

OFFICIALS WITH INDEFINITE ACTING TENURES

*A Shortcut for Bypassing
Open Competitions*



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Officials with Indefinite Acting Tenures:
A Shortcut for Bypassing Open Competitions

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Summary

This analysis focuses on the legal institute of the “acting official”, the way it is regulated, and the manner in which it is used in practice—particularly in the context of efforts to professionalise and depoliticise the state administration.

During the term of the 44th Government of Montenegro, the practice of appointing acting officials to key leadership positions has continued. As of the end of February 2025, a total of **313 decisions on the appointment of acting officials had been adopted. This confirms that the mechanism, which originally intended to ensure continuity in the performance of certain functions within the state administration until permanent appointments are made, following a public competition, has become the rule rather than the exception.** In contrast, within a slightly shorter timeframe, only 41 senior officials were appointed on a full-term basis through the prescribed public competition procedure, indicating a lack of logic when it comes to staffing the most important roles in the public administration.

Acting tenures are frequently renewed without initiating open competitions, as illustrated by the following findings: of the total 184 individuals appointed as acting officials, 95 (51.6%) were appointed more than once—some twice, some three times, and in one case, even four times. In response to our inquiry, the Administrative Inspection interpreted the current legal framework on civil servants and state employees as permitting such repeated appointments. They maintain that the law limits the duration of acting status to no more than six months, but does not explicitly prohibit successive renewals.

The high frequency of renewed appointments highlights a systemic issue in human resource management, and avoidance of open recruitment procedures for permanent posts. This practice can lead to institutional instability, a lack of long-term solutions, and increased political influence over managerial roles in the public administration. Our key recommendation, therefore, is that not only should acting appointments be restricted to individuals already employed within the civil service, but these situations should be avoided altogether by advertising vacant leadership posts before the end of a tenure.

Why are Acting Tenures Problematic?

The mechanism of acting officials is meant to serve as a temporary solution that allows uninterrupted operation of public authorities between the expiration of a previous manager's tenure and the appointment of a new one in accordance with the law. However, in practice, this mechanism is often used in a way that departs from its intended purpose. Although the law stipulates that acting status may last for a maximum of six months, data shows that individuals are frequently reappointed to the same position, thus formally bypassing the legally defined limits. Indefinite extension of the acting status creates legal uncertainty, undermines the principle of professionalism in the public administration, and enables undue political influence.

Such appointments effectively circumvent the procedure of public competitions and merit-based appointment of senior officials. Rather than being led by qualified and competent individuals chosen through transparent processes, institutions are often headed by politically appointed acting officials, allowing the ruling majority to install loyal personnel without the risk of exposing them to competing candidates. Aware that their position is time-limited and dependent on the political will of their appointers, acting officials may lack full authority and independence in decision-making. In certain cases, this has resulted in a system of so-called "permanent acting officials", where the same individuals are rotated among various posts for years without going through a competitive process or formal selection.

SIGMA—the joint initiative of the European Union (EU) and the Organisation for Economic Co-operation and Development (OECD), which provides expert support to countries undergoing public administration reform and EU accession—has also underlined the importance of resolving the issue of acting officials as part of wider reform objectives, and as a condition for progress on the path to EU membership. In its January 2025 report on Montenegro,¹ SIGMA warned of the frequent practice of appointing officials without open competitions, often beyond the timeframes prescribed by law, and highlighted that acting positions are increasingly being assigned to individuals from outside the public administration. SIGMA's recommendations clearly stress the need to appoint acting officials exclusively from among existing civil servants, and for strictly limited timeframes, in order to reduce political interference and reinforce the rule of law.

1 SIGMA Monitoring Reports, Public Administration in Montenegro 2024, January 2025, available at: https://www.sigmaweb.org/en/publications/public-administration-in-montenegro-2024_6b3dec38-en.html

The proposed amendments to the Law on Civil Servants and State Employees, submitted to the Parliament at the end of February 2025,² include steps that aim at curbing misuse by limiting the number of times an individual may be appointed in an acting capacity to a maximum of two.

However, the remainder of this analysis will explore additional aspects of the mechanism of acting officials. By focusing on the legal framework and specific examples from practice—particularly those involving appointments made at Government sessions between 31 October 2023 and 27 February 2025—this analysis aims to illustrate how the acting official mechanism is used, the extent to which it circumvents public competitions, and the degree to which acting arrangements have become the rule rather than the exception, at the expense of legal certainty, institutional memory, and stability in senior civil service appointments. The first section focuses on the legal framework, while the second presents figures regarding the application of this mechanism. One of the key methodological limitations in this respect is the lack of complete biographical data and often vague justifications provided in the appointment decisions, which makes it difficult to definitively determine whether acting officials come from within the public service or from outside it. Accordingly, in the conclusion and recommendations, we point to the need for improved monitoring and identification of specific indicators in this area, in addition to proposals to prevent or minimise abuse of acting appointments.

2 Draft Law on Amendments to the Law on Civil Servants and State Employees, February 2025, available at:

<https://zakoni.skupstina.me/zakoni/web/dokumenta/zakoni-i-drugi-akti/491/3654-20982-23-2-25-8.pdf>

What Does the Law Say?

In the current **Law on Civil Servants and State Employees**, the institute of acting officials is regulated by a single article. Article 61 governs the appointment of acting officials in situations where the tenure of the head of authority or service, or senior managerial staff has ended. According to the relevant legal provisions, an acting official may be appointed exclusively as a temporary measure, for a maximum duration of six months, until a new official is appointed or assigned in accordance with the law.

The appointment of an acting official is made by the body competent for the appointment of the head of the authority or senior managerial staff. The appointee may be a civil servant from within the state administration or a person from outside the administration, provided that they meet the criteria prescribed for the specific leadership position. An acting official has the same powers, rights, duties, and responsibilities as the official they are replacing. If the acting official is a civil servant from within the authority in which they are appointed, they are entitled to return to their previous or another suitable position after their acting period ends.³

The head of an administrative authority represents the institution, and manages, and organises the work of the institution. Senior managerial staff includes leadership positions in state authorities that are responsible for coordination, organisation, and decision-making on key matters. This category includes secretaries of ministries, directors-general, and assistant heads.⁴

While the law stipulates that the acting function should be temporary and limited to six months, the **frequent repeated appointments** of the same individuals to the same posts may indicate a practice that formally circumvents this rule. This is confirmed by the response to the initiative submitted by **Institute Alternative in 2023, requesting an inspection oversight of the practice of renewing acting tenures**. The initiative highlighted that, in the period 1 January - 19 October 2023, in 31 individual cases, the Government acknowledged the expiry of six-month acting tenures, only to reappoint the same individuals to the same positions at the very same session. A full year later, Institute Alternative received a response from the Administrative Inspection, **which stated that the law does not specify how many times a person may be appointed as an acting official**. According to the interpretation provided by the Administrative Inspection, there is no legal

3 Law on Civil Servants and State Employees (Official Gazette of Montenegro, No. 2/2018, 34/2019, and 8/2021), available at: <https://www.gov.me/dokumenta/59ed0c0d-daf3-493a-b4f3-afe34d5b1992>

4 Articles 21, 22, 23, and 24 of the Law on Civil Servants and State Employees (*Official Gazette of Montenegro*, No. 2/2018, 34/2019, and 8/2021)

obstacle to renewing an acting tenure if the position has not been filled via a public competition within the prescribed period.⁵ This position not only confirms the problem of insufficient regulation of this institute, but also points to a lack of institutional will to implement the law consistently.

“The administrative inspector considers that the purpose of the acting official mechanism is to temporarily fill a position, in the event of the termination of tenure of the head of an administrative authority or service, or of a senior manager, until a new appointment or assignment is made in accordance with the law, for a period not exceeding six months.

The law does not prescribe how many times an acting official may be appointed to a post. Therefore, in the inspector’s view, if a position has not been filled in accordance with the law within six months, there is nothing to prevent a new acting appointment being made.

In light of the above, the administrative inspector considers there are no grounds to take any actions or measures within the competence of the Administrative Inspection.”

— From the response of the Administrative Inspection to the initiative submitted by Institute Alternative

Nonetheless, certain changes in this area are anticipated under the **Draft Law on Amendments to the Law on Civil Servants and State Employees**.⁶ The aim of the amendments is to specify that an acting official may be appointed to the same position **no more than twice**. Furthermore, the proposed changes allow for appointment of acting officials in cases of temporary inability to work, parental or maternity leave of the incumbent official, in which case the duration of the acting tenure would be limited to the length of the absence. However, one point of contention remains in the draft law: that of acting officials not having to be selected from among the current employees. This solution was not part of the originally proposed amendments, which had envisaged restoring the previous provision that acting officials should be appointed exclusively from within the existing workforce. Instead, this provision was altered at a later stage via conclusions adopted at a Government session.⁷ In doing so, an important opportunity was missed to limit political influence over staffing decisions, and to reinforce institutional stability by appointing temporary leadership from within the current civil service ranks.

5 Decision of the Administrative Inspection No. UPIN10-700/23-526/5 dated 25 November 2024

6 Draft Law on Amendments to the Law on Civil Servants and State Employees, February 2025, available at:
<https://zakoni.skupstina.me/zakoni/web/dokumenta/zakoni-i-drugi-akti/491/3654-20982-23-2-25-8.pdf>

7 Conclusions adopted at the session of the Government of Montenegro held on 20 February 2025 regarding the Draft Law on Amendments to the Law on Civil Servants and State Employees, available at:
<https://wapi.gov.me/download-preview/d6a7fe2b-e3cd-43c2-bb20-252c427f5464?version=1.0>

In Practice: Acting Appointments More Frequent Than Public Competitions

Institute Alternative has repeatedly drawn attention to the misuse of this mechanism, documenting cases across the mandates of previous governments. One example from 2019 shows that the Government violated the Law on Civil Servants and State Employees at least nine times during the first quarter of that year, by extending the tenures of acting directors of institutions. This indicates not only that the law was being breached, but also that certain individuals were being favoured — allowing them to accumulate experience in managerial positions and thereby increase their chances of permanent appointment, thus distorting fair competition against other candidates.⁸

A similar pattern continued in 2021. Instead of strategically planning human resource policy and permanently filling managerial positions, certain ministries launched calls for acting appointments — with some of these published as late as ten months after the Government had been formed.⁹

During the mandate of the 44th Government of Montenegro, which took office on 31 October 2023, appointment of acting officials to key managerial posts continued as before. Based on available data and analysis of Government session materials, as of 27 February 2025, a total of **313 decisions** on the appointment of acting officials were adopted. Rather than opting for permanent staffing solutions, the same individuals were frequently reappointed to the same or similar roles. Out of a total of 184 persons, **95 (51.6%) were appointed more than once** — some twice, others three times, and in one case, even

From the beginning of Prime Minister Milojko Spajić's term until the end of February 2025:

- **89 individuals were appointed as acting officials once, for a period of up to six months;**
- **62 individuals were appointed twice as acting officials;**
- **32 individuals were appointed three times as acting officials;**
- **One individual was appointed as acting official no fewer than four times.**

In a slightly shorter time-frame during 2024, only 41 individuals were appointed to full-term leadership positions—highlighting the lack of a planned and transparent approach to filling these roles.

⁸ Government abuses acting duty appointments and violates the law, Institute Alternative, April 2019, available at:

<https://institut-alternativa.org/vlada-zloupotrebljava-v-d-stanja-i-krsi-zakon/>

⁹ Instead of unnecessary acting duty appointments, ensure compliance with the law, Institute Alternative, September 2021, available at:

<https://institut-alternativa.org/umjesto-nepotrebni-v-d-stanja-obezbijediti-postovanje-zakona/>

four times. In a smaller number of cases, the same person was appointed to a different acting role, either within a different directorate of the same ministry, or to another related position. However, in the majority of cases, acting appointments were repeated for the same individuals to the same roles. This practice raises concerns about consistency of application of legal provisions, and affects institutional stability.

More than two-thirds of all acting appointments involved repeated tenures for the same individuals in the same positions, while only 30% of such appointments were made just once for a given individual.

According to data from the Human Resources Administration's report,¹⁰ a total of 33 public competitions were conducted in 2023, aiming to fill 51 positions within the senior managerial cadre, and 10 public competitions were announced for 10 posts at the level of heads of administrative authorities. In total, 46 individuals were appointed to these positions. A similar figure — 41 individuals — were selected to leadership posts in 2024.¹¹ In contrast, more than 300 acting appointments were made in just over one year. This illustrates the fact that acting appointments have become the norm rather than the exception.

According to monitoring conducted by SIGMA, the average duration of a public competition was 111 days, which is an increase compared to the previous monitoring cycle (2020), when the average was 90 days. Among the three institutions examined, the duration of competitions ranged from 65 days in the Ministry of Finance to as much as 153 days in the Ministry of Education, indicating significant variation and limited efficiency in conducting public competitions. However, the lengthy duration of public competitions is not the sole reason for the frequent use of acting appointments. In many cases, there is a clear lack of will to prepare and execute timely staffing plans in a transparent manner.

In an attempt to determine whether acting officials were appointed from within the existing workforce or from outside the state administration, we analysed the relevant decisions, supporting rationales, and available staff lists within ministries. However, the data is inconsistent. While some appointment rationales clearly indicate the prior position of the acting official, others merely list their job title, without providing further detail. Given the inconsistent approach to drafting decisions, it is not possible to systematically establish whether acting appointments were made from within the existing staff. This further undermines transparency, and hampers effective monitoring in this area.

10 2023 Annual Report for, Human Resources Administration, April 2024, available at: <https://wapi.gov.me/download-preview/1d45990f-3ea5-4d2a-a59e-5af3a0352470?version=1.0>

11 2024 Report on the Work and General Situation in the Administrative Areas of the Ministry of Public Administration, Ministry of Public Administration, March 2025, available at: <https://wapi.gov.me/download-preview/6931f46d-3aec-4c71-af05-309f0154e6d1?version=1.0>



Conclusion

The data points to a widespread use of the acting duty mechanism, which may stem from various factors — including administrative procedures, legislative shortcomings, undue political influence, and challenges in recruiting for permanent positions.

The frequent and prolonged use of acting duty appointments well beyond the six-month limit reveals a systemic problem in human resource management, and a tendency to avoid public competitions in order to fill permanent roles. Such practices may result in institutional instability, a lack of long-term staffing solutions, and undue political influence. Instead of stable and merit-based staffing solutions, these patterns suggest ad hoc personnel management that can undermine institutional efficiency and hinder attempts at professionalisation of the public administration.

Examples across different state authorities show that some individuals have held senior positions for up to one-third of a full tenure without any public competition being conducted. Although the acting duty mechanism is intended as a temporary solution to ensure uninterrupted functioning of public administration authorities, in practice it is often used to bypass competitive recruitment procedures and favour specific candidates. This approach undermines the principles of legality and transparency, and slows down reform processes, facilitating political control, and jeopardising the stability of public institutions.

Following a vague provision offered by the applicable legislative framework — which fails to limit the number of times an acting duty tenure can be renewed — the proposed amendments to the Law on Civil Servants and State Employees introduce a cap of two consecutive acting duty appointments. However, despite the original intention, the amendments do not require that acting duty appointments be made exclusively from among existing staff. Furthermore, even with the proposed two-term limit, acting appointments could still last up to one year — equivalent to one-fifth of a full tenure — offering no assurance that these posts will ultimately be filled through a more transparent and merit-based procedure.

Recommendations

01

To ensure uninterrupted functioning of the state administration and reinforce a merit-based system, the legal framework should allow for announcement of public competitions for positions of heads of authorities and senior managerial staff no earlier than three months prior to the expiration of a tenure. This would enable timely recruitment, reduce the need for temporary appointments, and curb reliance on the acting duty mechanism;

02

To limit the potential for undue influence, Members of Parliament should adopt amendments to the Law on Civil Servants and State Employees stipulating that, as a rule, acting duty appointments must be made from among existing employees within the given state authority;

03

The Government of Montenegro and the Human Resources Administration should ensure timely implementation of public competitions to promote responsible and professional human resource management and prevent further abuse of acting duty appointments;

04

The Government, Ministry of Public Administration, and the Human Resources Administration should conduct regular and systematic monitoring of the use of acting duty appointments, including:

- information on the appointee's previous role (i.e., whether the individual was previously employed in a state authority or not);
- the duration and any renewal of the acting duty tenure;
- and the share of positions filled through acting duty in relation to the total number of senior positions — both within individual state authorities and across the public administration as a whole;

05

The Government and all relevant ministries should adopt well-reasoned decisions on acting duty appointments, explicitly stating the appointee's educational qualifications and professional experience, including previous job roles.



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About Institute Alternative

Institute Alternative was founded in 2007 in Podgorica with the mission of strengthening democratic processes and good governance in Montenegro, through research and analysis of public policy options, as well as monitoring the work of public administration.

We function as a research centre (think tank) and work on good governance, transparency and accountability through three main program strands: I) public administration reform; II) accountable public finances; III) rule of law.

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