried out for admission to the civil service. An open competition was held for senior officials of the civil service, which led to the creation of the body of senior management.

Changes to the law were adopted in December, but they opened the possibility of recruiting people from outside the civil service in the posts of middle and lower management, and made dismissal more flexible.

Bylaws adopted in the implementation of changes, should ensure strict and fair procedures for recruitment and dismissal. Quality recruitment procedures should be improved significantly, especially in independent institutions. The legal framework excludes certain institutions and certain positions from the scope of the Law regarding the status of civil servants. Albania should ensure a homogeneous mode of recruitment in institutions of public administration.

5. SUMMARY OF STATISTICS ACCORDING TO REPORTED DATA BY CENTRAL AND SUBSIDIARY INSTITUTIONS. COMPARATIVE OVERVIEW OF STATISTICS OF DISMISSALS AND THE TREND OF DISMISSALS' MOTIVATIONS

The People's Advocate Institution pursuant to Article 63 paragraph 4 of the Constitution of the Republic of Albania, states that: *"The organs and public officials are obliged to present to the People's Advocate all documents and information requested by it"* and Article 19 letter "b" of the Law No. 8454 dated 04.02.1999, *"On People's Advocate"*, as amended, which states that: *"The People's Advocate is entitled: b) to require explanations from any organ of the central and local*

administration, as well as receive any file or material related to the investigation ", has required information by the Central / subsidiary institutions associated with⁹:

1. Number of employees who are currently employed after the adoption of organic structures, by specifying the number of employees who are treated under the provisions of the Labor Code and the number of employees who enjoy the status of civil servant.
2. The number of employees who have been dismissed for the period of January-September 2014, for the above-mentioned institutions, by specifying the civil servants and employees treated under the Labor Code.
3. The number of people who have been dismissed due to disciplinary measures at work and whose labor contract has been terminated immediately.
4. The number of employees dismissed due to restructuring of institutions and which is the further legal treatment for these former employees.
5. Number of employees recruited for the period of January-May 2014 and on the basis of what procedures their recruitment was carried out.
7. Cases of dismissals that have been subject to review in the Administrative Court and that are available to central / subsidiary institutions.

This methodology followed aimed at highlighting and creating a clear view on the total number of employees dismissed from the Public Administrations, for the period of September 2014-May 2015. How many of the dismissed enjoy the status of civil servant and what was the number of employees who have been treated under the provisions of the Labor Code, but even to understand the main motivations that are used by institutions of Public Administration for dismissals in this period.

By recording the responses coming from relevant institutions, we note that only 10 central / subsidiary institutions have provided their official response on the statistics required by the People's Advocate Institution.

We highlight as disturbing the lack of cooperation by the Ministry of Economic Development, Commerce, Enterprise and Tourism; Ministry of Justice; Ministry of Social Welfare and Youth as well as the lack of cooperation identified in three separate reports drawn up by the People's Advocate Institution, the Ministry of Education and Sports and the Ministry of Health.

After identifying the statistics on 12 ministries according to the information required and highlighted above, for the period of **September 2014-May 2015, it turns out that a total number of 1356 employees have been dismissed from the Public Administration.** From the

⁹ Letter with doc. No. 201500843; protocol K3/I40-2 and the following addressed to any institution of the central administration.

number of employees dismissed, it turns out that 694 enjoy the civil servant status, while the remaining 662 are employees who are treated under the provisions of the Labor Code.

If we refer to the period of January 2014-September 2014, when the number of employees dismissed has been 2337, we note that there has been a decrease in total of layoffs, but it is ascertained that the number of laid-off employees who are part the civil service, has increased. This is inferred even by the expansion of the range of employee involvement as part of the civil service after the entry into force of the new Law no. 152/2013 "On the civil service", as amended.

From the total number of employees dismissed, it turns out that 179 employees have been dismissed immediately as a result of the restructuring of institutions.

177 employees turn out to have resigned, referring to political positions (part of the political staff).

While 368 employees, of whom 143 with Labor Code and 225 civil servants have been dismissed through disciplinary measures.

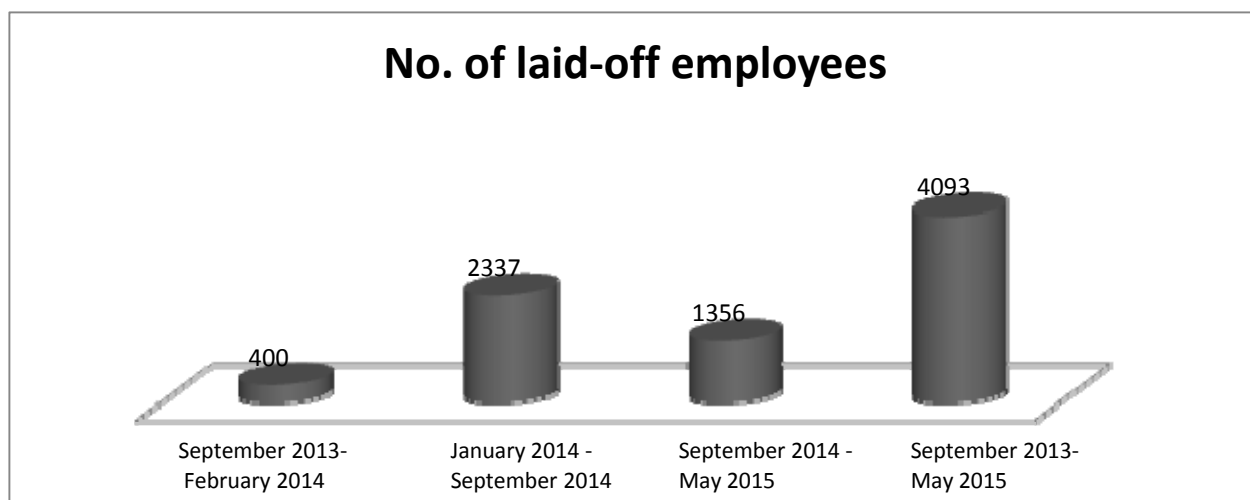
What can be noted regarding the motivations used for dismissals, is the increase in the number of employees dismissed due to disciplinary measures and the decrease in the number of layoffs due to restructuring of institutions compared to the period of January 2014-September 2014.

By administration of relevant data, it is ascertained that the General Directorate of Taxation for the period of September 2014 - May 2015 had the greatest number of people dismissed due to disciplinary measures, with a total number of 254 employees, of whom 141 civil servants and 113 employees with Labor Code.

Below we present a summary of the total number of dismissed employees for the period of September 2013-May 2015¹⁰.

Period	No. of laid-off employees
September 2013- February 2014	400 employees
January 2014- September 2014	2337 employees
September 2014- May 2015	1356 employees
Period September 2013- May 2015	In Total = 4093 laid-off employees

¹⁰ The number of laid-off employees included in the above defined periods, was extracted from the special reports drafted by the People's Advocate Institution, two of which filed at the Parliament of the Republic of Albania.



6. CHALLENGES OF THE PEOPLE'S ADVOCATE INSTITUTION REGARDING PUBLIC ADMINISTRATION AND ISSUES OF PRESENTED CLAIMS RELATED TO THE REGULATION OF LABOR RELATIONS

The People's Advocate Institution is the only constitutional institution of its kind in the protection of human rights and their promotion. Recommendation of the People's Advocate Institution under the law *"On the People's Advocate"* has no legal or binding force, but depends on the implementation of the will of the public administration employees initially to respond or to accept the findings and suggestion and then to implement them.

As mentioned in the Progress Report of the European Commission for the year 2015, the structure of institutional organization and resources that should guarantee **the right of citizens to have a good administration**, are well-established in general, however, the rate at which recommendations of oversight bodies apply, such as the People's Advocate, is difficult to determine, since it lacks the systematic monitoring.

Regarding the complaints filed at the People's Advocate Institution with the object of regulating the labor relations, we are providing details on the distribution of complaints for the period of January 2013- December 2015.

Period	Number of complaints
YEAR 2013	300 complaints
YEAR 2014	207 complaints
YEAR 2015	186 complaints
Period of January 2013- September 2015	607 complaints for dismissal



Meanwhile, we observe that for the period of January 2013-September 2015 we addressed **90 recommendations** to the Public Administration bodies regarding measures to implement the right procedures of layoffs or even ascertaining the absolute invalidity of orders issued for layoffs as illegal.

As for handling complaints filed at the People's Advocate Institution, problematic remains the execution of judicial decisions given in favor of former employees, bringing about an increase in the financial bill that should be borne by the state budget for the execution of these decisions within the observance of fair trial principle as a principle protected by the Constitution of the Republic of Albania and the European Convention of Human Rights.

As for the complaints filed, in cases where violations are found and we have drafted recommendations against the Public Administration bodies, unfortunately, we have concluded that the recommendations in most cases are not accepted because dismissal orders have become object of judicial complaint, but there are even other cases when there was no official response to them.

Because of the short term of 45 days provided for by law so as to challenge in court the administrative act of dismissal, state institutions to which letters of the People's Advocate Institution are addressed, reply after this deadline. This does not only obstruct the operations of the People's Advocate Institution in protecting the rights of employees, but also impact our activity.

► The People's Advocate Institution in 2014, because of an article published in Journal "Panorama", has taken the initiative of handling the case regarding an order of the Education Directorates, under which teachers must submit the payment booklet of electricity at the Directorate of school.

Specifically, in this article it was cited that teachers of schools and kindergartens of the capital should deliver up to 28.04.2014 the payment booklet of electricity so as to confirm to their executives that they have paid their relevant obligations for the first three months of this year. Those employees who have unpaid energy bills, should pay them within the specified period, otherwise they risk to be dismissed.

Following the review of this case, based on Law no. 8454 dated 04.02.1999, *"On People's Advocate"*, as amended, we have required information regarding the legal basis for such an order at the Education Directorate of Tirana district.

Referring to our request for information with letter no.1313 / 1 Protocol, dated 08.05.2014, by the Education Directorate of Tirana District, we have been informed that:

"Pursuant to Decision No.01 dated 28.02.2014, of the Task Force on improving the level of collection and reduction of losses in the distribution system of electricity" followed at our institution from the Ministry of Education and Sports with letter No. 1858 dated 21.03.2014 where in paragraph 3 of this decision, it is stated that "The relevant ministries for budgetary and non-budgetary entities, covering in cooperation with the Prefectures of Districts, shall receive information every three months on payment of electricity bills by the employees of these entities", information is required by the directors of public educational institutions with respect to the payment of electricity bills of their employees.

Even with letter protocol no. 1858, dated 21.03.2014, of the Ministry of Education and Sports, it is required to take measures necessary to strictly implement the decision of the Task Force No. 01 dated 28.02.2014.

As with the collection of information received by the executives of public education institutions, the institution shall report to the Ministry of Education and Sports regarding the information required.

Also, in letter protocol No. 371 dated 27.01.2014, of the Prefecture of Tirana District, pursuant to DCM no. 1086 dated 14.12.2013, "On the establishment of the task force to improve collection rates and reduce losses in the distribution system of electricity", documents are required on the payment of electricity for employees of the Education Directorate of Tirana District."

In conditions when the People's Advocate Institution has ascertained that this order is illegal, it has forwarded a recommendation addressed to the Deputy Prime Minister of the Republic of Albania¹¹ regarding the review of Task Force Decision No. 1 dated 28.02.2014, to the public administration concerning the payment of obligations of electricity bills.

In our opinion, the supply of electricity is a public service provided by the government to its citizens, where for the benefit of its every user, there is an administrative contract (of supply) in

¹¹ Recommendation no 201401030 dated 06.10.2014 addressed to the Deputy Prime Minister of the Republic of Albania.

which rights and obligations of parties are defined (signed between the family / non-family customers and the supplying operator).

In respect of this contract, its Article 9 defines *"The payment and terms for electricity"*, further continuing with Article 11 on *"The consequences of non-payment"*, provided for a range of sanctions concerning the criminalization of customers who do not pay the electricity bills, starting from the interruption of supply of electricity, the solution of unilateral contract, to further pass on to other procedures provided for by Articles 510 and the following of the Civil Procedure Code, in cases when the bill constitutes an executive title.

In our assessment and trial, such an order issued for the public administration employees is contrary to the basic principles on which the activity and mission of public administration bodies are based.

This order has not only been repealed, but at the People's Advocate Institution starting from December 2014, 25 complaints were addressed regarding unfair dismissal by the General Directorate of Prisons mainly to employees of the basic service, with the motivation **"dismissal due to unpaid electricity obligations"**.

For all the reasons mentioned above by judging that the failure to pay electricity is not provided for as a legal reason for dismissal, in none of the legislations governing the labor relations (Labor code), and at a time when the power supply is a public service, we have ascertained violations of the legislation in force.

For this reason we have addressed to the General Directorate of Prisons recommendations on the immediate measures to revoke and ascertain as invalid the orders of dismissal contrary to all legal provisions governing labor relations.

In our view, this is a violation of rights of employees, since the implementation of a contractual relationship just like the one with OSHEE, is regulated through the implementation of provisions of the Civil Procedure Code, by disrupting the service and seeking damages in a judicial way.

► Another problem ascertained in January 2015, has to do with a notice on the procedures to be developed so as to test the doctors and nurses throughout the health system in Albania. This initiative, which was widely spread in the print and visual media due to the impact that it had on the white shirts.

In the trial of the People's Advocate Institution, this case is illegal, due to:

- Referring to the legislative package on the regulation of labor relations and the profession of doctors, there is Law No. 123/2014 *"On the Order of Doctors in the Republic of Albania"*, where in Article 3 of this law, it is provided for that: *"The Order of Doctors is a public non-budgetary, professional, independent entity, which represents and protects the common interests of members of the order, and regulates the activities and relations between them in serving the public"*.

Also, Article 4 of this law clearly stipulates that: *"The mission of the Order of Doctors is the maintenance of high standards in forming and exercising the profession in the field of medicine"*

and the protection of patients and the public from the misuse of medical profession. Following the above legal provisions, paragraph (d) of this article imposes this structure as follows: "Cooperation with the National Center of Continuing Education, other institutions of science and education to ensure high standards in Continuing Medical Education, postgraduate qualifications and specializations of the Order".

- To get a clear picture of the journey of exercising the profession of a doctor prior to 2010 and afterwards, they are regulated by legal acts as we can mentioned: providing a license as the only legal document worldwide, to individually exercise the profession, conducting the professional practice, state examination and providing license to individually exercise their profession for young doctors who have just graduated, as well as institutionalizing the continuing medical education based on credits required to be carried out as a condition for certification and re-licensing with cycles of 5 years for all doctors in the profession.

In the trial of the People's Advocate Institution, we stated that testing is not the only way to capture and identify the needs and problems of today's health system. All managers of health centers and hospitals are obliged to deal precisely with the human resources management, identifying problems and referring them to the relevant bodies, which must then react with trainings or continuing education, as the only way for the professional development of doctors or nurses.

Also the fact that pedagogues of Medicine are excluded from testing, is abusive since the law No. 10107/2009 "*On Health Care in the Republic of Albania*", did not provide for exceptions in the continuing professional education for any category of doctors.

In fact Article 13/2 stipulates that: *Health care professionals are obliged to undergo the updated continuing professional education, so as to improve their knowledge and professional skills, in order to enhance the quality of health care.*

So the process initiated on your side, should not be selective for a particular category (pedagogues), and degrading to another category (doctors). Moreover this public announcement without being associated by **any written administrative act** on the organization, development or implementation of this test, would not be serious and transparent.

- Also, such a process of competition would be against the law, would violate human rights and contradict one of the main principles such as the "**legal security**". This Principle implies the confidence of citizens to the state and the immutability of law on the regulated relations.

As the above, with a recommendation addressed to the Minister of Health¹², we have required:

1. Review of the Ministry of Health initiative to test doctors and nurses as a violation of the principle of legal security for these employees.

2. The establishment of a transparent and collaborative process with groups of interest to find an effective and legal solution for the professional growth of this category.

► In March 2015, we have submitted the opinions and suggestions of the People's Advocate Institution to the Commission of Education and Means of Public Information at the Parliament of the Republic of Albania concerning the reform being conducted for the testing of teachers.¹³

Given the collective appeal of a high school in the town of Lezha, testing was objected which the Ministry of Education and Sports launched to be held in May 2015. Regarding this concern we initially sought information at the Ministry of Education and Sports and referring to the response received it was stated that:

The complaint made by the staff of teachers concerned, is not eligible because:

1. According to the judgment of SAA, it is the duty of every institution to take the initiative in service of improving the quality of work.

2. As long as we refer to just a project, where are not yet defined the modalities, goals, ways of realization, participants, etc., we think that prejudices would be unfounded and reckless.

3. It seems unfounded to us to consider testing as a way of working that discriminates people who are tested, when in the daily work practice at school, it is well known that tests, surveys, etc., are very popular forms of working that serve to a better recognition of the real state of knowledge that the tested or respondents possess.

Referring to the response addressed to the People's Advocate Institution, but also to our review of the legal acts in force, we have come to the conclusion that law no. 69/2012 "On the Pre-University Education System in the Republic of Albania", accurately and clearly stipulates in Chapter IX, "The Status of the Teaching Staff", where Article 58, paragraph 1 states that: *"The education institution plans the professional development of teachers according to the needs of central, local and institutional education policies."* The meaning of this provision clearly represents the need of teachers for a continuous training, for new knowledge in the view of teaching quality, communication with students, parents, etc. Precisely for this reason the legislator in Article 58, paragraph 2, has specifically defined that:

"The forms of professional development are: internal professional development, training, professional networking, counseling, short and long term courses."

¹² Recommendation with doc. no. 201500058 addressed to the Ministry of Health

¹³ Recommendation with doc. no. 201500256 addressed to the Ministry of Education and Sports

As above, the People's Advocate Institution has promoted and supported any institutional initiative which is based on Law 69/2012 *"On Pre-university education system in the Republic of Albania"*, which clearly defines the ways of a continuing professional development and teacher training. But we have suggested that the Ministry of Education and Sports should find effective and legal ways for the professional development of teachers, in close collaboration with teachers' unions operating with the status of social partner, with the only purpose: any education institution shall provide a quality teaching for all students where they learn and live, as the only way towards a European future.

So as long as the law no. 69/2012 *"On Pre-university education system in the Republic of Albania"*, states concerning a fixed element of the functioning of a fair recruitment process or a continuing professional development, any other form applied by SAA and that is contrary to this law, in **the judgment of the People's Advocate Institution**, shall be considered illegal and unfair. This was the attitude of our institution to the Commission of Education and Means of Public Information in April 2015, since according to institutional perception, these initiatives should be reviewed so as to test teachers throughout Albania and to implement normative acts and find legal ways to enhance the quality of teaching for students wherever they are.

► A group of former employees of the Council of Korça District has filed a complaint to the People's Advocate Institution, complaining about the unfair suspension of the civil servant status.

Specifically, the complainants claimed that referring to some orders which dated on 10.02.2015 (No. 9, 10, and the following), based on Law no. 8652/2000 *"On the Organization and Functioning of Local Government"*, Law no. 152/2013 *"On the Civil Servant"*, DCM No. 171/2014 *"On the permanent and temporary transfer of civil servants, suspension and dismissal from the civil service"*, etc. it was ordered:

- 1. Suspension due to the civil servant law, after ascertaining the cause of the suspension by the department in charge;**
- 2. By the end of the suspension cause, the civil servant is returned to the previous position, or if the previous position is no longer vacant, he is transferred to another position in the same category;**
- 3. If at the end of the suspension cause, it shall be decided on the termination of the civil service relation, because of the law as a result of the restructuring of the institution and reducing the total number of employees, civil servants shall be treated according to Law No. 178 / 2014 "On some amendments and additions to the law No. 152/2013 on the Civil Servant".**

Following the above Orders for the suspension of the status of some employees due to restructuring that has been undertaken by the Council of Korca District, the People's Advocate Institution, based on all the relevant documentation submitted by the complainants as well as official documents of the Council of Korca district, in accordance with the applicable legislation regulating labor relations, namely law No. 152/2013 "*On the civil servant*", as amended, filed objections regarding violations identified in the procedures followed for these civil servants:

Firstly: Article 50 of Law no. 152/2013 "*On the Civil Servant*", as amended, provides for the entire procedure to be followed in case of restructuring of the institution. In this article it is stated that:

1. If because of closure or restructuring of the institution, the previous position of a civil servant no longer exists, he is transferred to another position in the civil service of the same category.

2. Transfer under paragraph 1 of this article, is conducted by precedent, according to this order:

a) in the same institution where the civil servant is appointed;

b) in the institution with which the institution is merged or joined, in one of the institutions in which the institution is divided or in the institution which has acquired the functions performed previously by the employee;

c) in subsidiary institutions to the restructured institution;

d) at another institution of the civil service.

3. In case of closure or restructuring, a restructuring commission is established. Commission examines the possibilities of arranging every civil servant in the existing vacancies and proposes the transfer of employees to a free position, in which it meets the specific requirements. The final decision is taken by the responsible department on the proposal of the Commission.

4. An employee may refuse the transfer only for the reasons provided in paragraph 3 of Article 48 of this Law. Refusal of transfer for any other reasons constitutes grounds for dismissal from the civil service.

5. The restructuring commission provided for in paragraph 3 of this Article, shall be managed by the responsible department and includes representatives of the institutions provided for in letters a, b and c of paragraph 2 of this article accordingly.

6. Termination of relations in the civil service due to restructuring or closure of an institution is not permitted, except when as a result of these procedures, there is a general shortening of civil servants and transfer, which under paragraph 2 of this article, is impossible. "

So, in the case of restructuring, all procedures for establishing a restructuring commission should be carried out in order to find opportunities for the placement of these employees in the vacancies, and in case this is not possible, it can be proposed to transfer them in similar

positions. (Within the term provided for in DCM no. 171 dated 26.03.2014 *"On the permanent and temporary transfer of civil servants, the suspension and dismissal from the civil service"*).

Secondly: Regarding all the procedure followed for the suspension of the status referred to in the order *"because of the law"* to these employees, in Article 54 of Law no. 152/2013 *"On the civil servant"*, as amended, all cases of suspension of the status of the civil servants are defined because of the law, which stipulates that: A civil servant is suspended from the civil service in the following cases:

- a) When he is appointed in one of the functions provided for in letters b, c and g of article 2 of this law, for the corresponding period of the appointment;*
- b) When he is transferred, for the needs of the institution or the state, to an international organization, a foreign government or an international institution for the relevant period;*
- c) When the court decides to impose to a civil servant the prohibitive measure of suspension from the office or the public service, under the law in force;*
- d) When he is declared missing by a final decision of the court, until the appearance of the person or declaration of his death by final decision of the court;*
- e) When he is registered by law as a candidate in the local or political elections, for the period from registration until the announcement of the final result or until the end of his mandate;*
- f) If he finds himself in a continuous conflict of interest, which is declared by the employee under the law on prevention of conflicts of interest, up to his transfer to another position in accordance with Article 52 of this Law, or other measures for the final avoidance of conflict of interest by the employee himself, pursuant to the terms of the law;*
- g) While pursuing in-depth training program in ASPA, for the period that follows this program with severance;*
- h) In other cases provided by law;*

2. The ascertaining of suspension is carried out by becoming aware of the cause of suspension:

- a) Human resource department of the institution where the civil servant is appointed;*
- b) DPA for the members of the TND.*

So, the restructuring of an institution does not constitute grounds for suspension of the status of civil servant, and furthermore that the suspension of the status should be undertaken by the department of human resources (in cases of local government institutions) and not by the restructuring commission.

According to the judgment of the People's Advocate institution in respect of the whole legislation in force, it was necessary to carry out all the procedures for the transfer of these employees in the same or similar job positions and to cancel all orders for the suspension of their status.

As for the above, we recommended¹⁴: ***1. Taking measures for the cancellation of orders "On suspension because of the law" toward some employees of the Council of Korca District.***

2. Carrying out procedures for the transfer of some employees of the Council of Korca District to the same or similar positions in compliance with job descriptions that these employees have.

For the moment, regretfully we do not have any official response regarding this case.

LOCAL GOVERNMENT AND TERRITORIAL REFORM

By Law no. 115/2014 *"On the administrative and territorial division of units of the local government in the Republic of Albania"*, new divisions were approved by deciding on the creation of only 61 municipalities in the country, and the important element of this reform is decentralization and strengthening of the local governance, but it has definitely started to be accompanied by restructuring and reduction of small units that do not perform any service or that do not provide any adequate qualitative level of service.

Currently, DCM no.510 dated 10.06.2015, *"On the approval of procedures for the transfer of rights and obligations of the staff, acts of tangible and intangible assets, archives and all the other official documents in the local government units affected by the administrative-territorial reorganization"*, defines the procedures to be followed for the dismissal of employees due to the restructuring of local-government units as for those which are part of the civil service as well as those with Labor Code.

The People's Advocate Institution in accordance with Article 60 of the Constitution of the Republic of Albania and with the Law 8454/1999 *"On the People's Advocate"*, is currently in the monitoring phase of all dismissal process for these local government units, whose workplaces shall be affected due to the territorial reform.

As for the above, in order to create a clear picture of the local government employees, we have sought information at the Ministry of Domestic Affairs regarding¹⁵:

1. The total number of employees currently employed in the local government units, by specifying the number of employees who are treated under the provisions of the Labor Code and the number of employees who enjoy the status of civil servant.

¹⁴ Recommendation with doc. No. 201500457/2 addressed to the Council of Korça District.

¹⁵ Letter with protocol no. K3/I45-2 addressed to the Ministry of Domestic Affairs.

2. The number of employees who shall be affected by layoffs due to the territorial reform in each unit of the local government, by specifying the number of employees who enjoy the civil servant status and the number of employees who are treated with Labor Code.

3. Measures on the financial impact for all the employees who shall be subject to proceedings of dismissal.

In response, we note as follows:

According to the latest data made available by the project of the Council of Europe for the public administration, it turns out that the total nationwide number of employees in the local government units **according to the old territorial division is 19.625 employees, of whom 3819 enjoy the civil servant status.**

Regarding the number of employees that shall be affected by dismissals due to the territorial reform are still in the decision-making process of 61 new municipalities.

At present, two collective complaints have been filed to the People's Advocate Institution, respectively of a group of employees of the administrative unit of Lukovë and the administrative unit of Paskuqan.

In the complaint of the Administrative unit of Lukovë, it is claimed of verbal notice, without any official letter regarding the dismissal of these employees, 4 of whom enjoyed the status of the civil servant and 10 others regulated their labor relations according to the Labor Code.

Meanwhile only an order has been communicated to employees of the administrative unit of Paskuqan by the municipality of Kamëz dated 26.08.2015, under which it is stated that: "Within the administrative-territorial reform, pursuant to Law no. 115/2014 "On the Administrative-Territorial Division", Law no. 8652/2000 "On the organization and functioning of the local government", as amended, Law No. 152/2013 "On the civil servant", as amended, DCM no. 510/2015 *"On the approval of procedures for the transfer of rights and obligations of the staff, acts of tangible and intangible assets, archives and any other official documents of local government units affected by the administrative-territorial reorganization"*, **we inform you that over the period of one month from the receipt of this notification, we shall conduct the termination of relations in the civil service with the Municipality of Kamza.**

Currently, these complaints are at the stage of an administrative investigation by the People's Advocate Institution, for which, in the following we shall conclude with the relevant recommendations.

7. STATISTICS RELATED TO CASES OF DISMISSALS, OBJECT OF JUDICIAL REVIEW AT THE ADMINISTRATIVE COURT. ISSUES CONCERNING THE EXECUTION AND IMPLEMENTATION OF FINAL JUDICIAL DECISIONS.

Identification of data related to layoffs is undoubtedly related closely even with cases subject to judicial conflict after the termination of labor relations. In order to create a picture on such cases as well as more complete comparative information, we have required official data at the Administrative Courts in Tirana and other districts, at the administrative court of appeal and the ministry of justice and that of finance.

First, concerning the administrative court, information is related to the total number of lawsuits filed for the period of September 2014 -May 2015, the number of cases on which a decision was made, by specifying in particular how many cases deal with monetary compensation, in how many cases it is decided on returning the dismissed to their position, or both, as well as institutions that specifically refer to lawsuits.

Meanwhile, in conditions when there is a significant number of civil servants who by court decision, must be returned to their previous positions / or appointed to similar positions, a procedure that is not fulfilled in most cases by the relevant bodies, directors of which do not recognize the institutional responsibility / liability, we have sought general information from the Ministry of Finance regarding:

1. The number of unexecuted final court decisions, where debtors are budgetary institutions and which are related to failure of observing the procedures for unfair dismissals for the period of September 2014-May 2015 (including any organ of the Public Administration).
2. The total amount of obligations in ALL necessary to execute all judicial decisions related to the payment of financial compensation in cases of unfair dismissals by the Public Administration organs for the period of September 2014 - May 2015.
3. The total amount of obligations that have been paid regarding the executed decisions in these cases.
4. The amount approved in the state budget for the execution of court decisions where debtors are budgetary institutions and which are related to the termination of work relations unfairly.

And we have required information from the Ministry of Justice for each organ of the Public Administration concerning:

1. The total number of lawsuits filed in Administrative Courts (including Tirana and other districts), for the period of September 2014 - May 2015, concerning dismissals from the

Public Administration, by dividing how many cases are of civil servants and how many are of Labor Code.

2. The number of cases to which the review procedure has started and for how many cases a decision was made, by specifying the number of cases with return to the position and the number of cases only with payment of financial impact as a result of failure to observe the procedure for dismissal.

The number of unexecuted final judicial decisions, where debtors are budgetary institutions and which are related to failure of observing the procedures for unfair dismissals for the period of September 2014 - May 2015.

3. The number of executed court decisions in cases of unfair dismissals from the public administration bodies for that period.

Regretfully both these Ministries have not provided any official response.

Meanwhile, according to data transmitted by the administrative courts and the administrative court of appeal for the period of September 2014 - May 2015, it turns out that:

1. There was a lack of cooperation by the Administrative Court of Vlora and that of Shkodra.
2. From the responses obtained, it turns out that for the period of **September 2014-May 2015, 1463 lawsuits in total were filed** to 4 Administrative Courts of the districts.
3. From these lawsuits, it turns out that **762 decisions on financial compensation** have been taken for unfair dismissals and **23 decisions on returning dismissed employees to their positions.**

PERIOD SEPTEMBER 2014 -MAY 2015	Total no. of lawsuits	Object of compensation	Object of returning to the office	No. of cases with final decision	No. of revoked cases	Under process of review
ADMINISTRATIVE COURT OF TIRANA	892 lawsuits	390 decisions	7 returns to the office	740 decisions	343 decisions	48 cases
ADMINISTRATIVE COURT OF DURRËS	200 lawsuits	183 decisions			32 decisions	
ADMINISTRATIVE COURT OF KORÇË	223 lawsuits	98 decisions	10 decisions			55 cases
ADMINISTRATIVE COURT OF GJIROKASTËR	148 lawsuits	91 decisions	6 decisions			

ADMINISTRATIVE COURT OF APPEAL (period of September 2014-May 2015):

3530 cases have been filed with the object of salary compensation and return to the office.

A total of 855 cases were tried for which it was decided:

380- remain in force

319- change of decision

61 - rejection of appeal

95 – breach of decision, relapse of trial

Also, in total we ascertain 3506 lawsuits, filed in the Administrative Courts for the period of September 2013-May 2015¹⁶, among which there are unregistered lawsuits in several courts which have not responded to the People's Advocate Institution.

Data according to special reports	Total number of lawsuits at the Administrative Court	
Report I September 2013- February 2014	384 lawsuits	It lacks data by the administrative courts of districts
Report 2 January 2014- September 2014	1662 lawsuits	It lacks data by the administrative court of Tirana and Gjirokastra
Report 3 September 2014- May 2015	1463 lawsuits	It lacks data by the administrative court of Vlora and Shkodra

Just as it was emphasized in the progress report for Albania (2014), a challenge for the People's Advocate Institution still continues to be the execution of executive titles. Mainly those related to their return in the office.

For the period of September 2014 - May 2015, 15 complaints were filed to the People's Advocate Institution which have as their object of appeal the failure of execute final judicial decisions after layoffs and not only for the benefit of financial effects as a result of unfair termination of labor relations, but also for their return to the work.

In the majority of complaints filed to the People's Advocate Institution, it was easily ascertained that there is violation of the right to development of a fair trial as a result of the non-enforcement of a final court decision within a reasonable time as provided for in Article 42/2 of the Constitution and Article 6/1 of the ECHR.

¹⁶ The total number of dismissals object of judicial review has been extracted from statistics included in two separated report drafted by the People's Advocate Institution.

In cases when the obligation imposed is an obligation of paying money, it is in the interest of the debtor to fulfill the obligation in which the winning subject is not obliged to address the bailiff service for executing an executive title. This is due to the fact that the mass of financial obligation increases as the debtor is charged to pay even the bailiff expenses. Upon putting into execution the executive title, the debtor body, if unable to pay the obligation in cash, for lack of state, may address the court to enable the postponement of the obligation in cash or divide it by installments.

Meanwhile, the situation appeared even more problematic when the court decided by a judicial decision to return the dismissed to the workplace. This was due to the fact that the previous workplace could be suppressed and there could be discrepancies of job descriptions.

In Decision dated 25.03.2014, of the European Court of Human Rights, after reviewing the Albanian appeal, of EM vs. Albania for the non-execution of a final judicial decision by the Municipality of Tirana, it is noted that: *"There is no effective internal means about the delay in the implementation or non-implementation of a final decision. Even the lack of funding by the authorities does not justify the non-enforcement of a final court decision."*¹⁷

Although the Constitution, the ECHR, ensure without any distinction enjoyment of the right to a fair trial, as quoted above, this right is constantly violated by the Public Administration bodies. In its jurisprudence, the European Court of Human Rights ascertained a violation of the principle of right to fair legal process by interference or non-observance of provisions and laws and bylaws in force. Such an interpretation is made even to the case of Burdov vs. Russia.¹⁸

Problematic in connection with the findings of violation of fair trial, as well as determining the financial value of which the aggrieved party must be compensated, are associated primarily with other social benefits which the employee is entitled to, but that certainly even the former employee should be entitled to, who has lost his job due to the unjustified and immediate termination of the labor agreement.

Referring to the jurisprudence of the ECtHR, the Court considered that the respondent State shall ensure the payment of the calculated interest and social contributions, as provided in the relevant clause of the court decisions in favor of the complainant.¹⁹

¹⁷ For more information refer to Immobiliare Saffi vs. Italy [GC], no. [22774/93](#), § 74, ECHR 1999-V.

¹⁸ Refer to *Burdov vs. Rusisë*, no.59498/00, ECHR 2002-III.

¹⁹ For more information refer to CASE OF ČOLIĆ AND OTHERS v. BOSNIA AND HERZEGOVINA, Applications no. [1218/07](#), [1240/07](#), [1242/07](#), [1335/07](#), [1368/07](#), [1369/07](#), [3424/07](#), [3428/07](#), [3430/07](#), [3935/07](#), [3940/07](#), [7194/07](#), [7204/07](#), [7206/07](#) and [7211/07](#)), Judgmen, November 10th 2009.

Amounts in cash allocated by the State available to the execution of executive titles are at very low levels, therefore the number of cases at the expense of debtor budgetary institutions, keep growing, by increasing this way even the financial bill to be paid in favor of the winning litigant parties.

8. CONCLUSIONS AND RECOMMENDATIONS

1. Through identification and monitoring of all complaints taken to the Public Administration bodies, regardless of the fact that the law *"On the civil servant"* is completed in several of its articles, a series of DCM have been adopted, mainly in the procedures followed by institutions for dismissals which leave room for misinterpretation.
2. We keep ascertaining irregularities in procedures of layoffs within the process of restructuring institutions, as for employees who are treated under the Labor Code as well as those who enjoy the status of the civil servant.
3. There are still judicial decisions given in favor of former employees, who have difficulties of executing especially when the court has decided on returning the dismissed to the workplace.
4. Regarding the local government units, the establishment of relevant restructuring commissions have not started yet according to legal provisions of Law no. 152/2013, and DCM no.510 / 2015, a fact which brings consequences for unfair dismissals contrary to procedures required by law.
5. There are still no planned measures to be taken for collecting data from local government units so as to calculate the financial effects to the employees who have started the procedures of layoffs due to the administrative-territorial reform.
6. Although efforts are being made to create databases on the number of employees in public administration, there are still difficulties in registering their number, and there is no uniformity regarding the level of salaries in different institutions for the same category of civil servants.
7. Referring to the data submitted by the institutions of Public Administration regarding dismissals, the motivations of dismissals often are not based on the legislation in force, dismissals are often carried out due to political motifs and convictions, a fact which has lead to frequent changes in administration and fails to provide a sustainable career development for the civil servant. This fact in most cases is proved even by judicial decisions which in most cases are in favor of employees by deciding on their return to duty.
8. The People's Advocate Institution continues to have a lack of cooperation with many institutions of the public administration, a fact which in many cases obstructs the work and realization of actual data collection on information required.

At the end of all issues raised above, the People's Advocate Institution feels the need to submit in this last part some recommendations at a time when the reform in public administration remains the key driver for the country's integration into European structures, so as to contribute to improving and creating a public administration model which shall function according to European principles.

As for the above, we recommend:

1. The establishment of unified practices in any institution which is mainly related to the procedures undertaken for dismissals of civil servants, but even those with Labor Code.
2. The rigorous implementation of standards set by the existing legal framework that guarantees labor relations (especially with regard to the financial effects), to resolve individual labor contract unilaterally, immediately and in an unjustified way, in order to avoid further growth of the financial bill in cases of illegal dismissals.
3. The review of practices associated with the execution of final court decisions, in cases when the court has decided on the return to the previous job position. For this reason it is necessary to develop specific studies on the manner of enforcing the return to work of employees.
4. The establishment of the restructuring commissions in each local government unit in order to identify vacant positions, the possibility of transferring employees in cases when this is not possible, the relevant payments of their financial effects.
5. Taking appropriate measures to determine the costs of dismissals of employees due to institutional reforms and changes of existing structures, this infers financial effects for each employee either treated under the law on civil servant, or with Labor Code.
6. The civil service shall provide guarantee to employees for stability in labor positions and provide an ongoing career by promoting employees based on job performance.
7. Creating as fast as possible a system to identify the exact number of employees, including the central and local government, as well as independent institutions part of Public Administration.
8. Taking measures to strengthen cooperation and implement recommendations of the People's Advocate Institution, as an independent constitutional institution for monitoring and improving the work toward reforms being carried out in the country.