

# INTEGRITY OF RECRUITMENT IN STATE AUTHORITIES:

## Assessment of abilities or partisanship?



Publication:

**INTEGRITY OF RECRUITMENT IN STATE AUTHORITIES:  
Assessment of abilities or partisanship?**

Publisher:

**Institute Alternative**

57, George Washington Boulevard Podgorica, Montenegro

Tel/Fax: + 382 (0) 20 268 686 E-mail: info@institut-alternativa.org

For the publisher:

**Stevo Muk**

Editor:

**Stevo Muk**

Author:

**Milena Muk**

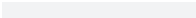

Prepress and design:

**Ana Jovović**



Podgorica, January 2020



This analysis was prepared within the project “FAR - Evidence For Better Administrative Reform”, implemented by the Institute Alternative and supported by the European Union within the sector budget support for public administration reform. The contents of this document are the exclusive responsibility of the authors and in no way reflect the opinions of the European Union.



EXECUTIVE SUMMARY . . . . .	4
INTRODUCTION . . . . .	5
Panel composition: no impartiality guarantees . . . . .	6
Written tests: potential favouritism by the representative of the state authority . . . . .	7
We do not know what is being assessed; interviews or general conversations? . . . . .	8
Subsequent conversation: unclear role and room for too much discretion . . . . .	9
WHAT NEXT?. . . . .	12
RECOMMENDATIONS . . . . .	13
SOURCES . . . . .	15



## EXECUTIVE SUMMARY

This analysis covers the **assessment procedure** of the candidates for jobs with state authorities, as the segment that will define the course of further development of Montenegrin state administration, setting it either toward further politicisation or toward professionalisation, as a proclaimed objective of the current Public Administration Reform Strategy.

Research has pointed to the presence of **regulatory and practical problems** that jeopardise the integrity of the assessment panels and the overall testing procedure, which affects implementation of the principles of merit-based recruitment in state authorities.

The key improvement consists in enabling candidates to perform testing by electronic means, since this type of “automatization” of procedures diminishes potential undue favoritism of certain candidates in this phase of the recruitment. However, **there are no guarantees of political impartiality of the assessment panels’ members selected from the ranks of professionals**. The state authority that is recruiting is solely responsible for designing the practical tests, which leaves room for some candidates to be favoured and essentially implies that **the roles of individual panel members are not identical**.

On the other hand, external scrutiny of the quality of implementation of the assessment by the civil society is hampered by the HRMA **denying access to copies of tests and minutes from interviews**. Only access to general assessment reports is provided, which do not enable insight into specific tasks, questions and answers provided. Lack of transparency, together with some legal shortcomings, does not signal substantial progress towards establishment of a merit-based system in the Montenegrin administration. This is in particular so given that the new Law does not envisage **mandatory hiring of the candidates who ended up as top-ranked after the assessment**. **Subsequent under-regulated conversations with the shortlisted candidates** do not constitute a formal part of the assessment, although they may prove decisive in the selection process.

Besides **deletion of contested provisions**, progress towards professionalisation of state administration calls for laying down and ensuring guarantees of impartiality of the assessment panel and audio-recording of interviews. Panel members should design the practical tests jointly, immediately prior to the assessment, so as to prevent some candidates from obtaining the tests in advance; also, selection of the first-ranked candidate should be stipulated as a general rule.

## INTRODUCTION

Montenegro has a “new” Law on Civil Servants and State Employees (*LCSSE*)<sup>1</sup>, implemented as of 1 July 2018. In order to ensure implementation of the new legal provisions, a dozen accompanying pieces of secondary legislation have been put in place, namely decrees, rulebooks and Code of Ethics of Civil Servants and State Employees. The Decree on the criteria and detailed method of assessment of knowledge, abilities, competencies and skills for work in state authorities is the most relevant piece of secondary legislation addressing the recruitment process.<sup>2</sup> Although it was supposed to be adopted prior to the beginning of implementation of the Law, the Decree entered into force as late as 20 July 2018, signalling the initial lack of preparedness on the part of state authorities and the HRMA for full implementation of the new provisions. Furthermore, since **it had not been defined in the course of public consultations concerning the draft new LCSSE**, citizens and the interested expert public had not been provided any opportunity to state their views on the key recruitment criteria, although depoliticisation and professionalisation of public administration fall among the essential requirements for democratisation of the country, and thus also for its accession to the European Union (EU).

This analysis aims to re-launch a substantiated debate on the key aspect of recruitment in public administration, namely that of assessment of candidates. According to the opinion polls conducted for the Institute Alternative (IA), from year to year Montenegrin citizens have had unfavourable perceptions concerning the integrity of public administration recruitment. Most **Montenegrin citizens consider political connections to be the key factor in public administration recruitment** (43%); one in four citizens consider the key factor to be friendships/family ties (24%), or education, ability and experience of candidates (24%).<sup>3</sup>

1 <http://www.mju.gov.me/biblioteka/zakoni>

2 <http://www.mju.gov.me/biblioteka/uredbe?pagerIndex=1>; Besides the mentioned Decree, the following were adopted: Decree on performance appraisal of civil servants and state employees; Decree on the contents, procedure and method of development and amendment of the HR Plan for state administration authorities and Government offices; Decree on the criteria for internal organisation and systematisation of jobs in state administration authorities; Decree on the training and professional development of civil servants and state employees; Decree on the programme for an method of taking professional examination for working in state authorities; Code of Ethics of civil servants and state employees; Rulebook on the criteria and method of assessment of probation period of civil servants and state employees; Rulebook on the criteria and method of drawing up the list of members of the Disciplinary Committee; Rulebook on the contents and method of keeping of the Central Personnel Records and records on internal labour market; Rulebook on the contents, withdrawal and correction of job advertisements in state authorities and access to advertisement documents.

3 Ipsos Strategic Marketing for the IA, *Percepcija javne uprave 2019 (Perception of Public Administration 2019)*, September 2019.

Development of this paper included a review of the regulations, reports and other acts of relevant state authorities and of the data obtained by the IA on the basis of the Law on Free Access to Information. Since the new Law did not repeal some of the controversial provisions from the previous legislative framework, the findings refer also to the problems encountered in the course of implementation of the 2011 LCSSE, with a view to support the argument that the new legislative framework retained the essential shortcomings in the application of the assessment criteria.

The first section of this paper describes the problems related to the composition of the assessment panels; the second section elaborates on the practical problems in the course of test design and administration; the third section focuses on the oral interviews as a subjective testing method which is particularly flawed in Montenegro, while the fourth section brings to attention the unwarranted concept of subsequent conversations with the candidates as the grounds for recruitment decisions. Finally, recommendations on the ways to improve the situation are provided – besides regulatory activity, they refer also to changes in testing practices.



### **Panel composition:** no impartiality guarantees

The main objective of the assessment procedure is identifying the candidate who possesses most knowledge, abilities, competencies and skills for the vacancy advertised. This is the task of the assessment panels; for lower civil service positions, the panel is composed of HRMA representative, head of the organisational unit that is filling the vacancy and a professional from the relevant field. The composition of the assessment panel is similar also for senior civil service positions (e.g. directors

of directorates in ministries) and for heads of authorities (e.g. director of an administration), except that, in addition to representatives of management, these panels have to include a “renowned expert” and head of the HRMA.

The role of professionals or “renowned experts” in assessment panels is inadequately defined. Although the new legal framework stipulates that these should be selected for the specific area, so as to ensure that their expertise corresponds to the vacancy, it is not defined whether an independent professional may come from the ranks of civil servants, political party officials etc. This may affect the integrity of the selection process, i.e. impartiality of candidate assessment. Legal mechanisms for preventing political influence via panel membership have not been provided, either in the case of selection of heads of administrative authorities or senior civil servants.

### Written test: Potential favouritism by representatives of state authorities

For the majority of civil service positions, the assessment consists of a written test and an oral interview, and assessment of specific skills if so required (e.g. computer skills). Written tests are further divided into theoretical and practical parts. Tests are designed electronically and are coded, which is a significant breakthrough in comparison to the previous period because it enabled “automatisation” of conducting written tests and of distribution of theoretical questions, which in return hampers potential undue favouritism in this segment of testing procedure. Nonetheless, **preparation of practical tests is not sufficiently confidential.**

According to the currently applicable provision, the state authority has a key role in the preparation of the practical part of the test, as it submits to the assessment panel ten items relevant for the job description in question, at the latest two days prior to the test date. The contents of the practical part of the written test are determined by means of random selection of two items from the short list which is put together by the panel, on the basis of the items delivered by the state authority. This arrangement significantly constrains the integrity of the assessment panel, given that it is not the panel, but the state authority that is authorised to prepare the items for the practical part of the test. Although the final practical tests are selected by random sampling, the possibility that the candidates may learn the contents of all potential items has not been ruled out.

## We do not know what is being assessed; interviews or general conversations?

The results of the oral interview carry one-third of the score. However, there is evident lack of transparency in conducting the interview. Since this segment of assessment largely depends on the subjective impression of the panel members concerning the candidate's presentation and qualities, a high level of transparency of the obtained results has to be ensured.

Candidate's complaints concerning oral interviews are quite frequent and refer both to the contents and the way they are conducted.<sup>4</sup> Complaints claim, *inter alia*, the following: all candidates were not awarded equal time for their responses; oral interviews were not conducted by competent persons; single interview was organised for several positions etc. The Complaints Committee, in its rationale accompanying a decision, states: "that it is not possible to establish, on the basis of the case file, whether the head of authority interviewed the candidate for each position", which points to the problem of assessing the allegations concerning oral interviews and to the difficulty in coming to an objective assessment of their implementation against the applicable procedures.<sup>5</sup>

**Although oral interviews carry one third of the final score in the testing procedure, the HRMA does not compile minutes from the conducted interviews, leaving no written trace of questions posed and answers provided.**

The HRMA is denying access to the minutes from conducted interviews and test copies, thus additionally affecting the integrity of the assessment and transparency of the recruitment process in state authorities. In response to the IA request for access to copies of theoretical and practical tests, minutes from oral interviews and subsequent conversations with the candidates, for the procedures for three positions (at the Ministry of Justice, General Secretariat of the Government of Montenegro and Ministry of Public Administration), the HRMA provided only the general assessment reports which show the scores per candidate per criterion but not the specific tasks they had to solve and the specific questions they needed to respond to. Denied access to this information was justified by the HRMA by the fact that the Law obliged them to compile a testing report and not the interview minutes.<sup>6</sup>

4 Insight into Complaint Committee decisions: No. 373/18 of 12 Oct 2018; No. 401/18 of 24 Oct 2018; No.344/18 of 14 Sept 2018; No.394/18 of 24 Oct 2018; No.391/18 of 24 Oct 2018; No. 380/18 of 24 Oct 2018 etc.

5 No. 391/18 of 24 Oct 2018.

6 Response of HRMA to the draft analysis «Integrity of recruitment in state authorities: Assessment of abilities or partisanship?»



This means that there is no written trace that interviews took the place, especially given the fact that the structure of the testing report is not clearly stipulated in the Law and the accompanying Decree. This renders meaningless provisions referring to transparency and rights of candidates to obtain insight into all the documents of recruitment procedures.<sup>7</sup> HRMA denied access to copies of theoretical and practical tests on the grounds of personal data protection,<sup>8</sup> although it has not explained in what manner the copies of tests, which were supposed to be disseminated to all the candidates, can endanger anyone's personal data.

The fact that the HRMA had already provided us access to similar information in the past – also on implementation of the LCSSE - speaks of the unfoundedness of such denial of access. Namely, in the course of regular public administration reform monitoring, we had received minutes from the interviews conducted with the candidates for the respective chairs and members of the Complaints Committee and the Disciplinary Committee. Although the procedure for conducting interviews for these positions is not regulated to detail, the delivered minutes suggest attention to form in conducting the interviews: judging by the documents, these lasted up to nine minutes and included general conversations on the mandates and legal framework, and as such did not provide a sound basis for a substantial assessment. For instance, the interview with the candidate who subsequently was selected to chair the Complaints Committee began at 10:28 and the interview with the next candidate began at 10:36. Given the experience with assessment for the positions in the two committees, which became professional under the new legislative framework, we have reason to suspect that assessment for positions in state authorities suffer from similar flaws.

## **Subsequent conversation:**

### **Unclear role and room for too much discretion**

The new Law kept the controversial arrangement whereby the entire preceding assessment procedure, with all of its shortcomings, is rendered additionally meaningless by the final decision on recruitment taking place after conversations with all of the candidates from the list for selection. This arrangement constitutes a major threat to the integrity of the selection process, as it largely brings into question the existence of the assessment panel, whose results should be decisive for selection. The objective of such subsequent conversation with the candidates is

<sup>7</sup> Article 50, Law on civil servants and state employees, Official Gazette of Montenegro, No. 2/2018 and 34/2019

<sup>8</sup> Decision No. 07-UPI-007/19-183/1(August 20, 2019)

not clear: who is entitled to conduct it on behalf of the state authority; what may be the subject-matter of such conversation; to what extent that conversation is decisive for selection; whether minutes are drawn up on the conversation etc. While the issues of relevance for implementation of the Law are addressed in several articles and some are elaborated to detail in the Decree on the criteria and detailed method of assessment, the conversation with the candidates from the list for selection is defined only in a single paragraph of Article 48 of the Law.<sup>9</sup> This is particularly controversial if we bear in mind that the panel already includes a representative of the state authority which is recruiting and that there is no obligation, not even rhetorical one, to select the first-ranked candidate from the list for selection (which was the case under the previous law). This leaves room for **unlimited discretion when deciding on the selection of the candidates from the list for selection**, without any obligation to specify the reasons in case the first-ranked candidate does not get selected.

The practice of the Complaints Committee confirms that this concern is warranted. There are cases where the state authority, following the conversation with the candidate, made decision on the basis of different scoring of the same criteria that had already been scored in the assessment process. Thus, for instance, the state authority selected the second-ranked candidate, supporting that decision by stating that the candidate demonstrated a higher degree of motivation than the first-ranked one, although the former had been awarded a lower score for the criterion in question in the assessment process.<sup>10</sup>

In some cases, there is dispute about the contents of the conversations that state authorities held with the candidates after assessment. Candidates' complaints concerning the credibility and method of drafting of the minutes from these interviews fall under the warranted complaints that resulted in the Complaints Committee annulling the selection decisions in the context of implementation of the 2011 Law.<sup>11</sup> These controversial practices have been kept in the course of the implementation of the new Law, as demonstrated by the minutes from these conversations, which we have obtained through the freedom of information requests.

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9 The paragraph reads: "Selection of candidate shall be conducted following the conversation with each candidate from the list for selection of candidates, and the rationale for the decision on the selection of candidate shall state the reasons for the decision." See: LCSSE, Official Gazette of MNE 2/2018 and 34/2019.

10 Insight into the Complaints Committee Decision No. 315/18 of 29 Aug 2018. Similar irregularities were noted also in the Complaints Committee Decision No 319/18 of 14 Sept 2018.

11 Insight into the Complaints Committee Decision No 379/18 of 24 Oct 2018; No. 08-UP II-152/18 of 31 Jan 2018.

These minutes confirm that the arrangement of subsequent conversation is unnecessary attachment to the previously conducted testing and assessment. They confirm that conversations largely serve either to repeat the results of the previously conducted assessment, or, as in the case of Misdemeanour Court in podgorica, to encompass specific criteria, which were supposed to be assessed within the previously conducted testing procedure. President of this Court justified the recruitment of specific candidate by arguing that she has demonstrated exceptional motivation for performing work tasks, and that she has satisfied the

criteria of presentation and structuring of practical test, although the minutes of the conversation with the candidate contained solely three sentences.

**The new Law kept controversial arrangement of subsequent conversation with short-listed candidates, which remained completely under-regulated. Minutes from these conversations, obtained by the IA, confirm that they are unnecessary attachment to the previously conducted testing and assessment procedure.**

It is therefore not clear why, instead of being deleted, the controversial provision was kept and even reinforced in the new legislative framework. Namely, while under the old law, selection of a candidate who was not the first-ranked one had to be specifically explained with reference made to the subsequent conversation with candidates from the list for selection, now the selection of the best-ranked candidate is not mandatory even in principle. A state authority has the discretion to select any of the three candidates included in the list for selection. Given the low competition for vacancies, as pointed earlier, we believe that such flexibility is not justified. Namely, judging by the latest HRMA report, the

average number of candidates per vacancy in the second half of 2018, following the beginning of implementation of the new Law, was: 0.33 for internal advertisements; 1.53 for public advertisements; 1 for public competitions for senior civil servants, and 1 for public competitions for heads of authorities.<sup>12</sup> In other words, **selection from the group of three candidates is not the short list of a large number of applicants**, which would be to an extent justified in some more competitive procedures.

12 HRMA, *Izveštaj o radu Uprave za kadrove za 2018. godinu (HRMA Performance Report for 2018)*, January 2019.

## WHAT NEXT?

The opportunity to prevent misuse of the provisions of the new LCSSE has been wasted due to the poor quality of secondary legislation, primarily the Decree on the criteria and detailed method of assessment. In addition, although implementation of the 2011 Law showed that it was hard to find justification for the subsequent conversation with the candidates from the selection list, this controversial provision remained included in the Law.

In principle, practice shows that state authorities are trying to keep the mechanisms of control over recruitment processes, primarily through design of contents of practical items and introduction of the concept of “conversation with the candidates from the selection list” following the assessment. This brings into question the significance of assessment results and integrity of the panel conducting the assessment. Therefore, it is not sufficient, to protect assessment integrity, to have the tests developed electronically and coded, if there are no guarantees that the preceding (preparation of tests) and following procedure (impartial assessment by the panel whose members are sufficiently independent) will be adequately implemented.

Bearing in mind that conducting oral interviews represents a segment of assessment that is largely dependent on the panel members’ subjective impression of the candidates’ presentation and qualities, and that it may be decisive in the selection of civil servants, it is necessary to ensure a high degree of transparency of obtained results. This is currently not the case; on the contrary, the HRMA does not consistently provide access to the minutes from the conducted interviews or copies of the tests applied. Thus, independent scrutiny of this key segment of recruitment by the civil society and other independent experts has been prevented; this, in turn, does not contribute to increased confidence in the efforts to professionalise the public administration.

## 01

ENSURE THAT ASSESSMENT PANEL DESIGNS THE PRACTICAL TEST ITEMS IMMEDIATELY PRIOR TO THE ASSESSMENT, TO ELIMINATE THE POSSIBILITY FOR CANDIDATES TO LEARN THE CONTENTS OF THOSE ITEMS IN ADVANCE;

## 02

ENABLE AUDIO RECORDING OF ORAL INTERVIEWS, SINCE THE INTEGRITY OF ASSESSMENT REMAINS DISPUTABLE WITHOUT SUCH RECORDING AS PROOF THAT THE INTERVIEW WAS CONDUCTED; THIS SHOULD BE PRESENTED TO ALL CANDIDATES AS A PREREQUISITE FOR THE INTERVIEW TO TAKE PLACE. SUCH PRACTICE WOULD MAKE IT EASIER TO THE COMPLAINTS COMMITTEE AND THE ADMINISTRATIVE COURT TO UNEQUIVOCALLY ASSESS THE MERITS OF CANDIDATES' COMPLAINTS CONCERNING THE CONDUCTED ORAL INTERVIEWS, IN TERMS OF BOTH FORM AND CONTENTS;

## 03

ORAL INTERVIEW SCORING SHOULD BE RENDERED MORE OBJECTIVE BY HAVING EACH PANEL MEMBER ASSESS EACH CANDIDATE ELECTRONICALLY, WITHOUT PRIOR EXCHANGE OF VIEWS. THIS WOULD PREVENT ANY INDIVIDUAL PANEL MEMBER FROM INFLUENCING OTHERS WHEN SCORING ORAL INTERVIEWS, AND THUS WOULD STRENGTHEN THE INTEGRITY OF EACH PANEL MEMBER;

## 04

THE CONCEPT WHEREBY A STATE AUTHORITY CONDUCTS A “CONVERSATION WITH A CANDIDATE FROM THE LIST FOR SELECTION” FOLLOWING THE ASSESSMENT SHOULD BE DELETED FROM THE LCSSE. THIS WOULD ENHANCE THE WEIGHT ASSIGNED TO ASSESSMENT RESULTS WHEN DOING THE SELECTION. SELECTION OF THE FIRST-RANKED CANDIDATE SHOULD BE STIPULATED AS A GENERAL RULE, WHILE SELECTION OF ANOTHER CANDIDATE SHOULD BE AN EXCEPTION AND SHOULD BE POSSIBLE ONLY IN STRICTLY REGULATED SITUATIONS;

## 05

STIPULATE THAT PANEL MEMBERS MAY NOT BE MEMBERS OR OFFICIALS OF POLITICAL PARTIES;

## 06

REVISE THE ROLE OF THE HRMA IN ASSESSMENT SO THAT, INSTEAD OF BEING ESSENTIAL IN CANDIDATE ASSESSMENT, THAT ROLE ENCOMPASSES SOLELY TECHNICAL AND ADMINISTRATIVE SUPPORT IN ADMINISTERING TESTS AND INTERVIEWS.

## SOURCES:

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- Moja uprava (*MyAdministration Website*), <http://mojauprava.me/prijavi-nepravilnosti/lista-prijava/>;
- *Decisions of the Complaints Committee*: No. 373/18 of 12 Oct 2018; No. 401/18 of 24 Oct 2018; No. 344/18 of 14 Sept 2018; No. 394/18 of 24 Oct 2018; No. 391/18 of 24 Oct 2018; No. 380/18 of 24 Oct 2018; No. 391/18 of 24 Oct 2018;
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- Law on Civil Servants and State Employees, *Official Gazette of MNE 2/2018 and 34/2019*.

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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 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.

On the basis of our five programmes, we monitor the process of accession negotiations with the EU, actively participating in working groups Public procurement (5), Judiciary and Fundamental rights (23) and Financial control (32). Our flagship project is the Public Policy School, which is organized since 2012, and in 2018 we organized the first Open Budget School.

So far we cooperated with over 40 organizations within regional networks in the Western Balkans and with over 100 organizations in Montenegro. Institute is actively engaged in regional networks: Think for Europe (TEN), Pointpulse, SELDI, WeBER, UNCAC Coalition, Global BTAP, PASOS and The Southeast Europe Coalition on Whistleblower Protection.

The results of our research are summarized in 107 studies, reports and analyses, and the decision-makers were addressed 1036 recommendations. Over four thousand times we communicated our proposals and recommendation to the media for better quality public policies.

We started three internet pages. [My town](#) is a pioneer endeavour of visualization of budgetary data of local self-administrations. [My Administration](#) followed, which serves as an address for all those citizens that have encountered a problem when interacting with public administration and its service delivery system. The newest internet portal, [My Money](#), provided national budget data visualization.

Institute Alternative regularly publishes information about finances, projects and donors that support the work of the organization. For this reason, the Institute have five-stars rating third year in a row, according to a survey conducted by the international non-profit organization Transparify, which evaluates transparency for over 200 research centers.

President of the Managing Board is Stevo Muk, and our organization currently has ten members.

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