

PUBLIC SERVICE REFORM ASSESSMENT

Analysis of Legislative Norms and
Administrative Practice



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Executive Summary

Public service reform has been one of the key policy priorities for successive Georgian governments in the last two decades. The reform process was carried out in several stages, and involved changes of both administrative and legislative nature. The most recent of such changes was the new Law on Public Service, which was adopted by the Parliament of Georgia on October 27, 2015, and enacted on July 1, 2017. The new law introduced a number of important policy changes for the sector, the most significant of which was the adoption of a professional, career-based system of public service. In line with this model, the Law on Public Service established new rules for appointing and dismissing public servants, introduced the principle of lifetime appointment of public service employees and instituted a number of other incentives for increasing the efficiency of their performance.

This report provides an analysis of the implementation of the Law on Public Service in the context of central and municipal authorities. More specifically, the document scrutinizes how new legal norms and rules were put into practice in the following institutions: the Ministry of Education, Science, Culture and Sport; the Ministry of Finance; the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs; the Ministry of Regional Development and Infrastructure; the Mayoral Office of Batumi Municipality; the Mayoral Office of Gori Municipality; the Mayoral Office of Zugdidi Municipality; and the Mayoral Office of Kutaisi Municipality. The document covers the developments at these institutions in the period from January 2018 to December 2018.

The research employed a combination of qualitative and quantitative approaches. From qualitative methods, the research team used document analysis and in-depth interviews, while from quantitative approaches – the research team used the method of data analysis.

The research was conducted from May 2019 to July 2019 and was carried out in several stages. In the first stage, the research team retrieved official information from target ministries and mayoral offices, including on the number of employees, appointments, dismissals and appeals applications, as well as on instances of career development and disciplinary proceedings at these institutions. Also at this stage, the researchers gathered all legislative and normative acts pertaining to the public service reform, both at large and in the context of the new law. The research team processed the retrieved data using the method of document analysis. In the next stage, the research team conducted 24 in-depth semi-structured interviews with representatives of target institutions, including managers and employees of human resource, internal audit and administrative units. One more interview was recorded with a representative of the Civil Service Bureau. In the final – data analysis – stage, the statistical information and interviews were processed and compared, followed by research report compilation.

The main goal of the research report was to understand the policy implications of the Law on Public Service, and to plan any reasonable adjustments required. It does this by examining the legislative norms, statistical data and administrative practice in relation to the new law and the public service reform in general, as well as by drawing a number of recommendations based on the successes and the shortcomings identified in the course of the research.

Key Findings: Statistical Data

The research showed that the implementation of the Law on Public Service was characterized by both, positive and negative trends. Positive findings include: infrequent use of closed competitions¹ for hiring qualified/professional public officers in the transitional period², as well as higher participation of experts, civil society organizations and labor unions in the job competition commissions and distancing of political officials from the hiring process³. The research also highlighted a number of areas that require additional efforts from relevant public institutions, most importantly on the size of the bureaucratic apparatus, duration of job competitions, mobility transfers and performance evaluations.

Specific findings are:

- The percentage of those employed under administrative contracts⁴, as a rule, does not exceed the legal limitations (10% of all employees). The only exception is the Ministry of Regional Development and Infrastructure, where this figure stands at 14%;
- The number of those hired under employment contracts exceeds the legal limitations in all target ministries, as well as in Batumi and Gori municipalities. This has to be assessed negatively;
- Target institutions used closed competitions for hiring professional public officers eight times only, which has to be evaluated positively;
- Participation of external experts (representatives of labor unions, independent experts and policy specialists) was high in all target institutions. However, the Civil Service Bureau representatives were present in none of the job competitions held in the reporting period. This has to be disapproved since their presence is critically important for monitoring the progress of competition-related amendments;

¹ According to the Law on Public Service, there are four ranks of qualified/professional public officers: a) Rank I – top management level; b) Rank II – middle management level; c) Rank III – senior specialist level; and d) Rank IV – junior specialist level. Beginning from January 1, 2020, open competitions can only be held for the lowest, fourth rank.

² Although the Law on Public Service enacted on July 1, 2017, some of its new provisions went into force later. For instance, new provisions on performance evaluation and remuneration of public servants were enforced on January 1, 2018, while those making closed competitions mandatory for most qualified/professional public positions went into force only on January 1, 2020.

³ Ministers, deputy ministers, mayors and deputy mayors can no longer chair job competition commissions.

⁴ According to the Law on Public Service, there are three types of public servants: qualified/professional public officers, persons employed under administrative contracts, and persons employed under employment contracts.

- Target institutions failed to ensure proper introduction of the job transfer system. There were only two cases of such transfers in the target institutions, which speaks to the difficulties of its implementation;
- Cases of job promotion remained insignificant in the reporting period (27), which has to be assessed negatively;
- 160 out of a total of 225 persons hired under employment contracts were recruited without a competition⁵. This has to be assessed negatively as it undermines the idea of simplified competition and increases the risk of nepotistic decisions;
- The figure of dismissals of professional public servants (444 cases) is twice bigger than that of persons hired under employment contracts (205 case) even though the former enjoy much higher degree of protection under the Law on Public Service;
- Dismissals on discretionary grounds (283 cases) significantly outnumbered dismissals on mandatory grounds (161 cases), which has to be evaluated negatively;
- Dismissals upon personal application were critically high (199 of 444 cases). The corresponding figure was much higher in municipalities (127) than in government ministries (72). This raises the question of how genuine the requests are, particularly on the municipal level;
- Although public servants can recall personal applications for dismissal before the decision is finalized, no applicant used this right in the reporting period, highlighting the difficulties of this legal norm's implementation in practice;
- In general, disciplinary proceedings were mostly launched on the grounds of failure to perform official duties;
- As a rule, target institutions used softer forms of disciplinary measures, which has to be evaluated positively; It is also worth noting that financial sanctions were very rarely employed, even though regulations to that end were significantly tightened;
- The target institutions used maximum available time of three months for reorganization. Decrees authorizing the reorganization processes were of standard nature, and as a rule, did not contain detailed information on what changes were planned and which structural units would it apply to;

⁵According to the Law on Public Service, public institutions are entitled to hire persons under employment contract through a simplified competition or without a competition.

- Reorganization-related mobility transfers remain problematic since other public institutions refuse to hire dismissed public servants. Mobility at the level of central government works only when it happens within the institution where the reorganization process takes place. On the municipal level, mobility transfers were practically impossible to implement due to the lack or absence of vacant positions in the same municipality;
- The target institutions did not fulfil the court decisions on three occasions, and failed to reinstate unlawfully dismissed public servants.

Key Findings: Interviews

Majority of the respondents expressed positive sentiments about the new law. Most particularly, they welcomed the lifelong appointment of qualified/professional public officers; many of them noted that the law increased the sense of stability and security in the public sector, and reduced likelihood of dismissal on political grounds. New rules in the appointment procedures were evaluated overwhelmingly positively as well; according to the respondents, participation of experts, civil society organizations and labor unions in the job competition commissions contributes to the transparency and impartiality of the appointment process. The respondents also noted that stripping the political officials (ministers, deputy ministers, mayors and deputy mayors) of the right to chair the competition commissions reduced the chances of political influence over employment decisions.

Respondents concurred on the issue of job competition durations. According to them, competitions for vacant public service positions take around 2.5 months, reducing flexibility of public institutions, and sometimes, impeding their proper functioning. Almost all respondents, including a representative of the Civil Service Bureau, believe that reducing the length of job competitions is possible and desired.

Scrapping the institute of temporary replacements was evaluated largely positively, as a means to increase the impartiality of appointments. According to the respondents, the change significantly restricted the practice of formalistic competitions, and put the candidates in equal conditions. This was, however, not shared by a small group of respondents: one of the interviewees, for instance, said absence of temporary replacements creates vacuum on vacated positions, endangering proper functioning of public institutions.

Most respondents noted that specification of disciplinary proceedings and measures reduced the likelihood of unjustified and biased decisions. A small portion of the respondents, however, pointed out that there is no difference between the old and the new laws in terms of how disciplinary liability is regulated. One of the respondents also noted that the norms related to the disciplinary liability pay excessive attention to the rights of ordinary employees, reducing the freedom of action of those in managerial positions.

The respondents also pinpointed a number of areas that necessitate further action. The interviews showed that the right to use audio and video recording during job interviews is rarely used. One of the respondents also pointed out that if minor documentation is missing in the application materials of candidates, they are not given an opportunity to resubmit the missing information, potentially depriving experienced candidates of the possibility to join the public service.

There were mixed positions on the issue of open and closed competitions. Part of the respondents welcomed the change as a means to increase the motivation of public servants, while others noted that closed competitions would discourage qualified professionals to enter the public service. The respondents were also divided on the issue of probation periods. Part of them stressed that 12 months are sufficient for evaluating the competencies of public servants, while the other part noted that 12 months are too long for testing one's abilities. The latter group recommended reducing the probation to a period from three months to six months.

Several respondents, primarily from mayoral offices, raised the issue performance evaluations. According to them, their institutions do not possess the knowledge, experience and capacities required for conducting the evaluation process properly. They also think the weakness of the evaluation system is that it does not directly reflect on one's job promotion.

Majority of the respondents identified brain drain as one of the key challenges for their institutions, particularly at the municipal level. In their words, many qualified employees are leaving the public service for more competitive jobs, mostly to the private sector, but also to institutions of central government or other higher-paying public agencies.

Overall, representatives of administrative units were generally more critical of the new law than representatives of human resource units. Very often, human resource managers were highlighting the participatory nature of the reform process, while administrative managers were noting that the process was largely formalistic. As it seems, human resource managers as coordinators and drivers of the implementation process had an impression of a much greater participation, which was less so for the other - reform "beneficiary" - units.

Recommendations

The document provides a number of recommendations to the Government, mayoral offices and other relevant institutions. Those addressed to the target institutions highlight the need to:

- conduct periodic organizational needs assessment exercises, particularly with regards to identifying human resource requirements and development strategies;
- give preference to simplified competitions when hiring public servants under employment contracts;
- allow applicants to resubmit the missing documentation if there are only insignificant deficiencies in their application materials;
- more actively use career development tools for professional public officers, including transfer and career promotion;
- reduce dismissals on discretionary grounds, and ensure that such decisions are always well-justified;
- lay down specific plans for action in reorganization-related legal acts;
- facilitate transfer of public servants dismissed as a result of reorganization within the institution or to other vacant positions in the public sector;
- immediately reinstate officers in the same position, or if such position is not available, in an equivalent position, if a court issues a respective decision.

The report advises that the Cabinet of Ministers/municipal councils approve ministerial/mayoral requests for increasing legal limits of employment under administrative and employment contracts only when these requests are duly justified.

The document also recommends that the Civil Service Bureau provides necessary capacity-building support for public service managers in introducing the performance evaluation system, as well as ensures presence of its representatives at job competitions for vacant public service positions, particularly at the municipal level.



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