

institut alternativa

Recrutiment and Promotion in State Authorities

Semiannual Monitoring Report (January 1, 2013 – July 1, 2013)

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Summary

First six months of implementation of the Law on Civil Servants and State Employees had certain positive effects. Internet presentation of the Human Resource Management Authority offers a detailed insight into the reports on testing abilities and evaluation of candidates for job positions in state authorities. Also, filling of vacancies analyzed by the Institute Alternative, from the aspect of the time period between launching the procedures and selection of the candidate, can be assessed as efficient. However, until July 1, 2013, some of the legal and institutional preconditions for the application of the act were not met. Six out of thirteen envisaged by-laws, which were expected to elaborate the implementation of the new law, did not enter into force within the reporting period.

The report focuses on filling the vacancies in state administration. Furthermore, the focus is on those job positions which prescribe the general obligation of the head of the state authority to select the candidates who received the highest ranking during the previously regulated procedures of testing and evaluation. Only seven persons were selected in line with these procedures for job positions in state administration in the period between January 1 and July 1, 2013. In all seven cases, ranking list was composed of one candidate, who was subsequently selected for the certain job position. On average, 58 days was needed for these vacancies to be filled.

Around half of the state administration authorities aligned their acts of systematization and internal organization with the new law by July 1. Only five of them have done so within the prescribed deadline of 60 days after the start of the implementation of the act.

Although there is an increase in submission of information about civil servants and state employees into the Central Human Resources Record, this information system of the Human Resources Management Authority, which is a key to the human resource planning in state administration, is still only partially updated. By July 1, data for 7 out of almost 13 thousand servants and employees, who fall under the scope of the law, were not submitted to the system.

Institutional capacities for implementation of the new law and related by-laws are also insufficient. All the envisaged job positions in the Administrative Inspection and in the Human Resources Management Authority were not entirely filled, but only around fifty per cent of them.

Delays in responses to the freedom of information requests and failures of authorities to publish the lists of their employees hinder monitoring of the law's implementation. It is this necessary to ensure consistent implementation of the Law with regard to the recruitment and promotion in state authorities. Also, there is a need for efficient oversight of the application of the new rules, with an aim of preventing the abuses by hiring people via employment mediation agencies, which would make the obligation of testing abilities of candidates for job in state authority pointless.

Introduction

Implementation of the new Law on Civil Servants and State Employees (LCSSE)¹ started on January 1, 2013. The Law is expected to bring the working and expert skills, as well as candidates' overall abilities, as key criteria of recruitment and promotion in state authorities. Following the implementation of the new Law is particularly important given the remarks of the European Commission that this act laid down the main foundations for the establishment of a de-politicized and professional public administration².

The main novelties which the law brings imply more rigorous procedures of testing the candidates' abilities³, as well as general obligation of the head of the state authority to select candidates with the highest ranking⁴. Accordingly, the goal of this monitoring report is to identify challenges in application of the new rules and offer recommendations for overcoming them by reviewing the first six months of the Law's implementation.

The report focuses on state administration authorities, which had 10,479 employees on June 1, 2013⁵. Because of the different procedures for selection and appointment of senior managerial staff and heads of state authorities⁶, as well as interns⁷, the IA did not analyze these cases in more details. Relevant information was collected by continuous following of the Internet presentation of the HRMA⁸ and by the freedom of information requests, which had been sent to this institution and state administration authorities. Requests referred to practically entire documentation with regard to announcements for filling the vacancies which fall under categories of expert-managerial, expert and operational staff and of state employees⁹.

¹ Official Gazette of Montenegro, 39/11, 50/11, 66/12

² European Commission, *Montenegro 2011 Progress Report*, Brussels, 12.10.2011

³ Testing of candidates' abilities, in written and by oral interviews, is conducted by the commission composed of representative of the HRMA, representative of the state authority, and experts in the field required by the vacant post.

⁴ In general, head of the state authority should select the candidate with the highest ranking. Only exceptionally, after conducting interviews with all the candidates, he or she can select the other candidate from the selection list but in that case is obliged to justify such decision.

⁵ Response to the freedom of information request, from July 10, 2013 (the total number of civil servants and state employees who fall under the scope of law was 12,941 on June 1, 2013, because the LCSSE also regulates filling of vacancies in the service of President of Montenegro, Parliament of Montenegro, judiciary authorities, and prosecution, as well as in the Pension and Disability Insurance Fund of Montenegro, the Health Insurance Fund of Montenegro, Employment Agency of Montenegro, the Labour Fund and the Agency for the peaceful settlement of labor disputes).

⁶ Article 53 and 57, Law on Civil Servants and State Employees, Official Gazette of Montenegro, 39/11, 50/11, 66/12

⁷ Article 118, Law on Civil Servants and State Employees, Official Gazette of Montenegro, 39/11, 50/11, 66/12

⁸ http://www.uzk.co.me/index.php?option=com_wrapper&view=wrapper&Itemid=209&lang=sr

⁹ Category of expert-managerial staff entails titles such as chief, manager, supervisor, and the tasks usually performed are coordination, management and supervision of work of certain organizational units. The expert staff encompasses titles such as independent advisor, advisor or senior advisor and tasks performed are usually drafting of strategies, projects, and legal acts, administrative supervision, analyzing of the situation in particular field. The category of operational staff include titles such as clerk, independent clerk and superior clerk and tasks performed are keeping of records; gathering and exchange of information, reports, data and their processing; performance of simplest actions in administrative and other procedure etc. State employees

Also, analysis of the content and dynamics of adoption of legal acts, whose implementation is directly or indirectly relevant to the recruitment and promotion in state administration, served as indicator of fulfillment of legal and institutional preconditions for implementation of the new Law. Interviews with representatives of the HRMA, institution which has a key role in implementation of announcements for filling the vacant posts in state authorities, enabled a more precise insight into its capacities and capacity-building activities and into the trainings organized with an aim of a more successful implementation of the LCSSE and related by-laws.

The first section of the report offers a review of adopted by-laws, aimed at facilitating application of the new rules, as well as a review of fulfillment of institutional preconditions for their implementation. The second section focuses on the quantitative data about the implementation of vacancy announcements in state administration and on the transparency of the law's implementation. Following the findings about the challenges during application of the new provisions regulating recruitment and promotion in state authorities, recommendations, aimed at improving these procedures, are presented.

Dynamics of Adopting the By-laws

The LCSSE was adopted in July 2011, but with the postponed implementation in order for all the preconditions to be met in the meantime. However, during the 17 months long transition period, until January 1, 2013, only 4 out of 13 envisaged by-laws were adopted. Three more acts entered into force after the expiration of the legally prescribed deadline, until July 1, 2013.

The timeline of adoption of by-laws, required for the implementation of the LCSSE, was as follows:

- Code of Ethics of Civil Servants and State Employees (Official Gazette of Montenegro, 39/11) – adopted at the Government's session from March 5, 2012;
- Rulebook, regulating the way of monitoring and appraisal of probationary work of civil servants and state employees (Official Gazette of Montenegro, 51/12) - adopted on September 28, 2012;
- Rulebook on criteria and manner of compiling members of disciplinary commissions, (Official Gazette of Montenegro, 62/12) – adopted December 12, 2012;

perform administrative-technical and ancillary tasks that are necessary for timely and efficient performance of state authority activities.

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- Decree on the way of testing the abilities, determining the closer criteria and the assessment method of the job candidates in state administration authorities (Official Gazette of Montenegro, 4/13) – adopted on December 27, 2012;
- Rulebook on the content of vacancy announcement, method of correction and withdrawal of the announcement and electronic application to the announcement (Official Gazette of Montenegro, 8/13) – adopted on January 31, 2013;
- Decree on classification of civil servants’ job positions within levels and categories (Official Gazette of Montenegro, 12/13) – adopted on February 14, 2013.
- Rulebook on the content and manner of keeping the Central Human Resources Record and records of internal labor market (Official Gazette of Montenegro, 27/2013) - adopted on May 31, 2013.

Acts which were supposed to regulate preparation and realization of training programs, granting recognition and gifts to civil servants and state employees, as well as method of their evaluation, did not enter into force by July 1, 2013, although their adoption was envisaged by the LCSSE¹⁰.

The Decree on the criteria and method of evaluation of civil servants and state employees was adopted at the Government’s session on June 6, 2013, but it was published in the Official Gazette of Montenegro only on July 11, 2013. Also, the Decision on the formation of Ethics Committee, envisaged by the Code of Ethics of civil servants and state employees, and the Decision on appointment of president and members of the Appeals Commission were brought in the meantime.

Delays in adoption of the acts for the implementation of the LCSSE hampered creation of conditions for recruitment and promotion in state administration which would be exclusively merit-based.

For example, a more elaborated categorization of job positions in state authorities is a prerequisite of the successful implementation of the LCSSE. The new law thus prescribed obligation of the state authorities to align their acts on internal organization and systematization with its provisions 60 days after the start of its implementation the latest.

¹⁰ The Law prescribes exceptions for testing of candidates for job in Parliament of Montenegro, as well as for the evaluation of employees in the Parliament’s service. The Parliament was supposed to elaborate these procedures by adopting specific by-laws. Nonetheless, none of these acts have been adopted in the reporting period, Although since the start of the implementation of the LCSSE, the Parliament did not advertise any vacant post, according to the response to the IA’s freedom of information request, this cannot justify delays in adoption of necessary regulation.

Yet, the two acts, providing basis for categorization of job positions¹¹ along with the LCSSE, entered into force only in January and February 2013. State authorities thus did not have enough time to align their acts within the given deadline. Consequently, only 5 out of 32 state administration authorities¹², defined by the Decree on organization and manner of work of state administration¹³, adopted acts on internal organization and systematization by March, as previously prescribed by the law. However, only 13 state administration authorities¹⁴ more adopted new acts on systematization and internal organization until the end of the reporting period. The rest thus breached obligations relevant for the application of the LCSSE, suggesting the need for strengthening accountability of state authorities.

Institutional preconditions

The HRMA has a key role in implementing vacancy announcements for state authorities, while the Ministry of Interior Affairs (Administrative Inspection) has a key role in performing oversight of the implementation of these procedures. The HRMA, among other things, publishes announcements and organizes testing of candidates' abilities. It also keeps the Central Human Resources Record (CHRR), whose one of the components are annual grades of civil servants' work, which should be one of the key criteria for testing the candidates' abilities for work in state authorities. However, as already highlighted, the act on content and manner of keeping the CHRR was adopted with delay while the act on the criteria and method of evaluation of civil servants and state employees has not entered into force during the first six months of the law's implementation.

This problem is even larger given that the CHRR is not updated, despite the increase in submission of information about civil servants and state employees into this register. Number of civil servants and state employees in the Montenegrin state administration authorities, as they are defined by the Decree on organization and manner of work of state administration, on January 1, 2013, was 3,739 according to the CHRR, although over 10, 000

¹¹ Decree on the classification of job positions of civil servants within levels and categories (Official Gazette of Montenegro, 12/13) and the Decree on criteria for internal organization and systematization of jobs in the state administration authorities (Official Gazette of Montenegro, 7/13)

¹² Ministry of Labor and Social Care, Ministry for Human and Minority Rights, Ministry of Science, Legislative Secretariat, Administration for Inspections

¹³ Official Gazette of Montenegro, 11/2013

¹⁴ Administration for Public Procurement, Ministry of Culture, Ministry of Transport and Maritime Affairs, Ministry of Foreign Affairs and European Integration, Metrology Bureau, Directorate for the Protection of Classified Information, the Agency for Environmental Protection, Secretariat for Development Projects, Hydrometeorology and Seismology Bureau, Ministry of Health, Human Resources Management Authority, Ministry of Finance, and Ministry of Information Society and Telecommunications.

people is employed in these authorities. Until July 1, 2013, however, information for more than 3,000 of civil servants and state employees were also submitted¹⁵.

The HRMA has 28 employees¹⁶, although the new Rulebook on internal organization and systematization of the HRMA¹⁷ envisaged 45 persons for performing this institution's tasks. Its representatives claim that the existing human resources and space capacities are not satisfactory, given the scope of the HRMA's competences¹⁸. Illustratively, now it takes approximately ten days to implement procedures for testing candidates' abilities. According to the previous LCSSEE, these procedures were realized within two days on average.

Capacities of Administrative Inspection, which is in charge of performing oversight of submission of information into the CHRR and of determining illegalities and irregularities during the procedures for filling and announcing vacant posts in state authorities, are also not satisfactory. Currently, 4 administrative inspectors¹⁹ are active although the earlier rulebook on internal organization and systematization of the Ministry of Interior Affairs envisaged recruitment of 7 of them, while the current rulebook envisaged job positions for 9 administrative inspectors²⁰.

Representatives of state authorities in commissions for testing candidates' abilities also play an important role. Those servants, apart from the expert knowledge in the field, must be familiar with the procedures of filling the vacancies in state authorities. During 2012, the HRMA, according to the information it submitted on July 24, 2013, organized 55 trainings and seminars for 627 participants, and during 2013 it organized 25 trainings and seminars for 479 participants, relevant for implementation of the LCSSE and related by-laws²¹.

Nonetheless, delays in adoption of the relevant by-laws caused a delay in organization of trainings for their implementation. For example, during the reporting period there were only two trainings organized in February for 36 participants for the implementation of the Decree on the way of testing the abilities, determining the closer criteria and the assessment method of the job candidates in state administration authorities, and one

¹⁵Information obtained during the interview with the representative of the Sector for information system of the HRMA, July 22, 2013

¹⁶ As on June 1, 2013 (response to the freedom of information request, from July 10, 2013)

¹⁷ Adopted at the Government's session on June 6, 2013

¹⁸ Interview conducted with representatives of the HRMA, (heads of sectors for announcements, trainings, and information system of human resources and director of the HRMA), July 22, 2013

¹⁹ Information obtained from the chief administrative inspector, July 22, 2013

²⁰Government of Montenegro, Ministry of Interior Affairs, *The Rulebook on internal organization and systematization of Ministry of Interior Affairs*, May 2013.

²¹ More precisely, the trainings subjects included implementation of the Code of Ethics and integrity plans, ethics in the work of civil servants and state employees, as well as the work on the application for the information system of human resources, which is a basis for the submission of information into the CHRR. The trainings were also organized on local level, for local administrations employees. The implementation of the project "Good practices in the human resources management is also ongoing, and is a result of the cooperation between the HRMA and Northern Ireland Cooperation Overseas (NICO). It aims at standardization of rules for human resources management. The IPA project "Support to the Human Resources Management Authority" also aims at strengthening the HRMA's capacities.

training in April for 6 participants about the procedures of advertising vacancies, selecting and recruiting candidates.

Filling the Vacancies

During the first three months of the implementation of the new LCSSE, there were significantly less vacancy advertisements than after the first quarter. This is due to the presidential election, which was held on April 7, and the ban of the recruitment of new staff in state authorities by public advertisements in the pre-electoral campaign²². Therefore, in the first quarter of the year there were 18 advertised vacancies²³ (9 internal announcements, 1 public announcement and 8 public competitions), while in the second quarter of the year there were 59 advertised vacancies²⁴ (24 internal announcements, 18 public announcements, and 17 public competitions).

Since January 1 up to July 1, 2013, there were thus total of 77 advertisements for 229 job positions and 266 persons, who were sought for work in Montenegro's state administration authorities, as they are defined by the Decree on Organization and Manner of Work of State Administration (See Table 1). There were 25 public competitions for heads of state administration authorities. For this category of job positions, as well as for the selection of the senior managerial staff and interns, the new law envisages different procedures²⁵. The IA thus conducted a more detailed analysis of the 51 announcements for 177 job positions, and 200 executives for jobs falling into the categories of expert-management; expert and operational staff and into the category of state employees²⁶.

²² Article 21, The Law on political parties financing, Official Gazette of Montenegro, 42/11, 60/11, 01/12

²³ Apart from these 18 announcements, 6 announcements for 8 vacant job positions and 12 executives were also announced in the period between January 1, 2013 and April 1, 2013, for the purposes of state authorities which are not under the scope of the Decree on Organization and Manner of Work of State Administration (basic courts, State Prosecution and Misdemeanors Council).

²⁴ Apart from these 59 announcements, there have been 13 announcements more for 19 job positions and 38 executives in the period between April 1 and July 1, 2013, for the purposes of state authorities which are not under the scope of the Decree on Organization and Manner of Work of State Administration (basic courts, State Audit Institution, Audit Authority, Appellate Court)

²⁵ Testing the candidates for the job posts from category of senior managerial staff is conducted through "a specially structured interview", while testing the abilities of candidates for the heads of state authorities, after the list of candidates who meet eligibility criteria is determined, is practically reduced to the conversation between the candidate and the relevant minister. For selection of interns, who are persons being employed in state authority for the first time, head of the state authority has absolute discretion to choose any of the candidates who meet eligibility criteria.

²⁶ Public competitions, public announcement for 8 intern job positions for 22 executives (announcement, number: 02-2033/2, for purposes of the Ministry of Interior Affairs, published on June 1, 2013), as well as 2 secretary job positions for 2 executives in the Departments for programming and supervision of the Ministry of Foreign Affairs and European Integration, from the public announcement, number: 02-2072/1, published on June 17, 2013. were not analyzed in more details and were thus excluded from the previously cited number.

Table 1: Vacancy advertisements in state administration authorities in the period between January 1, 2013 and July 1, 2013

Type of advertisements	Total number	Number of advertised job positions	Number of sought employees
Internal announcement within the state authority	13	85	105
Internal announcement between the state authority	20	41	41
Public announcement	19	61	78
Public competition	25	42	42
Total	77	229	266

Based on the information obtained by the continuous following of the Internet presentation of the HRMA and by the responses to the freedom of information requests, our findings suggest that 6 vacancy announcements for 7 job positions and 7 employees in the category of the expert-managerial, expert and operational staff, as well as in the category of state employees, resulted in the selection of job candidates in the reporting period²⁷. For all the implemented announcements, the ranking list was composed from only one candidate who was subsequently selected for a certain job position. The list of eligible candidates was also composed from one candidate, in almost all cases, apart from the case of the vacancy announcement for the job position of tax inspector in Tax Administration²⁸.

On average, 58 days were needed for these vacancies to be filled, if the time period between launching the procedures for filling the vacancies and selection of the candidates is considered. No candidates applied to six vacancies for ten job positions from the aforementioned categories²⁹.

²⁷ The decisions were brought for the selection of candidates to the following job posts: Tax inspector – Chief of the regional unit of Tax Administration in Bar; Secretary in the minister’s office within the Ministry of Justice, independent advisor in the minister’s office of the Ministry of Interior Affairs; Independent advisor for the protection at work in the Ministry of Labor And Social Care, Independent clerk in the Department of Information Technology and independent clerk in the Office of General Affairs in Administrative Inspection; Independent employee- Chief Accountant in the Department of Financial Affairs in the Ministry of Justice.

²⁸ In this case, there were four candidates who met eligibility criteria. However, one candidate did not go through the testing procedures, while the other two candidates did not receive satisfactory grades.

²⁹ The HRMA informed the IA by the response to the freedom of information request (decision - number: 03/2612/1, from July 22, 2013) that no candidates applied for the following posts: Independent clerk I, head accountant in the Financial service in the Ministry of Foreign Affairs and European Integration, Independent

Transparency of filling the vacancies

During the first six months of monitoring, the IA faced numerous difficulties in obtaining certain information and delays in getting responses to the freedom of information requests. It also faced with different interpretations of the legal provisions by different authorities and with the concrete impact of the loose interpretation of the certain procedures onto transparency of the implementation of the LCSSE. There were certain positive shifts with regard to the information sharing and cooperation with relevant authorities, especially from the side of the HRMA, whose representatives demonstrated readiness to cooperate. Internet presentation of this institution, despite certain technical deficiencies, offers a detailed insight into the reports on testing abilities and on evaluation of candidates for job in state authorities, contributing thus to a more transparent implementation of the new rules.

Nonetheless, there was a tendency for two vacancy announcements in the Ministry of Justice to be implemented against the procedures, prescribed by the LCSSE, which imply an indispensable role of the HRMA in implementation of all the announcements and competitions as well as the obligatory tests of candidates' abilities. Also, vacancies in one state authority were filled according to the employees transfer agreement, in a way which suggests the need for specifying certain legal norms.

The IA had a complete insight into decisions on the selection of candidates, apart from one case, when Ministry of Justice submitted decision of a selection of a candidate for a vacant position of minister's secretary in a limited form, by erasing name and surname of the selected candidate³⁰, under the excuse of personal data protection. Ministry stated Article 14 and 24 of the Law on Free Access to Information as reasons for its decision. These articles prescribe the possibility of limiting access to information and regulate such access. However, this interpretation is opposite to the Article 12 of the same Law, which encourages proactive sharing of information among the state authorities, by envisaging duty of the state authority to publish a list of its servants and employees with their positions at its Internet presentation. Additionally, the fact that the Ministry itself

advisor - leading planner in Department for statistics and development of customs system and for the job position of the Independent advisor - leading system engineer, specialist for hardware, database, and operational system in the Department for the revenue collection in the Customs Directorate, two posts for Independent clerk and one post for independent employee/technical secretary in the general and financial service of the Secretariat for Development Projects, authorized official for the supervision of the execution of criminal sanctions in the Sector for Execution of Criminal Sanctions - Department of supervising the execution of sanctions, employee - carrier - driver in the Service for legal, personnel and office work for the Ministry of Justice; Independent advisor for maintenance of infrastructure-service investment and public procurement in the Ministry of Justice, authorized official for supervision of execution of criminal sanctions - Department for criminal sanctions in the Ministry of Justice (to the repeated announcement for a given position within the Ministry of Justice there was also no applications)

³⁰Decision of Ministry of Justice, number: 814 - 3217/13 - 2, from April 25, 2013, as a response to the freedom of information requests sent to the Ministry on April 23, 2013.

subsequently submitted the names of its employees with their job positions makes its previous rejection to provide an insight into the name and surname of the selected candidate even more questionable. Also, it should be noted that since the start of the implementation of the Law on Free Access To Information in February 2013, only 15 state administration authorities, including the authorities within the ministries, fulfilled obligation of the proactive publishing of the lists of their employees.

Demands from large number of authorities, such as Ministry of Justice, Real Estates Administration, Ministry of Finance, Ministry of Education, Ministry of Labor and Social Care, Public Procurement Administration, Ministry of Agriculture and Rural Development, Ministry for Information Society and Telecommunications, Administration for Inspection Affairs, for paying expenses of responding to the freedom of information requests additionally hinders the timely access to the necessary information. It is also against the principle of efficiency, since most of the documents could have been submitted in electronic form.

During the reporting period, there have been dilemmas with regard to the implementation of the internal announcements within the state authorities. In other words, the HRMA rejected to deliver documents with regard to two internal announcements within the state administration authority during the first half of 2013. In a response to the one freedom of information request, the HRMA explained that it was not able to deliver the report on the evaluation and the ranking list of the candidates who applied to the internal announcement within the state authority, published for the purpose of the Ministry of Justice on February 19, 2013, because the “entire procedure of the internal announcement was implemented within the Ministry of Justice”³¹. The HRMA also rejected to deliver documents about the other internal announcement within the Ministry of Justice, which was published on March 4, 2013. It explained that the documents are in the possession of the state authority, which is in charge of implementing this type of announcements, while the HRMA is only in charge of publishing them³².

Ministry of Justice informed us afterwards that there were no applications to two previously described announcements. Otherwise, there was a danger for them to be implemented in a way which would represent breaching of the new procedures. The LCSSE and the Decree on testing the candidates’ abilities assigned central role in the implementation of all the announcements, without exemptions, to the HRMA. What’s more, Ministry of Interior Affairs in its opinion issued in June with regard to the possibility of Ministry of Finance to hire 23 servants based on the internal announcement within the state authority, highlighted provisions of the LCSSE which prescribe obligation of testing the candidate’s abilities also in the cases of internal announcements within state authorities.

Implementation of internal announcements within state authorities by the authorities themselves would endanger the basic concept of the LCSSE, aimed at selecting the best

³¹Response to the freedom of information request, July 22, 2013

³²Response to the freedom of information request, May 20, 2013

candidates, because the mere testing of candidates' abilities without the HRMA in its organization is questionable. The fact that the Ministry asked an opinion about the possibility of promotion of certain people without previous testing thus demonstrates the lack of understanding of implementation of the internal announcements within state authorities³³.

Findings of the first six months of monitoring, apart from pointing to previously described dilemmas and insufficient transparency of certain state authorities, also suggest the insufficient elaboration of the law and related by-laws. In return, it is difficult to assess legality of implementation of certain procedures, as demonstrated by filling the vacancies in the Administration for Inspection Affairs.

By comparing the trends in number of employees in state administration authorities with filling the vacancies, along the procedures prescribed by the LCSSE, it is evident that only in the period between April 1 and July 1, 2013 the number of employees in Administration for Inspection Affairs increased by 6 although only one decision on selection of one employee was brought in the same period. In a response to the freedom of information request, it was explained that five persons were recruited based on the employees transfer agreement with the capital Podgorica. They were appointed to the job position Inspector I of the space protection in Podgorica. However, there is no legal foundation for making this agreement. The assessment of its legality is thus difficult to make.

Decree on the organization and manner of work of state administration from January 2012³⁴, which envisaged formation of Administration for Inspection Affairs, prescribed that this newly formed administration should take over employees from state administration authorities, but not from the local administration. Also, it was envisaged for the inspectors in charge of space protection to be taken over within 120 days after the Decree enters into force, in the first half of the 2012. Transferred inspectors were supposed to continue the work until the expiration of their mandate, or until their appointment according to the new LCSSE, which prescribes obligatory testing for candidates for this job position as well.

Although the Law on Local Self-Governance prescribes that the acts regulating status of civil servants and state employees should apply by analogy to the local servants and employees, the precise and consistent implementation of these norms usually lacks in practice. The previously described case of transferring inspectors supports this view. Apart from these dilemmas, it should be pointed out that Administration for Inspection Affairs took over five employees with delay. Hence it is justified to ask why they were not appointed in line with the LCSSE, whose implementation was launched in the meantime.

³³ After the expiration of the reporting period, the HRMA informed the IA that the announcements for this ministry were implemented in line with the Law.

³⁴ Official Gazette of Montenegro, 5/2012

Employment mediation and invisible servants

During the reporting period, media published information that revealed the case of circumventing obligatory procedures for filling the vacancies in state authorities. In other words, the daily *Vijesti* reported that the State Commission for the Control of Public Procurement Procedures (hereinafter: Commission) temporarily recruited three persons via Dekra, agency for employment mediation, for the period from January 1 and March 31, 2013. Subsequently, the same persons were hired for another three months period in the same way. This is opposite to the provisions of the LCSSE which prescribe obligation of internal and public announcements for filling the vacancies in state authorities. Testing of job candidates is thus obligatory.

The LCSSE applies to the employees of the professional service of the Commission³⁵. However, Commission in this case did not seek publishing of the announcement, but it signed the employees transfer contract with the agency. Recruitment of this kind makes pointless the role of the HRMA in announcements of the vacant posts in state authorities and in the implementation of these announcements. It also breaches the Labor Law and circumvents the obligation of securing financial means for filling the vacancy.

In other words, occasional and temporary tasks, as they are defined by the Labor Law, are tasks which do not require special knowledge and expertise and do not last longer than 120 work days within the calendar year with specific person. On the other hand, the response of the Commission³⁶ that three persons were hired via agency for employment mediation on behalf of expenses for contracted services because there was no enough budget for wages of employees and their proper recruitment is also illegal. We remind that the Article 35 of the LCSSE prescribes that the head of the state authority can launch procedure for filling the vacancy only if necessary financial means, among other things, are secured.

In a final instance, this kind of recruitment makes insight into the precise number of people, hired in the state administration of Montenegro, impossible. For example, although in its report on the work during the 2012, Commission said that there were 6 persons employed in its professional service³⁷, 3 permanently and 3 on the basis of service contract, in a response to the freedom of information request³⁸, this state authority said that its professional service has three employees. It thus excluded people hired via agency for employment mediation.

³⁵ Article 141, Law on public procurement, Official Gazette of Montenegro, 042/11-21

³⁶ *ND Vijesti*, July 17, 2013. Politics (p. 2)

³⁷ *Report on the work of State commission for control of public procurement procedures*, State commission for the control of public procurement procedures, June 2013

³⁸ To the freedom of information request, sent on July 16, 2013, State commission for the control of public procurement procedures responded on September 17, 2013, decision - number: 09 – 183/7 - 2013

Conclusion

There have been certain positive steps since the start of the implementation of the new LCSSE. The HRMA demonstrated readiness to cooperate, and Internet presentation of this institution offers a detailed insight into reports on testing abilities and on evaluation of candidates for employment in state authorities. Also, given the limiting circumstances, primarily consisted in inefficient institutional capacities, implementation of the announcements which was analyzed in more details can be assessed as efficient.

However, start of the implementation of the new law was primarily marked by the failure of authorities to meet some of the legal and institutional preconditions for successful application of this act. That is a cause of justified concern about the consistency of current and future implementation of the new solutions, which are expected to break with nepotism and politicization in Montenegro's state administration.

Main problems noted in the reporting period, with regard to the lack of fulfillment of legal and institutional preconditions, are:

- Delays in adoption of by-laws for the implementation of the LCSSE (adoption of the five by-laws was still pending after July 1, 2013, while only something more than a half of state administration authorities aligned their acts on systematization and internal organization with the new law);
- The CHRR is only partially updated although there is an increase in submission of information about civil servants and state employees into this information system of the HRMA;
- Capacities of the HRMA and Administrative Inspection for the implementation of the LCSSE and related by-laws are insufficient, especially in terms of insufficient number of employees, which is currently in both institutions significantly lower than the number envisaged by the relevant acts on internal organization and systematization;
- Delays in adoption of by-laws, especially of the Decree on the way of testing the abilities, determining the closer criteria and the assessment method of the job candidates in state authorities, negatively affected the number of organized trainings for the application of this act, whose adequate implementation is a key to the evaluation of the working and expert skills and overall abilities of job candidates.

During the reporting period, not enough job candidates have been selected so it is too early to make conclusions about the level of implementation of the new general rule, which prescribes that candidates with the highest ranking should be selected for job positions in state authorities. Still, certain experiences with the implementation of announcements suggest that the implementation of the LSCEE lacks transparency. Main problems, noted in that respect, are:

- There are indications that, based on the public registers, it is impossible to determine the number of people hired to work for state authorities;
- Tendency for the two internal vacancy announcements within the state authority, more precisely, within the Ministry of Justice, to be implemented exclusively by the

authority itself, without participation of the HRMA, what could endanger transparency and legality of filling the vacancies in these cases;

- Employees transfers between state administration and local administration authorities are insufficiently regulated;
- Delays in responses to the freedom of information requests, incomplete responses to these requests, and failures of large number of authorities to publish the lists of their servants and employees;
- By signing the contract with the agency for employment mediation one state authority circumvented the rules prescribed by the new LCSSE, revealing potential for abuse of the law.

Recommendations

1. Legal framework for implementation of the new LCSSE needs to be finalized and consisted implementation of all relevant acts ensured;
2. All state administration authorities, which failed to align their acts on internal organization and systematization with the new law should do so as soon as possible;
3. Activities of updating the CHRR should be continued, with an aim of reaching the complete datedness of this information system of the HRMA, which has the key role in t human resources management in state authorities and represents the basis for implementation of the many provisions of the LCSSE;
4. All the envisaged job positions in the HRMA and Administrative Inspection should be filled;
5. The HRMA's capacities for the implementation of the Decree on the way of testing the abilities, determining the closer criteria and the assessment method of the job candidates in state administration authorities should be enhanced by organization of focused professional trainings;
6. In line with the Law on Free Access to Information, all state authorities should regularly update and publish on their websites complete lists of their civil servants and state employees, along with their job positions, in order to ensure complete transparency and easier monitoring of the recruitment and promotion in state administration;
7. Recruitment and promotion in state authorities, opposite to the LCSSE, should be prosecuted with an aim of preventing circumvention of the new rules, which could forestall the break with nepotism and politicization in state authorities;
8. The HRMA and state authorities should ensure consistent implementation of legal provisions regulating competences for filling of vacancies, in line with the opinion

issued by the Ministry of Interior Affairs, and thus prevent for internal announcements within state authorities to be implemented by the authorities themselves.

9. The Law on Local Self-Governance and other related by-laws for the implementation of the LCSSE and the Law on Local Self-Governance should specify definition of the “analogous” implementation of the provisions regulating status of civil servants and state employees onto the local level, including the employees transfers between state and local administrations.

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Institute Alternative (IA) is a non-governmental organization, established in September 2007 by a group of citizens with experience in civil society, public administration and business sector.

Our mission is to contribute to strengthening of democracy and good governance through research and policy analysis as well as monitoring of public institutions performance.

Our objectives are to increase the quality of work, accountability and transparency, efficiency of public institutions and public officials; to encourage open, public, constructive and well-argument discussions on important policy issues; raising public awareness about important policy issues, strengthening the capacity of all sectors in the state and society for the development of public policies.

The values we follow in our work are dedication to our mission, independence, constant learning, networking, cooperation and teamwork.

We function as a think tank or a research centre, focusing on the overarching areas of good governance, transparency and accountability. Our research and advocacy activities are structured within five main programme strands: i) public administration, ii) accountable public finance, iii) security and defense, iv) parliamentary programme and v) social policy.

On the basis of our five programmes, we monitor the process of accession negotiations with the EU, actively participating in working groups for certain chapters. Our flagship project is the Public Policy School, which is organized since 2012.

In our hitherto work, we had joint projects with Center for monitoring and research (CEMI), Centre for Civic Education (CGO) and European Movement in Montenegro. When it comes to international partners, we have cooperated with Centre for Control of Armed Forces (DCAF) from Geneva, Support for Improvement in Governance and Management (SIGMA), a joint initiative of the OECD and the European Union, European Policy Center from Brussels, Center for International Studies (CESPI) from Rome, Center for Study of Democracy – Sofia, etc.

Managing of the organization is divided between the Assembly and the Managing Board. President of the Managing Board is Stevo Muk. Research Coordinator is Jovana Marović, PhD.

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