



INNOVATIONS FOR SUCCESSFUL SOCIETIES

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REPISHTI: Thank you for the interview today. I would like to begin this conversation by talking a little bit about your background with civil service reform, as well as your experiences here in Albania.

IMHOLZ: *Well, first of all my experience is not primarily in civil service reform. I am a lawyer, I'm from New York City, and I came to Albania to live in 1996 as a Fulbright Fellow teaching commercial law. 1996-1997, as you know, was the year the state fell, and I suspended my Fulbright. I was also working on a legal education program. I came back in 1997 as quickly as I could, during the state of emergency. I continued the legal education program. I took up my Fulbright again in 1998. In 1999, I started working first through the OSCE (Organization for Security and Cooperation in Europe), then through the World Bank, as an advisor to the Albanian government. So, I was actually the advisor to the General Secretary of Council of Ministers in 1999, when the civil service law was passed; the second civil service law, we'll get to that in a moment. From 1999 until 2005, I continued as an advisor, as I said; after four years with the OSCE, I then continued the same essential job with the World Bank. The World Bank legal and judicial reform project ended in October 2005 and I became one of the experts in an EU (European Union) project, known as EURALIUS, the European Assistance Mission to the Albanian Justice System. So, for the last three years, I've been in the Ministry of Justice, working on all aspects of the justice system. So, I know a lot about all the Albanian institutions, but I'm not a civil service expert.*

REPISHTI: Great. To discuss a little bit now—to move on, on the broad mission and context of the law that you mentioned, the Civil Service Law, and the reform in Albania. So, most of the interview can revolve about, obviously your work in Albania, but there are other experiences that you may know from other countries in the region, or beyond, then we would be very grateful if you would share those as well. So, would you be able to talk a little bit about the capacity of the public sector in Albania when the reforms started and then compare it a bit to how you see this capacity now.

IMHOLZ: *Well, the problem is, I have always thought Albanians very smart people in general. As you know very well, people—well, it's not only in Albania, don't get jobs with state institutions because of their skills, normally. This is why the United States had to enact legislation against the spoils system so, as I said, it's nothing unusual. Albania, as you also know, had the weakest institutions in the region when the communist period ended, and they started creating all sorts of institutions that hadn't existed before. And, the Civil Service Law that's in effect now, the one that was enacted in 1999, is not the first civil service law. The first civil service law was enacted in 1996, and it created a civil service commission that wasn't independent, and it also didn't really work. I know less about that, because, as I said, I just started working in the government in 1999, when the second civil service law was passed. So, the capacity of the Albanian people has been slowly increasing since 1991, as more and more people get educated abroad, and also as more and more people get experience. So, there was a certain level of experience in 1996, when the first civil service law was passed. There was a slightly better level in 1999, when the second law was passed. The second law was created in the context of the government that took over after the state fell in 1997, the Socialist run coalition. In fact, it wasn't even a coalition, because they had an overwhelming majority in 1999. They wanted to look good in the eyes of the world, having the heritage of the Party of Labor, etc., etc. So, at the beginning of their government, they paid more attention to building serious institutions.*

Maybe I'm not answering your question, you were asking about capacities. The capacities are there, and slowly increasing. But no civil service law has been completely respected. Now, it hardly exists at all, and, a lot of people who are not qualified have gotten jobs, and a lot of people who are very qualified have lost their jobs. That's the situation now in July 2008.

REPISHTI: Great. So, I will return to actually the discussion that we were about to have, which is more based on the history and the goals and the objectives, some more the political underpinnings of the reform in 1999, and as you may see it now, whether there is a momentum again. So, the things that we're interested in are what motivated civil service reform and which were the organizations and individuals that might have championed it?

IMHOLZ: *Well, as I said, the Socialists in 1999 were very interested in showing their Western orientation, and so they were willing to do what the international community wanted to do. So far as I know, the World Bank was the main international partner that pushed the civil service reform. SIGMA (Support for Improvement in Governance and Management), the joint OECD (Organization for Economic Co-Operation and Development)/EU project, has been coming to Albania throughout the 1990's and I don't know their role in pushing civil service reform. It's the World Bank role that I do know, and Gary Reid, whom you may have talked to, if you haven't you should, was very involved in this. The head of the Department of Public Administration was in the Council of Ministers at that time, now it's been moved under the Interior Ministry. But, at that time, it was in the Council of Ministers, and Filloreta Kodra, who was the head of it, worked closely with Gary, and the OSCE, which had a presence in Albania by this time, was interested in it too, although, as I said, the World Bank was the major factor pushing. Filloreta is definitely someone else to talk to. She's now with the LSI (Socialist Movement for Integration). She was in the department of public administration for—headed it for many years, and has a lot of experience in this.*

Apart from the desire to show how Western the government was, and I don't deny it, but, apart from that desire, there was a lack of understanding of—both a lack of understanding and the natural lack of desire to always get the best qualified person for the best position. Again, that happens everywhere, so.

REPISHTI: What do you think were the primary goals of the reform and the objectives? What was the government trying to achieve when they passed the 1999 Civil Servant Law?

IMHOLZ: *Well, that is not something I was really privy to. I can guess. I do know, as I've said, that there was a desire to create a modern administration. There were innumerable discussions with the World Bank and SIGMA and, you know, we were way before the EU accession thoughts and things like that. I don't think that was much of a factor. But there was a close working relationship in many areas with international partners like that. The problem of the fact that the Albanian administration had too many employees was not one they were willing to deal with at that time, I don't think. Again, I don't—these are just my thoughts. I have no official knowledge of many of these things.*

REPISHTI: Yes. So, how do you think the law responded to the challenges that civil service faced at the time? What are some of the problems that have been witnessed and made different priorities, have facilitated more progress, according--?

IMHOLZ: *I'm a lawyer, not a civil service expert, so I look at things from the legal point of view. One of the things that I have thought a lot about since I've been in Albania*

is what the “rule of law” really means and how many people misuse that phrase. And I don’t just mean Albanians, the foreign projects that misuse that phrase without knowing what it means, drives me crazy. Having thought about this a lot, I believe that one of the most important things to make a “rule of law” state, is to have clear laws. Although the Civil Service Law is not badly drafted, it’s not clear. It had very ambiguous coverage. I’ll give you an example; Customs was never covered by it. The Customs administration is vast and it’s a source of people getting their friends jobs, lots of corruption, alleged corruption. And, the idea that the World Bank pushed on the Albanian government in 1999 was—let’s have limited coverage first. So, a lot of groups were not covered, and as a result, it became very confusing. A person fired from Customs would want to rely on civil service rights, but it wasn’t clear whether they were covered. At some time during the last nine years, that is since 1999, a decision of the Council of Ministers added civil service procedures to the Customs, then they took it away. Then there were some decisions of the Supreme Court just this year, that the Customs officials couldn’t rely on the civil service law. That was the right thing legally, but it gave the impression that the court was somehow protecting these officials or protecting the Customs administration against—but the basic problem was that the law had limited coverage, and how limited the coverage was, was not clear.

I’ll give you another example; you may know that the head of the tax directorate is on trial for the torture/murder of a Macedonian/Albanian in 1996. He has not been suspended from his really important state job. The Civil Service Law requires that a person who is a civil servant who is on trial for a work-related crime or a serious crime, and I think we would all agree torture/murder is a serious crime, is suspended until the case is over. But, because the tax directorate is not part of the civil service, he continues in his job. He goes to the office everyday. He drives up to the courtroom in an official car. Confusion is the enemy of the “rule of law” and people are confused about what the Civil Service Law covers, even when it’s respected. It has not been respected a lot since 1999, and that’s another problem.

REPISHTI: To expand a little bit on this point, what has been the role of the courts and the independent commissions in actually working with the law?

IMHOLTZ: *Well, the structure isn’t too bad. The Civil Service Law permits a direct appeal to the court of appeals when the state is complaining against a Civil Service Commission decision. The Civil Service Commission is supposedly independent under the 1999 law, it wasn’t under the 1996 law. It took a long time to get started, it operated fairly well, it fell apart last summer. The last few years have been very hard on all Albanian institutions. The term of the former chairman ended, he resigned a little bit early, and then there was a dispute over who was the new chairman. And there was a question of changing locks, and somebody was locked out of the office—childish, but sad because the dream in 1999 was to build real institutions. The Civil Service Commission has functioned as an institution; I assume you’ll be talking to some of the people there. I hope that it’s strong enough as an institution to overcome these temporary irregularities.*

REPISHTI: Yes. So, you do say that the last years have been hard on Albanian institutions. Would you expand a little more on the changes that you’ve seen?

IMHOLTZ: *Well, it’s—the government that came to power in 2005 called itself “government on a diet”, and they wanted to cut down on the number of people in the administration, plus reward their loyalists who had been out of government for eight years. And this process led to a lot of civil service disputes, a lot of people being fired or made redundant, and a very heavy financial burden on the*

government. Often, two people are being paid for the same job. I know lots of specifics, but we don't a lot—we don't have all the time in the world and I can't—a lot of institutions have become weaker outside the civil service area because of the centralizing tendency. But if I were to start lecturing about the ALUIZNI (Agency for Legalization, Urbanization, and Integration of Illegal Property), the legalization, and the respective role of decentralization, local government—I mean, we'd get very far off the point and very complicated very quickly. I think it's sufficient to give a summary that a lot of institutions have been seriously weakened in the past few years.

REPISHTI: If you do have any stories that you would like to share specifics, we are really looking for that.

IMHOLTZ: *Well, I—we don't have a lot of time and maybe we should go through the questions and then see if there is any time left.*

REPISHTI: OK. Let's see, now I would like to talk or discuss some more things that are specific to reform programs. One of them being, how to reduce precisely what we've been discussing; this political and social influence in the recruitment and promotion of civil servants. I would like to hear your view on some of the changes that may have been put in place in this area and how they have impacted civil service reform.

IMHOLTZ: *What do you mean—changes that have been put in place?*

REPISHTI: For example, thing such as tests or things that have been done to monitor the performance of civil servants. Is this something in the area?

IMHOLTZ: *I don't know enough about the procedures to be really specific on that. It's my sense that very little has been done. The law is what the law is, and the Department of Public Administration, which I'm sure you'll talk to, both its former and present employees, can tell you what they've done. A lot of people who are outside the government, like Filloreta Kodra, whom I mentioned, or the person who followed her, Xhani Shapo, is outside the government now too, and I worked with both of them when I was working in the Council of Ministers. They had different views, but both are very experienced and can tell you a lot more about what they've done. I am aware of the formal legal structure. I have a suspicion that beneath the formal legal structure is not too much attention to monitoring and—but this is natural, it's very hard to do unless you really want to do it. And it's easy to fool foreigners. (laughter)*

REPISHTI: One thing that we started to discuss was the independent Public Civil Service Commission. Usually to manage a civil service, you use a merit system, and it's important to create an independent body to manage the recruitment, the promotion, and dispute resolution, particularly, among other things. Sometimes though each of these bodies extends to the whole civil service, or at times it's more limited, like we discussed in Albania. So, I'm interested to explore a little bit more in depth your observations on this subject, based on your experience. Would you briefly relate the story of the introduction of the Civil Service Commission? Who pushed for the commission? What models were considered?

IMHOLTZ: *Well, again, you should talk to people like Filloreta about that. I know what the law says and I know some of the things that happened. And I know that the Civil Service Commission created under the 1999 law was independent, it has five members, and two are supposed to be chosen by local government. They took a long time to get it in place. But, it had had a very limited role, primarily dealing*

with the employment disputes, when people are fired. I believe, the Department of Public Administration always kept the recruitment and the—and of course what happens is that a person, a minister, a deputy minister, in some institution wants to hire somebody, they hire the person. They turn to the Department of Public Administration and say “Make it right.” And then there is a retroactive test and whatever, and it’s so many of these—but, you know, you talk about independent institutions and, you know Albania, it’s not that easy to make an independent organization. Even the Civil Service Commission, with its limited reach, has been under attack. I mean, you might have—let the public administration experts argue about whether the Civil Service Commission created under the 1999 law should have had a broader reach. I’m not sure how you could have made recruitment, how you could have really enforced recruitment. I mean fair recruitment, recruitment of the best.

REPISHTI: What do you think are the main challenges that keep these institutions weak in Albania?

IMHOLZ: *Well, you know the answer every Albanian would give you—the political class, an irresponsible political class. I have now served under four prime ministers and two different parties, so I’m unbiased in that sense too. There were three Socialist prime ministers during the period I worked in the Council of Ministers, and since the DP (Democratic Party) coalition took over I’ve been in the Ministry of Justice under three different ministers of justice. So, I think that there is a lack of real commitment to change. It’s a shame. The Albanian people deserve something better.*

REPISHTI: Now I’d like to ask you a little bit about the role of other actors, such as civil society or media. Do you think these are positive forces in pushing reform?

IMHOLZ: *I think they are positive forces, in general. But I don’t think they are positive forces in pushing reform, which is one reason why there’s been so little reform. As you know, civil society in Albania came out of the Communist era, very, very, very weak. And you know there is a very disturbing tendency in Brussels now to have funds for civil society go through the government. There’s a draft law, even in Albania, on this and it should be watched really carefully, because it will weaken civil society even more. I have information from some people in Brussels, that civil society people from Albania, who were there at a conference on the West Balkans, were arguing this very point. We’re supposed to monitor government, if we are suddenly dependent on the government for the money, in other words, if EU funds are gonna go through the government to civil society, they’re going to be even weaker. Civil society is weak in Albania. A lot of people have, as you know, looked at having an NGO (non-governmental organization) as sort of being a profit making organization, and it—. So, civil society obviously has potential. During the state of emergency in 1997, when, as I said, I waived my Fulbright and came back here because I wanted to be here, and I saw that among the only people who could keep going were the NGOs, because they were funded from outside and they kept getting their salaries. So that was a good thing.*

The media is badly paid, irresponsible, doesn’t understand things well, there’s lots and lots of newspapers with economic interests, publishers who push their reporters only to say things with a certain slant. With all that said, it’s good to have such a variety of media. It’s not a force for reform now, and I have to laugh because, you know, they have spent so much, they—the foreigners, me, people like me, have spent so much time and money on trying to train journalists and what have we done? As I said, journalists are badly paid, they have two or three

jobs, turn over real fast, and they don't really report things very well. But, both civil society and the media, in my opinion, in Albania, are a potential force to push reform. But their current weakness, and their past weakness, is one of the factors that has kept real reform from developing. I refuse to say that reform should be pushed by outside, because I don't think that works.

REPISHTI: Do you see an impulse or momentum for reform that may be happening now? Is anything in terms of civil service?

IMHOLZ: *No, right now is a very difficult time.*

REPISHTI: Let me ask you a little bit about whether there have been other reforms that have been put in place simultaneously with civil service reform, and how these other reforms in other areas may have impacted. What I'm talking about here is, for example, anti-corruption initiatives and such other things.

IMHOLZ: *Well, anti-corruption initiatives have been mostly rhetoric. I don't see anything concrete that's happened, at least legislatively. Of the laws that were passed in the 1999—you know, the state of emergency ended with a shift in government in 1997 and then in 1998 they were working on a new Constitution, so, a lot of things got started in 1999 at the same time. For example, they passed an administrative procedures code, and that was an attempt to bring more regularity to the administrative cases. Like the Civil Service Law, it's not a bad law. The Civil Service Law has limited coverage; the Administrative Procedures Code was designed to have broad coverage, that's good. People don't understand it well. Now, just this year, the government is doing a big push to create administrative courts. I've been involved in a lot of meetings involving the relationship of the Administrative Procedures Code and new courts. This government, especially under the Millennium Challenge Fund of USAID (United States Agency for International Development), has been trying to create one-stop shops for forming a business. They have this new tax procedures code. For the Millennium Challenge follow-on project, which is supposed to start in the fall, the government has asked that it help strengthen the administrative courts, which the government thought they would have created by then. But I have, as I said, been in the middle of that process, and it's going slowly. So, but the Administrative Procedures Code does exist and there is the raw material there for a better functioning of the government, though—I mean, the Administrative Procedures Code, ninety percent of it is within the administration. How people appeal decisions, tax, customs, all sorts of government decisions, and then only at the end do you get to the courts.*

Another reform that started, not a reform exactly, but the 1998 constitution created an ombudsman, people's advocate for the first time. 1999 saw the enactment of the law on the people's advocate. The first people's advocate, Ermir Dobjani, served five years, and has been active, and was reelected. So, there were a lot of initiatives during that year. The Freedom on Information Act was passed in 1999 also, almost at the same time as the ombudsman law, the people's advocate law. That has not worked well because the procedures have—it's not an easy thing to develop the culture of getting information from a government. Since I am a lawyer, and work more with the judicial system, I am aware of how hard it is, for example, to get a court decision, and court decisions are supposed to be public completely. If it's so hard to get a court decision, imagine how much harder to go in to the actual public administration and extract some information, even if the law permits you to do that.

So, those are some of the initiatives that I can think of that started in 1999 and have—everybody is becoming a little cautious right now, just because nobody is sure which way things are going. But, the legal basis is still there. By the way, SIGMA has been talking recently about totally revising the Administrative Procedures Code, and creating a new Administrative Procedures Code—not necessary, not necessary. You can imagine how disruptive it is for a country like Albania to change a complete structure. I'll give you an example; in 1992 one of the first laws elected under the new democratic government was a commercial companies law. Now, it wasn't perfect, it was the law I taught when I taught at the Magistrates School in the mid-1990s, but just a few months ago they enacted a completely new law based on some foreigner's model created for some former Yugoslav republics. It's disruptive for a country that doesn't have a lot of human resources. People are smart, as I said, but there just aren't that many of them. And I see this in the Ministry of Justice, where I've been working for the past three years. There aren't enough people to draft the laws. The Administrative Procedures Code and the related law on administrative courts have been left to outsiders, just because the ministry doesn't have the human resources. I have been constantly pushing for the Ministry of Justice to be strengthened. A lot of laws come from outside, for example, the Civil Service Law; the World Bank pushed it. I didn't work in the Ministry of Justice at that that time. I'm sure they were involved to some extent, but mostly that law was done in the Council of Ministers, and as I said, the Department of Public Administration was under the Council of Ministers at that time. But every government needs a central place where the expertise in law drafting is concentrated, and when you look at a law, at a draft law, you see its relation to all the other laws of the country. I—that has to be the Ministry of Justice in a civil—in a parliamentary republic like Albania, in my opinion. But, foreign projects push laws because of individual people they know in the Ministry of Finance, the Ministry of Economy, which has taken over a lot of the commercial laws.

REPISHTI: This is interesting because it leads to a question about the perception on how civil service performs inside these institutions, in the ministries. Would you be able to talk a little bit more about that and talk about some of the main challenges that civil servants face now, both internal, in terms of fulfilling their jobs, and external pressures as well, if there are any?

IMHOLZ: *Well, job descriptions are very rare. People don't know what they're supposed to do. Since the Civil Service Law doesn't work, many people are filling positions they are not qualified for. Albanian education is so terrible that people have really bad work habits. If you do work hard, you are in danger of having so much work to do, that you can't get it all done, and other people--. These are all formidable challenges.*

REPISHTI: Great. To talk a little bit about the recruitment of new talent and improving the attractiveness of civil service employment, and this is because I know that you are part of the Fulbright commission here in Albania, so, improving the attractiveness of civil service of course, as a career option, is of course, a very important objective. Would you talk about options that have been entertained in Albania, or that you are aware of, to attract talented people to civil service?

IMHOLZ: *They periodically talk about giving special salary supplements to people who have a master's degree from abroad, and things like that. And then Bernard Zeneli has been working for UNDP project in the Council of Ministers through several years, called "Brain Gain", you know, in attempts to get people back. But, since people see so often that coming, even with a great educational background, they come back here and they don't get a good job in the public*

administration. It isn't totally a matter of being paid. I mean, obviously, a salary supplement will help.

We don't have too much time, so maybe we can think about the questions most important to you, and I'll--.

REPISHTI: Yes. The way that the interview is set up is very thematic, themes and very specific. So, I will depart from the script and actually ask you open ended questions, more about, you know, this legal expertise that you have, and as well your long time in Albania that you've viewed. So, to discuss this in the context of civil service reform, to let you tell me what you think are some of the most salient points that, you know, someone setting civil service in places like Albania, what we should be aware of, and what are some of the main challenges of reform. Again, which is a very broad question, but--.

IMHOLZ: *Well, yes, the question is what, you know, you—I think I've identified some of the major problems. I should add arbitrary discharge, despite the civil service structure, despite the Civil Service Commission, is another one. It's very, very hard to be a civil servant in Albania. And, if there is one thing I believe, it is that that advice of outside experts is of limited value. Obviously, you need people who have experience to tell you if you are going in the wrong direction or not. And I often say that the only real function we foreigners perform is to be cheerleaders and sounding boards. Sounding boards in the sense that, as I said, if somebody's going in the wrong direction, you can discuss this with them. Cheerleaders in the sense that when they do something well, to make sure the world knows about it. The Albanian Constitutional Court, for example, has issued a lot of really good decisions in the last few years, and I have made a real point, through my project, to get them well known, translate them, get them around.*

The question of motivating people to really want to improve the civil service, even if it means not hiring their friends, is always a hard challenge, and some of the people who have spearheaded moves like that in other countries have been publicity-seeking people. Obviously, there is this tendency. Albanians are so critical of one another, you know, that when somebody who is a publicity seeker starts something—well, you know, it's like the old joke about the Albanian lobsters. You know the old joke about the Albanian lobsters? One of the old jokes, there are several old jokes about Albanian lobsters. But, the man walks into a bar with a crate of lobsters and he puts the crate by the door and orders a beer, and the bar man says "You better put a top on the box, because while you are having your beer, the lobsters are gonna get out." And he says "Don't worry, they're Albanian lobsters and as soon as one of them gets to the top of the box, the others will pull him down." This is a very common story told of other countries and that kind of thing keeps people from trying to be crusaders, or if they are crusaders here and get funded from outside people, then there's even more criticism inside. So fundamental changes are really needed to make a real reform.

The civil service, as a matter of fact, you know, speaking of SIGMA again, although I have been working with SIGMA, mostly on the administrative courts and administrative law, they have also been talking to the Department of Public Administration, now under the Ministry of the Interior, and they see a lot of need for changes. Although I don't think a new administrative procedures code is needed, I wouldn't be unhappy to see a new civil service law. But, the best law in the world won't do anything if you don't have people who have the incentive to enforce it and to really make it work.

REPISHTI: What do you think may be some of the changes, talking obviously only about the first part, the legal framework, without discussing the necessity for incentive, what do you think may be some things that can improve upon the 1999 law? You touch upon some of them being the coverage.

IMHOLZ: *Yes, well, the coverage, yes, the coverage ought to be broader. The coverage ought to be broader and more simple, and there ought to be a real—prohibitions on—I mean, obviously, I don't know how you can—you can't draft a law that can't be gotten around, no matter how detailed. It's not in accordance with the "rule of law" to make law too detailed. Because a law that's too detailed becomes confusing and it doesn't cover every situation. But, it should, for example, be specified very clearly in the law, that hiring somebody on a contract is a very exceptional case and it should be very strictly regulated, because that is abuse occurs all the time. The civil service right now is full of people who were hired on contracts, and they know they can be fired immediately.*

REPISHTI: Why has there been this shift to hiring via contracts in Albania?

IMHOLZ: *Because it's easier, and since so many people who had been hired through competitions were fired, there was the danger that they'd get their jobs back and it takes time to get somebody. You know Albanians don't like to take time to do anything.*

REPISHTI: That's true.

IMHOLZ: *I'm so sorry I'm going away for ten days. Ten days is not a long time to be away, but it's the last ten days of Parliament's session this year, and I expect all sorts of very strange things to be done in the last ten days, and I'll miss it. But I'll be back here on August 1st and I'll have to survey the damage.*

REPISHTI: That's great. Well, I thank you so much for your time and I will pause.

IMHOLZ: OK.