

6 EU administrative conditionality and domestic obstacles

Slow, hesitant and partial reform in post-communist Albania

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Introduction

Post-communist Albania has proved to be one of the challenging cases of administrative reform. As a report notes, ‘every political party that comes to power fills the state institutions . . . with its own people’ (Kajsiu *et al.* 2002: 5). Indeed, the transformation of the administrative apparatus inherited from the communist regime has evolved in a way closely related to the legacy of the one party-state, which subjugated all levels of state administration to the political rulers. The European Union (EU) requirements for the development of a permanent and professional bureaucracy regulated by specific laws (Dimitrova 2002) has, thus, had to come to terms with the contradictory reality of enduring instability and the politicization of the post-communist bureaucracy. This chapter analyses whether EU conditionality regarding administrative capacities and the use of its enlargement instruments in the function of reform can succeed to turn around the poor record of administrative change. In line with the focus of the book, the analysis here seeks to uncover the domestic obstacles that challenge the transformative power of the EU, and the resulting changes in this area of reform.

In order to analyze the role of the EU *vis-à-vis* domestic obstacles and other alternative sources of change, we adopt a bottom-up approach, which first analyzes the system of interaction at the domestic level and then checks if, when and how the EU ‘treatment’ provides a change in the domestic components of interaction. The chapter makes use of process tracing, temporal sequences and time-sensitive political analysis to discern whether the dynamics of reform result from EU pressure or other endogenous and/or exogenous factors at play (Radaelli and Pasquier 2008: 40). Furthermore, the bottom-up approach’s focus on the domestic process of reform can be helpful in highlighting the challenge of the implementation phases.

The chapter proceeds in four parts. First, it examines the evolution and characteristics of the administrative criterion that the EU has used in the Western Balkans. Second, it assesses the process of administrative reform and the scope of domestic challenges in two sequential periods of Albanian transition, which coincide with pre- and post-application of EU enlargement conditionality. The third part explores the use of the EU enlargement toolkit in bringing about

administrative reforms since the activation of the enlargement policy in 2000. The last empirical part then analyzes how and whether EU instruments have triggered a change in the observed patterns of reform. Evidence from the case study suggests that EU pressure has worked to safeguard domestic actors' formal commitment to the new rules for managing state administration in line with principles of professionalism, political independence and career stability. Yet, it has not succeeded in curtailing informal politicization and appropriation of the state by governing elites. Albanian governing actors have preferred to pay only lip service to the EU conditions by adopting new legislation in line with the EU prescriptions, while at the same time resisting implementation of the rules that would restrain their control over the state. The continuity of old patterns of political domination reflects governing actors' resistance to substantial change that would ultimately curtail the informal system of spoils created through decades of unruly transition.

The evolution of the EU's administrative criterion

The generally weak administrative capacities left after the fall of communism, and the enlargement experience in Eastern Europe, has pushed the European Union to demand a set of administrative reforms from its Eastern neighbours waiting in line for membership. The growing *acquis communautaire*, of around 200,000 pages of current EU legislation, has also necessitated the Union requiring its candidate countries to develop the ability to transpose and implement the increasing body of EU law. With the event of post-communist enlargement, the EU has, thus, progressively outlined a new criterion of administrative capacities, which has become an important addition to the package of enlargement conditionalities.¹

What administrative capacities does the EU require?

Given the lack of concrete templates to reorganize administrative systems in its member countries (Olsen 2003: 513), the new administrative criterion has evolved in a gradual, peace-meal and case-by-case fashion through the first wave of Eastern enlargement. The 1993 Copenhagen Criteria required candidate countries to develop 'the ability to take on the obligations of membership' before joining the union. Whereas the Copenhagen Criteria include a merely general and implicit administrative criterion, the Council of Madrid in 1995 specified that the required 'abilities' entail 'the adjustment of administrative structures' (quoted in Dimitrova 2002: 178). Agenda 2000, which summarized the Commission's opinion on candidates' preparedness to join the EU in 1997, became the first EU document to evaluate candidates' administrative capacities as a separate criterion. The conclusions of the Agenda, moreover, showed the increasing role of the administrative criterion in the process of EU monitoring: 'a judgment on the other criteria... depends also on the capacity of a country's administrative... systems' (European Commission 1997: 6). Consequently, the EU institutions managing the process of



enlargement have paid consistent attention to the development of administrative capacities and related reforms in the candidate countries in the East.

Parallel to the drafting of a general administrative criterion, the EU has also proceeded to elaborate more specific demands for guiding and assessing post-communist administrative reforms. The emerging criterion stipulates quite clearly the general course and related aspects of reforms that former communist administrations must undergo in order to operate effectively within the Union (Verheijen 2002: 248). Initially, the Commission asked a specialized institution within the OECD, SIGMA,² to identify the basic components of the administrative criterion. SIGMA's paper *Preparing Public Administrations for the European Administrative Space*, published in 1998, provided some baseline elements for assessing administrative progress in the candidate countries: (1) the adoption of civil service laws guaranteeing political independence and the professionalism of civil servants; (2) the establishment of a career system; (3) pay reform; and (4) training capacities (Fournier 1998: 113; Verheijen 2002: 250). EU enlargement documents issued between 1998 and 2004 build on – but also elaborate and clarify – SIGMA's baseline, while stressing the most problematic issues that the EU encountered on a case-by-case basis (Kochenov 2004: 18–20).

The various EU requirements on administrative reform tend to converge towards the classic Weberian model of bureaucracy, and its principles of independence, efficiency and professionalism (Verheijen 2002: 248). The EU prescription of a Weberian-style administration also entails specific personnel management rules regarding competitive recruitment, stable career system, payment schemes and training provisions, which constitute the classic model. Yet, these more specific rules are not always systematically spelled out in the EU's evaluation of particular countries. Kochenov's analysis of enlargement documents between 1998 and 2004 shows that the EU has mostly insisted only on candidate countries' general/legal aspects of reforms: the adoption of a civil service law; embedment of specific career management rules into a comprehensive reform/implementation strategy; and the creation of special institutions, such as some form of a general directorate for the civil service system, which can assume management responsibilities including appointments, training and systematic assessment of the performance of civil servants (2004: 18–20). In some cases, the Commission has additionally asked for the adoption of measures to reinforce administrations' transparency and accountability *vis-à-vis* affected actors. Country reports might also raise specific personnel management issues that are problematic in a particular country and at a given point in time.

The reinforcement of the administrative criterion

When the EU came to extend its policy of enlargement to the Western Balkans by 2000s, it had already developed a fully-fledged administrative criterion tailored to deal with the problems of the post-communist countries. The required model of a professional and stable state bureaucracy regulated by specific rules seemed to be the most adequate cure to the inherited deficiencies of former 'real socialist' state



organization, including the intermingling of the party and the state, precedence of political decisions over legal norms, and a personnel system relying on party nomenclatura (Goetz and Wollman 2001: 865). The EU institutions were also increasingly aware of the slow pattern of administrative change – low salaries, insufficient training, and highly politicised and unstable bureaucracies – across post-communist states long after the event of democratization and EU-led reforms (Kochenov 2004: 19). Moreover, the legal approach to reform, including the adoption of new laws, which embraced the dichotomy between politics and administration, proved insufficient to reduce the on-going politicization and instability of post-communist administrations. ~~Despite the quick adoption of new civil service codes, governing elites have continued to maintain control over the state bureaucracy, either by using the loopholes found in the new codes, frequently changing the legal procedures, or ignoring the letter and spirit of new laws (Verheijen 2001: 6–9; Dimitrova 2002).~~ Problems encountered in the post-communist space were particularly grave in the Western Balkan countries, most of which had experienced an additional breakdown of former state structures, **predominantly authoritarian leadership, and generally unruly transitions during the first decade of post-communist transformations.** Here, weaker state structures and prevailing illiberal leaders added to and complicated the overwhelming challenge of rebuilding rather than merely reforming the former communist administration.

In the Balkans' context of overwhelming tasks and challenging domestic factors, the EU has reinforced the principle of conditionality regarding administrative capacity. First, the EU has made it clear that a country's demonstration of progress will feed into the pace of accession (Council of Europe 2007: 2). **Progress is further qualified to include necessary legal reforms, but also 'a satisfactory track record of implementation' (ibid.).** Last but not least, enlargement documents do **prioritize the development of administrative capacities as one of the difficult issues that 'need to be addressed early on in the accession process' (ibid.).** In other words, in contrast to the previous Central and Eastern European candidates who were assessed on the basis of the legal dimensions of reforms (Dimitrova 2002), new candidates from the Western Balkans are assessed on the basis of both legal and implementation results, with results feeding directly into accession stages.

Administrative reforms and the weight of the past in Albania

On the eve of the transition in the early 1990s, the reform task faced by Albania seemed insurmountable. **The Albanian communist regime had gone further than its contemporaries in establishing political control over all branches of state power (Prifti 1999: 214–29).** During the decades of communist rule, all sectors of the state had become the exclusive property of devoted members of the communist party and their clique, which ensured a direct line of political control over the state and its total subjugation to political priorities (Biberaj 2000). Given the nature of the totalitarian system and the subordination of the state, if not its total merger with, the party, **post-communist reforms encompassed a wholesale reorientation of the administration with respect to politics, as well as a total restructuring of the**

administrative organization, legal framework and new career management system (Verheijen 2003: 480).

Moreover, challenging reforms had to be done by only a few reform-minded elites amidst weak-to-non-existent institutional capacities and constraining structures (Biberaj 2000). In this way, post-communist Albania was probably the paradigmatic case of lacking both agency and structure-related factors that can facilitate post-communist reforms. ~~On the one hand, communists' constant purges of all kinds of dissidence had deprived the country of organized political grouping and even individual leaders who, at the beginning of the transition, had a democratic vision and/or actual experience of working under a democratic regime.~~ Indeed, reforms had to be done by people 'inside' the *ancien régime*, and thus imbued with a lifetime's experience of working under one-party state rule. On the other hand, the chaotic and disorderly mode of exit from the *ancien régime*, which featured an inevitable clash between communist leaders willing to preserve the system and increasing street protests asking for regime change, signalled a period of extreme weak stateness and dissolution of previous institutions. ~~Thus this initial moment of 'openness' was an intensive period of institutional flux, where communist rules and institutions had become absolved, but they were only partially and slowly replaced by new ones.~~ This moment of institutional change, characterized by partial and hybrid rules, created many opportunities for political agents to shape, invent, but also bypass the rules of the game. ~~One could assume that, under such conditions, the post-communist elites, most of whom shared solid relations with the former regime, would inevitably resort to replicating the old versions of state organization and its subjugation to political exigencies.~~ One could also assume that the opportunities of privatization and large state properties, that were up for grabs in a period of legal uncertainty and weak structural constraints, have added to elites' incentives to control the state.

Politicization of the state, 1992–7

Albanian post-communist reforms have evolved in a way closely related to the legacy of the one-party state regime and the weight of its authoritarian past. Communist Albania became among the last communist regimes in Eastern Europe to enact liberalization reforms and allow political pluralism in December 1990. ~~The communist leadership proved united to defend the main tenets of the one party-state dictatorship until they were practically unable to control spontaneous, but increasingly massive, protests that took over the big cities and challenged the legitimacy of the regime in the second half of 1990.~~ The chaotic clash between the regime forces determined to protect the system and the unorganised massive groups unhappy with the regime gave way to a slow, tumultuous and uncertain quasi-revolutionary moment of change in the period between 1991 and 1992.

The Democratic Party (DP), the first anti-communist organization created after the sanctioning of political pluralism in 1990, merged various strata unhappy with the regime, which determined its strong and confrontational anti-regime rhetoric. ~~Its programme insisted on a quick 'shock therapy' intended to dissolve~~

the communist system and build up a new regime similar to other European democratic states (Biberaj 2000). Popular support for regime change enabled the DP to win a comfortable majority in the first free and fair elections held in March 1992. The electoral victory of the DP brought the radical anti-communist agenda to the very heart of the post-communist governing programme. ~~Although the first DP government included a group closely related to the previous regime, who advocated a milder approach towards regime change, and a more radical stratum, that advocated nothing else than a sharp division with the past, the government's choices sided with the hardliners who advocated a wholesale cleansing from the state of all communist era employees (Elbasani 2009b: 76).~~ The former bureaucracy left from the communist era was widely seen as a bearer of that system and not suitable for any kind of collaboration. ~~Given the lack of autonomous pockets of dissidence and knowledge in the communist regime, however, the next step was to fill state organs with anti-communist activists who lacked any relevant experience and expertise (Vickers and Pettifer 2000: 244).~~ The new democratic establishment might have had limited choices of independent professionals and expertise, but a new administration packed with party loyalists and anti-communist activists was probably even more poorly-equipped to cope with the challenges of transition than the former communist-era bureaucracy would have been.

The strong hand of the anti-communists in reshuffling the state bureaucracy was largely facilitated by the lack of a proper framework for ensuring the independence and protection of public employees from political authority (Shunsi 2004). The idea of separating the administration from the ruling party, not to speak of elaborated devices for a career management system, was completely foreign to the Albanian authorities until at least the mid-1990s, when the government adopted the first-ever civil service law. ~~Until its adoption, the working status of all public employees was regulated by the temporary revisions of the communist labour code. Article 24/1 of the code permitted the directors of state organs, who were by definition political appointees, to fire any employees under their responsibility, whenever they deemed it necessary to 'implement reform in the state sector'. Since the same directors were also entitled to elaborate on 'reform needs', there were practically no provisions to defend state employees from possible arbitrary decisions by their directors.~~ Another article, which allowed for the temporary recruitment of personnel without formal competition in state institutions, provided another 'gap', which was effectively used to place political candidates in all sectors of state administration. The two provisions were used to the extent that appointments made on the sole basis of political criteria became the main rule of recruitment in state institutions (World Bank 1998: 96). ~~When the first civil service law, aiming to install new employment rules, was adopted with the help of international institutions in 1995, it was so different from the preferences and the actual practices of the ruling majority, that it remained a letter of intentions, which was never complemented with the necessary by-laws to make it, at least formally, functional.~~

Thus, during the initial stage of transition between 1992–7, old rules and practices established during decades of one-party rule lingered all around late and



intermittent efforts to reform old personnel management procedures. The most immediate result of such reforms was an extremely politicized and weak bureaucracy, lacking even the most basic administrative skills and sophistication, with huge repercussions for the country's frail governing capacities (Vickers and Pettifer 2000: 250). By 1997, Albanians crowded the streets again, this time protesting the anti-communist government's mismanagement of transition, especially the state's failure to prevent the mushrooming of pyramid schemes and the consequent loss of the savings of not less than two thirds of Albanian families. The weak state built during the first years of transition became one of the main factors that took the country towards a new collapse, and prolonged Albania's difficult transition. The 1997 crisis took the country back to square one in economic and political terms, and demonstrated quite clearly that the need to develop a state with adequate capacities to govern had been ignored, and had lead to Albania's failed transition (World Bank 2000: 47).

The foreign drive to re-build a scattered state, 1997–2000

~~The next stage of reforms between 1997 and 2000 also featured the paucity of reformist groups and facilitating domestic structures, but benefited from the intervention of the international community, keen to bring the patched system together.~~ The Socialist Party (SP), which came to power after the fresh elections of 1997, enjoyed little legitimacy to initiate large scale state reforms. At the time, the Socialists, who had inherited the organization and prominent leaders of the former communist party, were widely seen as a mutation of the communist organization. They were also perceived as one of the main protagonists of the escalating civil disorder that destroyed the little progress achieved up to 1997. In addition, the chaotic situation that followed the collapse of the pyramid schemes, including on-going street protests, withdrawal of the state functions and reigning disorder across the country, confronted the new government with the emergent tasks of ensuring order and stability, instead of focusing on much-needed institutional reforms. On the eve of the second transition, the country still lacked leading actors with the vision and experience to steer the country on the path of reform.

Once in power, the Socialists perceived the inherited bureaucracy as politically biased and took care to place their own supporters in key state positions. Although no data were made public, different sources estimate that only during the first year of SP governance, 1,500 or 15 per cent of the total public employees were dismissed and replaced with the incoming party's loyalists (Freedom House 1998). The first to go were the key administrative staff at all levels of state institutions, but also simple technical supporting staff. By 1998, the state had lost a critical mass of the former administration, together with their professional experience and skills (United Nations Development Program 2003). Most of them were once again replaced with people chosen on the basis of political connections rather than the professional expertise needed to do the job. The existing legislation, effectively used by the outgoing majority, facilitated a similar reshuffling of the old administration in favour of Socialist loyalists and politically-suitable candidates.

However, the 1997 crisis and resulting state vacuum, just next to a troubled region and porous European borders, encouraged various structures of the international community to take leadership of a new effort to rebuild the collapsing Albanian state. ~~A myriad of international organizations joined to prioritize state reforms, as an urgent and necessary element to place the country on the path of sustainable transformation. In July 1997, the World Bank, EU, European Bank for Reconstruction and Development, and the International Monetary Fund designed a joint *Strategy for Recovery and Growth*, which listed public administration among the key components of future reforms (World Bank 1997: 3).~~ The World Bank, in particular, emphasized governance reform as ‘one of the central planks of its intervention and... the most important challenge facing the government of Albania’ (World Bank 2000). ~~Many other bilateral and multilateral donors also endorsed governance as a strategic priority of their assistance programmes and abundant aid allocations. A new *Strategy for State Institution and Public Administration Reform (SIPAR)*, only formally adopted by the government at the end of 1997, was in fact totally funded by foreign donors and agencies.~~ Meanwhile, the international actors also supported – in fact, literally drafted – new legislation to regulate different aspects of state bureaucracy in the period 1997–2000.

Donors’ prioritization of administrative reform has encouraged deep-seated change at the strategic and formal level of state reforms. ~~In addition to SIPAR, the government corruption plan and the economic programme, which were both drafted with the help of donors, included a range of administrative reform priorities. The grand strategy for state reform foresaw two consecutive major stages: (1) the creation of a small civil service core in central state institutions; and (2) the subsequent extension of civil service rules to other public institutions.~~ A series of legal changes followed rather quickly. The 1998 constitution, which was itself one of the components of the Strategy for Recovery and Growth, made sure to enshrine the desired principles of a modern professional administration. **Article 107 establishes that public employees must ‘apply the law and serve the people, be selected through examinations and be guaranteed tenure and special legal treatment’.** The strategic and constitutional guidelines of reforms were probably too general to have a direct impact, but they had an important role to set the broad confines of change along the classic Weberian model and launch a renewal process at the symbolic level.

Already in 1999, the government compiled a master strategy, which comprised the programmes drafted in the two previous years and described the concrete steps, measures and resources needed to proceed with administrative reforms. **The World Bank lent around 8 million USD ‘to provide required resources... to implement the Government’s institutional and public administration reform agenda’ (World Bank 2007: 2).** A new civil service law drafted with donors’ assistance was adopted in November 1999. The law reiterated the broad principles of classic Weberian-style state bureaucracy: professionalism, independence, integrity, political neutrality, transparency, service to the public, career continuity, accountability and correctness in the application of binding legislation (Article 3). Besides, most laws and by-laws necessary to implement the new civil service law were

adopted in the first half of 2000. Given that most strategic and legal initiatives bore the mark of international actors involved in the country, researchers rightly wondered, however, whether the impressive reforms would proceed beyond the adoption of a legal package passed just to please donors and reap the benefits of foreign assistance (Vaughan-Whitehead 1999: 21).

The application of EU leverage

The EU requirement for administrative reforms, involving the restructuring of administration along the Weberian classic model, became active when Albania had already proceeded to enact formal legislation and specific personnel management rules aimed at building a professional state bureaucracy. ~~The EU institutions had also previously been involved in the international initiatives to rebuild the Albanian state.~~ Yet EU leverage was initially limited to the control of assistance and pressure of aid conditionality applied in concert with other foreign donors. The promise of enlargement policies to the Western Balkans, since 2000, has activated the policy of EU conditionalities and a progressive range of requirements related to public administration. ~~In addition, the SAP provides new instruments targeting of specific areas of reform, monitoring the state of compliance, a new programme of aid and assistance, and upgrading of the institutional relations depending on the state of reforms to ensure that the target countries comply with required reforms (Elbasani 2008).~~

Targeting and monitoring

Since the intensification of EU conditionality in 2000, the EU annual reports, as well as other country-specific but also regional documents, target and periodically assess the stage of administrative reforms. The annual assessments include administrative concerns as part of both basic Copenhagen Criteria; additional SAP requirements; and the general capacity to proximate legislation with EU standards. ~~In addition, the EU reports clearly distinguish between legal changes and implementation results on different dimensions of the administrative criterion.~~ Most EU assessments tend to stress thin progress and frail administrative capacities. The very first assessment on Albania's preparedness to negotiate and take on the obligations of a Stabilisation and Association Agreement with the EU noted that:

The Albanian administration remains extremely weak. In almost every area where Albania would take on obligations under an SAA there is a lack of implementing capacity. The legal situation is broadly satisfactory [...], but there is little capacity to implement them. Until this situation can be redressed the new laws will exist only on paper.

(European Commission 2001: 4)

Later assessments tend to pick up different components of the administrative criterion according to the weight of the problem in that particular year. Yet most EU reports converge when assessing 'weak' (European Commission 2002b, 2003) or

'some progress' with many 'buts' attached (2004–11). In addition, all reports tend to draw attention to the discrepancy between satisfactory legal progress and insufficient implementation. In 2009, the EU clearly noted that 'The legal framework is largely in place through the civil service law, but its implementation remains problematic' (European Commission 2009c: 7). All the EU assessments, at least since 2005, emphasize political resistance to real change when stressing that 'progress in this area is undermined by . . . a lack of understanding and/or will to implement a real separation between the political and administrative levels' (European Commission 2005e: 22).

The European Partnerships, which outline the priorities the country must deal with in the short- and medium-term, have also targeted different aspects of administrative capacity. The last European Partnership (2008), much like the earlier ones, requires the country to 'strengthen [its] administrative capacity in preparation for implementing Stabilisation and Association Agreement (SAA) commitments' (European Council 2008: 3). ~~The document also includes a range of prescriptions to improve compliance: 'Ensure enforcement of the Civil Service Law and related rules in public administration; Ensure that recruitment, appointments, promotion, transfers and dismissals are conducted according to the established rules [...]' (ibid.: 4).~~ These same issues also appear in the list of medium-term priorities that the country must handle in the course of two to four years, showing that the EU has placed administrative issues high on the reform agenda.

EU assistance

Administrative capacities have also been included as one of the consistent categories of EU assistance in Albania. Institution-building, including administrative sectors, figured among all annual PHARE allocations from 1992 onwards (European Commission 2001: 8). The Community Assistance for Reconstruction, Development and Stabilisation (CARDS), which replaced PHARE in 2001–6, identified public administration as one of five macro-sectors of the new assistance programme, and the third in terms of yearly allocations (Elbasani 2009b). ~~The biggest share of EU assistance, however, has tended to favour sectoral capacities needed to implement SAA obligations rather than general horizontal administrative reform.~~

~~The new Instrument for Pre-Accession (IPA) Program, which replaced CARDS in 2007, focuses on key areas of political criteria, including civil service and public administration reform, all with priorities revised in light of the EU decision to draw the Western Balkans nearer to the promise of membership.~~ IPA's yearly allocations support different aspects of administration, including the improvement of the legal framework, training and especially the strengthening of the main institutions in charge of managing administrative reforms, the Department of Public Administration (DoPA). The new attention to 'general capacities', although still focused mostly on legal issues, tends to show that the EU might be intent on paying more attention to a country's development of general capacities as it proceeds nearer to the stages of membership.

Upgrading of institutional relations

However, the EU has been less consistent in using its more important instrument – upgrading institutional relations – in the service of creating a demonstrable record of administrative change. ~~Neither the many deficiencies identified in the functioning of public administration, nor the lack of capacity to ensure implementation of the Stabilisation Association Agreement, nor the long list of priorities Albania had to deal with as part of the European Partnership legal obligations, have prevented the EU advancing its contractual relations with Albania as provided within the SAP institutional framework.~~

In the case of administrative reforms, the EU has seemingly opted for the use of positive conditionality, which consists of dangling the carrot of membership without, however, upholding the advancement of institutional relations when there is evidence of limited progress. ~~Administrative reforms were among the main areas assessed, but hardly among the critical issues that could block the opening, negotiation and conclusion of the SAA with Albania.~~ Although the SAA is considered an important advancement of contractual relations and a step towards membership, administrative problems have been rarely fed into the negotiation process. The Steering Group created to increase the level of cooperation with the country in 2000 proposed opening of negotiations for the SAA, although the Commission had noted a ‘widespread lack of capacity to implement [its] own laws and international obligations’ (European Commission 2001: 8). ~~The opening of the negotiations was then postponed until October 2002 and its conclusion stalled until summer 2006, but these were openly a response to problematic elections and raising political instability in the country (Elbasani 2009b).~~ When Albania was invited to sign the SAA with the EU in 2006, the Commission still noted lack of progress:

The capacity of the Department of Public Administration to set common management strategies across the public administration remains limited. Career structures, career planning, salaries and performance management in the civil service and other public services remain poor. Political appointment of higher civil servants remains prevalent, restricting the growth of a professional senior civil service level.

(European Commission 2006c: 7)

Since the conclusion of the SAA, however, the EU has increasingly opted for the application of a more strict conditionality. The EU’s negative opinion on country’s preparedness to open accession negotiations in 2010 and 2011 seemed to reflect a widespread concern with state capacities, especially when it comes to implementation. As the opinion suggested:

The public administration’s legal framework [is] mostly in line with European standards and practices. However, proper implementation of the

legal framework is a concern, and the public service is very politicized, lacks transparency in appointments and is marked by high turnover of staff.

(European Commission 2010b: 6)

This time around, the administrative deficiencies were listed among the main 12 priorities that the country had to tackle prior to being considered for full candidate status in the forthcoming evaluation.

The inconsistent application of EU instruments in furtherance of the administrative criterion could be explained by the range of problems that the EU faces in challenging cases of democratization, such as Albania. **In addition, the issue could be low on the EU agenda as long as the country remained a ‘potential candidate’ with only a very distant prospect of membership. Administrative capacities, have gained increasing importance as the country has moved towards the institutional ladder and applied for formal candidate status in 2009.** The EU has now made it clear that Albania can progress to full candidate status only after dealing with administrative deficiencies noted in the EU opinion.

Half-hearted reforms and partial compliance

When EU conditionality came into play around 2000, Albanian governments, with the help of the international community, had already initiated a comprehensive reform for the modernization of the state bureaucracy. The new package of laws adopted after 1998 fitted well into the general EU administrative conditionality, requiring establishment of independence, professionalism and integrity of the state bureaucracy. ~~In the case of Albania, the EU enlargement leverage is facilitated by overwhelming support for integration among both elites and the wider public.~~ **The EU itself has recognized that ‘there is a clear official policy in favour of EU integration, which is frequently presented as a reform facilitator’ (European Commission 2002b: 32).** Yet, can the EU tools turn around the poor record of administrative change? How do they work in challenging environments that lack both sufficient political will and institutional software to curtail political control over the state bureaucracy? ~~Moreover, can the EU instruments facilitate reforms that go beyond the adoption of new legal codes to actually change behavioural patterns of politicization and control?~~

Political resistance and the deficient working of new legal models, 2000–5

The adoption of new legislation regarding the creation of a civil service system in the period 1997–2000 has had a positive impact on the re-organization of the partly functioning state bureaucracy. As the World Bank assessed:

Civil service management practices have been set up and have had a very important impact on the behaviour, the practices and the incentive structure of



politicians in hiring and firing decisions. It . . . replaces the previous system in which any civil servant independently of grade or function could be fired at the whim of anyone with sufficient authority.

(World Bank 2007: 27)

Reports from DoPA show that, since 2000, recruitment through open competition has increased yearly to become the main method of selection in the civil service; advertisement of job positions and competition for the same place have also consistently increased; the evaluation process has gradually developed; career mobility rules are in place and been made operational; public sector salaries have increased and been unified after a new scheme, while training capacities have steadily improved (Elbasani 2009b: 79–81).

Yet, and despite the legal changes, politicization and instability continued to be the dominant 'informal rule' all across the state administration. The legal package issued in 1999–2000 came too late to stop a new wave of dismissals that followed soon after the election of a new Socialist majority in 1997. In addition, internal political fighting and frequent changes of Socialist cabinets in the period 1997–2005 stimulated other waves of dismissals and re-politicization at all levels of state bureaucracy. SIGMA reports have noted that, despite legal protection of state employees, each cabinet had resorted to placing members of their inner circle in key state positions (SIGMA 2004: 32). ~~Whereas initial politicization of the state was justified as part of the regime change and cleansing of the former communist collaborators, on-going patterns of politicization in favour of each incoming cabinet seemed to hint at the various parties' strategies and leaders' tactics to co-opt the state administration and benefit from the spoils of controlling its resources.~~

The large reshuffling of the state administration, together with each cabinet turnover, was again facilitated by the incomplete legal framework, especially the limited coverage of only 2 per cent of employees by civil service laws (Shunsi 2004). The extension of the civil service system to include wider categories of public employees was never enacted in law as predicted in the initial strategy of reform. In fact, the waves of new dismissals encompassed mostly the mass of employees contracted on the basis of the labour code.

The test of the 2005 turnover

The 2005 national elections that brought to power a new DP majority were to be an important test for the sustainability of administrative reforms issued during the previous Socialist governments, but also the effectiveness of the EU to improve the weak record of implementation. Hence, the 2005 elections were to be a critical moment for demonstrating continuities or breaks with the previous patterns of state control.

The EU monitoring of progress and targeting of priorities, as well as concrete assistance in various sectors of administration, have provided some safeguards to administrative reforms. The scrutiny of the EU has probably shaped incoming governments' broad consent to the previously-adopted legislation and its

underlying principles of professionalism and stability, at least at the formal level (Elbasani 2009b). Yet most legal initiatives prepared by the predecessor government were either stalled or delayed. For example, the proposals to move to a second stage of expanding the civil service rules to include more state institutions never made it to the parliament. Some newly-adopted decrees further worked to reduce rather than expand the number of positions open to competition (Albanian Parliament 2006: 23). **Another initiative to shut down the Civil Service Commission, which has served as an independent institution processing administrative complaints, alarmed critics as a new manoeuvre to restrict external supervision of administrative procedures.**

In addition, the law itself was often ‘bent’ to accommodate political control over the state bureaucracy. Neither the comprehensive legal framework nor the EU mechanisms in fact succeeded in stopping a new wave of dismissals soon after the instalment of the new majority. ~~In 2006, a parliamentary report prepared by the opposition disclosed that, after the elections, the ruling party had adopted an internal regulation effectively ordering the prioritization of ‘candidates that have played a special role in elections’ for employment in state administration (Albanian Parliament 2006: 3).~~ Various sources asserted that only within the first year, around 4,500, or almost half of the overall state administration, were fired (Braho 2005). The dismissals included around 1,300 out of 2,500 civil servants. Most places left vacant were filled with political activists and with little regard for job requirements (Braushi 2008). The Parliamentary report, which builds on information provided by state institutions, listed a range of examples when public employees were recruited in open contradiction to the requirements for the position.

The confirmation of the same political majority after the 2009 elections was only partly a blessing for the stability of the administration, because of the inclusion of new coalition parties, which have seemingly placed their own supporters in the ministries and institutions now controlled by them. One of the scandals disclosed in the media in 2011 showed the Minister of Foreign Affairs and head of a the new coalition party, the Socialist Movement for Integration (SMI), instructing the Minister of Economy, also from the rounds of the SMI, to recruit ‘school friends’ in well-placed positions in the Ministry (Bertelsmann Stiftung 2012).

Following on the previous trends, the ruling majority has made full use of the existing legal loopholes and inventive strategies that stretch the laws in order to fill state institutions with ‘politically suitable’ candidates. **This time, the most common tool for the dismissal of civil servants was the frequent restructuring, up to three times per year, of the central institutions, a strategy which would automatically make current positions redundant.**³ Civil servants who lose the job from restructuring are then placed in waiting lists as required by law, but in contradiction to the law the lists are never used for new recruitments. New employees are typically recruited through temporary contracts, which circumvent both procedures of employment through open recruitment and the function of waiting lists

(Malaj 2010). In this way, and contrary to the constitutional stipulations that open competition is the main channel of recruitment in state administration, temporary contractual employment has become *de facto* the main channel of recruitment. A prime ministerial decree adopted in 2004 allows for temporary contractual appointments, but restricts them to exceptional cases of replacement for up to three months. Although employed through the 2004 decree, contractual employees often keep the position for longer periods, usually until confirmed in the same position through an ‘open recruitment’, which is in fact used to legitimize positions distributed through temporary contracts rather than assume new candidates. A typical case is the Ministry of Interior, where all 111 winners of recent ‘open competition’ have been in a working relationship with the institution before (Malaj 2010).

Not surprisingly, such practices at the border of legality have served to undermine ‘the procedures... for merit-based appointments’ (European Commission 2010b: 15). The repetition of the same old patterns of political control, even when broad civil service rules were in place, shows the effective resistance of vested political interests against legal measures that seek to curtail the system of politicization and spoils created through decades of transition.

Conclusion

The analysis of EU-driven change in the sector of public administration reform in the case of Albania shows the limits of the EU’s transformative power in cases that lack domestic conditions conducive to reform. The overwhelming task of transforming the inherited bureaucracy, when added to the lack of reformist elites and the undeveloped institutional infrastructure, have inhibited a meaningful transformation of the state bureaucracy into a depoliticized and professional entity as asked for by the EU.

Indeed, post-communist Albania has, from the start, been one of the problematic cases where the impetus for change has come from outside the political unit. The EU enlargement standards and instruments have added to the external pressures to reform the state bureaucracy, but their impact has been limited to the legal/formal aspect of change, with little-to-no change at the enforcement/implementation level. In the Albanian context, the adoption of legal acts in line with the recommendation of the international community, including EU conditions regarding the development of a professional bureaucracy, has reached its limits when it comes to the implementation of those rules that target the control of politics over the state bureaucracy and the spoils associated with it.

Both the vested interest in maintaining a politicized administration as well as weak, although developing, institutional capacities have obstructed the effectiveness of EU conditionalities to curtail the usage of the state by ruling majorities. Albanian political actors, in general, have readily accepted the myriad of foreign codes as well as the EU rules on administrative reform, but have usually subverted the process during the implementation stages. The vague association between ongoing bleak assessments and advancement of institutional relations with the

country have also allowed ample space for the governing actors to pay only lip service to the EU demands by talking the talk and pleading allegiance to the legal framework, while at the same time refraining from the cost of substantial reforms.

Notes

- 1 The administrative criterion consist of several dimensions: (1) horizontal administrative capacities that target the overall operation of the administrative system; (2) sectoral capacities that affect more specific capacities needed to cope with crucial policy areas of the *acquis*; (3) development of structures for managing intensified relations with the EU; and (4) increased capacity of regional governments and local administrations. This paper adopts a narrow concept of public administration focusing on the horizontal or general administrative capacities.
- 2 SIGMA (Support for Improvement in Governance and Management) was created in 1992 as a joint initiative between the EU PHARE Program and the OECD Centre for Cooperation with Non-member economies. It aimed to offer post-communist countries the OECD expertise and assistance on public administration reform.
- 3 Interview with a consultant working for an EU-funded project assisting public administration in Albania, Berlin, July 2010.