

institut alternativa

Monitoring report:  
**RECRUITMENT AND PROMOTION IN  
STATE AUTHORITIES IN 2014**



Podgorica, May 2015



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Name of the publication:

**“Monitoring report: Recruitment and promotion in  
state authorities in 2014”**

Publisher:

**institut alternativa**

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*We owe special gratitude for the successful production of this report to the Human  
Resources Management Authority.*



This report has been produced as part of the Institute Alternative (IA) project entitled “State Administration in Montenegro – Equal for All.” Opinions, findings, conclusions, and/or recommendations in this report are those of its author and do not necessarily reflect the positions of the State Department / US Government.

Podgorica, May 2015

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## ABSTRACT

Two years into its implementation, the contribution of the Law on Civil Servants and State Employees towards establishing a merit-based employment system in state administration has been limited due to inconsistent application of new rules and poor competition for vacancies.

The fact that very few candidates successfully pass the mandatory testing procedures for any given job position, on the one hand, and the broad interpretation of the head of state authority's discretionary right to select from among the top five candidates, on the other hand, hardly contribute to the efforts at establishing a recruitment system that would be based on objective criteria.

Promotion of civil servants and state employees is virtually non-existent. According to available data, during the reporting period not a single decision on promotion has been passed. The legal provision that stipulates excellent results are a basis for promotion but only into a higher pay-grade is clearly not the right solution for motivating and keeping the best skilled employees.

In 2014, the number of complaints against heads of authorities' decisions has more than doubled compared to 2013. A big portion of the complaints is against the decisions on selection of candidates, decisions on reassignment, and performance appraisal. Out of the 322 complaints and decisions that Institute Alternative has analysed, as many as 222 have been upheld, meaning more than two thirds. Most complaints were adopted due to formal mistakes by state authorities.

Transparency of the skills testing is at high level. The Human Resources Management Authority (HRMA) regularly publishes ranking lists on its website. However, it is more difficult to obtain data from state authorities, due to the high costs of accessing the information (over 500 EUR for obtaining the data required for this year's monitoring). Of the 18 state authorities that we contacted requesting more detailed information on recruitment and promotion, only the Ministry of Defence refused to supply us with names of civil servants who were appointed to positions at this institution in the second half of 2014.

## INTRODUCTION

The Law on Civil Servants and State Employees (LCSSE) has been in force since January 2013. It was introduced with the intention to set up a different system of selection for civil service employees, one that would be merit-based<sup>1</sup>. Namely, the previous absolute discretion of the head of state authority to appoint any candidate who achieves satisfactory results during testing procedure has now been narrowed down to the obligation to choose from among the top five candidates from the list. In addition, the first ranked candidate is to be chosen by default, and the head of state authority may select another candidate only by providing a specific reasoning for such a decision.

In addition to this Law, the Government adopted a decree regulating the skills assessment for candidates applying for work in state administration authorities.<sup>2</sup> According to this bylaw, key capabilities and traits assessed in candidates are professional and expert qualities, written test results, theoretical and practical knowledge, oral interview results, and the grade point average. A special commission formed by the Human Resources Management Authority (HRMA) performs the skills assessment.

This report is drafted as a continuation of the first monitoring report on recruitment and promotion in state authorities, which the Institute Alternative originally drafted with the view to contributing to a more efficient and transparent implementation of new recruitment and promotion rules.<sup>3</sup> The fact that the process of adopting all the bylaws needed for the implementation of the Law took until late 2013 further asserted the need to continue monitoring the law's enforcement into its second year. This was also noted by the European Commission in its 2014 Progress Report on Montenegro.<sup>4</sup> The Report focuses in particular on recruitment for the lower-grade positions, a procedure that entails a detailed skills assessment. These positions are in the categories of operational staff, expert and expert-management staff, and state employees.<sup>5</sup> The data were gathered from free access to information requests sent to select state authorities, the Supreme State Prosecutor, the State Audit Institution, the Commission for monitoring the public procurement procedures, and the Parliament of Montenegro (see Annex 1). Namely, the LCSSE is applicable to 56 state authorities<sup>6</sup>, as well as other institutions that are specifically mentioned in the Law.<sup>7</sup>

For this reason we included among our case studies even those institutions that are not state administration authorities in strict terms but are state authorities in the sense of the LCSSE. In addition, the Parliament of Montenegro administers skills assessment independently of the Human Resources Management Authority (HRMA), which enables for a comparison

1 Ministry of the Interior, "Report on implementation of activities from the Action Plan for implementing the Public Administration Reform Strategy 2011-2013, with an adjacent draft Action Plan 2014-2015," Podgorica, December 2013.

2 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, No. 04/13.

3 Institute Alternative, "Recruitment and Promotion in State Authorities – annual monitoring report (1 January 2013 – 1 January 2014), Podgorica, 2014.

4 European Commission, *Montenegro Progress Report 2014*, European Commission, Brussels, October 2014.

5 The expert-management staff category encompasses titles such as chief officer, supervisor, manager, etc. The expert staff category encompasses titles such as independent advisor, senior advisor, and advisor. State employees perform administrative-technical and ancillary tasks that are necessary for timely and efficient performance of state authority activities. In addition to these categories, the Law also recognises the title of senior management staff. However, skills assessments for those positions are only performed through a specifically structured interview.

6 Decree on Organisation and Manner of Work of State Administration, Official Gazette of Montenegro, No. 5/12, 25/12, 61/12, 20/13, 17/14, 06/15.

7 This group of institutions encompasses, in addition to state administration authorities, the respective services of the President of Montenegro, the Parliament, the Prime Minister, the Constitutional Court, the courts, and state prosecution, as well as the Pension and Disability Insurance Fund, the Health Insurance Fund, Employment Bureau of Montenegro, the Labour Fund, and the Agency for Peaceful Resolution of Labour Disputes.

of procedures in different state authorities. Through free access to information we gathered copies of complaints and decisions on the complaints of civil servants and state employees. In obtaining the necessary information for this report, in addition to desk-based research and free access to information procedure, we held six interviews with key stakeholders.

The monitoring we conducted has enabled us to map key recruitment and promotion issues. In addition to a summary representation of the findings, we aimed to highlight, where possible, the characteristic cases of recruitment and promotion procedures and other key aspects of human resources management in individual state authorities. However, a limiting factor was that the Appeals Commission has granted us only limited insight into its cases, with redacted names of authorities and positions for which the complaints were submitted.

Even though it was not the primary objective of this report to quantify certain trends representative of all state authorities subject to the LCSSE, we did use some quantitative data obtained from the official reports of line institutions or in direct communication with those institutions' representatives. We owe a particular thanks to the HRMA representatives for their assistance in our research.

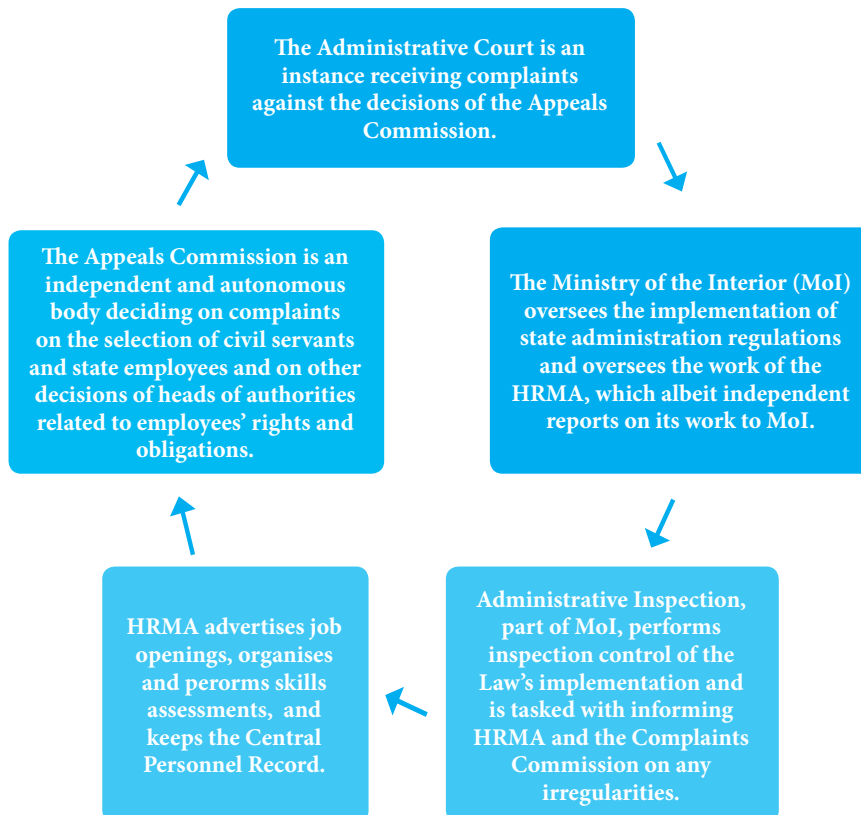
The report is divided into six key parts. Part one analyses the institutional framework and key data interpretation; and part two brings into question the practice of discretionary right of heads of state authorities to select other the first-ranked candidate. Part three's emphasis is on analysing civil servants' and state employees' promotion, including the issues of their appointment to higher or lower positions. Part four focuses on transparency; and part five provides an overview of the legal protection in recruitment and promotion procedures. The final part of the report offers a summary of the key findings and possible avenues for improvement.



## Institutional framework:

The key institutions for recruitment and promotion procedures in state administration authorities are the Human Resources Management Authority (HRMA), the Ministry of the Interior (Administration Inspection), the Appeals Commission, and the Administrative Court. Below is a visual overview of key competences of these institutions in the process of filling the civil servants' and state employees' vacancies and their promotion.

*Chart 1: Competencies of the key institutions for conducting the procedures of recruitment and employment in state authorities*



The capacities of these institutions have somewhat improved in 2014 in comparison to 2013. The number of employees' data entered into the Central Personnel Record (the human resources management information system for state organs) has risen. The number of personnel whose data have been entered into the system has more than doubled. On 1 January 2014 this number was 4,043, whereas on 1 January 2015 it was 8,546. Bearing in mind the overall number of employees (around 10,300) in 56 state administration bodies, this comes down to 82.7 %<sup>8</sup> of Record's completion.

It should however be noted that, apart from the number of civil servants and state employees entered into the Record, there is no official information on the completeness of the data. In other words, the rulebook on managing this IT platform<sup>9</sup> envisages a rather exhaustive list of required data for all employees with the view to a more efficient human resources management in state authorities. This list requires the name of the authority, exact title and description of tasks for the position, personal data of the civil

<sup>8</sup> Data obtained from HRMA.

<sup>9</sup> Rulebook on Content and Manner of Keeping the Central Human Resources Records and Internal Labour Market Records, Official Gazette of Montenegro, No. 27/13.

servant or state employee, the level and type of education and qualifications, previous working experience, performance appraisal, and other information such as command of foreign languages, IT skills, other skills, etc. With this in mind, in order to have efficient resources management it is necessary to keep the record of the exact number of civil servants and state employees for whom this data has been entered. This would enable for a full insight into their professional qualities and performance, especially given the fact that performance appraisal is a basis for promotion, and adequate reassignment to another post is among the criteria used in skills assessment for positions in state administration.

In spite of some progress being made in updating the Record, no significant progress has been noted in strengthening the capacity of key institutions for recruitment and promotion procedures. HRMA's staff has remained at the same level (37 employees) as in the first year of the Law's implementation, and this institution still lacks eight more executives provided for in the act on internal organisation and systematisation of this institution. Administrative Inspection is also unsuccessful in filling the nine envisaged vacancies for administration inspectors. In 2014 there were as little as seven administration inspectors.

The Appeals Commission's composition is pre-determined, and it consists of the chairman and four members, whose mandate is five years without the possibility of renewal. An improvement over the previous Law has been the professionalisation of the position of chairman (the current chairwoman is employed to this position full-time).

## Recruitment and promotion: key numbers

According to HRMA data, almost 800 more candidates applied for job openings in 2014 compared to 2013 (3277 and 2479, respectively).<sup>10</sup> However, both years of the Law's implementation saw a similar issue of low number of applications per post on average. To illustrate, the average number of applications per post in 2014 for a total of 677 announcements and competitions was just two.

The number of candidates per post in 2014 was notably very low for internal announcement within state authority (0.48) and for internal announcement among state authorities (0.72) – less than one candidate per ad. On the other hand, most candidates applied for public announcements, which are issued for entry-level positions (5.31 candidates per announcement in 2014). In principle, the number of applications for public announcements is higher for lower-level positions, such as interns or independent advisers III, whereas the number of applications is extremely low for higher-level positions that are not filled through internal announcements. In the first two years of the LCSSE enforcement there has been a growing trend of complaints to the Appeals Commission. To illustrate, in 2014 the number of cases dealt with by this office grew by 203.19%, and in the period from 1 March until 31 December 2013 the number further grew by 35% compared to the year before. Of the overall number of completed cases, 52.79% of complaints, or 566 in total, have been adopted, whereas the remaining 506 have either been denied, rejected, or the process had been put to a halt.<sup>11</sup>

During the reporting period, not a single decision on promotion was adopted, as a decision can only be made for a promotion to a higher pay-grade when the civil servant in question receives an *excellent* mark in performance appraisal two years in a row. However, whereas HRMA data claim that a majority of employees received a *good* grade in 2013,<sup>12</sup>

<sup>10</sup> Human Resources Management Authority, "Report on the Human Resources Management Authority Work 2014," Podgorica, March 2015.

<sup>11</sup> Information provided by HRMA.

<sup>12</sup> According to HRMA data, 6835 civil servants and state employees were assessed in 2013. Of those, 2238 were assessed as *excellent*, 3981 as *good*, 596 as *satisfactory*, and 20 as *non-satisfactory*.

the currently available 2014 data point to a conclusion that the majority of civil servants and state employees were given an *excellent* grade. According to the data entered into the Central Personnel Record, of the total 2050 appraisals that were entered into the Record for 2014, as many as 1569 contained an *excellent* grade, 410 *good*, 67 *satisfactory*, and only four employees were given an *unsatisfactory* grade.

#### In sum:

Even though 2014 saw more candidates apply, this number is still significantly lower than the number of candidates from among whom, according to the Law, the heads of state authorities are allowed to select candidates.

In 2014 not a single decision was made on promoting civil servants or state employees.

The number of submissions to the Appeals Commission more than doubled in the second year of the Law's implementation as compared to 2013. The majority of complaints have been upheld.

## A contest without contestants

One of the key problems when it comes to recruitment in 18 bodies, which were additionally in the focus of this report, is the low number of candidates who make it to ranking lists for heads of authorities to choose from, in practice resulting in the average of just 1.63 candidates per position. It should be noted, however, that no recruitment in line with the LCSSE took place at the Pension and Disability Insurance Fund, the Ministry of Health, and the Directorate for the Protection of Confidential Data.<sup>13</sup> Out of the 446 employees hired by the remaining 15 state authorities, as many as 60% (269) had faced no competition at the skills assessment tests. In other words, 204 of them were the only candidates to pass the skills tests for their respective posts. In the remaining 24 cases, where more than one vacancy was advertised, the final ranking lists had exactly as many successful candidates as were required by each respective vacancy. A total of 65 candidates were recruited in this manner. The ranking lists had more successful candidates only in cases when vacancies were advertised through public announcements. Even in these cases the average number of competing candidates was relatively low, which led to very few candidates undergoing skills assessments.

Low competitiveness for certain vacancies could to an extent be explained with limited human resources in Montenegro, i.e. few candidates that meet the criteria, and especially those prescribed by internal announcements that are issued solely for higher positions in the civil service.<sup>14</sup> However, there is limited demand even for the public announcements issued for entry-level positions, which is surprising given that civil service jobs were traditionally considered the most attractive ones in the country.<sup>15</sup>



In spite of certain steps forward, the 2013 Law failed to respond adequately to the need to limit the arbitrariness of heads of authorities when hiring candidates. The number of candidates from which the head of authority may appoint a civil servant is three times higher than the number of candidates who are successful in skills assessment tests.

<sup>13</sup> At this Directorate, one person was hired on an indeterminate contract, but this was done pursuant to the Law on Data Protection, which prescribes different procedures for certain positions to those prescribed by the Law on Civil Servants and State Employees.

<sup>14</sup> Public announcements are issued by default only for entry-level executive and expert positions, whereas other civil service positions are by default advertised internally or among institutions in order to stimulate greater use of internal resources and to rationalise public expenditure.

<sup>15</sup> According to a survey conducted for UNDP Montenegro, a great number of Montenegrin citizens believe that civil

The reasons for the lack of interest in both the internal and public vacancy announcements and public competitions require further analysis. However, the fact that few candidates apply propels the need to redefine the civil service employment policy. In particular, the institute of internal vacancy announcements has not met the expectations. Having in mind the extremely low numbers of applications for internal vacancies within institutions, a question begs as to whether the relatively high costs accrued by this recruitment method (which entails establishment of special commissions, involving external experts and psychologists, and the skills assessment procedure) are justified.

## Discretion without explanation

To reiterate, one of the key novelties found in the LCSSE was the duty to employ the top-ranked candidate by default. Only exceptionally and with an explanation is the head of authority allowed to decide to hire another candidate after the interviews have been conducted. However, heads of authorities have rarely given sufficiently convincing arguments to substantiate such decisions. From the appointment decisions we have analysed for only 35% (158) selected candidates were clearly stated in decisions that they were top-ranked. On the other hand, the decisions appointing other than top-ranked candidates were vague and ambiguous.

Out of 130 complaints submitted to the Appeals Commission in 2014, 26 were submitted because other than first-ranked candidates were chosen. It is common place for heads of authorities to state that they have made a decision to appoint second-ranked candidates solely on the basis of an interview, without further elaborating of the reasons for doing so, which resulted in the majority of those complaints being upheld.

## Flawed explanations

In addition to failing to state explicit reasons in their appointment decisions, heads of authorities often state reasons not prescribed by the Law. Most common errors of such kind are:

- » Applying criteria that are in direct collision with the merit-based employment principle;
- » Applying criteria reserved for skills assessment as oral interview criteria;
- » Not applying properly the constitutional and legislative provisions on the obligation to observe equal representation of national minority communities in state institutions;
- » Favouring candidates who have already worked at the institution.

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servant jobs are excellent career opportunities due to various privileges they entail. Almost two thirds (64%) of those surveyed would rather earn 450 EUR per month in the civil service than 750 EUR in the private sector (See: United Nations Development Programme (UNDP) Office in Montenegro, *National Human Development 2013: 'People are the real wealth of the country'. How rich is Montenegro?*, Podgorica, 2013).

## ‘Unwarranted’ criteria

In a certain number of cases, head of authority’s discretionary right not to appoint the top-ranked candidate is interpreted in a way that directly collides with the principle of merit-based employment. While analysing decisions and complaints, we encountered two particular cases where failure to appoint the first-ranked candidate was particularly worrisome as the decisions were due to the head of authority’s assessment that the candidates were insufficiently motivated for work requiring high school education given the fact that they have expressed an ambition to pursue further education and professional development.

In one of the complaints about appointment that was upheld due to an unintelligible explanation, which prompted the complaint in the first place, the top-ranked candidate claimed that she was not selected because she had previously allegedly terminated her employment relationship unilaterally. However, she was previously hired on a contract for occasional tasks, which does not envisage a termination notice. This case, which we later ascertained came from the Real Estate Directorate,<sup>16</sup> is very suggestive, given that the so-called temporary and occasional contracts are, in addition to service contracts, the most susceptible ones to misuse, as they may be used as mechanism for bypassing the relatively strict employment provisions prescribed by the LCSSE. The fact that the termination of a temporary contract in this case was interpreted as unilateral termination of the employment relationship, if the statements outlined in the complaint are correct, this would corroborate the indications that these contracts are being misused to bypass the regular procedures for civil service employments.

In a certain number of cases, the explanations on the selection of candidates that were not top-ranked contained criteria normally used in HRMA skills assessments tests, i.e. the criteria that were already employed for the purposes of making ranking lists and lists of candidates for the heads of authority to choose from and make the final decision. For instance, a candidate was selected for the Secretariat for Legislation even though she was not top-ranked, and the explanation was that she has shown “knowledge of tasks within the competences of the Secretariat” and that she gave clear and precise answers to “the questions related to Montenegro’s legal system.” These are criteria that should be used in HRMA’s skills assessment procedures, and not for interviews with heads of authorities.

There were also cases of formal errors in oral interviews between short-listed candidates and heads of authorities. In one case, the interview was not conducted by the head of authority but by employees who were previously not given mandate to conduct interviews. Our analysis of complaints and pertaining decisions of the Appeals Commission has also lead us to believe that in at least three instances the heads of authorities have scored interviews even though they are not part of the skills assessment and consequently there are no benchmarks and criteria for scoring them.

In one case, the head of authority made a decision that the minimal difference in the scores of two top-ranked candidates, expressed in decimals, was not of critical importance, which cannot be employed as justification for selecting the second-ranked candidate. Additionally, in this case the head of authority made a personal reasoning that the composition of the skills assessment committee was inadequate due to the fact that one of its members was sup-

Heads of authorities have in at least three instances scored the interviews they had held with candidates, even though the interviews are not part of the skills assessment.

Two candidates complained about not being selected due to the arbitrary assessment by the head of authority that in the near future they might be motivated to apply for higher positions.

<sup>16</sup> Even though the Appeals Commission has limited, without prior explanation, access to names of institutions and positions for which the complaints were submitted, it was possible to deduce from reading the material that the institution in question was the Real Estate Directorate.

posedly related to the first-ranked candidate. This is also not in line with the Law, as in cases of doubt regarding the composition of the committee it is necessary to require exemption of committee members that are related to candidates prior to the skills assessment procedure and not express doubts in the legality of the decision-making process only after the results have been published.

One instance related to the Parliament showcases an issue of unfamiliarity with the provisions regulating employment in state bodies. Between the two candidates that had the same score in skills assessment, the candidate who “had a better psychologist recommendation” was selected, even though the psychological evaluation of the candidate to perform tasks ought not be scored.

## Proportional representation of national minorities

In five cases that were analysed, national minority candidates were selected even though they were not top-ranked, with an explanation that the decision was informed by the need to observe proportional representation of minorities. However, three complaints against such decisions were upheld with an explanation that the LCSSE does not prescribe the need to give priority solely on the basis of belonging to a minority group.

These cases highlight a lack of awareness of the legal provisions requiring observance of proportional representation of minorities in state administration. The ambiguous application of this provision is partly due to the fact that the Law fails to define in more detail what ‘proportional representation’ entails and how it is to be achieved. There is also no reliable data on the ethnic structure of the civil service, as it is not obligatory to state one’s ethnicity.<sup>17</sup>

## Favouring candidates who have already worked at the institution

It is often the case that candidates who have already worked at the institution to which they are applying are being favoured in hiring procedures. Even though such decisions have grounding in the need to ensure team continuity and employee trust, they are in essence contrary to the purpose of the LCSSE. This Law upholds the so-called *open position system*, meaning that all vacancies are to be filled through a competition or announcement and not through promotion of civil servants and employees, which is the main trait of the so-called *career-based system*.

According to our findings, more than 60 candidates were appointed over the course of our research period to positions at the Ministry of the Interior with the explanation that they have, among other things, already been employed on a temporary basis and have demonstrated “excellent qualities and professionalism in performing tasks.” The candidates, however, were not first-ranked at skills assessments. In addition, assessment of expert and professional qualities in previous positions is done by default for the skills assessment procedure and hence further underlining them in this context is superfluous.

Furthermore, the MoI explained that better ranked candidates have been appointed to other positions they applied for. However, we at IA believe that such explanation is unsatisfactory. It fails to provide clear and compelling arguments as to why the other candidates have been selected other than their expert and professional qualities in previous postings. Moreover, the legislation does not define more closely the instances in which certain candidates are top-ranked in skills assessments for more than one vacancy.

<sup>17</sup> Read more on this topic at the Ministry of the Interior’s *Information on the representation of minorities in state authorities*, Podgorica, December 2014.



## (In)ability to transform fixed-term contracts into indefinite contracts

The previously outlined case of selecting candidates who have already spent time at an institution on fixed-term contracts highlights a broader set of issues of transforming a fixed-term contract into an indefinite contract. In our first monitoring report on recruitment and promotion in state authorities,<sup>18</sup> the IA highlighted the failure to solve adequately the legal status of fixed-term employees before the entry into force of the LCSSE, which has further deteriorated the job security of these employees.<sup>19</sup>

Namely, the Law stipulates that candidates for civil servant and state employee positions may enter employment on a fixed-term contract only to replace a temporarily absent civil servant or state employee for the period of their absence, to work on project-related tasks, aid with temporarily increased workload, or to train interns.<sup>20</sup> On the other hand, as underlined by the State Audit Institution, a great number of people were employed on fixed-term contracts across the civil service, contrary to legal provisions.<sup>21</sup>

However, whereas the Labour Law stipulates that fixed-term contracts must after a period of time transform into an indefinite contract, this provision does not extend to employees at state authorities. Namely, given that the LCSSE and Labour Law are acts of the same legal force, the latter only has subsidiary applicability for civil servants and state employees.

Two questions remain to be answered from this conundrum: one about the possibility of favouring candidates who have previously had fixed-term contracts in contravention of the law and the other about the protection of their rights. In other words, bearing in mind the peculiarities of such legal framework, there are no guarantees that persons who have been employed on fixed term contracts in state authorities will remain in these positions despite the fact that their contracts have been extended for years. This conclusion also draws on the analysis of cases submitted to the Appeals Commission during the reporting period.

Two complaints have been submitted because the appellants believed that the conditions were met for their fixed-term contracts to become indefinite contracts after five years. However, these complaints were dismissed with the justification that fixed-term work in these cases is fully regulated by the LCSSE and that there is no possibility for subsidiary application of general law regulations in this regard. In one of the complaints, which was upheld because the decision it questioned was incomplete and unclear, the appellant even highlighted the fact that he spent more than 15 years working in the position advertised by the job announcement.

## The paradox and limits to freedom in decision-making

Bearing in mind the peculiarities of heads of authorities' discretionary rights, as well as the lack of precision in the LCSSE in terms of defining circumstances under which other than the top-ranked candidate can be selected for the position, the following question comes to mind: What are the limits to the discretionary rights of heads of state authorities to choose from among candidates?

<sup>18</sup> Institute Alternative, *Recruitment and Promotion in State Authorities – Quarterly Monitoring Report – (January 01 – April 01, 2013)*, Podgorica, 2013.

<sup>19</sup> There were over 500 fixed-term contract employees in 2013 at MoI alone, even though the Law stipulates these contracts are allowed only in exceptional cases.

<sup>20</sup> Article 48, Law on Civil Servants and State Employees.

<sup>21</sup> See: State Audit Institution, *Annual Report on Performed Audits and Activities of the State Audit Institution of Montenegro for period October 2012 - October 2013*, Podgorica, October 2013.

The Appeals Commission has in practice adopted a position that the head of state authority's personal impression from his/her talks with all the candidates from the list and his/her assessment of their level of motivation or communication skills are appropriate arguments to select other than the top-ranked candidate. Whereas this position could be justified considering the principle of autonomy in running the human resources policy in state bodies, it is paradoxical if one takes into account the skills assessment procedure.

Namely, the criteria used for scoring the interviews, which are considered an integral part of the skills assessment procedure, largely focus on the personal traits of candidates often cited by heads of authorities as reasons for selecting other than first-ranked candidates. Some of these criteria are: sound logic, clear and compelling statements and presentation skills, knowledge relevant for the post, communication skills, and personal motivation and presentation.

This unique paradox highlights the need to change the current manner of job advertisement and candidate selection. Namely, what is lacking is a set of guidelines that would inform heads of authorities on the instances in which they may use the right of not selecting the top-ranked candidate. Additionally, as the skills assessment contains some criteria that should be reserved for heads of authorities rather than a committee, instead of adopting a set of guidelines new criteria could be established for candidates' interviews with heads of state authorities.

### Skills assessment for state employees: Legal framework shortcomings

The Decree regulating skills assessment in state authorities<sup>22</sup> contains an omission and that is that it contains no precise criteria of performing skills assessments for positions of state employees. According to the LCSSE, state employees perform administrative-technical and ancillary tasks that are necessary for timely and efficient performance of state authority activities. For this reason, vacancy announcements for these posts do not require the professional examination certificate or prior working experience. However, following various complaints and the Appeals Commission's position that skills assessment procedure should be required for state employees positions as well, line institutions have devised skills assessments for these positions, which consist only of the interview assessing the criteria prescribed by the Decree on skills assessment.<sup>23</sup> However, taking into account the nature of tasks performed by state employees it is questionable whether the current skills assessment procedure is adequate.

### 'Imaginary' promotions and purposeless evaluation

As we outlined before, civil servants and state employees can only be promoted to a higher pay-grade, and only in cases when they score the *excellent* mark two years in a row. However, the available data leads to a conclusion that virtually all employees are already in the highest respective pay-grades,<sup>24</sup> as well as that appraisals are mainly superficial. It is therefore no wonder that no promotion took place during the reporting period.

The Institute Alternative analysed decisions on work appraisals for 2014, which lead to a conclusion that evaluation is still done arbitrarily and with little regard for relevant regulation. This can partly be explained by the fact that in practice evaluation and work appraisal

22 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, No. 4/13.

23 The criteria are: (1) logical, clear, and convincing statements and presentation; 2) demonstrating relevant knowledge for the position; 3) communication skills; 4) motivation; 5) personal presentation).

24 Interview with Svetlana Vuković, HRMA Director; Đuro Nikač, Assistant HRMA Director, HRMA, Podgorica, 16 March 2015.



have no real purpose, except for offering basis for promotions and as a mechanism for firing employees who perform unsatisfactorily two years in a row. It is interesting as an illustration to underline that in the Environmental Protection Agency and the Education Bureau all the employees received *excellent* marks.

The Environmental Protection Agency provided nearly identical justifications for these marks in all 64 performance-appraisal decisions and they were all adopted after the deadline (which is 31 January of each year for the previous year) had passed. The Education Bureau adopted all the decisions prior to the deadline, but all the employees (61) received *excellent* marks. All justifications are nearly identical and stated that all employees are performing better than their positions require them.

Similarly, the Service of the Parliament of Montenegro, which is autonomous in appraising the work of its employees, assessed most of them as *excellent*. Of the 79 decisions on appraisal adopted in 2014, 73 were *excellent*, three were *good*, and 3 were *satisfactory*. Even though the basis for skills appraisal at the Parliament is the Decree on criteria and manner of appraisal of civil servants and state employees,<sup>25</sup> there are many deflections from the this document, which makes it impossible to enter the appraisal marks into the Central Personnel Record. This is another limiting factor in human resources management in the civil service.

Even when employees receive lower marks, the cases submitted to the Appeals Commission show there are many omissions. Of the 66 cases for 2014 the Institute Alternative looked at, as many as 61 were upheld. These complaints were largely successful because appraisals were not conducted in line with the regulations, i.e. they failed to provide justification for the marks given. In four cases, the Commission has explicitly noted that no concrete mistakes were pointed out that have led the heads of authorities to give low marks to employees.

In the Environmental Protection Agency and the Education Bureau all the employees received excellent marks. In the latter, employees even scored 'better than required.'

## Reassignment of employees: Promotion or demotion?

In spite of the virtual impossibility of being promoted in the strict sense, civil servants and state employees can in fact be promoted in two ways: by applying for and winning internal competitions within the state authority for a better position, or by being permanently re-assigned. Namely, the reassignment of civil servants and state employees in cases of re-organisation or shutting down of state authorities is one of the two main ways of filling the vacancies in state authorities, the other being selection of candidates for the positions that have previously been advertised.

However, permanent reassignments in cases of re-organisation of state authorities, which presuppose the adoption of new acts or amendments to existing acts on internal organisation and systematisation providing for cuts,<sup>26</sup> offers a possibility to reassign civil servants and state employees to both higher and lower posts, meaning that it is at the same time the basis for promotion and demotion.

In cases of reassignments of this kind, state authorities take into account the tasks the employees have performed previously, giving preference to civil servants or state employees who have previously done similar tasks and have received better marks in the three years prior to the reassignment. Therefore, the purpose of work appraisal is more visible in cases of reassignment and re-organisation than it is for their formal promotion. This was one of the reasons why the Education Bureau gave us two decisions on reassignment when we

<sup>25</sup> Official Gazette of Montenegro, No. 33/2013.

<sup>26</sup> Article 129, Law on Civil Servants and State Employees, Official Gazette of Montenegro, No. 39/11, 50/11, 66/12, 34/14.

requested insight into decisions on promotion.

However, in addition to serving as a basis for promotion, the institute of permanent reassignment in cases of re-organisation can also serve as a mechanism for demotion. This is due to the fact that unlike the institute of temporary reassignment it does not guarantee the protection of acquired rights of employees. For this reason it often causes frustration among civil service employees, who often complain about being demoted to lower positions. According to our insight, 125 complaints on reassignment were submitted in 2014, of which 88 were upheld. Most of these complaints were related to permanent reassignment due to re-organisation.

In 2014, **1%**  
of state administration  
employees complained  
about their reassignment.

Employees often complained that they were being demoted contrary to legal provisions, i.e. that they were reassigned to lesser-grade positions which entail lower salaries and require a lower skill-set. In two instances, reassignment decisions were cited as continuation of long-standing mobbing and attempts at exercising discipline on employees who filed complaints. In one instance, an employee was demoted to a lower position during a sick leave, even though the Law clearly stipulates that a civil servant or a state employee cannot be demoted during temporary inability to perform tasks. In 15 cases, civil service employees complained for being demoted to positions that denied them the benefit of reduced service retirement that they were entitled to at their previous assignment.

However, a large number of complaints were adopted due to formal mistakes of state authorities and not because of supposed degradation of employees' positions. In other words, even though the Appeals Commission has adopted two thirds of all complaints, the reasons were often not the same as the reasons that prompted the complaints. In a large number of cases state authorities have adopted decisions on reassignment for the periods that were partially expired at the time of decision, even though it is impossible to apply these measures retroactively, and this was the reason for their annulment. Moreover, the largest portion of complaints were upheld because the parties were denied the right to participate in the proceedings and have a say on important facts and circumstances that have led to their reassignment.

In conclusion, one per cent of the 12.000 people the Law on Civil Servants and State Employees is applied to have expressed dissatisfaction with the way reassignment of civil servants and state employees is performed. On the other hand, re-organisation of state authorities often leads to amendments of internal organisation and systematisation of work posts acts, which further jeopardises job safety for civil servants and state employees. Over the course of the reporting period, almost one fourth of autonomous state administration authorities, in addition to the Secretariat General of the Government, have suggested amendments to their rulebooks on internal organisation and systematisation of work posts.<sup>27</sup>

<sup>27</sup> Government of Montenegro official website:[http://www.gov.me/sjednice\\_vlade](http://www.gov.me/sjednice_vlade).

## Recruitment and promotion transparency

The key resource for recruitment transparency in state authorities is the HRMA website, which provides ranking lists for all the job categories in the focus of this report. A very good step forward in recruitment and promotion transparency is announced launching of the Appeals Commission website.<sup>28</sup> In principle, most state authorities offer full access to recruitment decisions following HRMA's skills assessment. A very positive example is given by the Secretariat for Legislation, which publishes recruitment decisions on its website. However, it is more difficult to access decisions of some other authorities due to the issues surrounding the implementation of the Law on the Free Access to Information,<sup>29</sup> such as failure to respond to requests within the legal deadline of 15 days and very expensive costs.

For the purposes of this report, Institute Alternative has had to pay 505 EUR in free access to information expenses. Of the 18 state authorities that we contacted requesting more detailed information on recruitment and promotion, only the Ministry of Defence refused to supply us with names of civil servants who were appointed to positions at this institution in the second half of 2014. The alleged reason was protection of personal data, despite the fact that they have previously allowed full access to this information. For this reason, the Institute Alternative filed a complaint to the Agency for the Protection of Personal Data and Free Access to Information on 17 March 2015; however, no decision was reached on this complaint by 20 April 2015. Our argument was that personal data protection could not be used as reasoning in this case, since the Law stipulates that each authority is obliged, for reasons of promoting free access to information, to publish the names of all the civil servants and state employees together with their titles.

Promotion transparency is also at a low level. Given that no decisions on promotion were passed in the reporting period according to available data, it would be possible to ascertain whether some employees managed to improve their positions only through case-by-case analysis of internal announcements and decisions on permanent reassignment. In addition, given it is practically impossible to move up the ladder, an additional challenge is posed as regards transparency of providing rewards to civil servants and state employees, especially if we bear in mind the broad spectrum of possible rewards that are not strictly dependent on work achievements and objective criteria. There are currently several options for rewarding employees, such as reward for "outstanding success in work" or "special contributions," which fail to elaborate further the benchmarks and indicators of success. Among others, these rewards are provided in the form of variable income<sup>30</sup>, award decisions<sup>31</sup>, decisions on increased salaries for employees dealing in normative and legal affairs<sup>32</sup> and remuneration for participation in working groups set up by the Government.<sup>33</sup>

28 Interview with Snežana Radović, Appeals Commission President, Appeals Commission, Podgorica, 10 March 2015.

29 Law on the Free Access to Information, Official Gazette of Montenegro, No. 44/2012.

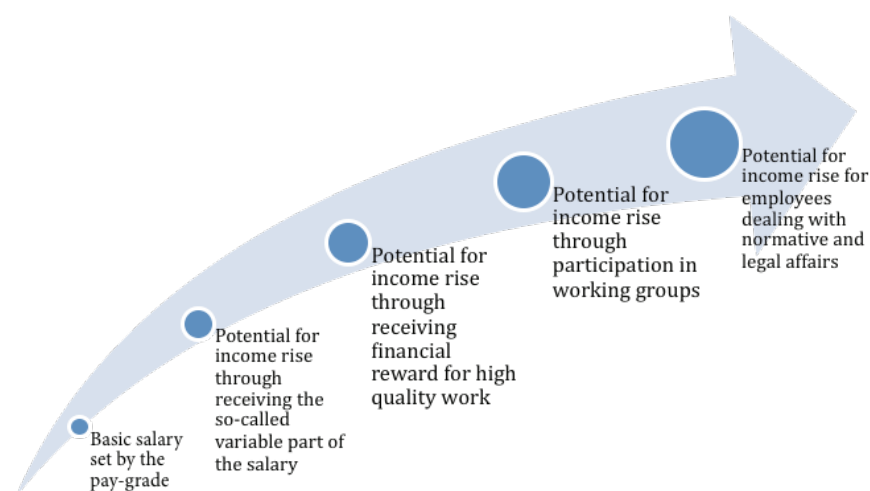
30 Government of Montenegro, Decision on the criteria and way of determining variable part of salary of civil servants and state employees, Official Gazette of Montenegro, No. 25/11.

31 Decree on the manner and procedure for awarding recognition to civil servants and state employees, Official Gazette of Montenegro, No. 40/13.

32 Government of Montenegro, Decision on salary raise for civil servants who perform normative and legal affairs, December 2014.

33 Law on the prevention of the conflict of interest, Official Gazette of Montenegro, No. 01/09, 41/11, 47/11, 52/14.

Below is a graphic representation of these rewards:



State authorities spent around 1.46 million EUR in 2014 for variable parts of salaries for employees.<sup>34</sup> On the other hand, three out of the 18 authorities to which we sent free access to information requests have given financial rewards worth 19.561 EUR and 25 monthly salaries.<sup>35</sup> This data, if put into context of the inability to move up to a higher pay-grade on the basis of appraisals and set criteria for appraisals, are merely illustrations of less transparent ways of motivating employees and they highlight the existing need to redefine rewarding and promotion policies in state authorities.

## Intermediation in employment and service contracts: enemies of transparency?

Recruitment transparency in state authorities is not measured solely by looking at the breadth of published and readily available data. In order to measure transparency of vacancy filling we cannot focus solely on the LCSSE, as the most problematic issues take place outside the scope of the Law.

### Intermediation

The Institute Alternative warned during the first year of the application of the LCSSE about the possibility of misuse of intermediation in employment, which the Law says should be limited to three months and should serve only for those positions requiring specific skills, and could hamper establishment of a merit-based system.

The Administrative Inspection, however, did not launch satisfactory action following the Institute Alternative's July 2014 initiative, which urged this inspection to investigate the breadth of misuse of intermediation for bypassing regulations for employment in state administration.

<sup>34</sup> Information provided through free access to information request sent by IA to the Ministry of Finance.

<sup>35</sup> Financial rewards were paid by the Ministry of Foreign Affairs and European Integration, the Ministry of the Interior, and the Environmental Protection Agency.

In our initiative we stated that at least two state authorities – the Environmental Protection Agency and the education Bureau – have broken the Law in 2013 by concluding contracts with Dekra, an agency for temporary employment, on hiring workers to perform tasks that ought to be performed by civil servants.

The inspection has claimed that there was no misuse of the intermediation institute in these instances and that they have been in accordance with the Labour Law, disregarding the fact that the LCSSE has precedence in these cases. Another issue where the inspection took no action was when we highlighted the issue of the so-called “administrative silence” and asked the inspection to investigate further which state authorities employ the institute of intermediation and whether they are breaking the law in doing so.

Such approach by the inspection is additionally worrisome if one considers this report’s findings that confirm that agreements on transfer of employment are useful as a tool of circumventing the skills assessment procedures. The State Commission for Control of Public Procurement Procedures, which was also criticised last year in a number of media for circumventing the need to fill vacancies via official job announcements,<sup>36</sup> has again appointed two employees from an employment agency to positions regulated by the LCSSE (independent adviser III and state employee VI).

## Service contracts

Furthermore, the analysis of additional 18 case studies that have been in the focus of this study has concluded that state institutions often hire people on service contracts. Of the 18 institutions mentioned here to whom we sent detailed free access to information requests, 12 have concluded 750 service contracts in the reporting period.<sup>37</sup> Given that service contracts are not labour-law contracts and are not regulated by the LCSSE (they are regulated by the Law on Contract and Torts<sup>38</sup>), they could be used to favour certain persons in recruitment and in practice may serve for hiring individuals without submitting them to skills assessment. It is therefore necessary to undertake a detailed analysis of the ways in which these contracts are being concluded, given that the available data has shown several ways of their misuse in practice:

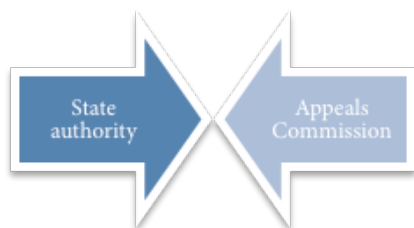
- » Persons that should be recruited as civil servants or state employees, by following procedures prescribed by the LCSSE, are instead hired on service contracts;
- » Persons initially hired on service contracts later get selected for positions at the state authority, which points to possible favouring during the selection process;
- » Some persons’ service contracts get permanently extended over longer periods of time, effectively making them employed at the state authority.

<sup>36</sup> Independent Daily Vijesti, 17 July 2013.

<sup>37</sup> According to the data we received, these institutions are: the Parliament (292), the Ministry of Culture (254), Pension and Disability Insurance Fund (132), the Finance Ministry (28), the Supreme State Prosecutor’s Office (18), the Justice Ministry (10), the Agency for Preventing Money Laundering and Terrorism Financing (5), the Directorate for the Protection of Confidential Data (4), the State Audit Institution (3), the Interior Ministry (3), the Environmental Protection Agency (1). Statistics Directorate submitted just summary information on the overall funds this institution spent on service contracts in 2014, which was 375.000 EUR.

<sup>38</sup> Law on Contract and Torts, Official Gazette of Montenegro, No. 47/08, 04/11.

## Complaints due to disappointment or due to distrust in institutions?



As has already been noted, the number of complaints in 2014 rose by virtually 204% as compared to 2013. Most complaints are related to the following: decisions on termination of employment, recruitment decisions, decisions on reassignment of civil servants and state employees, remuneration, and transformation of the employment relationship.<sup>39</sup> The number of complaints per institution correlates with their size, i.e. number of employees, and hence most complaints related to decisions on appointment (44) were submitted to the Ministry of the Interior.<sup>40</sup>

There are several possible explanations for the surge in complaints: the raised level of awareness among citizens in general and especially civil servants and state employees on their rights' protection; growing trust in institutions, including the Appeals Commission; and flawed implementation of the LCSSE by heads of state authorities and human resources managers.

While it is possible that all three factors have contributed, the analysis of cases submitted to the Commission points to a conclusion that heads of authorities often pass decisions that are ridden with grave procedural omissions. Namely, the Appeals Commission must annul by default, regardless of the contents of the complaint, any decision made by the head of state authority that suffered from serious breaches of administrative procedures.<sup>41</sup> This is why the majority of complaints submitted in 2014 have been upheld.

The IA asked the Commission through the free access to information mechanism to make available all the complaints submitted to it in 2014 related to the selection, work appraisal, and reassignment of civil servants and state employees, and all the decisions on such complaints. We received 322 cases (both complaints and decisions), 66 of which were related to work appraisal, 125 were related to reassignment, and 131 were related to selection of candidates. Most complaints (222) were upheld, and by and large because heads of authorities have made procedural omissions in adopting decisions.

### Below are the types of omissions made:

- » Unclear justification in collision with the dispositive part of the decision, making it impossible to ascertain legality in the complaints procedure;
- » Heads of authorities pass decisions that span periods of time preceding the adoption of decisions, i.e. that act retroactively;
- » In passing their decisions, the heads of authorities disregard the fact that complaints can have an effect of suspending action, i.e. they can postpone enforcement of decisions;
- » Parties or concerned individuals are not granted the possibility to participate in the procedure and they are not given opportunity to discuss facts.

39 Interview with Snežana Radović, Appeals Commission President, Appeals Commission, Podgorica, 10 March 2015.

40 Ibidem.

41 Major violations are considered to have taken place in the following cases: the decision is issued by a truly incompetent authority; the person that was supposed to participate as a party or interested person, was not given the opportunity to participate in the procedure; the party or interested person was not given the opportunity to make a declaration on all facts and circumstances essential to issuing a decision; the party was not represented by a legal representative i.e. if the authorised representative did not hold a power of attorney; the provisions of this law related to the language were violated; a person which, by this law, should have been exempted from participating in this procedure or decision-making process or a person that does not meet requirements for conducting a procedure or issuing decision did take part in the process; if disposition of a decision is contradictory to its exposition, thus making it impossible to determine legality in the procedure of appeal. (Article 226, Law on the General Administrative Procedure, Official Gazette of Montenegro, No. 60/03, 73/10, 32/11.



The fact that state authorities often make such omissions in decision-making has a negative bearing on the protection of the rights of candidates, as they rarely address the Appeals Commission about omissions that could be treated as grave trespasses against administrative procedures. Therefore, in spite of the fact that many complaints get upheld, the reason is rarely related to the dissatisfaction that prompted the citizens to write to the Commission. The only exceptions in this sense are the complaints about work appraisal, which regularly get upheld because appraisal has not been conducted in line with the legal provisions.

## The Ping-Pong effect

A peculiarity regarding cases treated by the Appeals Commission is that if the Commission annuls the decision in the first instance and the authorities that adopted such a decision fail to remedy all the irregularities **the cases can extend indefinitely**. Employees at state authorities can file complaints again and again, and the Commission can annul decisions again and again, since it **does not have the right to pass binding decision**. In other words, as the Commission has stated in its 2013 report, the first instance authorities often fail to act pursuant to Commission decisions, which leads to prolonged processes and cases of Commission passing the same decision on the matter over and over again and authorities failing to adopt its decisions over and over again.<sup>42</sup>



**The new Law on General Administrative Procedures**, which will enter into force in 2016, is intended to prevent the problem of multiple decisions on same cases in the future. The main novelty of this Law is that the second-instance organ (the Commission in this case) will have the power to pass a binding decision when deciding for the second time on the same matter. This is meant to be understood in the sense that the Commission will be able to decide on those cases that do not delve into the human resources policies of state authorities. In other words, it is not likely that the Commission will adopt final decisions about work appraisals of civil servants and state employees.<sup>43</sup>

<sup>42</sup> Appeals Commission, Work report for 1 March – 31 December 2013, Podgorica, January 2014.

<sup>43</sup> Ibidem.

## Court protection

It is possible to launch an administrative dispute against the decision of the Appeals Commission by filing complaint with the Administrative Court. This Court had 309 cases of complaints against the Commission in 2014.<sup>44</sup> The Court gave opinions on 135, i.e. 43.6 % of the cases.

In principle, complaints to the Administrative Court in the area of civil servants' and state employees' protection are mainly related to the establishment and termination of employment relationship and reassignment. Most of the cases viewed in the reporting period dealt with termination of fixed-term employment relationships, recruitment after public announcements, and termination of working relationship that included compensations.

However, this area also suffers from the lack of discipline of state authorities. As the Commission claims,<sup>45</sup> it is often unable to forward all the documents to the Administrative Court because the state authorities fail to submit them in their entirety, and it is even impossible to estimate the timeliness of complaints. The Commission also has troubles of acting on court decisions in a timely manner,<sup>46</sup> whereas the Administrative Court rarely passes mandatory decisions even though it has the power to do so, which also leads to extended processes.<sup>47</sup> It should serve as good illustration to note that a 2007 case dealing with a complaint against the termination of employment relationship has not yet been solved.<sup>48</sup>

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44 Appeals Commission, Work report for 1 January – 31 December 2014, Podgorica, March 2015.

45 Ibidem.

46 Interview with Branka Lakočević, Administrative Court President, Administrative Court, Podgorica, 9 April 2015.

47 Interview with Snežana Radović, Appeals Commission President, Appeals Commission, Podgorica, 10 March 2015.

48 Interview with Svetlana Vuković, HRMA Director; Đuro Nikač, Assistant HRMA Director, HRMA, Podgorica, 16 March 2015; Interview with Dragica Anđelić, Chief Administrative Inspector, Institute Alternative, Podgorica, 17 April 2014.



## Conclusion

The report's findings highlight the limited reach of the LCSSE when it comes to establishing a merit-based system, which is one of the key objectives of the state administration reform,<sup>49</sup> whose purpose should be to ensure that the best and most capable candidates are selected to work at the civil service.

The objective limiting factor is weak competition for vacancies in state authorities. The very low numbers of candidates that apply for internal announcements (less than one per ad on average) also showcase the limitations of this institute whose main purpose was to ensure rationalisation of civil service work by ensuring first pick is made from among the internal human resources. Even though there was more competition for jobs advertised as public announcements, the numbers are still very low and highlight that discretionary rights given to heads of authorities to choose from among five top-ranked candidates were without ground.

Other factors limiting the positive effects of the Law are mainly subjective, i.e. they are related to decision-making processes in individual state authorities. Even though the head of authority's discretionary right not to choose the top-ranked candidate can only be used in cases when strong justification for doing so is provided, in effect it often takes place without heads of authorities providing any specific reasons, and sometimes with very adverse effects on the principle of merit-based employment.

In addition to exercising a very broad understanding of their discretionary rights, heads of authorities often make grave formal omissions in human resources management, which is why a great number of recruitment decisions are overturned by higher instances. On the other hand, there is insufficient co-ordination among the state authorities, the Appeals Commission, and the Administrative Court, which has negative effects on the protection of rights of civil servants and state employees and candidates for these positions. Moreover, given that heads of authorities make various breaches of administrative procedures, which prompt line institutions to react *ex officio*, citizens often do not receive a response as regards the topic of their complaint.

According to available data, not a single decision on promotion was passed over the reporting period. Even though there are several procedures for rewarding and giving incentives to civil servants and state employees, they are often insufficiently transparent or not directly in line with their results. Reassignments due to re-organisation of a body may become promotions, but often become demotions. Amendments to documents on internal organisation and systematisation of work posts, decisions on appointment that are often passed retroactively, and reassignments are some of the most sensitive issues related to human resources management in state authorities and they command special attention.

Service contracts and contracts with intermediation agencies, which are not regulated by the LCSSE, are potentially the main mechanisms for circumventing rules prescribed by this Law. However, line authorities failed to take necessary action with the view to determining the true scope of and ways in which these institutes are used, except for the State Audit Institution which in 2013 pointed out irregularities related to these contracts. According to our findings, the low observance of the Law on Free Access to Information by state authorities is another important factor negatively affecting employment and promotion.

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49 See: Government of Montenegro, Public Administration Reform Strategy 2011-2016, Aurum, Podgorica, March 2011.

## WHAT NEXT?

### RECRUITMENT:

- » Having in mind the relatively low number of candidates going through skills assessment, it is necessary to reduce number of candidates on the shortlist, which currently contains five top-ranked candidates;
- » The Government, in cooperation with HRMA, ought to adopt decision-making guidelines for heads of authorities, with the view to prescribing in more detail the ways in which heads of authorities are allowed to use the discretionary right of not selecting the top-ranked candidate;
- » An alternative to such guidelines could be a definition of criteria used by heads of authorities when conducting interviews with short-listed candidates, which would, as such, become an integral part of the skills assessment;
- » If a candidate is ranked best for several positions for which he/she applied, an option to choose preferable employment should be provided;
- » Administrative Inspection and the State Audit Institution, in cooperation with other line institutions, should undertake all the necessary action to ascertain true scope of the use of service contracts and intermediation contracts are being used to employ persons who ought to be employed on civil servant or state employee contracts;
- » Amendments to the Decree regulating skills assessment for jobs at state authorities should prescribe in more detail the skills assessment procedures for state employees;
- » Amendments to the LCSSE should provide more detailed definition of the head of state authority's obligation to take into consideration the right to proportionate representation of members of minority nations or other minority ethnic communities; this obligation should be limited to the cases when candidates have achieved identical results in skills assessment and have stated their ethnicity;
- » An investigation should be made into the necessity of publishing internal job announcements within the institution, and, for the sake of flexibility in human resources management, a possibility should be considered of filling those vacancies through reassignment, which would be done in line with those employees' results.

### PROMOTION, EVALUATION, REASSIGNMENT:

- » Given that it is practically impossible to be promoted on the basis of merit, the institutions tasked with implementing the LCSSE, among which especially the Interior Ministry and HRMA, should reconsider the human resources management policy in this regard with the view to establishing a clear link between work appraisal on the one hand and promotion and rewards of civil servants and state employees on the other;
- » HRMA should organise trainings for immediate managers and heads of authorities with the view to preventing work appraisal decisions from being passed without participation of appraised employees, i.e. when the grade is not properly explained and no concrete errors or omissions are outlined;
- » Bearing in mind the tendency of some state authorities to give all employees the top grades, an introduction of grading quotas should be considered, similar to certain EU member states, whereas top grades should be reserved only for a certain percentage of civil servants and state employees in each authority;

- » HRMA should make annual reports on reassignment of civil servants and state employees and to enable for an overview of decisions on reassignments on the basis of which employees at state authorities have remained in same pay-grades or moved to higher or lower pay-grades.

## RIGHTS' PROTECTION:

- » State authorities and the Appeals Commission should stick to and act efficiently on the decisions of the Administrative Court;
- » In order to avoid delays of procedures before the Appeals Commission and the Administrative Court, the court should pass final decisions whenever possible on administrative disputes between parties related to the procedures of recruitment and appraisal.

## INSTITUTIONAL FRAMEWORK:

- » The Government of Montenegro should provide budgetary means necessary for filling all the vacancies at HRMA and the Administration Inspection;
- » HRMA should, in cooperation with state authorities, ensure the Central Personnel Record is fully up to date, and it should keep an official file on this information system and its completeness in relation to criteria and indicators prescribed by the rulebook on its use, including personal info, qualifications, professional and expert qualities, performance appraisal, and specific skills and knowledge.

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- Interview with Branka Lakočević, Administrative Court President, Administrative Court, Podgorica, 9 April 2015.
- Interview with Snežana Radović, Appeals Commission President, Appeals Commission, Podgorica, 10 March 2015.
- Interview with Dragica Anđelić, Chief Administrative Inspector, Institute Alternative, Podgorica, 17 April 2014.
- Interview with Dražen Malović, head of Human Resources and General Affairs Service, Parliament of Montenegro, 3 April 2015.
- Interview with Srđa Keković, Secretary-General, Union of Independent Syndicates of Montenegro, Podgorica, 15 April 2015.
- Interview with Svetlana Vuković, HRMA Director; Đuro Nikač, Assistant HRMA Director, HRMA, Podgorica, 16 March 2015.

## Annex 1

Case studies that were additionally in the focus of this monitoring report:

- 1) The Human Resources Management Authority
- 2) The Administration for Prevention of Money Laundering and Terrorist Financing
- 3) The Ministry of Justice
- 4) The Ministry of the Interior
- 5) The Ministry of Defence
- 6) The Ministry of Foreign Affairs and European Integration
- 7) The Ministry of Culture
- 8) The Ministry of Finance
- 9) The Secretariat for Legislation
- 10) MONSTAT
- 11) The Bureau for Education Services
- 12) The Directorate for the Protection of Confidential Data
- 13) The Environmental Protection Agency
- 14) The State Audit Institution
- 15) The Supreme State Prosecutor's Office
- 16) The Parliament of Montenegro
- 17) The Pension and Disability Insurance Fund
- 18) The Commission for the Control of Public Procurement Procedures

## About us:

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 defence, 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 organised since 2012.

Managing of the organization is divided between the Assembly and the Managing Board. President of the Managing Board is StevoMuk. Research Coordinator is JovanaMarović, PhD.

***Visit our website for more information about the work we do  
[www.institut-alternativa.org](http://www.institut-alternativa.org)***



