Working Conditions and Industrial Relations in the Central Public Administration: Conducting in-depth case studies in Member States which have joined the EU since 2004

Case Study Report: Romania

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Executive Summary

The current study has been conducted as an in-depth analyses of the characteristics of public administration in Romania and the industrial relations and working conditions in the central public administration with a special attention to the way into which the reforms, the economic crisis and changes in central public administration and civil service have been affecting industrial relations and working conditions, including the involvement of the social partners.

In order to have a solid background and information to analyse this field desk research has been done and administrative documents have been analysed (key legislation, strategy and implementation reports, public management and human resource management documents). Statistical data have been also compiled so as to obtain a clearer and quantified, for as much as this is possible, view on developments in terms employment and working conditions in central public administration. A very important and useful tool was carrying out interviews with persons directly involved in development of the public administration in Romania. Interviews have been thus conducted with key persons including state officials, senior civil servants, experts as well as union representatives from the sector. Two focus groups have been organized: one involving civil servants who worked in the field of European integration, currently working on the European affairs and the second one with civil servants working in the Ministry of Labour. The objective of the interviews was to obtain information on how developments and reforms have impacted employment relations and working conditions at the workplace level and give workplace level interpretations, providing opinions from both employers and employee perspective to these developments.

Any attempt to understand the policies of Romania in the early years of transition needs commencing from a brief overview of the main features of Romanian reality in the early 1990s: lack of experience; a highly centralized decision-making process and the violent character the fall of the regime assumed in December of 1989.An important step in the **public administration reform was represented by the conceptualization and formalization of the CIVIL SERVICE and its status through Law no. 188/1999** on the Statute of Civil Servants. However, the modernisation process did not bring the expected changes, despite the **initial reforms 2001-2004, the Strategy on the acceleration of public administration reform,** updated for the period 2004-2006, mainly due to the **financial crisis and subsequent recession**, which form 2009 onwards took a severe toll on the public administration which itself has been the main target of harsh internal devaluation measures taken in the summer of 2010 and which mainly consisted of an across-the-board reduction of salaries by 25% ; It is as such to be understood that the cut affected each salaries and other associated and assimilated rights of each individual employee in the public sector. Therefore it was of a severity unprecedented and it had lasting deflationary effects.

Several circumstances have led institutions in Romania to change and these were related to the radical transformation(s) that swept throughout Europe and primarily throughout Central and Eastern during the last quarter of a century. For most of their part however they could have been easily anticipated as early as the 1990s when the primary goal of a country emerged from the shackles of the Iron Curtain that of a gradual but nonetheless steady (re)integration into the Western World was clearly expressed. New technologies and the IT revolution that ensued at the end of the 20th century required additional changes. Growing demands of citizens or changing social needs have forced institutional structure to respond effectively and adapt to slowly but nonetheless steady awakening civil society. Not least changes in the structure of the economy and of the labour market, increased competition and openness. A marked increase of the general level of education of the population, in its expectations with regard to the state and its administrative apparatus together with the tremendous change brought about by the process of integration into the European Union also spurred change and gave incentive to innovation. While it is still hard to say if endogenous or exogenous factors were the primary drivers of change or if, amongst the exogenous ones, distinction between the effects of globalization and European integration can be made and if Yes, to what extent, it is nonetheless an undisputed fact that the whole of the society witnessed during the last quarter of a century a transformation at a scale, and a pace,

unprecedented. While for many at the beginnings of the process, including for state administration as well as to a certain elite linked to it that engineered and made change happen, it was vastly about a return to the "*status quo ante communism*" it finally turned out that while indeed "restoration" was necessary and sometimes even possible, it was clearly more than that. A brave new world was emerging and the very fact that at the core of the change was the national effort for European integration (i.e.: something that in the *status quo ante communism* simply did not exist!) imprinted the nature, the shape and pace of the whole process.

As a rule civil servants are considered as a special category, in the service of the state which vests its author with and into them. As such they cannot negotiate the rights and obligations of their service relationship (i.e.: which hereby terms what for private sector employees or for employees of state companies is conventionally labelled as "employment") with all amendments and changes being exclusively decided by public authority or institution. Appointment in a public function creates a specific service relationship that falls under the regime of public administrative law. The rights and duties of the public function are stipulated in statutes and regulations, detailed in job description(s) and *may* differ from a public authority or institution to another, according to their status (management or executive) and position (central, regional or local authorities), as well as a result of its position in the system and relations with its various components. As a result of the economic and financial crisis of 2008-09 and the subsequent recession, central public administration (i.e.: labelled conventionally: "CPA") workers suffered both in terms of payment as well working conditions and job security.

The economic turbulences and the effort to provide first and foremost for a balanced budget basically through the harsh means of an internal devaluation severely affected security of employment in public administration. That meant changes in the career and employment security (satisfaction at work, employment status, pay systems and levels, job involvement, autonomy at work, number of worked hours, working time flexibility) the emergence of a widespread "fear-to-lose-employment" sentiment, and a multiplication[1] of what are generally viewed in the public sector as a forms of precarious and/or atypical employment (temporary workers, part-time, agency work), etc.). Between 2008 and 2011 total employment in public administration declined only by a modest 2.1%; however this came at the cost of a 30% drop in gross average salary earnings.

The structure of the ministries, agencies, and other government institutions is still in the process of reorganisation, after the Dec.2012 elections. The political programme of the current Government (2013-2016) does not envision any other major restructuring measures likely to impact the number of workers in the central public administration. Nonetheless the Government made it clearly that it wants to pursue a grand strategy of de-centralization which will basically remove from the central public administration all of their territorial branches (i.e.: local and "judete" offices[2]) which will thus become part of the local public administration ("LPA"). This will mark indeed a type of watershed development.

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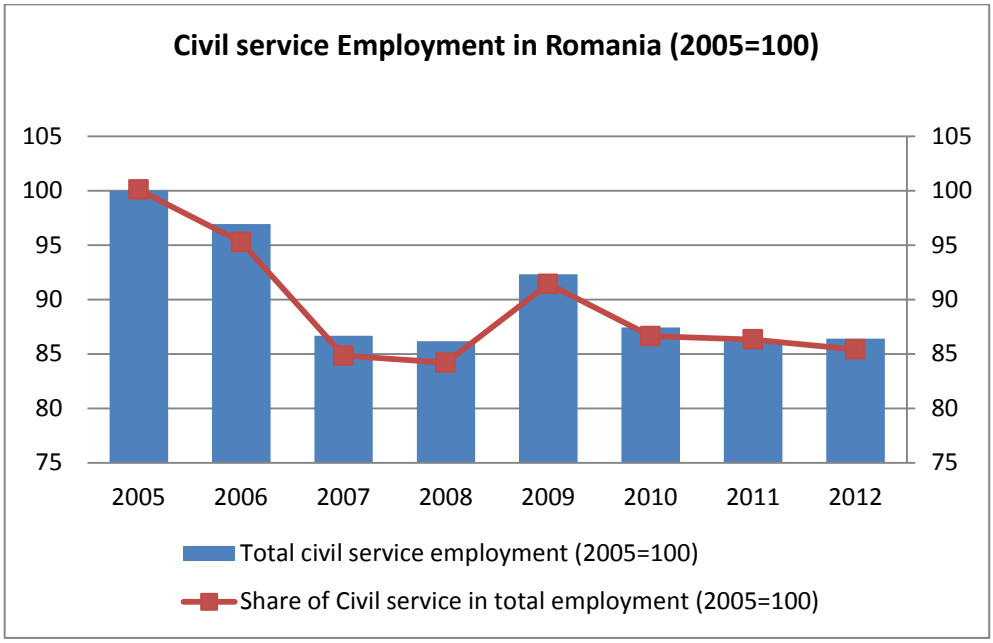
[1] Stemming from several discussions of the author with civil servants in various administrations. However given the nature of it most of these sources wished to remain anonymous;

[2] By tradition the Romanian modern state was highly centralized as it modelled its administrative structures on the ones of France's administration during the era of the Second French Empire/Second Empire (1852-70) matching the reign of Napoleon III Emperor of the French, a sovereign that took an active role in the building of modern European nations such as Romania and Italy in the mid of 19th century. Accordingly and owing to this tradition most of the ministries (e.g.: Labour, Finance, Education, Interior-which also coordinates Police, Military Firefighters and a military force also based on the FR model „the Gendarmerie", Health, Agriculture, Culture,Defence) maintained and still maintain apart from their central structure (in its entirety based in Bucharest) a „territorial structure" that it is itself also part of the central public administration although it is based in the provinces. For most of their part these structures are based in the residence cities (municipalities-a higher rank for important cities in Romania, deriving from the latin/Roman „municipium"; the largest of them is the

As a general conclusion, even if during the last 20 years important steps have been taken in modernisations of the system, political patronage at times and, economic crisis lately, have adversely impacted upon the results achieved. Changes with respect to the number of employees in the public administration, their working conditions, social dialogue with administration and mostly their pay system are still more than likely to occur, as the country continues a process of transformation and modernization deriving not only from its status as a member state of a European Union, itself undergoing a process of unprecedented transformation which at times encroaches upon the sovereignty of its Member States, but also stemming from the more deeper forces that are at work in an emergent market economy. This stage of development itself makes change a fact of everyday life.[3]

Figure no.1



Source: National Institute of Statistics of Romania[4] data, processed by Dr. C. Ghinararu;

capital municipality of Bucharest; all of the „judet" residences have this administrative rank) of the judets but in some cases there maybe branch offices also in smaller cities and, circumstances demanding even in larger communes/villages. These territorial structures of the CPA are only responsible in front of their central offices in Bucharest and thus in from of their ministers or secretaries of state. At judet level, the Government in Bucharest ensure coordination of these structures via the „office of the prefect/institutia prefectului", yet another institution bearing the clear mark of the FR administration. The current administrative structure based on „judets" dates back to medieval times (probably as early as 12-13th century) and it has been maintained as such up to1948 when a soviet-inspired „region and raion" structure has been imposed. However, in 1968 the country has reverted to its traditional structure although the number of „judet" is lower than the one in 1948 (some very small units have been amalgameted into larger ones). With minor changes (1981,1998), this remains the country's territorial administrative division to date;

[3] Conclusions from the interview with Mr. Valentin Mocanu, Representative of the social partners, former secretary of state

[4] Data publicly available do not make distinction between employment in the CPA and employment in the LPA. It is therefore impossible to disaggregate;

Contextual aspects and background

The Romanian society faces a continuously changing process where all economic, social, politic and civic elements meet new dynamics in a continuous and continuing process of adaptation to an ever-changing European and global reality.

The public administration reform was a priority starting with 1989. The EU accession process provided an impetus for this particular strand of reform in the Romanian society. As Romania became a full member of the EU on Jan 1st 2007, the process assumed a new dimension in accordance with the country's commitments as Member State. Public administration is understood as a system of institutions, including various administrative structures of the organization charged with thee enforcement and application of the state legal apparatus as derived from the Constitution (the fundamental law and base of all legislation issued subsequently), regular laws, regulations, orders, decisions, decrees, orders in council, ministerial orders, rulings of the Constitutional Court of other Courts of law if and when or wherever applicable etc. The central public administration (CPA) stands as a hierarchical structure, constitutionally defined as the "executive power' and divided into two branches – i.e.: the Presidency of Romania and the Government and which subordinate the whole of the civil and military (Army with its three branches-Land, Naval and Air, plus Gendarmerie, Fire-fighters and other special formations) service of the state. While the Presidency has a rather more representative role and takes over functions relating to foreign relations and security issues although its prerogatives in other matters of the state remain large (the President of Romania is elected by direct universal suffrage), it is the Government and office of the Prime Minister that largely deal with the "administration of the state", its day to day businesses, social and economic matters. The Romanian Government which stands at the apex of what may be labelled as the "operational" branch of the executive power is responsible in front of the Parliament which has the sole authority to confirm a Government following elections or to dismiss it following an eventual vote of confidence (RO: "motiune de cenzura")[5].

The last quarter of a century of communist regime has been characterized in Romania by an out-of- proportions personality cult built around the leader of the regime, Nicolae Ceausescu. Corruption and nepotism grew rife in an environment increasingly affected by scarcities of even the most basic goods and services and hidden inflation stemming from an all-encompassing black market all of which, were compounded by the sense of imminent collapse of an illegitimate political regime facing mounting pressure from both the inside as well as from the inexorable advance of events outside the country's borders.

In the Romanian case, where the reform experience was more muted in the last decades of the communist regime, the emergence of alternative trends which, at their turn, might have

[5] The Romanian Government, simply labeled in the Constitution „the Government of Romania" does not have a fixed number of ministerial portfolios and thus each and every governing party of governing coalition is free to modify the number of ministerial portfolios which accordingly leads to changes in the number of ministries and sometimes central agencies or at least in their labeling. Historically, the first Romanian constitution passed in 1866 consecrated an executive power divided between the constitutional monarch (i.e.: the King, „royal majesty") and a Government (labeled after French as „the Council of Ministers/Conseil des Ministres/Consiliul de Ministri"). The number of ministerial appointments was limited to 7 including the President of the Council or the Prime Minister. The rule was however altered in 1923 when a new Constitution has been passed whereby what remained His Majesty's Government was now no longer limited in terms of ministerial portfolios. The communists created an inflation of ministerial porfolios as each and every industry branch received practically a ministry. This situation lasted till 1990 when for the first time after 45 years these plethora of „industrial ministries" has disappeared. The name of the Government has been changed from „the Council of Ministers" to „Government/Guvern-RO" but no limit has been set for the number of portfolios a fact which of course caters for change but in the meantime induces grave instability. One cannot say that there is an „office of the prime-minister" in the structure of the Government today. However the ‚General Secretariat of the Government" caters for this role with the General Secretary of the Government being the highest civil service position.

contributed to a more smooth transition was rather difficult with a ripple effect for the whole of the process as „succeeding in changing the regime has more chances where a civil society functioned before the [fall] of the totalitarian regime and where a political culture was created (even limited).”(Bozoki, 1992).

From this point of view, „due to the fact that the civil society was [rather] underdeveloped or fragile in Bulgaria and Romania and the communist elites were not able to provide alternatives to their disastrous policy, transition was significantly different.”(Tismăneanu, 1999).

Before the December 1989 revolution the public administration entirely depended on the state (i.e.: the party-state). During the communist regime, public administration machinery was wholly ignorant of efficiency and impartiality, its main aim being that of responding to the commands of the single, totalitarian party [i.e.: the communist party].

Although in December 1989, after the fall of the dictatorship, Romania officially passed to a governing system based on democratic principles, a certain continuation with respect to the means and ways of governing that was specific to communist authorities was still detectable for a number of years. That is why the Romanian transition, was characterized by Tismaneanu as being „marked by a lack of will for reforms and a lack of imagination”(Sartori, 1999).

On June 28th 1990, following the first free general elections held on May 20th, a new government had been sworn, mirroring the newly elected Parliamentary majority. As reality changed what were gradually removed from the system although this process was rather a natural one occurring basically through old-age retirement, sometimes and only exceptionally through early retirement and never followed a path of vindictive exclusion from the system or a process of lustration.

The period of the 1992-96 government marks Romania's first steps towards European integration, with the country becoming a member of the Council of Europe and the signing Association Agreement with the EU (1993).

An important change occurs in **1996 (November)** with the first democratic, election-led alternation in power. A predominantly right wing coalition grouped around the two main political parties tracing their roots in the pre-1947 democratic Romania (i.e.: the National Peasant Party-PNTCD and the National Liberal Party-PNL) were swept to power thus dislocating the political leftist elite inherited from the communist regime. Main political messages referred to the right to property and the need to transform the society in a radical way (anti-communism, moral probity, incorruptibility, honesty, stability and obvious enough, decisive pro-market reforms).

Romania becomes an **EU Member State at 1st of January 2007** and the first period as a Member State is characterized by record economic growth (GDP growth rate on the year early of 8.8% in the 1st semester of 2008), increased flows of foreign investments both direct ones but also of the speculative type, the fall of unemployment to rates below 4% against a backdrop of sporadic, though manageable bouts of political instability.

The year 2009 marks the beginning of the first economic recession after almost a decade of economic growth at rates significantly above potential[6]. The main feature of this period is the economic crisis, the government setting up a program to reduce the budgetary expenditures (the reduction by 25% of wages in the public sector and other measures to reduce the costs with the public administration – internal devaluation move under the conditions agreed in the Memorandum of Understanding/MoU). The beginning of 2012 brought popular discontent at boiling point as living standards fell and prospects seemed to be further deteriorating. Street

[6]The potential rate of growth designates that rate of GDP growth, varying from country to coutry and from period to period, consistent with both non-accelerated inflation (CPI) as well as with full employment (to be determined of course by the actual level of productivity and having nothing to do with any indicative target in terns of employment). The potential growth rate is linked also to the concept of NAIRU or the non-accelerated inflation rate of unemployment. This value is determeind, alike with the ”potential GDP” „potential real GDP” from period to period via calculations. It is therfore a constructed value at all times and it may involve also quite a lot of „guesstimate”. Nevertheless, both the potential growth rate as well as the NAIRU are currently well established concept in the economic sciences;

riots in January of 2012 were followed by the resignation of the Emil Boc cabinet in Feb. of 2012. The Government of M.R. Ungureanu, also formed by the PD-L only lasted for 78 days.

The present Government, whose mandate started at the end of 2012 according to the Parliament Decision no. 45 from 21st of December 2012, consists of 28 ministers (including the prime-minister). Of these, 9 are delegated ministers for certain fields of activities. There are also, in the current Government, 3 positions of deputy prime-minister.

The state government is organized on two levels: central and local. The first one is the focus of the current study. At the central level the following components of the government can be identified: presidential administration (i.e.; also dubbed conventionally as "the Presidency" or the "offices of the President of Romania"), government administration, specialized central public administration, specialized autonomous administrative authorities (with constitutional status, legal status). As mentioned before when evoking the historical evolution of the Romanian CPA and the roots of its organization, one has to state that its representation and action is done both through the central apparatus of the ministries and central agencies, entirely located in Bucharest as well as through its apparatus in the 41 "judets" (EN: counties) and one capital municipality which make for Romania's administrative organization of its territory

Ministries are specialized bodies of the central public administration dealing with the governmental policy in their fields of activities. Ministries may have under their subordination **county ("judets") level public services** functioning in administrative-territorial units

There are 3 categories of ministries depending on the tasks they have**: economic and financial line-ministries** (public finances, agriculture and rural development, economy, transports), **administrative affairs ministries** (internal affairs, regional development and administration, defence, foreign affairs, justice, European funds) **and ministries in charge with the social, cultural and scientific affairs** (labour, family and social protection, education, culture, health, youth and sports, informational society). A special role is played of course by the **ministries of foreign affairs** as well as by the **ministry of defence** (i.e.: ministries in charge with foreign and security affairs; actually amongst the oldest, together with agriculture and finance, of the line ministries in the Romanian Government structure)

The number of ministries and implicitly their tasks frequently changed in the course of time, one reason in this respect being governmental reshuffling and reorganization. This aspect leads to a considerable instability of the administrative structures. The relatively frequent modification of the number of ministries is generally considered as a mere expression of the continuing and continuous process of adaptation to the dynamics of reality, an attempt to increase the effectiveness of public services. At times however it has also been only a too blunt expression of political ambition or patronage.

The examination of the changing process (restructuring) of ministries after 1989 reveals a process characterized by high frequency, often U-turns as ministries and agencies have surfaced and re-surfaced into the structure of successive Governments but also by an evolution towards a more effective machinery, catering for a more complex, open and competitive environment. An increase in the regulatory burden is evident nonetheless and it also came, undeniably, with the assimilation of the "*acquis communautaire*" and the necessary implementation of the stream of European regulation flowing from Brussels and Strassbourg. At times this might look burdensome given Romania's lower level of development when compared to the EU average but it also means an incentive for continuing innovation and change.

Governmental reorganizations referred to the establishment of new ministries aiming at: achieving political objectives (the Ministry of European Integration); the dissolution of some ministries or their transformation into governmental agencies (in case of domains where only a market regulatory body was needed as it has been the case for sports, tourism, communication, research etc), the reorientation of activities in the case of some ministries, the transfer of governmental activities under the subordination of ministries in order to ensure coherent and effective activities; the reduction of personnel in leading positions from the

central public administration; costs cut for wages; establishment of new ministries or agencies resulting from either political, economic or societal reasons[7].

Apart from ministries, the central public administration also includes agencies subordinated to ministries and managing certain activities defined within the scope of the ministries to which there are subordinated.

The National Agency of Civil Servants (NACS) was established by the Law Nr. 188/1999 on the Civil Servants Statute, with the purpose of ensuring the management of civil service and that of civil servants.[8]

TEXT BOX no.1 – Changes in the Romanian CPA throughout the last 25 years

1989, Dec.22nd–Fall of the communist regime, Romania returns to democracy after 42 years of communist dictatorship;

1990, May 20th – First free elections after the fall of communism and first Parliament elected;

June 1990 – First elected Government after the fall of communism; Branch line ministries are eliminated and broader ministries are created as the state prepares its gradual withdrawal from the economy, privatization of state enterprises commences;

Jan.1991 –First unemployment insurance act; Re-emergence of the employment services administration;

Feb.1991 – Commencement of a long and comprehensive process of restitution of properties in agriculture to be finalized at the beginning of the 2000s;

Dec.8th 1991 – Romania adopts via referendum its new Constitution; Organization of the territory in counties (41) plus the municipality of Bucharest confirmed, two Parliamentary chambers, Presidential office of the republic created; Government as the executive branch with a variable number of ministries and ministers; Romania declared a national, unitary state (legislation applies equally to the whole of the territory and without exceptions);

June 1992 – First local elections after the fall of communism – new elected local authorities, commencement of organization of local public administrations at the echelon of localities (communes, cities and municipalities); Offices of the Prefect established as representatives of the central Government in all judets and the municipality of Bucharest; County (judet) council only limited authority;

Feb.1993 – The Romanian Government signs the EUROPE AGREEMENT (the free association and free trade agreement) with the European Communities (the start of the gradual European integration process);

1997 – Following the election of a reformist right wing Government, a through decentralization process of all branches of administration is launched, jointly with an effort to finalize privatization of all major state enterprises and the restitution of properties; Local authorities given control over local finances, social services etc. County councils elected directly for the first time (1996); Law for the organization of the Social and Economic Council, the country's main social dialogue body;

1999 – New pension law adopted, Statute of Civil Service adopted, Creation of the National Civil Service Agency and of the National Institute for Administration. Establishment of the Public Employment Service as an autonomous agency together with the Public Pension House and the Labour Inspection;

1999, December – Romania receives the official invitation to EU Accession, official start of the EU Accession process and negotiations;

2002 – New unemployment insurance law;

2003 – Labour Code adopted, Constitution revised to allow for EU Membership, modifications to the Constitution adopted via referendum;

2004 – For the first time presidents of county (judet) council elected directly (finalizaion of a process started in 1992 through which increased autonomy has been granted to local and county authorities);

2004, Apr.1st – Romania becomes a member of the NATO; The Romanian Armed forces become a fully professional force; Finalization of the process of transformation of the police force from military to civilian;

2005, Apr. – signing of the EU Accession treaty by Romania, following ratification by the Romanian Parliament;

[7] Law no.188/1999 restored the functionin of the National Civil Service Agency (Agentia Nationala functionarilor public-RO) as a professional, neutral and a-political body destined to recruit, maintain and develop a professional civil service corps that would ensure the functioning of the state apparatus. Such a body existed alo before WW-II.

[8] The Law on the Civil Service Statute (law.188/1999) created a professional civil service corps. It ahs been followed by several acts of successive Governments that have re-organized minstries and other public agencies. The National Civil Service Agency however has been retained by all Governments giving thus stability to the system. A unitary salary system for the public administration had to wait however until 2009 when a first form the unitary salary law has been adopted. The law has seen subsequent changes in 2010 and 2011. A National Instituteof Administration as a training and human resources development organization of the civil service had emerged in the late nineties. It has been merged with the National Civil Service Agency in the summer of 2009 as part of a broader program of public spending cuts triggered by the crisis;

2007, Jan. 1st – Romania becomes a member of the European Union;

2009, Apr. – due to the economic crisis Romania compelled to sign a Memorandum of Understanding with the IMF, the World Bank and the European Commission; focus for the next two years of macro-economic stabilization;

2009 – Adoption of the unitary salary law for the civil service;

2010, Jul.1st – Salaries in the public sector cut by 25% as part of drastic internal devaluation measures;

2010, Dec. – new public pension law adopted; separate pension systems for military as well as for some categories of the civil service (e.g.: Parliament) as well as those of the military integrated into the public pension scheme;

2011, May1st – Entry into force of the revised version of the Labour Code and of the new Law on Social Dialogue – collective bargaining at national and sector level as well as collective labour agreements at these levels no longer mandatory!

2012 – July and December: purchasing power of salaries for the civil service restored by the social democrat Government to levels previous to July 1st 2010; Minimum salaries and pension point starting to increase for the first time and at a regular pace, for the first time since 2009; The social democrats and liberals win landslide victory in Parliamentary elections Dec.2012;

2013 – Romania exits EDP procedure and enters a less strict phase of application of the Memorandum of Understanding;

NOTE: Events linked to the transformation and changes to the CPA marked with italics;
Events related to EU integration and the adhesion to NATO marked with "blue"
Other historic landmarks of the period marked with "bold"

The main objectives of initial reforms 2001-2004 were: the deep restructuration of central and local public administration; substantial change of reports between administration and citizens; decentralization of public services and consolidation of administrative and financial local autonomy; reducing the scope for political patronage in the public administration structures; the diminution of bureaucracy in the public administration; improvement of administration management; harmonization of legal framework with the EU regulations.

In order to continue the reforming process, the "Strategy on the acceleration of reform in public administration", updated for the period 2004-2006, foreseen the following **main objectives for the reform in the field of public/civil service status: defining the recruitment procedures**; constructing **the remuneration system, as well as an improvement in the image of public administration**, by increasing the transparency of the administrative act and taking firm anticorruption measures, visible for the public opinion.

Other elements of reform in the public administration were promoted by: modifying the legal framework on recruitment, training and remuneration of civil servants; regulating the free access to information of public interest was possible since 2001 by means of Law no. 544/2001; the regulation of ensuring the decisional transparency in the public administration – Law no. 52/2003; regulation on anticorruption measures by Law no. 161/2003 regarding measures on ensuring transparency in exercising elected or appointed offices of the state, the relation between public positions and corporate environment, preventing and sanctioning corruption.

As a result of the **financial crisis from 2008** that affected Romania, the public administration reform included a number of **measures on reducing the costs and increasing the effectiveness of activities in the field**. Accordingly Law no. 329/2009 approved the dissolution or restructuration of public authorities or institutions and the efficiency of public expenditures; this regulation met the requirements of the Memorandum of Understanding with the European Commission, the International Monetary Fund (IMF) and the World Bank. Cost cutting measures affected budgets allocated by public institutions on training and improvement of skills for civil servants. Moreover, 2009 also witnessed was the suspension of all competitive procedures for vacancies inside the system of central public administration, a process that has been formalized via Government Emergency Ordinance no. 34/2009. A rule of 1 out of 7 (only one person replaced for seven leaving public administration/services; rule that has been applied to public health and public education too) has been imposed and is still currently observed although some allowances have been made as time passed and situation of the public finances improved for the public health sector which has been badly affected by its application.

Current situation and changes in employment relations and working conditions

Current state of affairs

Reforming public administration has been a permanent objective of governmental programs and strategies after 1990. This objective stemmed from both endogenous as well exogenous factors with the most important endogenous one being the need to re-adapt administration to the needs of re-born Parliamentary democracy and market economy and the most evident exogenous one being the process of EU accession. Ultimately, as Romania became a member of the Union in 2007, one may talk also of an "indigenization" of the latter, a fact which apparently should have wielded more control back to the Romanian state apparatus although in practice, given the increased autonomy and power given to the EU apparatus as a result of both the adoption of the Lisbon Treaty as well as a result of the economic crisis and subsequent recession, it leaves a lot more outside (exogenous) to the process. To what extent this encroachment by a non-sovereign (the EU and its apparatus) upon the sovereign entities it consists of (i.e.: the Member States) will influence the future of the central public administration reform remains however to be seen.

Though the creation of a modern and effective system of public administration was considered as a priority for the Government, resources could not be mobilized, necessary to create the legal and institutional framework needed for central and local public administration and especially for the effective implementation of reform measures.

An important step in the **public administration reform was the conceptualization of the public or civil service status as consecrated by Law no. 188 from 1999** on the Statute of the Civil Servants. This basic act has been subsequently modified several times so as to suit new situations appeared on the functioning of the public administration in Romania. It has to be stated in this context the importance of **the integration process in the EU** for the modernization of the public administration.

The first strategic document mapping the future development of this essential aspect of public administration came in 2001 through GD[9] no. 1006/2001 on approving the Government Strategy regarding the acceleration of the public administration reform.

The analysis made in 2001 showed that the globalization trend, accompanied by dynamic development of social systems, put nation-states in an entirely new position, where institutions and administrative systems have to be adapted, with interventions in the field of public administration reform involving modifications of major components, including the central and local administration, and public services dependent upon them. On the other hand, the democratic development requires the establishment of a new relation between citizens and administration, the increase and consolidation of the role of local authorities and the reconsideration of partnership with the civil society.

The actual conditions from the Romanian society set upon the administration machinery a commitment for change focusing on 4 main strands of elaborate thinking and action: a **strategic strand**, where the role of the state should be redefined, in order to clearly differentiate it from the one of private organizations; a **legal strand**, directed to a reduction of legislative density, a better use of the legal framework, leading to more possibilities of action for the executive authorities; an **organisational strand**, oriented towards the simplification of procedures in the case of delegation in the performance of public duties and tasks to bodies that are not part of the administration; a "**cultural strand" also to be defined as the "*deep change strand*"**, aiming at positively altering the values and the ways and means of action of elected politicians, civil servants, interest groups and citizens.

Mid 2010 (as of July 1st), through what was a drastic measure of internal devaluation, wages of all public personnel have been reduced by 25% (as already stated each and every individual

[9] Government Decision;

wage has been affected inside the public sector; state owned enterprises however were not affected by the measure). This measure had two major effects on the public administration. The first one was a general sense of disillusionment which swiftly afflicted public personnel (i.e.: civil servants) the other one, more tangible, was a quick-starting and still continuing drainage of staff leaving the public sector as it no longer provided them with even the basic means for a decent living. The full restoration of lost purchasing power by public employees has only been accomplished in 2012 as the USL[10] Government swiftly enacted two rounds of salary restoration in July and December of year thus bringing all individual salaries back to their pre-July 2010 levels as of Jan 1st 2013.

In this context, within the *Functional analysis of public administration in Romania* (World Bank, 2011) underlined the fact that personnel reduction as a part of the austerity measures was far too blunt and indiscriminate in its application. It thus determined situations where structures from the administration were left with fewer employees than the minimum necessary for an effective functioning. Moreover, the above mentioned analysis suggests that remuneration within ministries is not fair and genuinely acts as a hindrance to performance as criteria for promotions, wage increases and others related are not necessarily transparent and linked with the activities undertaken or with the level of responsibility associated to the different positions.

The abrupt reversal of the economic cycle in late of 2008 and early of 2009 made a negative imprint on the process of reform of the public administration in Romania, causing distortions due to the lack of resources which lead to abrupt cost-cutting decisions which in most cases were not only prone to reversal and thus ineffective but were also having immediate disruptive effects on the very functioning of the system.

TEXT BOX no.2 – Central Public Administration and process of European Integration

Following the accession to the EU, Romania had to revise its entire institutional architecture so as to face the needs to implement the "*acquis communautaire*" and subsequently the specific requirements of its Member State status. The EU accession negotiations, a process political by character albeit technical by its inner nature, conferred a greater importance to the ministerial autonomy in specific fields of activities. On the other hand, for the other bodies/institutions the accession process needed a really tight cooperation as a result of their reduced experience and exposure to specific EU-related processes. In terms of its administration, EU accession went through five successive phases:

First phase (1992 – 1994): Up to the "Europe Agreement", the relations with the European Economic Communities (EEC) were strictly commercial – based on the *Agreement between the European Economic Community, European Atomic Energy Community and Romania on Trade and Commercial and Economic Cooperation, signed at Luxembourg on October 22nd 1990*;

Second phase (1995 - 1999): Starting with 1995 a more structured institutional system for the management of the association process has been set-up (The Secretariat of the Inter-Ministerial Committee for European Integration);

Third phase (2000 - 2001): As of January 2000, shortly before the start of accession negotiations, within the Ministry of Foreign Affairs (MFA) a Department of European Affairs (DEA) has been created within the Ministry of Foreign Affairs (RO: Ministerul Afacerilor Externe) by merging the DIE with 3 diplomatic directions of the MFA so as to increase coherence, substance and unity of action with regard to Romania's policies in the field of European integration;.

Fourth phase (2001 – 2003): As the performance of the DEA was not necessarily convincing during the first year of the accession negotiations a Ministry for European Integration (MEI) has been established as a distinct structure of the Romanian Government headed by a full minister. This new ministry took over the responsibilities of the former DEA;

Fifth phase (2003 – March 2005). As the European Commission applied further pressure on the Romanian Government with regard to certain accession commitments and their implementation as well as to ensure a bettered management of pre-accession funds the Ministry of Development and Prognosis was included in the Ministry of Economy and Trade ;

Sixth phase (2006 - present). From the accession date (jan.1st 2007), Romania participates to the European decision process. This made the existence of a distinct structure, positioned at the highest level inside the public administration system, and in charge with the coordination of the whole array of process a member state of the EU is involved, mandatory. The DEA was thus dissolved in April 2007 and transformed in the Ministry of European Affairs; Further to this during the pre-accession period and for the purposes of the first programming period to be undertaken by RO as a member state (2007-13) management authorities for the EU structural and cohesion funds have been created and made dependent on line ministries. As problems during the first

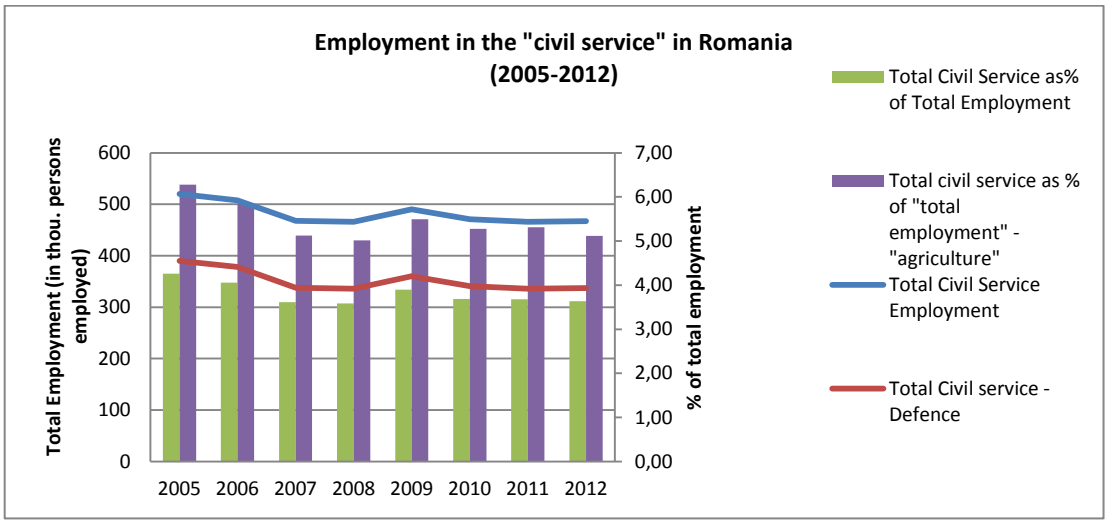
[10] USL stood for 'Uniunea Social Liberala/The Social-Liberal Union", an election alliance between the Social Democrat and the National Liberal Party that won a landslide victory in the Dec.2012 elections, gaining 70% of seats in both chambers of the Parliament. However the union dissolved itself in early of 2014 as it could not reach agreement with regard to the candidate for the Presidential election taking place end of the year;

period mounted some of them leading to temporary suspensions and financial corrections, a new structure dubbed as the Ministry of European Funds has been created as of the end of 2013. Apparently it will take over the management authorities as of the incoming programming period 2014-20.

Employment in the Romanian CPA

Within the central public administration operates public servants who are employed by an appointment (order / decision of / the Head of the respective public administration, i.e.: ministry, agency etc.) under the Law no.188/1999 the status of civil servants and also staff employed under Labour Code with individual labour contract (the labour contract is signed by the employer, the head of the public institution. The Law on Statute of the Civil Servant (law no.188/1999) defines public function as "all duties and responsibilities established by law for the fulfilment of public power/authority" by the central government, local government and autonomous administrative authorities.[11]

Chart no.2



Source: National Institute of Statistics of Romania data, processed by Dr. C. Ghinararu; Administrative data referring exclusively to the CPA are given below using the National Civil Service Agency (Agentia Nationala a Functionarilor Publici) source;

The employer for the whole of the civil service is the Romanian state, i.e.: the sovereign power. Ministries, central agencies and others as such act only as representatives of the state, or of the sovereign power. The National Civil Service Agency acts as body coordinating policies with regard to the civil service and acting as an enforcer and guardian of the Law on the Statute of the Civil Servant but it does not act as an "umbrella employer" for the whole of the civil service.

The employees are: Administrative public (i.e.: here with the meaning of "civil") servant represents the individual that is part of an authority or public institution in hierarchical subordination which has been legally invested with the exercise of executive public function, usually for an indefinite period of time and remunerated for its work.

The civil servant statute distinguishes between civil servants and auxiliary staff of the public authorities and institutions who do not exercise public powers. The distinction has the following consequences:

- Civil servants are appointed, while staff has an employment contract;

[11] The information regarding the implementation of the Law on Civil Servants Statute no.188/1999 were obtained during the meetings of the focus group 1 and 2

- Civil servants exercise public function while staff performs secretarial, administrative, protocol and service jobs;

- civil servants are subject to the legal regime of public law prescribed by the Statute, while staff are subject of legal regime of private law, the Labour Code and labour legislation;

- jurisdiction for civil servants public function disputes belongs to administrative courts, while for staff labour disputes belongs to common labour law courts. The Statute distinguishes between appointed civil servants and persons appointed or elected in public dignity function, the last category falling outside it.

The Personnel of the public (civil) services ("civilian" administration only[12]) consists of:

A) Public/Civil servants: – High level civil servants (for example a general secretary within the ministry); public managers; management civil servants, execution civil servant;
B) Contractual staff;
C) Personnel assigned to the cabinets of state dignitaries and elected officials;

Most of the central public administration staff consists of **civil servants**.

In 2011, senior/high level civil service positions with decisional grade/rank 1 and 2 were 11,320 (of which 1,779 not occupied/vacant). Just More than half of the occupied senior/high level positions (9,541) were occupied by women (4,850, i.e. 50.83%) as against 4691 (49.17%) by men. At ministry level, there were 997 decision-making positions, of which 866 occupied and 131 vacant. Of all occupied positions, the majority were again held by women (514 – 59.35%) with men holding only 352 or 40.65%. Most grade 1 decision-making positions (201 positions, only 177 occupied) were held by women (91 – 51.41%) compared to 86 (48.59%) by men.

Total number of public positions on 28.12.2012 was in the central administration, 17,744 civil servants and 230 senior civil servants were registered (www.anfp.gov.ro).

The **Statute of Civil Servants** adopted a particular definition and some criteria when setting the concept of public/civil servant:

a) Civil servants do not enter into individual employment contract. Only the staff employed in public authorities and institutions, that perform secretarial and administrative, protocol, management, maintenance and other categories of personnel who do not exercise public power have individual employment contract subject to the regulation of the generally applicable labour law (i.e.: the Labour Code, Law no.53/2003 with subsequent changes and amendments).

b) Civil servants are subject to the provisions of The Civil Servant statute. Although the Statute applies to all civil servants, including those with regulations approved by special laws, this applies only to the extent that those statutes do not provide otherwise (military, rail, water, air transport personnel, or education, etc.). Public/civil servants employed in the structures of the Parliament, the Presidential Administration, the Legislative Council, the diplomatic and consular services, the customs, police and other units of the Ministry of Interior (i.e.: the militarized services of the gendarmerie and of the inspectorates for emergency situations-former fire-fighter troops) have special statutes.

c) A civil servant is a person appointed into a public office, with the exclusion of all the elected positions (members of the Parliament-deputies and senators, mayors, deputy mayors and local councillors) as well as the members of the Government, including the Prime

[12] Military adminstrations are not discussed for the purposes of this study except where the case might for a process of „de-miltarization" (i.e.: national police and national border police) or when references have to be made for CPAs that have both a „civilian" and a „military" branch (i.e.: in RO the case of the Ministry of Interior);

Minister, ministers, secretaries and under-secretaries of state and other positions which are as such and by law assimilated to those.

d) the office of the prefect, the representative of the Government at county level, which until 2009 has been considered as a position of public dignity (political appointment according to a tradition inherited since before 1947; the office had been dismantled by the communists which had replaced it with the so-called "double nature", meaning both state and party, position of first/prime-secretary) and thereby assimilated to those detailed at point "c" has been since then included in the category of civil servants. However, the extent to which, in practice, this remains a political appointment in disguise is rather high as each every Government fully exercises its right to dismiss prefects appointed by the previous Government and appoint new ones, deemed to be "loyal" to the new administration. While the practice is not illegal via the application of the symmetrical principle (i.e.: the appointing authority has also the right to dismiss and vice-versa) in practice it shows that the transfer of the position from a political appointment to a "pure" civil service status is not effective;

Considering the competence entrusted to public servant, public functions are divided into three categories:

a) senior civil servant;

b) management/executive civil servants;

c) ordinary/common/rank-file civil servant or simply just "civil servant".

The law does not establish the contents of each category, the rights and obligations arising from it, but states that management civil servants organize, coordinate, and control the activities involving the exercise of public power, under the authority of a superior officer or a public an official omitting, unfortunately, the mayor, the deputy mayor, the county council president and vice presidents as elected persons./ **High level civil servants (a special sub-category restrictively defined by law)** category includes persons who are called in one of the following public offices: General Secretary and Deputy General Secretary of the Government; general secretary and deputy general secretary of ministries and other bodies of central government; prefect and deputy prefect; government general inspector.

The Romanian Constitution stipulates civil servants statute among the areas covered by organic (frame or basic legislation which requires a special Parliamentary procedure when effecting legislative changes) laws and, separately, by the general rules on labour relations, trade unions, employers and social protection.

This provision was made to differentiate between civil servants regime and contractual arrangements of the other categories of employees, because, in the view of Romanian constitutional legislator, public/civil service may only reside in the public domain thus inducing a fundamental difference with respect to the regime of ordinary/common employee (i.e.: to be understood as either employed by a private sector entity or employed by a state-owned enterprise), which, for the overwhelming majority of circumstances falls into the private domain (i.e.: this also means the private domain of the state, whereby the state acts as an ordinary "private" employer/owner). Every public position in the public administration represents a succession of rights and obligations/duties that are mandatory for its holder.

Also, public function (or the "**public office**") has continuity, arising from the continuity of the state, albeit from this feature one should not conclude that public function cannot be exercised with interruptions, because the "function" itself should not be confused with its fulfilment (i.e.; somebody else may fulfil the duties associated if and when for legal reasons the original holder interrupts its exercise).

The public function cannot be subject to the agreement of contractual parties as it is the case for ordinary/common labour relations. It is therefore considered as stemming from a "universal act of will", by legal vesting of powers which gives the person exercising public service the prerogatives of public/state power, which by way of legal consequence are as such "vested" into him or her. Goes without saying that public function (or "public office") must be accessible to all citizens.

Vesting the public servant to perform the public function/office is done by an act of authority and legal status of civil servant is generated by a legal relationship which therefore makes it a "relation or rapport of service (public service)", fundamentally different from a labour relation. In the broad sense of the Labour Code, the parties may negotiate as part of the individual labour contract any clause considered by them, within the limits set by law, public order and morals. Public administration is restricted here in terms of negotiating salaries and other entitlements associated with employment relations in the corporate sector or in lucrative enterprises of the state. Thus the scope of individual labour contracts is severely restricted in the realm of public administration/civil service. Rights and entitlements that have been the subject of laws and other regulation enjoying general application cannot be restricted by individual labour contracts.[13]Therefore they also apply to all persons working within the sphere public administration/civil service (i.e.: to be read here as CPA).

Civil servants are prohibited from holding jobs in the corporate sector (be it private or state corporate) as they are also barred, while in the public service, from corporate management positions as well as from leadership positions in political parties; contractual staff working in the public sector however, faces no such prohibition/restriction. Civil servants receive during holiday a premium equal to the salary of the previous month, something that does not apply to contractual personnel. Civil servants also enjoy stability in the public office (this does not refer however to their momentary hierarchical position but rather to their status as civil servants). As regarding temporary civil service this can appear when a public servant has suspended the labour contract for personal reasons. In this situation, a person can occupy his/her position in a framework of a temporary contract.

The civil servant statute distinguishes between civil servants and auxiliary staff of the public authorities and institutions who do not exercise public powers. The distinction has the following consequences:

- Civil servants are appointed, while staff has an employment contract;

- Civil servants exercise "***public functions***" while staff performs secretarial, administrative, protocol and service jobs;

- civil servants are subject to the legal regime of public law prescribed by the Statute, while staff are subject of legal regime of private law, the Labour Code and labour legislation;

- jurisdiction for civil servants public function disputes belongs to administrative courts, while for staff labour disputes belongs to common labour law courts. The Statute distinguishes between appointed civil servants and persons appointed or elected in public dignity function, the last category falling outside it.

This process resulted in the development and approval of new legislation regarding salaries for staff paid from public funds (essentially civil servants and contractual personnel). This legislation regulates, in terms of wages, both the regime for the general public functions/positions but also the specific functions/positions inside the central public administration (CPA).

A direct effect of the large number of special statutes was the splitting of the civil service corps into various sub-groups, which made it difficult to elaborate a unitary policy with regard to salaries. Equivalent positions were thus having divergent salaries in different ministries. A policy that introduced a variety of bonuses and other incentives further distorted the functioning of the system. A series of examples is provided by the subsequent enumeration of the sub-groups of the civil service which, by way of derogation from the general rules (i.e.: the law on the Statute of the Civil Service) acquired "*special statute*" : Customs staff in 2004, the police in 2002, civil servants from the National Civil Servants Agency in 2004, the civil service of the Romanian Parliament, members of the Romanian

[13] Interview with Mrs. Valentine Mocanu, representative of the social partners, former secretary of state

Diplomatic and Consular Corps in 2003, local police in 2010, officials of the Competition Council in 1996, the Permanent Electoral Authority in 2006.

Civil servants are prohibited from holding jobs in the "corporate sector" (be it private or public/state) as they are also barred, while in the public service, from corporate management positions as well as from leadership positions in political parties; contractual staff working in the public sector however, faces no such prohibition/restriction. Civil servants receive during holiday a premium equal to the salary of the previous month, something that does not apply to contractual personnel. Civil servants also enjoy stability in the public office (this does not refer however to their momentary hierarchical position but rather to their status as civil servants). As regarding temporary civil service this can appear when a public servant has suspended the labour contract for personal reasons. In this situation, a person can occupy his/her position in a framework of a temporary contract.

Changes and trends

After 1989 the main reform measures focused on the legal framework (laws adopted in response to a new reality unfolding in the economy and society) and its fulfilment where applicable. One of the first changes was done via the GD no. 667/1991 on measures to ensure the social prestige of civil servants which states the role of public administration authorities.

For the first time after 1989 regime change, a number of obligations of civil servants are given, according to their legal status as well as with regard to their duties as citizens in a democratic society. These obligations relate specifically to the fulfilment of entrusted duties in strict compliance with the legal provisions, on professional secrecy, on supplying the information requested by the public, on cooperation between officials in the work of fulfilling the duties. Also, a series of bans for officials are given.

This initial regulation did not include any reference to the rights of civil servants or his/her career. Thus, the adoption and subsequent enactment of a piece of framework legislation in the form of a comprehensive "statute of civil servants" was increasingly required. A first effort to reform the public function and civil servants statute was the introduction of rules regarding declaration and control of the assets (wealth) for the elected officials, magistrates, persons with management and control duties and civil servants. A second measure was the elaboration and adoption of the Statute of Civil Servants, which has been enacted through Law no. 188/1999. Law 188/1999 is considered as an "organic law" and thus subject to change only via a special procedure in the Parliament.

In 2003, discipline committees and joint committees within public authorities and institutions were organized by GD no. 1210/2003 creating control mechanisms of compliance with the regulatory environment.

In order to accelerate administrative reform new functions/offices were created and new measures have been taken in relation to the existing ones. The central goal was that of attracting specialist staff capable of contributing to the implementation of the reform process. This was accomplished by either adding new features to the civil service, with specific applicable provisions separate from general framework for civil servants. Thus, at the request of the European institutions, a new category of civil servants with special statute (i.e.: the "public manager") was created in 2004 (special category of civil servants which helps to ensure efficiency and continuity of public administration reform).

Trends

A constant increase of the number of categories of civil servants with special statutes is observed. In many cases "special status" mainly consisted in bequeathing of additional rights and benefits compared to other categories of civil servants; very often this translated in additional salary entitlements. Existence of special regulations and exemptions, overlapping of institutional competencies in the management of various categories of staff has led to **a**

distorted application of the relevant legal provisions (i.e. Romanian Parliament, Presidential Administration, Legislative Council, diplomatic and consular services, customs authority, police and other units of the Ministry for Internal Affairs).

Since 2009, in the context of the economic crisis, positions inside the CPA have been re-allocated, with the process affecting both civil servants as well as contractual staff within public institutions.

Industrial relations

Social[14] dialogue has a number of limitations for civil servants. Participation of civil servants in the social dialogue is achieved through representative unions established in direct application of the constitutional right to association. In accordance with Romanian's Constitution "Citizens may freely associate into political parties, trade unions, employers and other forms of association". In applying the constitutional provision, Law no. 188/1999 on Statute of Civil Servants ensures that civil servants have the right to trade union association (art. 29). In case senior civil servants or civil servants who act as authorizing officers are elected in the representation bodies of trade unions, they have a 15 days interval to choose between the senior public office and representation position with the unions. For the parliamentary civil servants, art. 35 of Law no. 7/2006 on the Statute of Parliament Civil Servants, stipulates the right to join trade unions. Although not expressly provided, the right of association is recognized for policemen, civil servants with special statute approved by Law no. 360/2002. Article 48 of this law provides the right of association for policemen[15] in *professional*, humanitarian, technical, scientific, cultural, religious and sports-recreational associations, without making explicit reference to the right of trade union association, though also not explicitly placing any restriction (i.e.: back in 2010 when internal devaluation

[14] Social dialogue is regulated in Romania by the Social Dialogue Act. Its current version dating from 2011 (Law 62/2011) replaces an act dating back to the 1990s. It has been completed in 2013 through the Economic and Social Committee Act which regulates the activity of the country's main social dialogue body. Social dialogue is also regulated by the Romanian Constitution (art. 41 and 141). The social dialogue involves the trade unions, the employers' associations and the state. The Social and Economic Council functions and operates as a consultative body for both the Government and the Parliament being entitled to give and formulate opinions (non-binding) on all acts of the Government and Parliament pertaining to social and economic life; Social dialogue commissions are functioning within all of the bodies of the public administration;

[15] As in all parliamentary democracies Romanian police was a civilian force made out initially of quasi-professional. professionals (recruitment procedures as well as training were patchy at their best, if they existed at all and not substituted by pure political patronage, in the second half of the 19th century when the first modern police formations started operating on behalf of the newly constituted modern Romanian state) from 1859 up to the beginning of the 20th century when for the first time a *professional police corps* has been constituted by the Romanian Kingdom. Following the accession to power of the communists with Soviet backing after the end of WW-II and alike in all former WTO conutries, police forces, after thorough and brutal purges, have been turned into what was known as „militia", a military force, basically concerned with repression on account of the regime and only to a lesser degree concerned with the safety of the citizens, their properties etc. While after 1990 seevral changes were brought so as to return police to their initial role, it has remained militarized until 2003 when it was turned into a civilain, though uniformed public order and safety force, with its professional enjoying a special status among civil servants.The same process affected the former border troops which were turned into the border police, a fact which marked a break-up with Romanian historic tradition whereby this always a military corps (i.e.; accordingly border policemen too belong now to the „civil service" enjoying the same status as public order police). Aa a result of gradual devolution of powers from the central to the local administrations, commencing with 2005-06, local authorities have been able to constitute and finance their own „local police forces" thus taking over some of the responsibilities from the „national police force"; it is to be undersood that from the onset these forces were „civilian". However being part of the local public administration they do not fall under the scope of this study.

affected mainly the civil servants, police "unions" were amongst the most militant; however disciplinary sanctions applied at the behest of the Presidency as well as pressure on union leaders turned them highly compliant. Fear of losing a safe even if less paid job outweighed the will to fight for their rights as "civil service workers").

Starting with 1989-90 Romania went through three successive periods in terms of the development of labour legislation:

The first period lasted until 2003, when the 1973 Labour Code was still applied, however with limitations as certain provisions were either considered as obsolete and thus no longer applied or, they were simply suspended until new legislation would replace or repeal them altogether depending the case;

The second period, governed by the new 2003, Law 53/2003 or the new Labour Code[16] up to 2011 when the Labour Code has been significantly amended;

The third period starting with 2011, when under the pressure of foreign investors' lobbies as well as international financial institutions, the Labour Code has been dramatically changed, with the removal of the chapter on collective bargaining; Subsequently a new law on social dialogue has been adopted which completely removes the mandatory character of national collective bargaining as well as of branch collective bargaining instituting instead a "sector collective bargaining", however also restricted and conditioned on the representative character at "sector level (up until now an ill-defined notion) of both trade unions and employers' organizations; This change led to a complete standstill of social dialogue in Romania, as trade unions started a boycott of the Social and Economic Council (the country's main social dialogue body-tripartite) which lasted until the commencement of this year; A new law for the organization of the Social and Economic Council and thus for the unlocking of tripartite social dialogue has been prepared by the Government and sent for Parliamentary debate as of the end of the first quarter of 2013.

The Social and Economic Council consists of representatives of the trade unions, the employers and the civil society in equal number. Prior to 2011 it included also representatives of the Government though not of the civil society. The role of the Council is to give a qualified and non-binding opinion to drafts of each bill, that is to be submitted to Parliament by Government, taking into account the views of the parties represented which are having equal force in the Council on all matters that concern the social and economic development of

[16] The Labour Code adopted in 2003 replaced the one in existence since the early 1970s and which obvious enough was no longer in accordance with the country's realities (in effect throughout the 1990S he country's labour market functioned without a comprehensive body of laws as most of the provisions of the old code were rendered irrelevant by the new realities and thus were virtually suspended). The 2003 Labour Code created a framework for labour relations matching the needs of a democratic society and a market economy, It defined the main institutions of the labour market (the individual labour contract, the employer, the unions, the minimum salary, the working time, the statutory annual leave, the procedure for collective dismissals, conclusion-execution and termination of the individual labour contract, the collective labour agreement and the procedure for collective bargaining). The adoption of the code followed a through reorganization of the Ministry of Labour in 1999 which led to the emergence of the Public Employment Service (Agentia Nationala pentru Ocuparea Fortei de Munca) of the Public Pension House (Casa Nationala de Pensii) as well as the adoption of a modern public pension act (Law no.19/2000replacing Law no.3/1977) as well as of a new unemployment insurance act (Law no.76/2002 replacing Law no.1/1991). 1999 also witnessed the creation of the Labour Inspection (Inspectia Muncii). Therefore the adoption of the Code was the final step in a process of modernization of the whole ensemble of labour market legislation. The code suffered several changes in the 2000s as some of its dispositions were viewed as too much geared towards the unions. However, the most important change occurred in 2011 when through an emergency procedure the Government modified the code abolishing collective bargaining and thus rendering the national collective agreement non-mandatory. Although it has created widespread discontent this measure has not been reversed since as it has been part of the flexibility enhancing package agreed by the Government with its international creditors under the Memorandum of Understanding signed in 2009;

the country, except matters related to national defence, public order and foreign affairs. Matters relating to the organization of the CPA, rights of the civil servants and others are also discussed as civil servants are represented here via their unions. The social dialogue law of 2011 created a new body, the Tripartite Council, whereby only issues relating to employment, labour relations, salary policies and related are discussed and where parties are the Government, the employers unions and the trade unions. It is here that tripartite agreements that also concern the CPA might be elaborated. To date however, no such agreement has been so far elaborated.

The Social Dialogue Law (law no.62/2011) states that it seeks to ensure better representativeness of trade union and employer organisations; ensure the participation of civil society organisations in dialogue; and improve the procedure for conflict resolution. In the sphere of collective labour relations, legislative changes introduced new minimum membership thresholds for forming trade unions, which at the most basic level of enterprise (or unit of the CPA) is of 15 (fifteen) employees of the same enterprise (or unit of the CPA). Previous legislation (the so-called Trade Union Act, law no.54/2003) provided for the same minimum threshold of fifteen (15). However those fifteen had to be drawn not necessary from the same enterprise or unit of the CPA, but just had to belong to the same profession or trade or to enterprises/units belonging to the same branch of activity. It was thus guaranteeing a lot more independence for employees/unionists and especially for trade union leaders from what are sometimes the ubiquitous injunctions of a single employer, i.e.: in our case the state. Collective bargaining can take place at the company level, groups of companies, or the sector of activity.

The Social Dialogue Law also limits the duration of collective agreements to no longer than 24 months, so new conditions and developments that might have taken place can be taken account, including legal changes and which may affect working conditions. If a new agreement is not concluded after the expiry of the 24 months then employees may commence a conflict of interests or even go on strike if the employer (i.e.: here the state) seems to be unwilling to conclude a new one. However this seldom happens as the state always takes care that such formalities are observed even if the substance of the new agreement may not differ much from its predecessor.

The reforms have also made changes to the criterion of "representativeness" which must be satisfied by a trade union and/or employer organisation if they are to negotiate collective agreements. Representativeness is defined as proven membership of at least 5% of all employees in the national economy if representativeness is to be proven at the level of national confederation with the cumulative condition of having operational branches in at least of half of Romania's judets (21 which half of 42) including amongst these the municipality of the capital Bucharest. If representativeness is required at sector level or at the level of a group of units (these maybe not only enterprises but also administrations and therefore it also applies to branches of the CPA) then the sector federation of the federation for a group of units must prove membership of at least 7% of the employees in the respective sector or for the respective group of units. At the most basic level, that of the enterprise, or a unit of administration, representativeness is defined as membership of at least 50%+1 of the total number of employees. The reason for imposing new criteria was not entirely determined by the will of genuinely seeing the employees represented. The aim of the reform was to practically reduce the voice of the unions and thus strengthen the rights of companies especially of multinationals. The state nonetheless has also been more than happy as the new law practically nullified unions in the civil service.[17]

[17] As in previous cases this statement, while strong, has nonetheless emerged from the author's informal discussions with various leaders of trade unions such as Bogdan Iuliu Hossu (leader of the National Confederation CARTEL ALFA), Iacob Baciu (leader of the National Trade Union Confederation CSDR). Both unions include civil service federations;

The right to collective bargaining on labour issues and the mandatory character of collective agreements (though now with limitations) are guaranteed in accordance with art.41of Romania's Constitution. Civil servants participation to collective bargaining is done through joint committees regulated by art.73 of Law no. 188/1999. An equal number of representatives appointed by the head of the authority or institution and the civil servants' representative union shall be present in the joint committee. The establishment, organization and operation of joint committees and their membership, competence and operating procedures were defined by GD no. 833/2007. Previous legislation did not allow to employees holding managerial position or involving in the exercise of state authority within the Parliament, Government, ministries and other central bodies of state administration, etc. to be part of the trade unions (Law 54/1991).

An amendment to the 2003 act states that individuals holding offices or positions of command/executive/management at the top of the civil service, judges, military personnel of the Ministry of Defence and Ministry of Interior, Ministry of Justice, the Romanian Intelligence Service, the Protection and Security Service, the Foreign Intelligence Service and the Special Telecommunications Service are prohibited from joining trade unions.

Collective bargaining for civil servants is conducted on similar principles to collective bargaining for employees in the corporate sector of the economy. Civil servants participation into collective negotiation within the Joint Committee is regulated by GD no. 833/2007. Article 6 stated the full members of the Joint Committee shall be appointed as follows: - half by the head of the public authority or institution - half by the representative trade union of civil servants in the public authority or institution, under the law, or, if the union is not representative or civil servants are not organized into unions, by a majority votes of civil servants of that public authority or institution. Collective bargaining is mandatory within 30 days of the approval of the budget for a respective public authority or institution, even if there is no trade union. If the bargaining does not take place, then workers/civil servants can go on strike or lash a law-suit against the administration. The primary aim of collective bargaining in the public authorities and institutions is the conclusion of collective agreements, as defined in GD no. 833/2007. Article 24 of this act stipulates the equality of the bargaining parties as well as the fact that during the bargaining process they are to act freely and un-impeded.

Although art.24 paragraph 2 of GD no. 833/2007 states that collective agreement can be concluded only at the level of a public authority/institution/administration it does not rule out the possibility of negotiating collective agreements at higher levels (e.g.: ministry or groups of ministries etc.), though it practically never happens, because before 2011, branch collective bargaining and agreement was practically mandatory, after 2011 the sector collective bargaining and agreement is not. Unless a union covers for the majority of the establishments in the sector and unless it has a negotiating partner on the employers' side (which seldom happens thus virtually nullifying the chances for such agreements in most of the sector for the want of a negotiation partner) even this type of collective agreement does not have mandatory character either. As for the CPA, which even before failed to form a branch, it does not constitute a sector either. The state simply ignored all pleas for collective bargaining and as such, the sole form available to CPA workers remains a sort of an isolated bargaining at the level of each and every ministry or central agency, provided that there is a representative union (i.e.: a union covering the majority of the employees) in place. If it is not then the state as an employer simply rules supreme. Under the stipulations of the new social dialogue law, even if collective bargaining takes place at the level of the sector and even if a collective agreement is concluded it only applies to the various establishments of the sector (enterprises or the CPA units) if the partners in the bargaining process are represented in particular establishment (e.g.: for an enterprise in the textile sector for example, if neither the union not the employer belong to the federations of unions and employers that have negotiated the sector agreement, then, its provisions do not apply; same should go for the CPA). In general few such sector agreements have been concluded, but none covers CPA workers. The 2011 national collective agreement was the last to be applied. Since then as there is no longer any legal obligation to conclude one, no such an act has been concluded any more. No higher

representatives than a minister or a deputy has ever signed a collective labour agreement inside the CPA.

Freedom of collective bargaining for civil servants has certain limitations when compared to corporate sector employees. This is a consequence of the fact that civil servants' collective agreements are exclusive of certain provisions which corporate sector employees are free to negotiate, first amongst those being salaries (art. 72 of Law no. 188/1999). This is the consequence of the fact that salaries of civil servants are established exclusively by means of law, regulation and statute and cannot be thus the subject of negotiation between the parties concerned (i.e.: the civil servant and the public authority employing him/her).

During the negotiation of collective agreement process, the public authority or institution is represented by its designated head or by mandated representative (broadly for each and every ministry it should be the person of the minister him or herself; However and in practice one of the secretaries of state acting as deputies of the minister is habitually designated for the purpose).Civil servants are represented through their union leaders or by their elected representative if they are not unionized. There may be cases where in the same administration (ministry, agency etc.) civil servants may be represented both by a trade union representative as well as by an elected representative of the non-unionized employees. As seen from this, it all depends on the level and extent of unionization within a certain specific branch of the CPA (ministry, agency etc.). Other forms of representation are not permitted.

As said before it has to be understood that in general, the process of negotiation practically never covers the whole of the CPA. Instead it is carried out at the level of each and every ministry or central public authority. Unions in the CPA differ with respect to their number, national representation, and technical capabilities, including negotiation capabilities and others as such. In some cases, e.g.: teachers, medical personnel (although employed by the state, they have special statutes, therefore teachers, medical personnel are not considered as "civil servants", so they will not be discussed), personnel of the national fiscal administration, unions are rather powerful and well represented. In other cases however they are rather weak, since unions of civil servants are also affiliated to large, nationally representative trade union confederations, which all have vied to take in unions from the CPA as generally this ensure stable membership and fees, although not much can be done for those members due to legal restrictions. They make for a poor, rather formal performance in this process, basically acquiescing to conditions imposed by the administration. Rank and file members perceived that they have actually nothing to gain from union membership and when they did not altogether withdraw they simply stopped paying membership fees which thus rendered their membership a matter of pure formality. Rivalry between confederations has also been rife. This made unions in the CPA weak, especially when on the side of the employers was the might of the state. Currently, due to abolition of the two main institutions upon which the powers of the national confederations rested, the national collective agreement and the national collective bargaining process, the bargaining powers of the confederations has been further reduced. To a certain extent they barely function in the civil service. Help and assistance can be legally provided by confederations to any federation or even union that may require it. It generally happens when requested but where the employer is the state itself it hardly matters.

The public authorities and institutions may, on an annual basis, conclude agreements with civil servants unions or civil servants representatives including clauses concerning: setting-up and use of funds to improve working conditions; health and safety at work; daily schedule; professional development, and protection measures other than those detailed by the body law for the persons elected in the governing/representative bodies of trade unions. It means that with these agreements the representatives of the servants may agree on terms concerning additional conditions than stated in law[18].

[18] For example, a powerful antenna for secured communications on top of Ministry building emits radiation and is harmful for the employees, so a kind of "antenna bonus" was developed for one

Regarding the consultation of civil servants, in 2007, GD[19] no. 833/2007 on the rules for organizing and functioning of the parity commissions and the conclusion of collective agreements was adopted in order to ensure the necessary legal framework for parity consultations between the leaders of public institutions and the civil servants (the parity commission is a committee established within a public authority or institution, having the task of consulting public institutions and civil servants when an agreement is to be concluded).

Parity commissions are the institutionalized conduit through which civil servants propose measures to improve the activity of public institution; review and endorse the annual vocational training plan; make proposals on flexible work program for civil servants etc. Recommendations are made always in writing and have to be properly substantiated.

Parity Commissions are the only body where issues are discussed between the employers (i.e.; here the state, the Government) and the employees (i.e.: here the civil servants). Civil servants have the right to be consulted on the issued pertaining their organization, training, promotion rights, career management as well as when certain acts are prepared and/or elaborated by the Government concerning the employees of the central government.

Consultation takes place regularly with the parties being under the obligation of informing those concerned. Parity Commissions meet whenever necessary but usually once a quarter. The only place where consultation does not take place is with regard to salaries.

Civil service has many other channels at its disposal. It gets therefore aside from the rather frugal mechanism of the parity commissions' voice enough in practically everything that concerns it. This makes for the greatest advantage of all for the civil service and practically explains to a certain extent the absence of protest when harsh austerity measures have been taken directly affecting it. This also means that while sometimes voicing dissent, employees are actually more than satisfied with the current practices.

A special mention must be made on the suspension of collective agreements. Article 29 of GD no. 833/2007 states that "the application of the collective agreement shall be suspended in the following cases: in the event of force majeure, by the agreement of the parties concerned, when the clauses included in the agreement cannot be applied due to financial restrictions or legislative changes regarding the rights or obligations covered by the collective agreement". In this case, the reason for the suspension is not the will of the parties' concerned but budgetary constraints which objectively prevent the parties concerned from the application and observation of clauses previously agreed.

However it is possible to turn to court, which in many cases rendered justice to the employees thus overturning hosts of illegal decisions taken by employers (i.e.: in this particular case the state itself as an employer of the civil service) . This shows most unfortunately that while civil servants do enjoy certain privileges when it comes to dispute, pre-court resolution hardly functions. With trade unions at a low due to legislation that scrapped the most basic institutions which underpinned social dialogue and negotiations (i.e.: collective bargaining at national level and the national collective agreement) there is not much left to the disgruntled civil servant than the recourse to courts. While individuals are embittered about this (costs of litigation are high and in most instances it might take rather long to settle a case) they have also witnessed that to a large extent they were rewarded as judicial/court resolutions favoured them in most cases.

"The civil servants right to strike is legally recognized. Civil servants who are on strike do not receive salary and other earnings during the strike" in accordance with art. 30 of Law no. 188/1999. It was considered that the right to collective bargaining and trade union association

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Ministry's servants and the servants of another Ministry, located in the same building, plead for that benefit as well. Though, when crisis strike this was one of the first ones to go, as it has been judged by the administration that improvements had been made so that the emissions from the antenna were no longer harmful. Unfortunately the employees were unable to defend themselves on that (no unionization) and thus the bonus has been lost.

[19] Government Decision;

(both established by Constitution) are more meaningful and substantial if complemented by the right to strike. Limitations of the right to strike for civil servants concern only special categories of civil service personnel (policemen). Initially, the law conditioned the right to strike "with regard to continuity and swiftness of public service". A double notification applies in practice for civil servants, when compared to corporate employees which concerns both the union declaring strike, as well as the individual civil servant willing to join in the striking action (i.e.: the strike) which also comes under an individual obligation to notify his or her participation in such action. While in theory this should not pose any problem whatsoever, in practice, this is often a severe limitation as the individual notification pressures the individual civil servant into outright submission to its employer (i.e.: the public authority) which often attempts intimidation, in most cases covertly, although sometimes even in the open. Employees may be threatened of transferring them to other place or remove from organisations, which makes it very hard for employees to strike, since in the near area their current jobs are the only ones that are suitable for higher education. These make for powerful reasons preventing a more vocal protest and it offers an explanation to the poor resistance with which harsh deflationary measures taken in middle of 2010 have been met by civil service personnel, with the sole exception of teachers where as usual numbers made for a more militant conduct, though at no much avail.

Strike in the public sector (i.e. CPA) is governed by the general legal regime. The strike can only be declared only if, in advance, all the possibilities of settlement of collective labour conflict had been exhausted, only after conducting a warning strike and if the triggering moment it was brought to the attention of employers by the organizers at least two working days before. For the duration of the strike the labour contract, service report, as appropriate are considered as suspended; nonetheless it is to be noted that these periods are covered by social insurance provisions, notably with respect to health insurance (as no salary payments are made pension insurances are also suspended following the principle according to which zero contribution for a certain period, irrespective of its duration yields zero benefits). As for this aspect, there is no particular difference with ordinary employees, except for issues of general response of the employer (i.e.: in this case the public authority concerned) which might be inside the legal limits or, in some cases might exceed them and apply unjustified pressure on striking employees. More and more such cases are dealt with by the Romanian courts as awareness amongst employees (i.e.: in this case the civil servants) increases with regard to their rights. Solutions are more often in favour of the civil servant although in some of these cases return to the previously occupied position becomes difficult. Civil servants are then either requesting transfers or are simply quitting civil service.

Formerly militarized services such as the police are rather more prone to such behaviours than services which have always been "civilian" (many actually say that the "militia" is not yet dead as many of the current heads of the police have been, in their early, formative years, militia officers and rather more accustomed with barked orders than with the application of the law).

Enforcement

According to labour law, the conflicts concerning work-related issues and arising throughout the negotiation of a collective agreement are labelled as "disputes of interest(s)" (i.e.: not to be confused with "conflicts of interest which legally are something totally different!). Disputes of interest arise if the collective bargaining process, commenced with the aim with of concluding a collective agreement, cannot be in practice concluded by the parties. Following the outbreak of the dispute of interest, means and ways of pressuring the other party, within legal limitations, may differ from one case to another with the possible inclusion of strike. The problem lies in the absence of explicit provisions on how disputes of interest may be solved. Law no. 188/1999 on the Statute of Civil Servants refers only to the right to strike of the civil servants, which is the extreme form of pressure that may be used by civil service workers against their employer (i.e.; the state and its various administrations) with no reference being made in the legal text to the amicable resolution of such disputes or the right

to submit such disputes to arbitration. In these circumstances, the provisions of Law no. 168/1999 on the resolution of labour disputes with specific regard to provisions on reconciliation of the parties concerned (compulsory phase in the resolution of a conflict/dispute), mediation and arbitration between the same parties apply to the civil service also.

Under the law, violations by the civil servants of their service duties attract disciplinary, administrative, civil or criminal responsibility, as applicable on a case by case basis. Disciplinary liability has a more precise definition than the one applying to employees covered by the labour law only. Civil servants will be liable to disciplinary action also when committing off-duty acts which affect their own public image or the public image of the institution/administration they are serving with.

In case there are disciplinary violations the cases go to the disciplinary commissions and only afterwards, if not solved, they may proceed to courts. If however there is a matter of civil responsibility then this can only be referred to courts as they are the only ones competent. Same goes for criminal matters where, if decided by the office of the public prosecutor, these cases also go to court. In such cases, the civil servant will be suspended from service for the duration of the judicial procedure. In case a final ruling is passed declaring him or her guilty he will be dishonourably discharged from the civil service. On the simple matters of violations of rights a first appeal may be filed with the disciplinary commissions if administrative matters are at stake also or are deriving from them. If other matters are at stake in the dispute of rights (e.g.: discrimination) then the civil servant might address the National Council for the Combat of Discrimination which will rule on a court-like procedure. Rulings of the Council may be however contested in court, where the final ruling is always reached. In most cases, only simple administrative matters are solved internally. More complex matters almost always reach courts. Parties may nonetheless reach also amiable agreement, which is not regulated in details. Nonetheless the latter applies only in minor cases.

In case rights deriving from collective agreements are violated, the employee in question may address trade union representatives or the "*employees' representative*" if there is no trade union within that specific branch of administration or in the case where the employee is not a union member. The representative may initiate a "mediation procedure" with the employer, in this case the respective central public administration (e.g.: ministry, central agency, central body etc.). However it has to be formally notified and documented in written so as to eventually serve the parties as proof in court. In the end, if no favourable resolution is reached, the ultimate solution remains with the courts.

When individuating the disciplinary sanction, the causes and the seriousness of the disciplinary deviation, the circumstances of its commitment, the degree of guilt and the consequence of the deviation, the general behaviour during work of the civil servant, as well the existence in his service records of other, previous and not-removed disciplinary sanction are to be taken in account.

In order to consider and assess acts considered as disciplinary faults and propose disciplinary sanctions applicable to civil servants within public authorities, discipline commissions are established. Disciplinary sanctions are different, and on a scale that starts with "moral sanctions" (written reprimand) continue with sanctions involving reduction of salary rights (this time outright "pecuniary") between a low of 5% and high of no more than 20% for periods up to a maximum of 3 months or then suspension (delay) of the right to salary rise, as it may be the case. Further on are sanctions that pertain to the civil service career and which might take the form of a delay up to 3 years of the right to be promoted to the next professional degree or to be promoted to an executive/management position. The sanction of the competent authority should be based on an objective and realistic assessment, ensuring both the application of a proportionate penalty as well as the pursuit of what is considered as a preventive and educational role for the civil servant to which it has been applied.

The civil servant unsatisfied with the applied sanction has the possibility to address a court of law, requesting the cancellation or the change, depending on the case, of the sanctioning order or decision. The causes concerning the labour rapport of the civil servant shall be addressed to

the court of law competent in what is dubbed in legal terms as "administrative matter" (i.e.: ruling on the cases that have to do with the application of the law by the state administration, be it central or local). Exception is made of course if the case of the respective civil servant falls under a different matter of the law, e.g.: common/civil or criminal as the case may be.

The worst sanction is the one that asks for termination of the service rapport of the civil servant. If however a court of law considers the sanction as unlawful or disproportionate to the acts committed, it may order the cancellation and indicate, if considered necessary, the most severe sanction that may be applied to civil servant (though not more severe than originally ordered).

Switching from disciplinary investigation to penal investigation is determined by the need to strengthen discipline. This also depends on whether an offence is considered a simple matter of administrative discipline or if it has crossed that border and it has become a matter of the criminal justice. It is to be noted that the application of the former does not exclude the latter.

The patrimonial liability of public servant appears when by their acts or deeds they produce damage to public authority or institution they serve as well as when by their actions they cause damage to any other entity public or private. Regarding damage repair to the public authority or institution, in the first two cases, the civil servant is held to repair damage. Within 30 days of becoming aware of the damage the head of authority or institution will issue an order or a provision of imputation. If and when appropriate this is based on final and irrevocable court decision.

Liability of civil servant for offenses committed during while in service or in connection with duties of public function may also fall under the criminal law if the case. The head of the public authority or institution has the legal duty of suspending the civil servant for which a criminal investigation has been launched.

It has to be stated that forms of pre-court resolution are limited to disciplinary commissions. This however works well only in the case of minor disputes. When disputes involve rather more serious issues, such as very often unlawful, abusive dismissal from the executive civil service positions, the resort to court is almost unavoidable. Cases referred to the European Court of Human Rights are, most unfortunately, not a rarity. The frequency of this sort of cases is rather high as executive positions in the civil service unfortunately make for the "realm" of partisan political bickering and trade-offs between political parties. The aftermath of every election since 1990 has been followed by changes at different levels of the civil service with executive positions being the most affected. This has resulted in numberless litigations for which only court rulings provided a settlement binding for the litigating parties.

Given the restrictions imposed to collective bargaining by the 2011 social dialogue law, pre-court resolution is even more difficult as civil service workers can no longer count on the protective umbrella provided by the civil service applicable national or sector collective agreement clauses.[20]

Control of labour relations in Romania is the prerogative of the Labour Inspection (RO: Inspectia Muncii), the state body which exercises prevention, control, inspection and investigation on all cases relating to labour law compliance. The Labour Inspection is subordinated to the Ministry of Labour (currently the Ministry of Labour, Family, Social Protection and Elderly Persons) and also exercises the legal prerogatives with respect to the combat of undeclared work, assists in mass lay-offs and may upon request play the role of mediator in case of collective labour disputes. The Labour Inspection, with the headquarters in Bucharest subordinates 41 county ("judet") labour inspectorates plus a general inspectorate

[20] The new Civil Code which entered into application as of this year jointly with the new Civil Procedure Code thus replacing the one dating back to 1864, provides for a form of pre-court resolution that may also apply to labour disputes, i.e.: the „mediation" to be undertaken by parties unde the authority of an „appointed mediator". Only if mediation fails may parties resort to court-a certain term and certain limtations with regard to the number of „mediation meetings" apply. However this provision is far too new to allow any kind of assessmenrt;

for the municipality of Bucharest. All labour inspectors are considered to be civil servants. However while the prerogatives of the inspection may look sweeping, with respect the wider mass of employees in the private sector as well as in the State Owned Enterprises it cannot investigate nor act as control and prevention body for the public administration be it central or local; as such it cannot mediate labour disputes in this realm nor act as a pre-court resolution body[21]. Therefore, for the CPA the discipline commissions remain the sole body. They are however complemented, at the level of each line ministry by a control corps subordinated to each and every line minister that may investigate also disciplinary matters although it cannot act as a pre-court resolution body. The Prime minister subordinates a separate independent control corps known as the Control Corps of the Prime Minister (RO: Corpul de ControL al Primului Ministru) that may investigate all over the CPA as well as the local public administrations with attributes extending also over the SOEs. Nonetheless, even this body cannot act as a pre-court resolution mechanism although it may, alike with the control corps of the line ministries, various solutions, sanctions and even penalties where the case or refer cases to other bodies of investigation, where deemed necessary. Measures in the reports issued by this control bodies have to be implemented by the controlled entities or else face penalties. Measures disposed can be nonetheless contested in court.

Working Conditions

Recruitment, termination

According to the Statute there are general conditions to be met by those willing to enter civil service must fulfil a number of conditions set by the legislation regarding the moral and professional capacity of person.

According to the law any person can hold a public functions if fulfil the following conditions:

a) has Romanian citizenship and residence in Romania; b) know the Romanian language , written and spoken ; c) is aged at least 18 years old ; d) has full legal capacity; e) has a health condition that candidates for public office , certified by a medical examination; f) satisfies the conditions of study provided by law for the public; g) meets specific requirements for civil service employment; h) has not been convicted of a crime against humanity; i) was dismissed from public office or the individual employment contract terminated for disciplinary reasons in the last 7 years; j) not to have conduct "political police" activities before 1989[22].

Following the 2008 financial crisis that affected Romania, public administration reform has included a number of measures to reduce costs and increase efficiency in the field. For example, Law no. 329/2009 concerned the dissolution or reorganization of public authorities and public institutions and rationalization of public expenditure; this responded to the requests of the regulatory framework agreements with the European Commission and International Monetary Fund.

The appointment is an individual administrative act of law issued usually by the head of the public authority. Service contract for public servants is indefinite (except public functions for a specified period) in accordance with the law. Changing the function or service relationships is the result of the same unilateral will of the public authority or institution that can confer or

[21] According to the law for the organization of the Labour Inspection, the state administration, including both the central as well as the local public administration (i.e.: the civil service) is out of the mandate given to the Labour Inspection.

[22] "Political police" activities are defined as those activities undertaken by the former secret police of the communist regime (the "Securitate") in order to suppress any type of political opposition to the regime. The National Council for the Study of the Archives of the former Securitate (CNSAS) issues, based on request for research, a ruling confirming or infirming, as case may be, if a certain individual, has or has not been involved, prior to 1989, in such activities. If the verdict is positive (i.e.: the individual did carry such activities) he or she is banned from civil service employment;

withdraw powers, can confer a new function (permanently or temporary – by delegation or detached –) in the same place or institution, or in another city or in another institution.

The public functions are occupied by: a) promotion; b) transfer; c) redistribution; d) recruitment; e) other means expressly provided by law.

Civil service system in Romania is somewhat career-based system, as promotions are quite common and during last years' very fast as new positions have been created inside the CPA, new challenges have emerged and as such many young civil servants have reached the uppermost professional ranks (senior adviser/counsellor IA) quite swiftly[23]. However, the managerial position may be temporary assignment, as superior authorities may dismiss a decision making civil servant and denote him/her to a rank and file position (however the professional rank is always retained once achieved professional contest).

There is also possibility for horizontal mobility moving from one branch to another via the "transfer procedure" in search of a better position or sometimes a better salary.

Recruiting for entry into the civil service is based on competition, according with the civil service vacancies in the plan of occupying public functions. The conditions of participation and organization of the contest procedure is established by law. The contest is based on the principles of open competition, transparency, merit and professional competence as well as that of equal access to public service for every citizen who meets the statutory requirements. However in practice there are several problems, especially when it comes to decision-making positions and high-ranking appointments where quite often political patronage prevails. Territorial branches of the CPA are especially prone to such phenomenon though it is not alien to the central offices of the CPA either.

As a rule, civil servants cannot negotiate the rights and obligations of the service relationship and any subsequent amendments or changes because these issues are exclusively decided by public authority or administration they are serving with.

Suspension from public function is a state of temporary interruption of service relationship. The suspension may be by law, at the public servant's initiative or at the public servants motivated request. The law is however unclear to the extent of the motivated request which remains something to be determined on a case by case basis. Once the suspension period comes to an end, civil service may be resumed.

Termination of service relationships occurs unilaterally, with the same procedural formalities considered to appointments, the official declaration being void if not substantiated by a legally binding decision of the competent authority desiring or, if the case, requiring termination.

Termination of service relationships is done by administrative act of head of public institution or authority within 5 working days of the declared termination intent. The individual concerned must be notified of the termination and must receive a legal and written act of notification. Termination must be afterwards communicated to the National Agency of Civil Servants within 10 working days of its issuance. Termination of service relationships can also occur by written agreement of the parties concerned; this implies the free will of both parties.

A specific case of termination is dismissal, which, according to art .58 paragraph (1) of the Labour Code/Law 53/2003, is the termination of employment at the employer's initiative. This term includes all situations of termination labour relations (i.e. disciplinary dismissal as a sanction, dismissal for physical or mental work incapacity, dismissal for economic reasons-reduction of activity of a specific employer). In case of dismissal, the public authority has the legal obligation of providing the civil servant concerned with a 30 days legal notice period. During the notice period, the civil servant concerned may benefit from a reduced (i.e.: 4 hours per day) working program without affectation of his or her salary rights, essentially to enable him or her to search and apply for another employment. Civil servants are entitled to information about any suitable vacancies inside the public administration system. If a vacant

[23] From interviews and focus groups with staff of the civil service (CPA);

public position is identified during the notice period, the civil servant may be offered transfer to the vacant position as such identified.

In case of reorganization of public authority or institution, civil servants will be appointed in the new public position/office or, where appropriate, the newly created departments or authorities, in the following cases: initial duties and tasks are amended by less than 50%; duties of the original department to which the civil servant belonged are reduced; the change only involves a re-labelling of the department with changes to the effective duties amounting to less than 50%; structure of compartments is changed. In the application of these provision some criteria are taken into account (category of civil servant and, where appropriate, professional grade of the civil servant, previous performance, professional qualification as well as eventual familiarity with the new tasks to be performed). If there are more civil servants suitable or applying for the same position, exams are organized by public authority.

Reduction (i.e.: in the sense of the removal of a specific position/public office from the administrative organization of a public service be it ministry, national agency, national authority or others assimilated) of a specific post/job/office is considered/deemed as justified if more than 50% of the tasks are modified or if the specific conditions for occupying the job are significantly altered. After reducing specific posts the public authority cannot create similar positions/offices for a period of one year from the date of the reorganization.

According to article 67 of the Labour Code, any employees (including here civil servants to which this provision applies) dismissed for reasons other than his fault, may receive severance payment (pecuniary compensation) according to collective labour contract/agreement. The amount of the severance payments to be received and other conditions for receiving it by the dismissed employee (civil servant in our case) are established through collective bargaining. Payment has to be done prior to termination of the labour contract (in our case service rapport). If there is no collective agreement, or if the collective agreement does not include such provisions, the general terms of legislation are applicable. In some cases, Government may decide to support severance payments (in which case adopt a distinct law/government decision). In any case, all without exception benefit from the legal provisions regarding unemployment benefit. In the case of ministries studied for the purpose of this study however, no such compensation has been ever accorded to personnel dismissed for reasons other than their own fault.

The new legislative framework regarding the implementation between 2013-2018 of measures of social protection for individuals dismissed through collective redundancies provide that certain rights including unemployment benefits, monthly income compensations and compensatory revenue be granted in accordance with individual labour contracts/agreements also. However, the Ministry of Economy seeks to promote a law limiting the wage compensation only for cases where the number of dismissals is higher than 1,000 (one thousand) persons. It will therefore only take into account large, collective redundancy processes leaving outside of the scope of the regulation small cases of collective redundancy which are actually the rule in public administration.

The law does not define resignation, but this is the expression of unilateral manifestation and free will of the civil servant to end its legal rapport with the state as his or her employer. Accordingly provisions of the Labour Code apply here which now provide for a notice period of 30 calendar days maximum when the resigning employee does not hold an executive position or, in case the latter applies (the civil servant holds such a position), an extended notice period of up to 45 calendar days.

Appointment in a public function creates a typical service or public office relationship that falls under the regime of public administrative law. It has a specific content that consists of all rights and obligations of the participating parties in that specific legal relationship (the so-called "service rapport", RO: "*raport de serviciu*" from the FR "*rapport de service*"). The rights and duties of the public office (RO: "*functia publica*" from the FR "*fonction publique*") are stipulated by statutes and regulations, are detailed in the job description and can differ from a public authority or institution to another, according to their status (executive or non-executive position), positioning of the authority inside the public administration (central,

regional or local authorities; for the scope of this study we refer only to central public administration) etc.

The activities of civil servants when exercising the powers vested into them by the state are regulated by the Statute of Civil Servants and Law No.161/2003.

Duties arising from the public function may, for the civil servant take either an active or a prohibitive (passive) character/shape. In terms of their intrinsic nature (content) they have to be based on professionalism, loyalty, respect of privacy, responsibility and responsiveness etc.

Loyalty requires a correct, timely mannered, precisely and conscientious fulfilment of the duties, but it also requires initiative in exercise of duty, assistance in their implementation, including mutual substitution within the same service when and if permitted for the performance of various tasks. Fairness requires observance of the laws, regulations and provisions applicable in the field, good faith in the exercise of duties, providing the information requested by the public with due regard to the protection of state and service secrecy (classified information) but also to the transparency of the public service as this is ultimately financed by the taxpayer.[24]

Special regulations may exists for duties specific to some public functions (e.g. working with the public, public institution building security, classified information, the use of weapons, physical training program, working on high alert, etc.).

Regarding the civil servants' rights and duties one may summarize that for the rights they are entitled to (salary, paid leave) their employer (i.e.: any public administration) has corresponding obligations (payment of salary, payment for leave). Vice-versa, civil servants are compelled to fulfil their statutory duties within the limits of their office, with due diligence and the highest degree of responsiveness they are capable of in the service of the state (i.e.; Romania) and of its citizens or face the penalty assigned by law. These rights and obligations/duties have an objective status as they are defined by statutory regulation. They are also however "subjective" when it comes to their performance by individual persons (i.e.: individual civil servants), parties being unable to remove, ignore or fix them in a different way, form, or content than the one that is explicitly stipulated by the law or regulation covering a respective, distinct issue or matter.

Suspension of service relationships is distinct from the change of service relationships. According to art.81 of the Statute of Civil Servant service relationship is suspended by law whenever the civil servant is appointed or elected to a position involving political representation, for the whole period of the mandate/term in office. The service relationship may be suspended at the initiative of civil servant in circumstances such as: parental leave for taking care of children below the age of 2, activities within international agencies or bodies, participation in the election campaign, participation in the strike. Military service, when requested, also implies suspension from civil service duties[25].

During suspension of service relationships, public authorities and institutions shall keep the position which corresponds to public function/office. This position can be occupied for a specified period by a civil servant from reserve body. In case the reserve body does not have civil servants who meet specific requirements, the position can be held under an individual

[24] Information obtained during the meeting of focus group 2, consisted from public civil servants

[25] Starting with 2007 compulsory military service in times of peace has been abolished as the Romanian armed forces have become an all-volunteer, professional corps. Starting as early as the 1860s the Romanian army was based on mandatory conscription of all able-bodied male citizens between generally the ages of 21 and 65. During the communist regime the mandatory character has been briefly extended also to female population, although on a very limited basis with the lower age-limit pushed to 18. Starting with 1990 and up until 2007 the mandatory character of the military service has been retained only for men;

labour contract (contractual personnel) for a period equal to the period for which the service rapport is suspended.

Skills and skill development

Professional (i.e.: one may read here "vocational") training of civil servants represents a significant section of their activity, the Statute establishing both the right and obligation of public servants to continuously improve training and acquire new skills and competencies. The trend towards modern public administration is provided by the continuous education of public servants. Their professional development is a necessity and civil servants specific legislation enshrines as both a right and an obligation to them.

In 2008, in order to implement the provisions of the above-mentioned law, GD no. 1066/2008 on the approval of normative of the training of civil servants came into force.

In order to ensure continuous education and professionalization of civil servants, the National Centre for Continuing Education for Local Public Administration and regional training centres for local administration were originally created in 1998 and transformed in 2001 into the National Institute of Administration and its regional centres. These institutions were created following European good practices, especially French, where a long tradition of professional education and schooling for civil servants and senior officials exists.

Training programs and professional development for public central and local administration is an important task of the National Agency of Civil Servant. More than that, competences of National Agency for Public Administration have been done for elaboration and implementing project with the sources of financing than public budget. (e.g.: the ESF). National Agency of Civil Servants has in coordination a total of four regional training centres.

Civil servants holding a public function in a specific category may participate in other categories training programs fully funded from the public authority or institution budget only if this results in improved knowledge, skills and competencies required for the public duties exercise.

Participation in training programs for civil servants is financed from the budget of the public authority or institution, from the amounts provided for this purpose or from other sources. Recession between 2009 and 2012 entailed severe cuts of training budgets.

During professional development training period the civil servants have the right for payment. In case of public servants, if we consider art. 14 of GD no. 1066/2008 for the approval of the norms for civil servants' professional training, which stipulates that "training programs followed by the initiative of civil servant, with the head of the public authority or institution prior agreement, in other areas than his or her duties but identified nonetheless as necessary to assess individual professional performance and which (cumulative condition) there is no provision in the annual training plan developed and approved under the law, costs are to be borne by the interested civil servant (i.e.: designated therefore as interested party)". However for the duration of such own-funded courses, the civil servant concerned will still receive legal remuneration as well as bonuses and other benefits, if and where the case. Attending such training programs is to be done by the civil servant during his or her own spare time.

According to the principle of planning, authorities and public institutions have an annual obligation to initiate the process of identifying training needs of civil servants and to set priorities in purchasing training services based on training needs identified and resources available. The public authorities and institutions may, on an annual basis, conclude agreements with civil servants unions or civil servants representatives including clauses concerning professional development, which includes also the training measures. In practice, however, given the current conditions and the practical absence of social dialogue consultation, it is perfunctory and employees rarely have a say.

Training leave is only granted for those programs which do not qualify as professional training of civil servants according to specific legislation (art. 52 of Law no. 188/1999) but which according to labour legislation classify as career development – e.g. university, masters or doctoral studies. The right for paid or unpaid study leaves is regulated as a form of the right

to “other holidays” in art. 35 of Law no. 188/1999: “Civil servants have the right, under the law, to paid leave, to sick leave and other forms of leave.”

A special regulation detailing the above provision is found in art. 35 of Law no. 330/2009 on the unitary salary system for public personnel, according to which, civil servants continuing studies as a mean of advancing career benefit from training/study leave. If the head of a public authority or institution considers that studies are useful for the public authority or institution where the civil servant performs his or her duties during the period of study leave (limited to 30 working days per year) then, the public servant concerned shall be paid all wages due for his position. The situation is similar to that covered by art.14 GD no. 1066/2008. Compared to previous years, the current regulation for paid study leave brings a severe limitation. Only those studies that are deemed as useful for career advancement are benefiting from the advantage of paid leave with the assessment of career advancement usefulness being left to the appraisal of the head of the administrative authority.

Art. 152 of the Labour Code, as amended and supplemented is applicable for all public servants as a common law. The article states that “if the employer has not complied with the obligation to ensure on its expenses the participation of an employee to professional training as provided by law, he or she (i.e.: the employee; here to be understood also the civil servant) is entitled to a leave for professional training, paid by the employer (i.e.: here to be understood, the State), up to 10 working days or 80 hours”. Civil servants have the right to unpaid study leave. The main legislation regulating this leave is GD no. 250/1992 on annual leave and other leaves of servants in public administration, in autonomous administrated companies and budgetary units, republished, with subsequent amendments (art. 25). According to it, employees in the public administration (i.e. civil servants) are entitled to unpaid leave whose durations may not exceed 90 working days per year in total for personal reasons.

Remuneration

Wages in the public sector were initially regulated by Law no. 40/1991 which established salaries for government members, the Presidency staff, the Government and local and central public administration staff. The system was based on the same principles for all areas and realms whereby payment was made from sources of the state or state social insurance budget, with the salary depending on the nature of the position held and a limited number of bonuses that could be granted as an extra to the basic salary payment.

All positions inside the public administration were assigned a salary coefficient which was supposed to capture different elements such as complexity of the tasks assigned to the office, level of responsibility, stringency of duties assigned and other elements as the case might have been. In principle, the system ensured a slow progression of salary based on rank advancement and seniority (tenure in the civil service) and of course performance.

A new pay system was introduced by Law no. 154/1998. By law, the salary was not fixed for each position, but was determined based on professional performance, between a minimum and maximum amount (e.g. for an inspector in the public administration the ratio between the maximum and minimum salary equals 2). Final salary would be set according to the coefficient obtained as a result of professional assessment and position coefficient (this was assigned on a scale rating civil service positions according to their importance and level of responsibility or complexity of tasks). The maximum salary was expected to be achieved by those who had the best performance, as assessed periodically, for a position with high level requirements (high coefficient). The Statute of Civil Servants stated the necessity “to create a unitary pay system applicable to all civil servants” (art. 21). In fact, things have gone in the opposite direction. The fact that wages in the public sector provide the opportunity for a large number of bonuses has been fully seized by the different authorities by bequeathing a diverse number of such onto their employees. Different ministries have tried to find ways to stimulate their employees, including providing specific bonuses. When the Law. 52/2003 has enabled civil servants to organize themselves into unions pressure grew for salary hikes via union action. Random evolution of wages continued in the following years without solving some

fundamental issues, also on the back of strong economic growth which for the first time in more than two decades was providing ample resources. The ratio between the maximum and minimum wage in the same public sector reached more than 38 in 2009 (according to the Motivation Note for the Unitary Salary law). Law no. 330/2009 on the unitary salary system attempted, against the background of increased economic austerity to bring some needed correction. Due to the significant budget deficit recorded in the first months of 2010 and under IMF pressure, a decrease of spending with public sector wages was assumed by the Government at the end of May 2010 (Law no. 118/2010). Wages were cut across the board by 25%. Some 10% were recovered as of the first quarter of 2011 with the rest being only recovered in 2012 (July and December).

Payroll system was a key element in the reform of the civil service. Article 29 of the Statute of Civil Servants stipulates that civil servants are entitled to basic pay, seniority pay and supplements. Payroll system takes into account the classification of posts and grades held by officials. Seniority payment may go up to 25% after 20 years of service. Under the current provisions, civil servants are entitled to a salary consisting of base salary and seniority bonus. Law no. 330/2009 on the unitary payment for public funds paid staff all paragraphs on the job and grade extra supplements were repealed.

A goal of the new payroll system was to simplify by eliminating supplements and bonuses, so as to render a simplified salary formula. This however leads to a flattening of salaries inside public administration which generally stifles initiative and acts rather a deterrent of initiative without either making for an element of enhanced loyalty to the public office ("*functia publica*").

However, civil servants can receive bonuses and other earnings. Some of them were introduced to compensate wage declines. In some areas civil servants benefit from work-specific bonuses (e.g. supplement for medicines and vitamins). Between 2003 and 2009 the number of bonuses paid to civil servants increased, in some cases exceeding 100% of salary.

Some of them were considered illegal afterwards because they were granted on the basis of collective agreements and the civil servants were required to return the received amounts. Among the bonuses received by civil servants were bonuses for stress, for public relations activity, for working with computer display, for increased toxicity, for mobility, for retirement, for loyalty, for privacy, gift-tickets or holiday-tickets. Also, civil servants are entitled to recovery/compensation with free time or to a payment-supplement equivalent to 100% of their base salary for overtime or for hours worked during week-end and public holidays. A holiday allowance and the right to receive a bonus equal to the base salary for the last month before leaving on vacation were added to these bonuses for the civil servants. This variety of bonuses and benefits created important, sometimes even significant differences between different public authorities or even inside the same public authority where civil servant holding the same administrative rank or position experienced important salary differentials. However, during the crisis the bonuses were reduced and at the end of 2012 average gross salary structure for public sector employees who worked at least 23 days per month consisted 98.7% of the gross average base salary and 1.3% from other bonuses and incentives (National Institute of Statistics data).

As an example of sorts, entitlement to a percentage of a given supplement (e.g.: seniority) is obtained with and in accordance with the numbers of years in service with different thresholds being applied as the civil servant accumulates years of service and thus is entitled to what is essentially a reward for its loyalty to the public office of the Romanian state.

Initially this decision has been contested into the Constitutional Court which has ruled that as any employer, the state may alter working conditions, salaries and others associated without being obliged to obtain the prior consent of its employees. Of course dialogue can be an option in this cases but the employer remains sovereign in its right to organize the work place according to the needs of its production (i.e.: here public services) and its available resources; accordingly as in the case of any employer if resources are getting scarce then downsizing becomes unavoidable with all consequences that may be derived from here. Alternatives may be provided to those dissatisfied but only to the extent they are available to the employer (here

the state). If the employee cannot or does not wish to accept them then he or she is free to leave (i.e.: in this case leave the civil service; in practice this has been followed by a certain number of suspensions as some civil servants managed to find better employment elsewhere for a determined period of time. For most of them however acceptance was the only option on a labour market starved of employment opportunities).

The current pay system has a number of shortcomings with negative implications, the main problems being listed below: a) A low salary for civil servants. Prior to 2009, salaries in central public administration, including of course the various bonuses and incentives were getting to a certain extent comparable with the ones in the private sector, with the sole exception of high-powered executives in large private companies (i.e.; read multinationals and their peers). After the pay-cut of 25% and removal of bonuses during the crisis, the salaries were lower than the ones of the private sector. Currently they can be characterized as rather low-to-average, with the actual average salary slightly below the average for the national economy which stands around a gross of 667 EUR (q2.2013). A junior civil servant salary is equal to the minimum salary (the rough equiv. of 180 EUR); b) Lack of consistent support for increased professionalization of the civil service, for the combat of corruption. The low salaries of civil servants, not related to the importance of their duties and responsibilities, the absence of alternative motivation tools, the strict regime of incompatibilities and restrictions have created a process of negative selection of the staff whereby the highest performing have left with the low performing ones remaining and eventually being even promoted due to a lack of suitable competitors for what are even positions of high responsibility inside the public administration; c) Lack of transparency on wages of civil servants - use of the bonuses system; d) Lack of correlation between wage and the level of duties and responsibilities. The current civil service pay system does not provide "equal payment for equal work". This principle cannot be met if, for the same duties and responsibilities, civil servants are remunerated differently according to the level of public authority or institution in which it operates (central or local);

Work time arrangements: work and work-life balance

Work time and leisure time are regulated in Romania by Law no. 53/2003 with subsequent changes and modification, republished in 2011 (i.e.: the Labour Code, Title III). The normal working time for civil servants is 8 (eight) hours per day and 40 (forty) hours per week. Laws on civil service does not allow for a civil servant to work part-time. It has always been this way and the reason is that this way the civil servant is completely in service of the state and his/her fulfilment is not jeopardized by involvement in other duties. Determined duration contract applies however for the so-called "contractual personnel" in the public administration as regulated by the Labour Code.

The daily working time follows the "Law of Eight", i.e. eight hours work, eight hours leisure and eight hours rest. Given that extra hours should be paid, an administrative act stipulating the amount of overtime due is mandatory. It is not at the employee/civil servant discretion in choosing when he/she works. The timing arrangements prerogative is centrally determined by law (including night work, evening work etc.). Normally the work starts at 8 in the morning and ends at 4 in the afternoon[26]. Therefore eight hours per day, five days per week are mandatory (i.e.: from Monday to Friday). In some cases working hours may be shifted to accommodate special needs. Night/evening work is rarely the case in the CPA.

[26] Lunch break is not mandatory in the public service, nor is it a mandatory provision for any employee (there is no provision as such in the Labour Code). However, employers may regulate this aspect via the collective agreements at enterprise level. Within the CPA nevertheless, this has not been the case. It should be noted that each and every branch of the CPA (i.e.: ministry, agency, authority etc) may establish different working hours so as to cater, for example, for shorter working hours on Fridays (i.e.; this means that during the rest of the week, working hours will be lengthened so as to cover for the Friday shortening).

The maximum legal duration of working time cannot exceed 48 hours per week, overtime included (exceptions applied). Work performed outside the normal weekly working time is considered overtime. Overtime cannot be provided without the employee's consent, except in force majeure situations or for urgent works destined to prevent the occurrence of accidents or to remove the consequences of an accident. Overtime is compensated by paid free hours in the following 30 days after the provision thereof. If the compensation by paid free hours is not possible within 30 days, overtime shall be paid to the employee by adding a salary bonus according to the overtime duration.

Between two working days, employees are entitled to a rest period of minimum 12 consecutive hours. The weekly rest period is granted in two consecutive days, generally on Saturdays and Sundays. Also the public servants are entitled to all public holidays, national or religious. However, due to reductions in the number of personnel as well as due to increased number of tasks and assignments in practice civil servants have been exposed to extended overtime and an excessive burdening with duties, none of which have received additional payment or very seldom this has been the case. Therefore working conditions have worsened in real terms quite significantly.

The minimum (civil servant with seniority below 10 years) duration of the vacation per year is of 21 working days, maximum (civil servant with seniority of more than 10 years) 25 working days and it is not negotiable. If the holiday schedule is split during the year, the statutory holiday is for at least 15 working days long uninterrupted, although at the motivated request of the civil servant, contiguous fractions of less than 15 days may be granted. Pecuniary compensation for non-effected vacation is permitted only in the event of termination of the individual employment contract or service rapport (legislation is here equal for ordinary employees as well as for civil servants) and provided that the vacation period has not been effected by the respective employee/civil servant.

In theory, the timing of annual leave is established by the employee on a basis of a dialog with the employer, but in practice vacations are scheduled throughout the year to ensure continuity in the civil service, being sure that each servant has replacement. The employer (here the state) has full authority to recall the civil servant from his or her statutory leave. Obvious enough if this entails additional costs for the employee these have to be reimbursed.

Conclusions

The process of reforming the public administration in Romania was an already fast on-going reality when the economic and financial crisis that still largely affects Europe struck violently at the end of 2008. The effects of this powerful exogenous shock have been wholly adverse on the reform process of the public administration with few remedial or mitigating actions being possible.

The public administration attracted during the pre-accession period young people, motivated both by remuneration as well as by professional development opportunities (European integration advisers and subsequently, public managers.

The 2007 full accession of Romania to the European Union, the end result of a process that started as early as the Europe Agreement of 1993 to be continued with the 1999 invitation to accession, marked for the civil service also the start of novel commitments arising from the very status of the country as a member state. As new branches have been created into the service to deal with matters relating to the representation of the country as well as with the management of the structural and cohesion funds, new issues relating to working conditions including the aspect of payment arose fast. Nurture in separation from the rest of civil service and given a special status , including bettered payment did not however serve the cause of better management of improved rates of absorption of the EU funds, in the contrary. As of 2010-11 all of the bonuses and payment differentials had been cut, not due to the lack of performance but due to the sheer and more pressing need of rebalancing the budget. While some of the lost incentive in terms of payment have been regained and some hasty reorganization has occurred in view of the new programming period (2014-20) it does not look like this branch of the CPA is really included and integrated with the rest of the civil service although it would be just normally, even if only for the sake of better management and absorption, to be an integral part of it. This form of development duly affected social dialogue as it further weakened an already shallowly esprit de corps of the civil service.

Employment relations and working conditions for employees in the central public administration have changed to an n unprecedented extent throughout the last almost quarter of a century since the fall of communism. The most important of changes has been brought at the end of the first decade of transition (1999) by the enactment and application of the Law on the Statute of the Civil Servant/The Civil Service Statute which laid the basis for the transformation of a rather ad-hoc based administrative structure, more inclined to obey the powerful of the day than to apply the law into a modern civil service capable not only of providing the necessary array of services for Romania's citizens but also to assume the commitments of a EU Member State.

This process had at its core the stability (RO:"*inamovibilitate*") of the civil servant so as to ensure that the public office becomes truly a career, if not necessarily a form of life-time employment, relatively immune to the democratic alternation in power of the political parties, providing opportunities for professional advancement and working conditions (including reasonable payment) that would attract and reward talent. In the meantime it was aimed at ensuring that civil servants, immune from political pressure would turn into a service devoted to the citizen and its needs, responsibly caring and catering for the public purse and diligently applying the law.

While these were the general aims, the extent to which they were achieved to date, more than one decade since the Statute has been enacted remains much in doubt. The only one that seems more or less to have been attained is stability. Indeed and at least for non-executive positions, stability is granted to a significant extent. However, executive positions, which are vested with high responsibilities, are still largely at the whim of politicians. Frequent changes of directors, of their deputies, sometimes through abusive practices have led to a high degree of litigation on the matter and to situations where the interest of the citizen is no longer the first one served,

Improvement of working conditions, including of payment as well as career opportunities was also a primary goal of the reform. For this purpose a national body under the guise of the

Civil Service Agency (RO: "*Agentia Nationala a Functionarilor Publici*") has been established at the end of the nineties with the goal of offering to the newly established civil service corps opportunities for training and development thus turning civil service in a genuine life-time career attracting talent and rewarding merit. While in terms of training opportunities this has been truly beneficial with civil servants truly enjoying at least a regularity of training provision that eludes the largest mass of Romanian employees safe for the ones employed by multinationals, in terms of the establishment of a career and merit rewarding much remains to be done. The first decade of this century commenced with an era of prosperity and growth for Romania. As sources of financing looked finally aplenty, small was the need for a unitary salary law for the civil service. With the consent of the authorities, unions in the civil service reaped benefits here and there in accordance with the political patronage they enjoyed rather than with the real importance of a branch of the service or another. Rising pay packages, although not always rising basic salaries attracted young talents although they have also created perverse incentives, at a certain moment crowding out private employment opportunities. This era was however to be short-lived. The advent of the crisis meant that civil service pay packages had to come under the hatch. The severe internal devaluation of mid 2010 affected civil service drastically, it induced disappointment and sometimes anger, though little action has been actually witnessed. Civil servants have proved themselves more "servants" than "civil" and as such they allowed political pressure on their office to mount again. While some measure of their purchasing power has been restored lately, the episode showed that to this avail, i.e.; working conditions with the inclusion of payment, much remains to be done to ensure that civil service genuinely becomes a career attracting talent and rewarding merit. For now, too many treat it as a sinecure and a place to where political patronage and pressure finds room to roam.

Establishing a specific frame for social dialogue has also been one of the aims of the reform enacted at the end of the nineties and continued at the beginning of the 21st century with the new Labour Code (2003). While it was understood that certain limitations will always weigh on the process given the special nature of the services performed by this category of workers practically in the service of the state (i.e.: rather it would be better to say in the service "of the people") it was also meant that unions will be able to form themselves in the sector and play an important role. The demilitarization of certain public service such as the national police and its arm the border police as well as of services of the Ministry of Justice (i.e.: prison wards) was to serve the same purpose, relaxing the grip of a rather authoritarian, highly centralized administration where the rule was the order from above rather than the strict application of law and where disobedience and grievance, even when justified, was promptly and sometimes brutally curtailed. However while unions soon made forays into the CPA body of ministries and agencies they limited themselves to the pursuit of limited gains. Payment bonuses and other petty gains, which were prone to reversal and the slightest change of the business cycle chipping at the Government's revenues, were the preferred target rather than the establishment of a frame of social dialogue that would endure both in good times but times of adversity which did not make them themselves much awaited. When the crisis started to bite, the lack of a frame of social dialogue made unions vulnerable and unable to mobilize their members. While the highest of pressure against any action has been recorded in services that were previously military and where fear of the superior officer still runs high, pressure has been recorded also in the so-called "purely civilian" services. Social dialogue almost died due to changes of executives on partisan criteria as well under the fear of simple job loss for the rank and file civil servant. A powerful blow has been given in mid-2011 to social dialogue at large with the one in the civil service the prime victim. Under the pressure of international financial institutions Romania adopted a new Social Dialogue law which removed the mandatory character of the national collective agreement labour agreement as well as that for branch collective labour agreements. Also minimum salary in the public sector (i.e.: basically in the civil service) has been decoupled from the one in the private sector. This development which is in effect even to date and this in spite of promises made before the Dec. 2012 general elections for its significant amendment, practically dissolves the power of national confederations as well as of branch federations. With the compulsory character of the national

collective agreement gone, social dialogue in the civil service has been reduced to a minimum inside the various ministries and central agencies. Also with payment strictly regulated by the 2011 Unitary Salary law the scope for negotiations remains more than limited. Accordingly regulations adopted throughout the crisis combined with a degree of political pressurizing at various levels have almost completely wiped out social dialogue from the Romanian central administration. A new law initiated by the current Government at the commencement of this year which seeks to re-organize and revitalize the Social and Economic Council, the country's main tripartite social dialogue body, practically blocked in its functioning by the 2011 legislation, is still in Parliamentary debate.

The change in status of the civil servant has been tremendous for the civil servants throughout the last quarter of a century. At least in terms of stability and the establishment of a base-framework for career advancement much has been achieved. For the rank and file civil servant if not for the high-ranking positions, the alternation in power of the political parties, a fact that is inherent to a Parliamentary democracy no longer puts his career and job under threat. However at the top of the civil service any change in Government creates much turmoil which thus affects the functioning of the overall CPA. In terms of payment and working conditions one cannot say that there has been linear progress. Whatever progress has been made before the crisis has been reversed by the crisis-related development. Nonetheless, a positive aspect also emerged: the enactment as of 2011 of a Unitary Salary Law for the civil service, while still incompletely applied, marks a formidable step forward as it creates a single framework for what is the most important aspect of working conditions in any service but most of all in a service that is dedicated to the people and is vested with the authority of the sovereign nation-state: payment, as a mean of attracting talent and incentivizing merit and performance. It remains however to be solved the aspect of the level of salaries the civil servants are granted, which is tied to factors outside of our discussion (e.g.: level of productivity in the general economy, budgetary equilibrium, etc.) but nonetheless the very fact that all civil service will enjoy the same status and will benefit from unitary rules on the matter will greatly enhance not only performance but will also buttress something which is still in sheer less and is possibly the most damaging of legacies still lingering from the communist regime: the lack of an "*esprit de corps*"!

This notable absence is at the root of the complete lack of success of social dialogue process in the central public administration and this in spite of the penetration of unions and the demilitarization of certain services (i.e.: national police) which was further supposed to boost unionization and social dialogue. However the fact that civil service while regulated by a single frame law enjoyed actually markedly different working conditions precluded the success of dialogue as well as the deep-rooting of unions. This gave scope to the political power to use economic difficulties so as to practically inhibit social dialogue (i.e.: the 2011 Law on Social Dialogue) and practically disable genuine negotiation of working condition in the central public administration. The fact that in spite of pre-election promises politicians made little progress in repairing a situation that is wholly damaging the civil service (i.e.: a lack of capacity to negotiate inside the service also means a decreasing capacity to act in favour of the citizen as the service becomes more dependent on the partisan whim) shows that politicians still harbour instincts that are wholly authoritarian and do hold a view that considers the civil service rather a realm of political patronage than a resource to serve for the public good. It is for this social dialogue remains rather muted in the Romanian central public administration and it's for this reason that the planned de-centralization[27] of the current Government is also viewed with much of suspicion.

[27] The move towards de-centralization which also involves a change of the country's Constitution will entail the grouping of the current administrative units, „ the judets" into larger ones, called „regions" Nobody knows yet how many of this will eventually emerge, but it is most likely that the current „development regions" will serve as their basis with minor changes. New bodies will be established at

The National Strategic Reference Framework 2007-2013 identified a number of problems that must be overcome in order to boost economic development. Thus, insufficient administrative capacity is reflected in poor management structures, insufficient skills of civil servants, inadequate institutional cooperation, eventually leading to poor quality of services provided to citizens and thereby jeopardizing socio-economic development. Services delivered by the administration are unattractive and do not meet the needs of final beneficiaries / citizens. There are also concerns about the incidence of corruption.

Meanwhile, the financial crisis and its lingering effects have posed new challenges for public authorities .In the context of financial, human resources and technology have given limited attention to increasing the capacity of public administration management from all perspectives: planning, organization, implementation, monitoring and evaluation.

Between 2007 and 2012 the decentralization process had a differentiated and sometimes unequal evolution being determined by the way in which ministries have promoted and implemented project sector decentralization strategies.

The recently commissioned World Bank analysis (i.e.; also known as “functional analysis” and conducted as part of the technical assistance offered by the WB in the frame of the MoU concluded with the IMF, the EC and the WB between 2009-11) pointed out that although the Government of Romania has a modern legal framework and many professional and dedicated employees, “the civil service system as a whole cannot function effectively within the current institutional policies and human resources."

The agenda for reform thereby remains open and several watershed changes are in sight. We are as such facing a system that is in a process of continuing change and adaptation. This continuing change poses a challenge not only to the authorities and to the system itself but also to the citizens of Romania as they will be the ones to face a new and continuingly reshaping reality, harness if benefits and, even more actively than up to nowadays, point to its deficiencies while actively working in partnership with the civil service for their remedy and for a progress that would benefit the Romanian society as a whole.

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regional level, with elected politicians at this level given more powers most of them devolved from the central public administrations, although some of them will be coming from strpping off some atributes from the current judets. While it has been made clear that at least for the beginning, inspection and control funcitons as well as the national police will remain under the control of the Government in Bucharest, it is clear that attributes related to employment, much of taxation, education, health environment, agriculture, infrastructure projects and others will go to the new reginal administrative layer which will thus take over an important part of the civil service. To what extent regional authorities will be able to establish their own rules and thus depart from the national framework it is again unclear for the moment but fears are the feeble esprt de cors will be further damaged and that social dialogue, already much shaken by the crisis-period legislation, will again suffer;

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GD no. 667/1991 on measures to ensure the social prestige of public servants
Law no. 115/1996 on Measures to ensure transparency in the exercise of public dignities, public functions and business environment, the prevention and punishment of corruption.
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www.anfp.ro
www.europa.eu
www.incsmps.ro;

Annex A

1. List of persons interviewed for the country report

	Name	Position	Institution	Contacts
1	Dr.Codrin SCUTARU	Secretary of state (currently), former counsellor for European integration; scientific researcher Romanian Academy, Research Institute for the Quality of Life;	Ministry of Labour, Family, Social Protection and Elderly (currently)/ Romanian Academy, Research Institute for the Quality of Life (formerly);	On request
2	Mr.Valentin MOCANU	Representative of the social partners, former secretary of state	National Confederation of the free trade unions in Romania (currently) / Ministry of Labour, Family, Social Protection and Elderly Persons (formerly)	On request

2. Focus group 1:

	Name	Position	Institution	Contacts
1	Mrs. Adina PAVEL	expert, former counsellor for European integration	Department for European Affairs	**On request**
2	Mrs. Alina FOTIN	Expert, former counsellor for European integration	Department for European Affairs	**On request**
3	Mrs. Elena Luminita CRISTEA	Expert, public civil servant	National Agency for Child Protection	**On request**
4	Mrs.Elisabeta TRIFAN	Expert, public manager	National Agency for Child Protection	**On request**

Focus group 2:

	Name	Position	Institution	Contacts
1	Mrs. Daniela MOTORGA	Expert, public civil servant	Ministry of Labour, Family, Social Protection and Elderly	**On request**
2	Mrs.MihaelaTuleu	Expert, public civil	Ministry of	**On request**

		servant	Labour, Family, Social Protection and Elderly	
3	Mrs. Selena VASILE	Expert, public civil servant, expert	Ministry of Labour, Family, Social Protection and Elderly	**On request**