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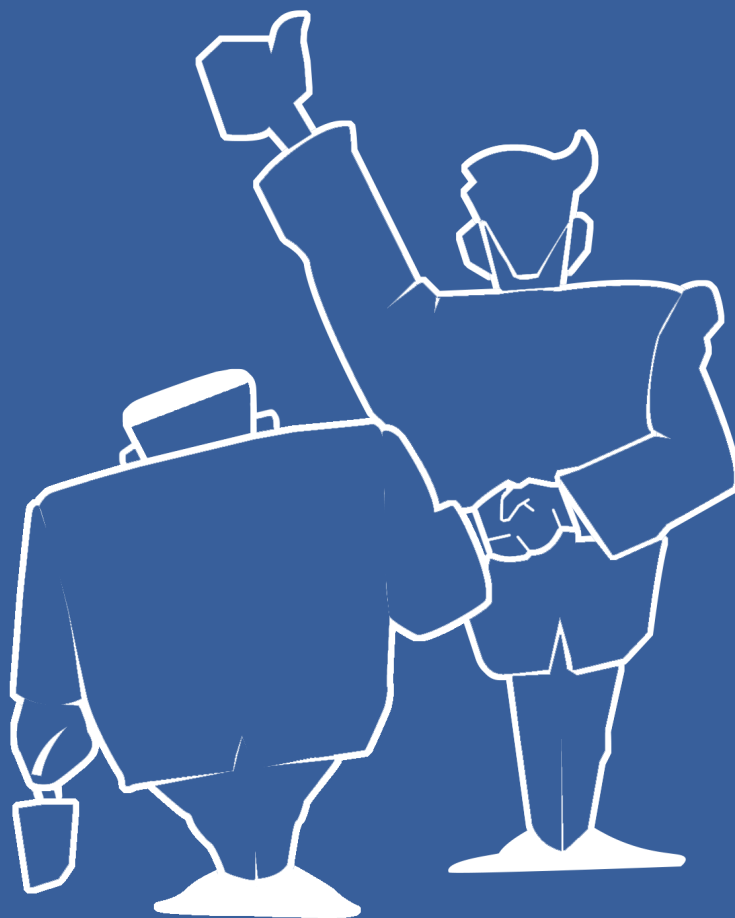


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institut alternativa

NEITHER A CLIENT, NOR A PATRON!

For greater resilience to political clientelism and corruption in the area of public sector employment in Montenegro



Centar za građansko obrazovanje
Centre for Civic Education

FRIEDRICH
EBERT
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Neither a client, nor a patron!

**For greater resilience to clientelism and corruption
in the area of public sector employment in Montenegro**

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INTRODUCTION

In a country with over 60,000 employees in the public sector, which accounts for circa 30 percent of total employment in the country,¹ employment of politically eligible and otherwise connected persons is one of the key corruptive mechanisms used for maintaining parties in power and informal exchange of services.² According to the findings of the INFORM project, which focused on the dynamics between informal and formal institutions in the Balkans, Montenegro is at the very top in the region when it comes to the spread of clientelist practices. When asked if they were ever offered money or other services in exchange for a vote in elections, 22.5 percent of citizens answered positively, compared to 7.4 percent in North Macedonia.³ Additionally, earlier research conducted for the needs of Institute Alternative, as well as research and evaluation of local policies related to youth and their needs in 15 municipalities show that the largest number of young people want employment in the state administration or public institutions, while as many as 70 percent of the unemployed believe that people are hired on the basis of personal connections, rather than merit and qualifications.⁴

At the end of 2021, the Government of Montenegro adopted a Public Administration Reform Strategy, which contains the overarching objective of professionalising the public administration, and foresees amendments to the Law on Civil Servants and State Employees, the Law on Local Self-Government, implementation of functional analyses in all segments of the public administration - in order to determine the optimal balance between competence and the number of employees - and considerations of the legal framework pertaining to public institutions.⁵ However, this Strategy does not cover the public sector in its entirety, and there is currently no strategic framework that would improve the management system of public enterprises, including employment procedures, which remain in the public focus due to mass employment, especially in companies

1 According to the latest data in the Public Administration Reform Strategy, there were 55.674 employees in the public administration, not including public enterprises, which, according to Institute Alternative, employ over 12.000 people. Simultaneously, at the end of 2020, a period that is comparable to the last available data on employment in public administration and enterprises, the total number of employees was around 219.000.

2 Milena Muk, "Public Administration Against Clientelism: Montenegro's Missed Expectations", in *Political Clientelism in the Western Balkans: Collection of Papers*, Institute for Sociological, Political and Juridical Research, Ss. Cyril and Methodius University in Skopje (ISPJR-UKIM), 2021.

3 Jovan Bliznakovski PhD, Borjan Gjuzelov PhD, Misha Popovik, *The Informal Life of Political Parties in the Western Balkan Societies*, Institute for Democracy 'Societas Civilis' Skopje (IDSCS), September 2017, available at:
<https://idscs.org.mk/wp-content/uploads/2017/11/IDSCS-Informal-Life-of-Political-Parties-Report-27092017.pdf>

4 Regional programme on local democracies in the Western Balkans, *Research and assessment of local policies pertaining to youth and their needs in 15 local self-administrations*, May 2022, available at:
<https://www.undp.org/montenegro/publications/research-and-assessment-pertaining-youth-and-youth-perceptions/needs-15-local-self-governments>

5 Government of Montenegro, *Public Administration Reform Strategy 2022-2026 with AP 2022-2024*, 09/02/ 2022, available at: <https://www.gov.me/dokumenta/823842f4-2ffd-4a0d-936e-c1b00c669115>

operating in the energy sector.⁶ Additionally, in parallel with the implementation of the Strategy, legislative initiatives submitted by MPs are not synchronised with key strategic objectives and activities. This is also the case with the proposal for amendments to the Law on Local Self-Government, submitted to the parliamentary procedure on 10 December 2022 by a group of MPs, which aims at lowering the conditions for employment in local government bodies and services, and revoking the rule that acting duty officers are appointed from among those already employed in the authority or branch of service.⁷

In principle, there are numerous systemic deficiencies in Montenegro, which make it difficult to monitor employment in the public sector. The system is characterised by fragmentation with numerous administrative “islands”, which is why there is no single and reliable record of employees in the public sector.

As part of the process of accession to the European Union, a disproportionate focus was placed on the central level of public administration, i.e. on employment in state bodies, which are recognised through the Regulation on the Organisation and Mode of Work of the State Administration and the Law on Civil Servants and State Employees (LCSSE). For example, in the absence of a unified legal framework, Principles of Public Administration have been formulated, but they mostly refer to ministries and administrative bodies, which is why regular monitoring is carried out only in relation to this level of administration, although it is smaller in size. State bodies, as defined in the LCSSE, employed 14.500 people at the end of 2020, according to the latest publicly available data, i.e. they employed less than a quarter of the total public sector.⁸ The rest of the public sector is subject to monitoring to a far lesser extent, which is partially contributed by proportionally lower degrees of transparency of certain institutions and public enterprises, as well as complicated and insufficiently clear procedures.

Therefore, to understand employment in the public sector, it is important to keep in mind all the different segments and legal regulations applicable in this area:

- **State bodies:** employment is regulated by the Law on State Servants and State Employees
 - (18 ministries; 24 administrative bodies; expert services of the President, the Parliament and the Government; the State Audit Institution; the Protector of Human Rights and Freedoms; the prosecutorial administration; the judicial administration; funds);

6 Lela Šćepanović, Energetski sektor Crne Gore u debelom minusu (Montenegro's energy sector in a deep slump), Radio Slobodna Evropa / Radio Free Europe, 16 November 2022, available at: <https://www.slobodnaevropa.org/a/energetski-sektor-crna-gora/32133821.html>

7 Group of MPs, *Draft Law on Amendments to the Law on Local Self-government*, 10/12/2022, Parliament of Montenegro, available at: <https://www.skupstina.me/me/sjednice/zakoni-i-druga-akta>

8 Government of Montenegro, *Public Administration Reform Strategy 2022-2026 with AP 2022-2024*, December 2021, available at: <https://www.gov.me/dokumenta/823842f4-2ffd-4a0d-936e-c1b00c669115>

- **Local administration bodies and services:** employment is regulated by The Law on Local Self-Government and, in relation to certain aspects, the Law on Civil Servants and State Employees;
- **Agencies and other regulatory bodies:** special laws, the Labour Law and, in cases of agencies funded from the state budget, the Law on Civil Servants and State Employees apply;
- **Public institutions:** special laws in the field of health care, social and child protection and the Labour Law;
- **Public enterprises / companies:** Law on Business Organisations (Companies Act), Labour Law;
- **Others:**
 - (Central Bank (Law on the Central Bank of Montenegro), the Audit Authority (Law on Audit of European Union Funds), State Commission for Control of Public Procurement Procedures (Law on Public Procurement), Accreditation Body (Law on Accreditation) etc.

Although there is no legal acquis in the field of employment and the civil service system at the EU level, in order to provide guidance to candidate countries in relation to good practices and certain international standards, the Principles of Public Administration for Candidate Countries were formulated.⁹ These Principles affirm merit-based recruitment in public administration, inter alia, through the requirement to clearly define the scope of the civil service system, which should also include independent regulators. The principles also imply that there are no excessive deviations from the fundamental rules of employment in various sub-sectors, that primary and secondary legislation in this area ensure legal certainty, openness and transparency, accountability, efficiency and effectiveness, and that recruitment of civil servants is based on merit and equal treatment in all stages of the process.

With the objective of merit-based recruitment defined as a priority, these principles further imply that key conditions for employment in the public administration and the general provisions that ensure the quality of the recruitment process are defined by primary legislation, while detailed procedures, including specific conditions for the title, job descriptions, competency frameworks, selection methods, scoring / ranking system and composition of selection committees are mainly regulated by secondary legislation. They further include the possibility of appeals for unsuccessful candidates, protection against discrimination and the composition of recruitment committees that is free from political interference.¹⁰

9 SIGMA (Joint initiative by the OECD and the EU), *Principles of Public Administration: 2017 edition*, OECD, 2017, available at: https://www.sigmaweb.org/publications/Principles_of_Public_Administration_2017_edition_SER.pdf

10 These principles refer primarily to the central level, i.e. state bodies, civil servants and state employees, in the sense of the Montenegrin Law on Civil Servants and State Employees. However, bearing in mind the principle of uniform regulation of employment in the public sector, and the importance of protecting the public interest in these procedures, they can be applied to the public sector in the whole.

There were several previous attempts to regulate certain aspects of the public sector as a whole in a more uniform way, including through the Law on Wages of Public Sector Employees from 2016. However, implementation of this Law suffered a series of problems, and was practically non-existent in the context of public enterprises and agencies. In principle, there is no systematic approach to regulating the work of all institutions, agencies, and bodies within the state and local administration that would fully adhere to the public interest, which is manifold in the context of employment: it is not only a matter of the public purse for gross wages and other personal income, but also of the public interest in the delivery of public services, which depends on the competencies of employees in the public sector. Therefore, the objective of this analysis is to point out the legal gaps and lack of balance in employment practices in the public sector, and provide recommendations for greater resilience to political clientelism and corruption in the area of employment in the public sector in Montenegro.

The rest of the analysis is divided into six key components. We start with an overview of the methodological framework, and then present key findings of the assessment of the levels of risk of corruption and undue influence in recruitment / employment in the public sector. The following sections contain a more detailed review of each of the aspects that were analysed separately: workforce planning, implementation of the procedures and protection of the rights of candidates / applicants. We finish the paper with conclusions and recommendations for the fight against political clientelism and corruption in this area.

METHODOLOGICAL FRAMEWORK

Bearing in mind the Principles of Public Administration for Candidate Countries, and many years of experience in monitoring employment in the public administration, all with the aim of underlining vulnerable points, legal gaps and other risks of corruption and undue political influence in the area of public sector employment, we conducted a comprehensive analysis of laws regulating employment in the public sector, as well as by-laws and statutes. We also organised three focus groups - in Bijelo Polje, Ulcinj and Podgorica - with a total of 24 participants from the non-governmental sector, trade unions and media from all geographical regions of Montenegro, in an attempt to shed light on practices in this area from different perspectives. Finally, using the mechanism of requests for free access to information, we sought additional documentation that is not publicly available, such as data on inspections carried out in certain sub-sectors, syllabi and timetables in certain schools, and the like. The collected material and information were analysed in relation to previously defined checklists, which consisted of 21 questions and two additional questions for those segments of the public sector in which appeals to second-instance bodies are allowed in the recruitment procedure.

The checklists contained a set of questions in relation to the following three key aspects:¹¹

1. **Recruitment planning** (a set of questions related to whether the internal organisation is based on previously conducted analyses and expert opinions, whether personnel planning is implemented, and whether integrity plans recognise the risks of corruption);
2. **Implementation of recruitment procedures** (a set of questions related to whether the obligation of prior job advertising is prescribed; whether sufficient time is given for application; whether clear and predictable conditions for vacancies are defined, and whether professional experience and competences are a guarantee for employment at a given workplace; whether assessment procedures are mandatory and, if so, whether provisions are defined to prevent conflicts of interest and undue influence in relation to the persons performing the assessment; to what extent are improvisations allowed in the work of the capability assessment committees, i.e. whether clear criteria and standards have been established for assessing the abilities, knowledge, skills or competences of candidates, and whether anonymised written tests are foreseen; whether the share of interviews, as a subjective method of assessment, is predominant; and whether transparency of reporting on the capability assessment is guaranteed. An additional two questions related to protection of management positions from undue influence, through a defined duration of the mandate of managing staff in relation to the election cycle, and the method of appointment of acting duty officials);
3. **Protection of rights following the conclusion of recruitment procedures** (a set of questions, which refers to whether the possibility of initiating an appeal or a dispute exists; whether there are guarantees in place for preventing conflict of interest and undue influence in the decision-making of the second-instance body for appeals, and whether the work of second-instance bodies is clearly regulated; what is the average duration of proceedings and disputes in this area and whether they take priority in resolution; whether inspections work efficiently and predictably).¹²

¹¹ In addition to Principles of Public Administration for Candidate Countries, these checklists are inspired by similar efforts in this area, carried out by the Regional School for Public Administration (ReSPA), the Regional Anti-Corruption Initiative (RAI) and civil society, especially through the WeBER programme (“Western Balkan Civil Society Empowerment for a Reformed Public Administration”), which is implemented by Institute Alternative with partners from TEN (Think for Europe Network).

¹² Checklists with answers in relation to the selected sub-sector are available on a specially created website <https://mapa-rizika.me>

Bearing in mind that the Principles of Public Administration imply the uniformity of recruitment rules in relation to the entire system of public administration, we analysed these issues in relation to the following eight key sub-sectors:

1. State bodies;
2. Local administration bodies and services;
3. Agencies and other regulatory bodies;
4. Public institutions in the area of social and child protection;
5. Public institutions in the area of healthcare;
6. Public institutions in the area of culture;
7. Public institutions in the area of education;
8. Public enterprises (majority shares held by the state or local self-government).

The legal framework and recruitment practices in these sub-sectors were analysed with an understanding for deviations from the general prerequisites implied by the sets of questions from checklists, especially in cases of specific job descriptions and positions such as, for example, actors in public cultural institutions. Additionally, in the absence of a single legal framework for agencies, this sub-sector includes “state agencies”, as defined by the Law on State Administration,¹³ but also other regulators and agencies.¹⁴ On the other hand, this round of research does not include recruitment in diplomacy, the police and armed forces. Due to security and psycho-physical ability assessments, and their specific nature, we considered that analyses of the legal framework and practice in these areas would require a special analytical framework, which could be an upgrade of research efforts in the future.

The research was burdened by certain limitations, primarily in terms of data availability, and especially in relation to the effectiveness of inspection control over recruitment in selected sub-sectors. Official reports of inspections, as well as additional documentation obtained through requests for free access to information generally do not provide information on the performance of inspections in e.g. control supervision after irregularities have been established, the number of addressed irregularities, and the like.

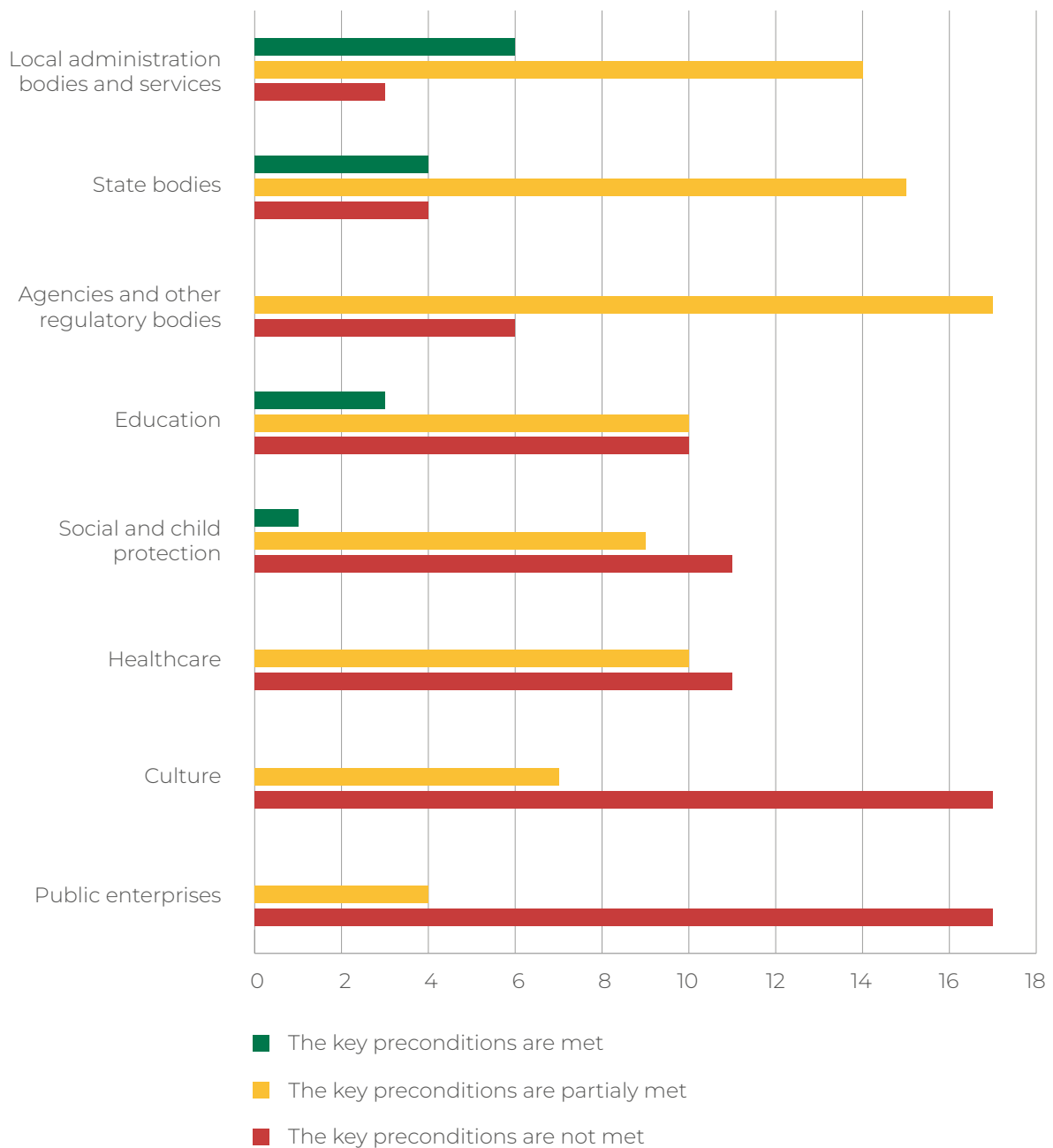
13 Agency for Electronic Communications and Postal Services, Agency for Medicines and Medical Devices (renamed into an Institute), Agency for Peaceful Resolution of Labour Disputes, Insurance Supervision Agency, and Agency for Protection of Competition.

14 Capital Market Commission, Agency for Prevention of Corruption, Agency for Personal Data Protection and Free Access to Information, Civil Aviation Agency, Agency for Electronic Media, Investment Agency, Energy Regulatory Agency.

VULNERABILITIES IN PUBLIC SECTOR EMPLOYMENT: ONLY FEW AREAS GREEN-LIGHTED

Graph 1 presents key findings of the analysis, according to which, relatively speaking, **the “best situation” is in local administrative bodies and services, and state bodies**, to which the Law on Civil Servants and State Employees and the Law on Local Self-Government apply. **The worst situation is in public enterprises**, with as many as 17 negative answers to questions pertaining to fulfilment of the fundamental prerequisites for preventing risks of corruption and undue influence during recruitment. The Law on Business Organisations did not take into account the specificities of companies whose founders and majority shareholders are the state or municipalities, which is why the applicable legal framework is that of general regulations on labour and internal company acts, which rarely prescribe more rigorous conditions and mechanisms that would ensure merit-based recruitment. **Public institutions** in the sectors of health care, social and childcare, education and culture, as well as **agencies** and other regulatory bodies are somewhere **“in between”**. Special laws for individual agencies and institutions prescribe additional guarantees for preventing conflict of interest, and for conditions for employment, to a greater extent than is the case with public enterprises. However, it should be noted that agencies and other regulatory bodies, due to inconsistencies in regulation of recruitment and the absence of a clear legal framework, usually partially fulfil the conditions for preventing the risk of corruption and undue influences in public sector recruitment.

Graph 1. Map of risks of corruption and undue interference in public sector recruitment



1. NON-PLANNED RECRUITMENT BECAME LEGALISED

When we look at the public sector as a whole, the explicit obligation of personnel planning was introduced only for state bodies and local administration bodies and services.¹⁵ Personnel planning should ensure that a certain institution has the optimal number of people with the necessary skills, allocated to the right positions and at the right time, in order to achieve short-term and long-term organisational goals. This process aims to achieve the optimal combination of the available budget and the number of employees who possess the necessary skills to achieve organisational objectives.¹⁶

However, even where it is prescribed, the obligation of personnel planning is not followed. The personnel plan of the Government was adopted partially both in 2022 and in 2021 because it did not include all the authorities that it encompasses.¹⁷ Even when they are adopted, personnel plans at the state level contain a very modest range of information; more precisely, they are reduced to a mere tabular overview of the number of required employees with an overview of the number of employees who will exercise the right to a pension. They do not contain detailed elaborations of the plan, and the use of other institutes, such as re-assignment of the existing employees. Additionally, the plans do not include other types of engagement in government bodies, such as service contracts, consultancy contracts, and the like. Bearing in mind the level of abuse of this type of contracts and the fact that they are often used for *de facto* employment, as a mechanism for avoiding relatively more rigorous conditions, their exclusion from mandatory personnel planning increases the risk of undue influence at the time when they are made.¹⁸

While personnel planning for state bodies was introduced by the previous Law on Civil Servants and State Employees (from 2011), for local administrations this obligation was prescribed only with the adoption of the Law on Local Self-

15 See: Law on Civil Servants and State Employees (“Official Gazette of Montenegro”, no. 002/18 from 10.01.2018, 034/19 from 21.06.2019, 008/21 from 26.01.2021), Law on Local Self-Government (“Official Gazette of Montenegro”, no. 002/18 from 10.01.2018, 034/19 from 21.06.2019, 038/20 from 25.04.2020),

16 Oscar Huerta Melchor, *The Government Workforce of the Future: Innovation in Strategic Workforce Planning in OECD Countries*, OECD Working Papers on Public Governance No. 21

17 Government of Montenegro, *Proposal for a Partial Staffing Plan for State Bodies and Services of the Government of Montenegro for 2022*, 24/02/2022, available at: <https://www.gov.me/dokumenta/052e9d67-b990-434e-9a95-83cb9b46adcc>

18 The state audit institution also indicated that management of service contracts, supplementary work contracts and temporary work contracts is not sufficient in state administration bodies, and that the activities of state administration bodies and established practices in the process of planning, control mechanisms and reporting on the effects of contracts do not ensure their successful management. See: State Audit Institution, *Performance Audit Report “Successfulness of Management of Service Contracts, Supplementary Work Contracts and Temporary Work Contracts in State Administration Bodies”*, Podgorica, 15 June, 2020, available at:

https://www.dri.co.me/1/index.php?option=com_k2&view=item&id=722:objavljen-izvještaj-o-reviziji-uspjeha-„uspješnost-upravljanja-ugovorima-o-djelu-ugovorima-o-dopunskom-radu-i-ugovorima-o-priremenim-i-povremenim-poslovima-u-organima-državne-uprave“&lang=sr

Government in 2018. However, regular monitoring carried out by Institute Alternative during the four years of implementation of this obligation at local level shows that these plans are adopted with significant delays and suffer from numerous shortcomings.¹⁹ The municipality of Ulcinj stands out for the fact that it has been violating the Law on Local Self-Government in the four years, as it did not draw up personnel plans, while it continued to hire personnel, thus additionally violating the law. Although the Law on Local Self-Government prescribed the obligation of personnel planning, it did not foresee penal provisions for municipalities that violate it.²⁰ Additionally, this Law prescribes a time limit for the obligation to adopt a personnel plan, which is 30 days from the date of adoption of the budget, nine municipalities in 2022 violated the prescribed deadline and were late with the adoption of the personnel plan. Finally, although the Decree on the Content, Process and Method of Preparation and Amendment of the Personnel Plan prescribes the obligation to clearly state the reasons for the increase in the number of employees, a large number of personnel plans either do not have an accompanying rationale, or the municipalities use generic formulations that do not clarify the link between new employment and the delivery of key services or implementation of public policies.²¹

In the education sector, the outlines of personnel planning exist in the obligation to allocate classes and jobs, and to submit to the relevant Ministry a list of employees whose services are no longer required (before the beginning of the school year, in cooperation with the Trade Union). Additionally, in the health sector, according to the Law on Health Care, in the process of implementation of the health policy, the state adopts a plan for the development of personnel in the field of health. However, only the outdated “Master Plan for the Development of Healthcare in Montenegro 2015-2020”²² is available. There are no individual personnel plans that health institutions draw up on an annual basis.

(MAINLY) NO GUIDELINES FOR INTERNAL ORGANISATION

In the context of recruitment planning, we paid particular attention to adoption of acts on internal organisation and systematisation, given that they often represent an entry point for undue influence, through adjusting the conditions for employment and the job title itself. In order to prevent excessive arbitrariness in that area, it is critical that the internal organisational structure of administrative bodies, institutions, public enterprises and agencies is based on needs, previously conducted analyses and expert opinions. However, although the Methodology for Drafting Acts on Internal Organisation and Systematisation has been adopted for

19 Nikoleta Pavićević, *Optimisation – what was it about again? Municipalities requested almost 1300 new employees*, Institute Alternative, 07/10/2022, available at: <https://institut-alternativa.org/optimizacija-sta-to-bjese-opstine-iskazale-potrebu-za-skoro-1300-zaposlenih/>

20 Law on Local Self-Government (“Official Gazette of Montenegro”, no. 002/18 from 10.01.2018, 034/19 from 21.06.2019, 038/20 from 25.04.2020)

21 All staffing plans for 2022 are available at the following page developed by Institute Alternative: <https://www.dropbox.com/sh/w0b53k123xd1z1u/AAC9QQSJBWiRBrvzOAKGww0fa?dl=0>

22 Ministry of Health, *Master Plan for the Development of the Health Sector in Montenegro 2015-2020*, Podgorica, August 2015.

state bodies, which implies the existence of an analytical basis for drafting these acts, in practice they are not accompanied by adequate analyses.²³ The opinions of competent authorities (Human Resources Administration, Ministries of Finance and Public Administration) on draft acts are not standardised nor are they always aimed at establishing an optimal internal organisation of state authorities. They are often not observed when adopting regulations, and the situation is similar in relation to local government bodies and services.

The situation is particularly bad in the context of public enterprises and public health institutions, where relevant ministries do not have any supervision over the establishment of internal organisation. In relation to agencies and regulatory bodies, only the Law on Energy refers to the need for the statute of the Energy Regulatory Agency to contain guidelines for determining the internal organisation of the Agency.²⁴ These guidelines, however, only contain the names of the basic organisational units (departments), guidelines on jobs performed outside the departments (jobs of Agency Board advisers and Agency Board secretaries), and guidelines on the possibility of organising internal audit work in a separate organisational unit.²⁵ Similarly, the Law on the Protection of Competition refers to the Statute of the Agency for the Protection of Competition to determine the basis for its internal organisation.²⁶ However, since there is no personnel planning procedure or the obligation to conduct periodic functional analyses, the legal framework leaves ample room for significant arbitrariness when defining the internal organisation, and therefore, determining the conditions for vacancies. This, in turn, creates space for inappropriate political and other corruptive influence.

“Illegal recruitment planning and recruitment / illegal decision making in recruitment procedures“ is recognised as a risk in only 0.81% of cases, compared to all other risks of corruption listed in integrity plans.

The Ministry of Education provides consent for the adoption of the act on internal organisation for public educational institutions. The law does not prescribe the conditions that the institution must fulfil in order to obtain consent for the adoption of the act, but it does prescribe fines ranging from EUR 500 to EUR 15,000 in the event that consent is not provided.²⁷ Findings from the focus

23 Human Resources Administration, *Methodology for Development of Acts on Internal Organisation and Systematisation*, Podgorica, December 2013, available at: <https://www.gov.me/dokumenta/11928447-2eeb-42d3-994d-af167efcd38b>

24 Energy Law (“*Official Gazette of Montenegro*”, no. 005/16 from 20.01.2016, 051/17 from 03.08.2017, 082/20 from 06.08.2020, 029/22 from 18.03.2022)

25 Statute of the Energy Regulatory Agency and Regulated Communal Activities (“*Official Gazette of Montenegro*”, no. 135/21 from 24.12.2021)

26 Law on Protection of Competition (“*Official Gazette of Montenegro*”, no. 044/12 from 09.08.2012, 013/18 from 28.02.2018, 145/21 from 31.12.2021)

27 General Law on Education (“*Official Gazette of the Republic of Montenegro*”, no. 064/02 from 28.11.2002, 031/05 from 18.05.2005, 049/07 from 10.08.2007, “*Official Gazette of Montenegro*”, no. 004/08 from 17.01.2008, 021/09 from 20.03.2009, 045/10 from 04.08.2010, 073/10 from 10.12.2010, 040/11 from 08.08.2011, 045/11 from 09.09.2011, 036/13 from 26.07.2013, 039/13 from 07.08.2013, 044/13 from 20.09.2013, 047/17 from 19.07.2017, 059/21 from 04.06.2021, 076/21 from 09.07.2021, 146/21 from 31.12.2021)

group organised by Institute Alternative with representatives of trade unions, NGOs and journalists showed that, in practice, this procedure complicates and delays the establishment of an internal organisation more than it contributes to the quality control of the process. Focus group participants point to the practice of long delays of the approval by the Ministry of Education of acts on internal organisation and systematisation. The representative of the trade union at the focus group pointed out that, previously, there were cases of consent being given by the Ministry of Education only at the end of the school year, or that consent was not given at all.

Only in relation to centres for social work, there are certain guidelines that can prevent excessive arbitrariness in establishing the internal organisation of workplaces, with appropriate supervision. The Rulebook on the Organisation, Norms, Standards and Mode of Operation of Centres for Social Work provides closer criteria for the organisation of centres for social work in relation to the number of inhabitants, as well as for the organisation of services in relation to the number of employees.²⁸ Nevertheless, the analysis of the work of centres for social work in Montenegro, conducted by UNICEF in 2019, showed significant discrepancies between the number of standardised jobs and the number of employees. The analysis showed that the centres for social work employed 28% more workers than the prescribed norm.²⁹ Additionally, similar guidelines do not exist for other social welfare institutions.

Only in relation to centres for social work are there certain guidelines for establishing an internal organisation, which, with appropriate supervision, could reduce arbitrariness in planning the number of vacancies and the conditions for filling them.

RECRUITMENT IS (NOT) A RISK OF CORRUPTION

In order to mitigate various risks of corruption through internal mechanisms, public sector institutions have an obligation to adopt integrity plans. An integrity plan is an internal anti-corruption document, “which contains a set of measures of a legal and practical nature that prevent and eliminate opportunities for the emergence and development of various forms of corrupt and unethical behaviour within the authority as a whole, its individual organisational units and as well as individual workplaces, and which arises as a result of the authorities’ self-assessment of the exposure to risks of emergence and development of corruption, illegal lobbying and conflict of interest, as well as exposure to ethically and professionally unacceptable actions.”³⁰

There is a significant discrepancy in relation to negative perceptions of employment in the public sector and the fact that, according to the Report on the Adoption and Implementation of Integrity Plans in 2021, “illegal process of planning

²⁸ Rulebook on the Organisation, Norms, Standards and Mode of Operation of Centres for Social Work (“Official Gazette of Montenegro”, no. 058/13 from 20.12.2013, 030/15 from 12.06.2015, 017/16 from 11.03.2016, 043/19 from 31.07.2019)

²⁹ UNICEF Montenegro, *Analysis of the Work of Centers for Social Work in Montenegro, 2019*, available at: <https://www.unicef.org/montenegro/media/9551/file/MNE-media-MNEpublication506.pdf>

³⁰ Agency for Prevention of Corruption, On Integrity, available at: <https://www.antikorupcija.me/me/integritet/integritetu/>

and implementation of the recruitment procedure / illegal decision-making during the recruitment process” is recognised as a key risk in only 0.81 percent of cases compared to all other recognised key risks of corruption.³¹ Even where this risk is recognised, implementation of the integrity plan is at an unsatisfactory level. Focus group participants from trade union organisations also indicated low awareness among employees about integrity plans, the measures undertaken and their implementation.

2. IMPLEMENTATION OF RECRUITMENT PROCEDURES: POLITICAL INTERFERENCE AND WIDE DISCRETIONARY POWERS

Recruitment procedures are more elaborate in certain segments of the public sector, primarily in state bodies and local administration bodies and services, and less so in others, where we only see application of general labour regulations. However, even when there is a test, i.e. a capability assessment for a vacancy, there is no obligation to select the candidates who were the best ranked, in any of the eight sub-sectors that we analysed.

Even when there is a regulated capability or competence assessment for certain workplaces, none of the eight sub-sectors that we have analysed are under the obligation to select the first-ranked candidates.

We find particularly devastating the fact that only in state bodies, local government bodies and services, and certain agencies, jobs are usually filled on the basis of public advertising that gives candidates sufficient time to apply (more than 15 days). However, it should be noted that the principle of public advertising is weakened in state bodies as well, because when appointing acting duty officials in management positions, people from outside the organisation can be brought in, without prior assessments that would go beyond checking whether the conditions of the given position are fulfilled, and the process even allows for additional exceptions. For example, the Law on Execution of Imprisonment, Fines and Security Measures allows interns to be employed without a public announcement, following the completion of an internship programme.³²

In institutions, agencies and public enterprises to which the general labour regulations apply, there is an obligation to publicly advertise a job vacancy for a

31 Agency for Prevention of Corruption, *Report on adoption and implementation of integrity plans in 2021*, Podgorica, February 2022, available at: https://www.antikorupcija.me/media/documents/izvjestaj_o_donosenju_i_sprovođenju_planova_integriteta_u_2021_godini.pdf

32 Law on Execution of Imprisonment, Fines and Security Measures (*“Official Gazette of Montenegro”*, no. 036/15 from 10.07.2015, 018/19 from 22.03.2019, 145/21 from 31.12.2021)

duration of only three days. However, aside to the insufficient duration of such public advertisements, an additional limitation is imposed by the fact that none of the following cases are considered vacancies: when there is a need to conclude a new employment contract with the same employee following the expiration of the previous employment contract, when there is a need to deploy the employee to another workplace with the same employer, and in cases of employee referrals. Thus, the list of exceptions to public advertising is potentially very long and inherently open to abuse.

In terms of eligibility criteria for recruitment, they are also legally defined for a smaller part of the public sector (state and local administration, social and child welfare institutions, a portion of agencies, and sporadically for management positions in public institutions and agencies). In relation to a large number of cultural institutions, health care, enterprises, associate staff in social and child welfare institutions, and a large number of agencies and other regulatory bodies, the definition of conditions for filling vacancies is left exclusively to the regulations on internal organisation and systematisation. Bearing in mind that there are no job catalogues or clearly defined job descriptions with appropriate conditions for their performance, there is a lack of legal certainty and predictability in the context of conditions for filling vacancies. In this regard, social and child welfare institutions are an exception. The Rulebook on Detailed Conditions and Standards for Performance of Professional Work in Social and Child Protection System more closely defines the concept of professional work in social and child protection and the conditions for their performance, in terms of education, work licenses and the like.³³

Even when they are defined, the conditions are relatively poor. For example, for the positions of senior management staff and heads of state bodies, the requirements include a higher education degree (VIII level of education qualification) and at least three years of work experience in management positions or five years of work experience in other positions (for heads of institutions), i.e. at least two years of work experience in management positions or five years of work experience (for senior management staff). In 2019, the Human Resources Management Administration created a Manual for the Application of Competence Frameworks for Senior Management and Senior Staff,³⁴ but it is not applied consistently. There is no competency framework for other official positions either at the state or local level.

However, the situation is even worse in public enterprises, where the management staff does not have to fulfil any special conditions. The conditions that the executive director of the company must fulfil are not defined by law at all, and in 15 out of more than 50 public enterprises, they are not contained even in the company's acts. In the rare cases where special conditions are prescribed, they rarely

³³ Rulebook on Detailed Conditions and Standards for Performance of Professional Work in Social and Child Protection System (*Official Gazette of Montenegro*, no. 056/13 from 06.12.2013, 014/14 from 22.03.2014, 073/19 from 27.12.2019)

³⁴ Human Resources Administration, *Manual for the Application of Competence Frameworks for Senior Management and Senior Staff*, Podgorica, 2019.

include years of work experience in managerial positions, special certificates, professional knowledge in the field of the company's activities, experience in the relevant profession or the company's activities. Only 16 companies have internal acts that prescribe the obligation to conduct a public competition for the appointment of the executive director.³⁵

Although the conditions are loosely regulated by laws that apply to agencies and other regulatory bodies, it is important to underline that the provisions on the prevention of conflict of interest are particularly significant, and prescribed by special laws for the selection of directors and members of councils or boards of the nine agencies and regulators. Additional provisions on the prevention of conflict of interest are prescribed by law for the election of the director of the Institute for Medicines and Medical Devices of Montenegro.

ELIGIBILITY CHECKS

The legally regulated capability assessment required to establish an employment relationship is not a rule in the Montenegrin public sector. This procedure was elaborated only in relation to state bodies, local administration bodies and services, some agencies and regulatory bodies,³⁶ and sporadically in public institutions, companies and other agencies and regulators. However, even in relation to the state and local administration, where the assessment is regulated, there are no guarantees of political impartiality of the committees that carry it out, as indicated in SIGMA's latest monitoring report.³⁷ Additionally, capability assessments are not organised in a way that prevents unequal treatment of candidates and unjustified improvisation. They consist of a theoretical and practical part and include a written test. The written test is submitted electronically and anonymised. There is an obligation to ask the same questions to all candidates at the interview, as well as criteria for evaluating the interview. However, the most room for improvisation is allowed in practical testing, given that the committee's role in that part is negligible, and it relates to the selection of two out of ten tasks submitted by the body for whose needs the recruitment is conducted. There are no standardised guidelines for the preparation of practical tasks, which increases the risk of their "leaking" and favouring certain candidates.

35 Marko Sošić, *Who owns our public enterprises in Montenegro? A review of aspects of transparency and accountability of state-owned enterprises*, Institute Alternative, Podgorica, 2021, available at: <https://institut-alternativa.org/en/who-owns-our-public-enterprises-in-montenegro/>

36 In relation to agencies and other regulatory bodies, it should be noted that the Law on Civil Servants and State Employees prescribes application of the law to those "state agencies", which are financed from the state budget. However, confusion still reigns in practice. Thus, in the example of special laws establishing agencies and regulators from 2022, the corresponding application of the Law on State Administration is prescribed only for the Agency for Protection of Competition, the Agency for Investments, the Agency for the Peaceful Resolution of Labour Disputes, the Agency for Control and Quality Assurance of Higher Education. In relation to the seven other analysed agencies and regulators, general labour regulations apply, and a special law establishing a given regulator and general acts of the regulator, while for the Agency for Electronic Media it is not specified at all which regulations are applied.

37 "The Law on Civil Servants and State Employees does not explicitly exclude politically appointed persons as members of competition commissions in the senior civil service, which leaves room for undue political influence": SIGMA, *Monitoring Report: The Principles of Public Administration – Montenegro*, November 2021, available at: <https://www.sigmaxweb.org/publications/Monitoring-Report-2021-Montenegro.pdf>

The Law on Health Care, as well as the Labour Law, which applies by default, do not provide for a mandatory capability assessment when hiring in health care institutions, and internal acts of health care institutions regulate this issue unevenly. For example, internal acts of the Bar General Hospital and the Podgorica Health Centre do not stipulate the obligation of organised written testing. The Clinical Centre of Montenegro prescribed a procedure for written and oral capability assessments, while at the Institute for Public Health, the director decides on the basis of the submitted documentation - the candidate's biography - and has the discretionary right to decide on the success or otherwise of applications.³⁸

The Law on Culture does not prescribe capability assessments for vacancies, and this is not the subject of any by-laws or internal acts of public institutions in this sub-sector. The research, based on publicly available sources, points to the fact that only the "Đurđe Crnojević" National Library has a Decision on Implementation of the Employment Procedure in the Library, which is inherently flawed because it leaves room for improvisation, as can be seen from the excerpt from that Decision.³⁹ The situation is similar in public enterprises.

A disproportionate share of interviews, as a subjective method of capability assessment, also poses potential risks for undue influence and corruption, especially if it is not accompanied by appropriate guidelines or standards for evaluation. In state bodies, local government bodies and services, and certain agencies, i.e. regulatory bodies, the interview does not have a decisive role in establishing an employment relationships in lower-grade positions, but it does for appointments of upper management staff. As in other sub-sectors, the capability assessment

"Article 12

The Director of the Library considers the received applications. When evaluating individual evidence of fulfilment of the conditions from the advertisement, the director may consult with expert associates.

Article 13

Upon reviewing the applications, the director may call the candidates for an interview.

Article 14

In order to make the optimal decision on appointment, the director has the right to organise a capability assessment in the field in which the candidate is being recruited. The assessment can be carried out personally or through an ad hoc committee."

Extract from the Decision on Implementation of the Employment Procedure in the "Đurđe Crnojević" National Library

³⁸ Institute for Public Health of Montenegro, *Rulebook on Employment Procedures, Form and Method of Capability Assessments and Criteria for Selection of Candidates at the Institute for Public Health of Montenegro*, Podgorica, February 2018.

³⁹ Decision on Implementation of the Employment Procedure in the Đurđe Crnojević National Library, 2017, available at: <https://www.nb-cg.me/fajlovi/ODLUKA-O-SPROVODJENJU-PROCEDURE-PRILIKOM-ZAPOS LJAVAN-JA-U-BIBLIOTECI-prepravljeno.pdf>

is not regulated in a legally secure and predictable manner, as there are no clear expectations regarding the share of interviews and other criteria that are evaluated. Internal acts that sporadically regulate this issue in public institutions differ regarding the share of the interview in the total number of points. For example, according to the Rulebook of the General Hospital in Bar, testing is conducted only through an oral interview, but without clear criteria for evaluating and influencing the results of the interview on ranking and employment.⁴⁰ According to the Decision of the Clinical Centre, which regulates capability assessments for medical staff, the interview weighs between zero and five points and does not have a decisive role.⁴¹

“In case of indecision, the director of the Institute may or may not invite all or only some candidates, in order to conduct an oral interview with them, and to make a decision on the successful candidate.

The director of the Institute makes a decision on the successful candidate on the basis of submitted documentation – CV, and has the discretionary right in the selection of candidates.”

Excerpt from the Rulebook on the Recruitment Procedure, the Form and Method of Capability Assessment and the Criteria for the Selection of Candidates at the Institute of Public Health of Montenegro

In social and child protection institutions, there is no explicitly prescribed capability assessment for employment in professional and associate positions, but the prescribed procedure is to take a professional exam upon completing an internship programme. The method of taking the professional exam is regulated by the Rulebook on the Conditions, Programme and Method of Taking the Professional Exam in Social and Child Protection,⁴² according to which the examination is carried out by a five-member committee, formed by the line Ministry, and made up exclusively of employees of the Ministry. The legal framework is insufficiently clear with regards to who has the right to take the professional exam and how it affects employment procedures.

40 PHI General Hospital „Blažo Orlandić“ Bar, *Rulebook for advertising vacancies*, 23/11/2017.

41 PHI Clinical Centre of Montenegro, *Decision on the Method of Ranking, Criteria for Selection of the Best Candidate for Establishment of an Employment Relationship – medical staff*, Podgorica, 02/08/2021.

42 Rulebook on the Conditions, Programme and Method of Taking the Professional Exam in Social and Child Protection (*“Official Gazette of Montenegro”*, no. 024/15 from 11.05.2015, 060/17 from 30.09.2017, 043/19 from 31.07.2019, 016/21 from 17.02.2021, 059/22 from 03.06.2022)

NO INSIGHT INTO QUESTIONS AND ANSWERS

In principle, apart from the Law on Civil Servants and State Employees, which applies to state bodies and, by default, to local administration bodies and services and individual agencies, the legal framework for recruitment does not deal specifically with issues of inspection of the documentation related to procedures for filling vacancies.

The Law on Civil Servants and State Employees stipulates that a candidate who has applied for an advertisement has the right to inspect the documentation in the presence of an employee of the Human Resources Management Authority.⁴³ The Rulebook on the Content, Withdrawal and Amendment of Advertisements for Filling a Vacancy in a State Authority and the Method of Reviewing the Documentation of the Advertisement⁴⁴ further prescribes that the candidate who submitted a request for review of the documentation of the advertisement shall be allowed to view the documentation of the advertisement for which he or she applied, in the premises of the Human Resources Management Authority, and in the presence of officials of that Authority, within five days from the date of submission of the request, in such a way as to ensure protection of personal data.

However, a major obstacle to insight into the complete documentation is the fact that interview minutes are not made. The Regulation on the Criteria and the Detailed Method of Conducting Assessment of Knowledge, Capabilities, Competences and Skills for Work in State Bodies⁴⁵ prescribes that only after the assessment has been carried out, and within seven days at the latest, a report is drawn up in which data pertaining to the assessment and the results are entered for each candidate individually. Those reports contain an overview of points that the candidates scored for different parts of the assessment, but they do not contain the interview questions and answers, interview minutes, and the like.⁴⁶

In other analysed sub-sectors, transparency is at an even lower level, because a detailed procedure for inspecting the documentation of the vacancy filling procedure is not foreseen. However, in accordance with the Law on Free Access to Information, which allows inspection of documentation in the possession of authorities, candidates can inspect the documentation and the results of other candidates. Notwithstanding, as there are no precise obligations regarding the reporting of the proceedings, insufficient transparency creates additional susceptibility of these procedures to risks of political interference and corruption.

43 Law on Civil Servants and State Employees (*“Official Gazette of Montenegro”*, no. 002/18 from 10/01/2018, 034/19 from 21.06.2019, 008/21 from 26.01.2021)

44 Rulebook on the Content, Withdrawal and Amendment of Advertisements for Filling a Vacancy in a State Authority and the Method of Reviewing the Documentation of the Advertisement (*“Official Gazette of Montenegro”*, no. 041/18 from 28.06.2018)

45 Regulation on the Criteria and the Detailed Method of Conducting Assessment of Knowledge, Capabilities, Competences and Skills for Work in State Bodies (*“Official Gazette of Montenegro”*, no. 050/18 from 20.07.2018)

46 An analysis from 2020 contains more details on this issue: Milena Muk, *Integritet zapošljavanja u državnim organima: Provjera sposobnosti ili podobnosti? (Integrity of Recruitment in State Authorities: Assessment of Abilities or Partisanship?)*, Institute Alternative, 26/02/2020, available at: <https://institut-alternativa.org/integritet-zaposljavanja-u-drzavnim-organima-provjera-sposobnosti-ili-podobnosti/>

MANAGEMENT POSITIONS ARE PARTICULARLY EXPOSED TO UNDUE INFLUENCE

At the level of the public sector as a whole, there is a lack of uniform approach to the duration of the mandate of management staff. At the level of state and local administration, the mandate of heads and senior management staff, which represents the upper limit that separates professional and political positions, lasts five years. However, in other sectors, the duration of the mandate is regulated differently. For example, directors of public institutions in the field of education, social and child protection, health care and culture are elected for a period of four years.

In principle, the duration of the mandate, which does not coincide with the four-year election cycle, is considered per se a barrier to undue political influences. However, in the absence of guidelines and rules that would prevent arbitrary reorganisation of individual institutions and the public administration system as a whole, the stability of the mandate of managers is threatened by unjustified abolition of organisational units or institutions, or administrative bodies as such, or even by their renaming. For example, cosmetic changes to the Regulation on the Organisation and Mode of Operations of the State Administration served as the basis for the termination of the mandate of the Forestry Administration, the Human Resources Administration, and the Public Works Administration management.⁴⁷

Additionally, in the public sector as a whole, the institution of *acting duty officials* is widely abused. Amendments to the Law on Civil Servants and State Employees from January 2021 saw deletion of the provision that acting duty officials are appointed as a rule from among those already employed in a given state body.⁴⁸ This situation created opportunity for additional politicisation of these positions, and favouring incumbents who do not have to undergo a capability assessment, but only meet the general requirements for a given position, which, as we previously discussed, are extremely low. In other sub-sectors, this institute is often not even specifically regulated; only the Law on Local Self-Government has retained the provision that, as a rule, acting duty officials are appointed from among those already employed. Additionally, according to the discussion at the focus group held in Podgorica, in practice, there have been cases in the education sector where the acting duty status has been extended even after the expiration of the six-month period, although in the meantime, competitions were conducted and candidates who met the conditions could have been appointed.

⁴⁷ Milena Muk, *The Government continues to violate the principles of good governance with its arbitrary dismissals*, Institute Alternative, 29/07/2022, available at: <https://institut-alternativa.org/en/the-government-continues-to-violate-the-principles-of-good-governance-with-its-arbitrary-dismissals/>

⁴⁸ Group of MPs, Draft Law on Amendments to the Law on Civil Servants and State Employees (Adopted), 11/12/2020, available at: <https://www.skupstina.me/me/sjednice/zakoni-i-druga-akta>

3. PROTECTION OF RIGHTS: NO PRIORITISATION IN RESOLVING DISPUTES AND INSUFFICIENTLY EFFECTIVE INSPECTION SUPERVISION

In terms of protecting the rights of job applicants, the Law on Civil Servants and State Employees applies to state bodies and local administration bodies and services. This Law stipulates that an appeal can be filed against the decision on the appointment of a civil servant or an employee, within eight days from the date of receipt of the decision. Appeals against the decision on the appointment are decided by the Appeals Committee. The Appeals Committee decides on the appeal no later than 30 days from the day of receipt of the appeal. An administrative dispute can be initiated against the decision of the Appeals Committee.⁴⁹

Until October 2021, the Appeals Committee mostly resolved cases within the prescribed deadline. However, from October 2021 until the beginning of April 2022, this body was not functional, which led to a significant halt in their operations, and resulted in 44.5 percent of unresolved complaints in 2021 alone.⁵⁰ With regard to the composition of the Committee, it should be noted that although the general principles of the Law on Administrative Procedure, which refer to the need for exemption in case of suspicion of impartiality, the Appeals Committee can include previously politically exposed persons, which is the case with the composition of the current Committee, based on an Internet search of biographies of appointed members.

Administrative and labour disputes in relation to employment procedures in the public sector last for longer than prescribed. The average duration of an administrative dispute in 2021 was 521.3 days.⁵¹ There is no data for the duration of labour disputes in the sense of the Law on Civil Procedure for those segments of the public sector in which general labour regulations are applied. However, according to the available data, the average duration of disputes before basic courts that are competent for labour disputes in 2020 was 158 days.⁵² Therefore, although the Law on Civil Procedure stipulates that, in proceedings in labour disputes, the court will always pay particular attention to the need for urgent resolution of labour disputes,⁵³ in practice these disputes last a long time. There is no specialised court

49 Law on Civil Servants and State Employees (*“Official Gazette of Montenegro”*, no. 002/18 from 10.01.2018, 034/19 from 21.06.2019, 008/21 from 26.01.2021)

50 Government of Montenegro – Appeals Committee, *Report on the Work of the Appeals Committee for 2021*, Podgorica, March 2022.

51 Administrative Court of Montenegro, *Report on the Work of the Administrative Court*, Podgorica, February 2022, available at: https://sudovi.me/static/uscg/doc/izvjestaj_o_radu_Upravnog_suda_CG_-_2021_godina.pdf

52 European Commission, *Montenegro Report 2022*, Brussels, 12/10/2022, available at: https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2022_en

53 Law on Administrative Procedure (*“Off. Gaz. of RM”*, no. 22/2004, 28/2005 – *Decision of the CC and 76/2006 and “Off. Gaz. of MNE”*, no. 47/2015 – *ot.law*, 48/2015, 51/2017, 75/2017 – *decision of the CC*, 62/2018 – *decision of the CC*, 34/2019, 42/2019 - *corr.* and 76/2020)

or court departments for labour disputes, which was highlighted and criticised by the Union of Free Trade Unions.⁵⁴

Additionally, in the sub-sectors to which general labour regulations apply, only in certain cases can a dispute be initiated over a violation of the rights of the applicant. To clarify, according to the Labour Law, persons seeking employment have the right to initiate proceedings before the competent court in case of actionable behaviour, as defined by special provisions of the Labour Law. More precisely, these provisions are articles of the Labour Law, which prescribe prohibition of discrimination against persons seeking employment, direct and indirect discrimination, discrimination on several grounds, harassment and sexual harassment, prohibition of discrimination in relation to professional social security systems, prohibition of discrimination in relation to professional training and improvement, prohibition of discrimination in relation to membership in organisations of employees and employers, and abuse in the workplace (mobbing).⁵⁵

In terms of inspection supervision, particularly by the Administrative Inspection and the Labour Inspection, as primary responsible parties in this area, inadequate performance reporting represents a significant obstacle to assessing their contribution to preventing the risk of corruption and other undue influence. The latest available report on the work of the Ministry of Public Administration does not provide sufficient information about the performance of the Administrative Inspection, as repeatedly underlined by Institute Alternative.⁵⁶

From the final report on the implementation of the Public Administration Optimisation Plan for 2018-2020, the final effect of those measures is unclear even in relation to the irregularities recorded by the Administrative Inspection, as evidenced by the finding that up to 2020, the Administrative Inspection carried out 16 inspections, during which it controlled 232 service contracts, and found 218 irregularities, which it pointed out to the subjects of inspection.⁵⁷ “Irregularities established during inspection procedures, which included inspection of service contracts, temporary and task-based contracts or other types of contractual engagement, related to the conclusion of these contracts for jobs under the regular jurisdiction of the subjects of supervision, i.e. jobs of systematised workplaces, which is contrary to the Law on Civil Servants and State Employees and the Law on Local Self-Government, which prescribe the manner of establishing an employment relationship. Further administrative measures will depend on the actions of the

54 Goran Kapor, *Union of Free Syndicates suggests formation of court for labour disputes: increase in the cost and duration of labour disputes*, *Vijesti*, 20/10/2022, available at:

<https://www.vijesti.me/vijesti/ekonomija/627052/radni-sporovi-traju-sve-duze-i-kostaju-sve-vice>

55 Article 16 of the Labour Law (“*Official Gazette of Montenegro*”, no. 074/19 from 30.12.2019, 008/21 from 26.01.2021, 059/21 from 04.06.2021, 068/21 from 23.06.2021, 145/21 from 31.12.2021)

56 Milena Milošević and Aleksandra Vavić, *Let's talk about effects! ...or gaps in reporting on public administration reform in Montenegro*, Institute Alternative, Podgorica, May 2018, available at:

https://institut-alternativa.org/en/lets_talk_about_effects/

57 Ministry of Public Administration, Digital Society and Media, *Report on Implementation of the Public Administration Optimisation Plan for 2020, with an overview of implementation of the entire document*, 2021, available at: <https://www.gov.me>

subjects of supervision, as indicated by the administrative inspection, which will be the subject of control inspections,” the report concludes.⁵⁸

Focus groups conducted with representatives of trade unions, the non-governmental sector and the media confirm the thesis of inadequate performance of the Administrative Inspection. Additionally, in response to the initiative submitted by Institute Alternative to this inspection, in relation to inspection of employment of the director of the Employment Agency of Montenegro, the Administrative Inspection indicated that the inspection could not be carried out because a court proceeding had been initiated in relation to the case in question. Bearing in mind the average duration of court proceedings, this attitude of the Administrative Inspection has a negative impact on the effectiveness of the protection of rights and addressing irregularities.

Simultaneously, the Labour Inspection does not report individually by sub-sectors in terms of performed inspections and established irregularities. We also found confirmation in practice that this inspection does not comply with the principle of prevention, which, according to the Law on Inspection Supervision, implies that in the performance of inspection supervision, the inspector performs primarily a preventative function, and only undertakes administrative measures and actions when the preventative function does not achieve the purpose and the objective of supervision. When Institute Alternative sent the initiative for inspection supervision to the Administration for Inspection Affairs, aware that the competition for a position in the Clinical Centre was carried out contrary to the procedures, the Labour Inspection informed us that it was not possible to carry out the inspection while the procedure was in progress. In other words, the supervision can only be carried out once a candidate is selected, and only in terms of verifying fulfilment of the general and specific job conditions.⁵⁹

⁵⁸ *Ibid.*

⁵⁹ Notification by the Administration for Inspection Affairs, Labour Inspection, no. 0203-717/22-11718/3 from 28 November 2022.

WHAT NEXT?

Public sector employment is a normatively neglected area, which led to the fact that various forms of non-competitive, non-merit-based employment became the rule, rather than the exception. Even in sub-sectors that were subject to greater scrutiny by the European Commission and civil society, the rules are so loose and the conditions so low, that there are no guarantees at all that people who possess the necessary knowledge and skills in the given field would be employed.

The rare exceptions, i.e. cases where we saw fulfilment of basic prerequisites for preventing undue influence, are not sufficient for meaningful progress in this area, which is much needed and which the European Union constantly underlines. Even if some type of testing exists, there is no obligation to select the best-ranked candidates, which calls into question the appropriateness of the procedures that precede the final decision on recruitment. The obligation to publicly advertise jobs in a public enterprise, public institution and other public services is defined with numerous exceptions, including extension of employment contracts and referral of employees. Given that mandatory duration of the public advertisement is only three days for public institutions, public enterprises and certain agencies, this is definitely not a guarantee of competitiveness.

Even when organised testing of capabilities / competencies exists, there are no guarantees of political impartiality of the committees that perform the testing. Even in relation to the second instance body for appeals of job candidates in state and local administration, there is no guarantee that it will not include historically politically exposed figures.

The infamous figures about the average duration of an administrative dispute of over 500 days, and disputes before the basic courts, which are responsible for labour disputes, of over 150 days, speak volumes about the lack of effectiveness in protection of rights.

Reporting on performance by competent inspections can only be described as inadequate. Rejection of initiatives by the Administrative Inspection because the court proceedings are ongoing on the same matter confirm the thesis of inadequate protection of rights and public interest in these proceedings. In addition, the position of the Labour Inspection that it cannot intervene while the employment procedure is in progress, particularly violates the principle of preventive action of inspections. Both cases illustrate the fact that inspections do not act to the full extent as allies in the fight against corruption and political clientelism in the context of public sector employment.

From the above, it is evident that changes are necessary in the normative framework, through narrowing the space for discretionary decision-making and improvisations, but especially in practice, through greater transparency of procedures, more effective inspection supervision and more efficient resolution of labour and administrative disputes in this area.

RECOMMENDATIONS IN RELATION TO RECRUITMENT PLANNING

Personnel planning, accompanied by appropriate explanations and an analytical foundation, should be prescribed as an obligation in all segments of the public sector;

In addition to plans for new recruitment, personnel plans should foresee, justify and leave open the possibility for filling certain positions by permanent (re) allocation of employees and indicate the need for other types of engagement in the public sector (service contracts, contracts for consulting services, etc.);

Line ministries and MPs should prescribe penal provisions in case of non-adoption of personnel plans, and in case of unjustified violation of employment rules beyond the previously adopted personnel plan, for all segments of the public sector;

The Government should determine job catalogues with appropriate job descriptions for all individual segments of the public sector, which currently only exists in relation to professional jobs in social and child welfare institutions. Therefore, it is necessary to define job catalogues and job descriptions in all sub-sectors, in order to provide guidelines for defining individual acts on internal organisation and systematisation, and prevent unjustified deviations regarding the conditions for performing similar jobs in different institutions, and unjustifiably ample room for manoeuvre in this regard;

Quality control of acts on internal organisation and systematisation should be improved through clearly established criteria, one of which should be the previously mentioned catalogue of jobs. Additionally, this control should be institutionalised in such a way that an act on internal organisation and systematisation cannot be adopted without a positive professional opinion (from the Human Resources Management Authority, relevant ministry, etc.);

All institutions that are bound by the Law on Prevention of Corruption should use integrity plans to recognise the risk of corruption and undue influence, which are inherent in employment procedures in the public sector, strengthen measures to prevent these risks and regularly report on their performance.

RECOMMENDATIONS IN RELATION TO IMPLEMENTATION OF RECRUITMENT PROCEDURES

Line ministries and MPs should legally standardise the basic steps for employment in the public sector, regardless of whether they are administrative bodies, institutions, public enterprises, or agencies and other regulatory bodies;

Through legislative activity, line ministries and MPs should establish the rule of prior public advertising for the establishment of an employment relationship for entry-level positions in all segments of the public sector;

Line ministries and MPs should prescribe the duration of public advertisements for employment in the public sector of a minimum of 15 days, regardless of the segment of the public sector;

The obligation of prior advertising should be prescribed in situations of establishing an employment relationship for an indefinite period, regardless of whether the person was previously employed for a certain period in the same workplace;

Line ministries and MPs should legally regulate the basis of competency assessments for work in all segments of the public sector;

Line ministries and MPs should more closely regulate competency assessments for work in all segments of the public sector, in such a way as to enable anonymised written and practical tests, clear guidelines and criteria for evaluating answers given in oral interviews, ensuring that their share does not play a predominant role in the selection of candidates, especially in lower positions;

Competency assessments should be organised in such a way that they are carried out by committees that are free from undue political interference, through the prohibition of participation of politically exposed persons in the work of the committees;

Line ministries and MPs should prescribe the duration of the mandate for all managers in professional positions in the public sector to five years;

Line ministries and MPs should prescribe the obligation that acting duty officials are appointed from among those already employed in a given body, institution, public enterprise or agency in all laws that regulate the positions of acting officials in the public sector;

The amended legal framework in the field of employment in the public sector, along with the improvement of competency assessment procedures, should prescribe the obligation to select the best-ranked candidate;

In all regulations governing employment in the public sector, the relevant ministries and MPs should regulate the reporting on employment procedures in such a way that all interested candidates and third parties can gain insight into the questions and answers and solutions to practical tasks during the capability and competency assessments, while respecting the provisions on the protection of personal data.

RECOMMENDATIONS IN RELATION TO THE PROTECTION OF RIGHTS OF PERSONS SEEKING EMPLOYMENT IN THE PUBLIC SECTOR

Planned changes to the Law on Civil Servants and State Employees should also improve the procedures for appointing members and presidents of the Appeals Committees, in such a way that they may not be politically active for a certain period preceding their appointment;

The Ministry of Public Administration, as an institution responsible for coordinating the work of inspection bodies, should draft and issue unified guidelines for the conduct of inspection bodies in employment procedures in the public sector, which would be harmonised with the Law on Inspection Control and prevent different interpretations that violate the principle of preventative action of inspections;

The Administration for Inspection Affairs (Labour Inspection) should separately report on inspection controls carried out in public institutions, public enterprises, and agencies and other regulatory bodies;

The Administrative Inspection and the Administration for Inspection Affairs (Labour Inspection) should accurately report on the effects of supervision, and the degree of addressed irregularities established in the procedure of supervision;

The option that the Law on Administrative Disputes, i.e. Civil Procedure, should prescribe urgent resolution of disputes initiated by persons seeking employment in the public sector should be considered;

The rights of applicants for jobs in the entire public sector should be protected in the most uniform way possible; in this sense, persons seeking employment in public institutions, public enterprises and a number of agencies should offer the possibility to initiate a procedure, i.e. a dispute if applicants believe that their rights have been violated, without the restrictions that currently exist in the Labour Law, and which only refer to certain prohibited behaviours.

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ABOUT INSTITUTE ALTERNATIVE

Institute Alternative (IA) is a non-governmental organisation, 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. The areas of our work and influence are structured around the following five main programmes: public administration; accountable public finance; parliamentary programme; security and defence, and social policy.

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 organisations within regional networks in the Western Balkans and with over 100 organisations 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 summarised in 129 studies, reports and analyses, and the decisionmakers 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 visualisation 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 visualisation.

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

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

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