



INSTITUTE FOR DEVELOPMENT OF FREEDOM OF INFORMATION

**Civil Service Recruitment
Legal Assessment
(Georgia, the UK, Estonia)**

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Contents

- Executive Summary..... 3
- Recommendations 4
- Introduction 5
- Legislation in Georgia..... 6
 - Main principles and the applications of the law..... 6
 - The work of the Selection Committees..... 6
 - Stages of selection process 7
- Legislation in the UK 7
 - Main principles and the applications of the law..... 8
 - Selection Panels 8
 - Selection process stages 9
- Legislation in Estonia 9
 - Main principles and the applications of the law..... 10
 - The Commission..... 10
 - Selection process stages 10
- Conclusions 11

Executive Summary

The civil service recruitment procedures have significantly improved after the adoption of the relevant decree by the Government of Georgia on the 20th of July this year. The legal act contains in detail regulations of the civil service selection procedures. According to the legislation selection committees shall be established within the system of public authorities. The law regulates the process of staffing the committees, and contains the practical provisions, such as publishing the recruitment announcement on the special web-page (www.hr.gov.ge), the minimum time frame for making applications for the vacant posts, the timeframe within which the committees are obliged to take final decisions and etc. The obligation of the members of the committee to declare any conflict of interest that might result in biased assessment of the applicant has been enshrined in the legislation. Overall the legal guarantees of the recruitment process being conducted in an objective and impartial way has been strengthened by the legislation.

As a result of comparing the regulations applicable in Georgia with the ones in force in the UK and Estonia, the advantages and the pitfall of the Georgian legislation has become obvious. It has been ascertained that the Civil Service Bureau does not have enough levers for conducting the in detail monitoring of the committees, in addition the law provides heads of public entities with broad discretion in the process of appointing the heads and the deputy heads of the appeal committees. In the process of conducting the competition public entities are free to use one or several stages with the aim of recruitment, these stages may be: application selection, written assignments, tests and interviews. The law does not oblige public entities to conduct written tests, and it does not contain the indication that the testing scores, which are more objective by character, should have the priority when selecting the applicants. In addition the legislation applicable in Georgia is not familiar with the term of second best candidate, accordingly in the cases when the applicant selected turns down the offer the recruitment process will be deemed void and the need of conducting another selection process will be on face. Thus administrative, human and financial resources will be spent in vain, while this problem can easily be avoided. There also are gaps in the process of informing the applicants on the outcome of the selection process. Public entities have no obligation to provide the applicants with well-grounded decisions, describing the reasons for not accepting their candidacies for the given post.

Recommendations

We find that the legislation regulating civil service recruitment issues in Georgia needs further improvements, hence our recommendations are as follows:

- The composition of the selection committees should be partially permanent. Given the specification of every single post the experts in the given sphere should be invited in the committees on an *ad hoc* basis;
- The ten days period for submitting an application enshrined in the legislation often may not be enough for making a well prepared application e.g. in the cases when submitting letters of recommendations, certificates and etc. is requested. Thus lengthening the period up to two weeks is advisable;
- Conducting tests in the process of selection should be made obligatory. In addition the scores of the tests should be granted higher importance than the results of other selection stages, e.g. interviews. Avoiding the score based assessment should only be made possible in exceptional circumstances based on the well-grounded decision. This will facilitate to conducting the selection process based on the highest possible standard for insuring the unbiased and objective assessment of the applicants;
- According to the legislation as a result of the selection process only one best candidate is selected by the committee. It is advisable for the committees to also nominate the second-best candidate. As a result in the case of the selected candidate turning down the offer the need of conducting the second selection procedure will be avoided.
- Each applicant should be provided with a well-grounded decision giving the reasons for turning down his/her candidacy;
- The Civil Service Bureau should be provided with more leverages for monitoring the activities of the selection committees. Precisely, the representatives of the Bureau should be given the opportunity to attend the interviews with the applicants. In addition the deputy chair of the section committees, as well as the chair and the deputy chair of the appeal committees should be appointed by the head of the Civil Service Bureau;
- In order to facilitate to the process of citizen control of the work of selection committees, it is advisable for the Civil Service Bureau to prepare and upload on its web-page the statistical information on the number and the results of selection procedures held (in how many case was the selection process finalized with an appointment), in cases when the vacant post was not

filled what were the reason for this, which sector (private or public) were the appointees employed in before joining the public sector and etc.

Introduction

The Government of Georgia has undertaken the obligation to reform civil service by number of International Agreements. *Inter alia* the obligation undertaken within the auspices of the European Neighborhood Policy, Open Government Partnership and the Organization for Economic Cooperation and Development should be emphasized. Thus the Civil Service Bureau and the special working group developed the Concept of the Civil Service Reform. Experts and the representatives of the civil society, among them IDFI, were actively involved in the process of developing the concept. As a result the innovative concept, the implementation of which will facilitate to the process of Georgian legislation being inline with International and European Standards is one face. The concept among other topics regulates the issues of civil service recruitment and selection procedures. Based on this very concept on the 20th of June this year, the decree of the Government of Georgia regulating civil service recruitment procedures came into force. Before the adoption of the above-mentioned decree the issues were regulated by the Law on Civil Service and the Statute of the Civil Service Bureau. Nevertheless the law did not contain in detail regulations of civil service recruitment.

The aim of the research is to provide the reader with the brief overview of the recently adopted law on Civil Service Recruitment, ascertain it advantages and disadvantages and assess to what extent it is in line with the regulations applicable in the European States such as the UK and Estonia. The reason of concentrating on the given two states is twofold. On the one hand in certain cases similarities can be found between the legislation of these states and Georgia, thus laying the proper basement for the valid comparison. On the other hand the legislation in the UK and Estonia set different regulations, giving the possibility to ascertain the gaps and the advantages of the Georgian legislation.

The research paper is composed of four main chapters. In the first one the legislation regulating the civil service recruitment issues in Georgia will be discussed. In the second and the third chapters the law in the UK and Estonia regulating these issues will be looked into. Each above-mentioned chapter will consist of the following sub-headings: Main principles and the applications of the law, the work of the selection committees and the stages of selection. The conclusions will be presented in the last chapter.

Legislation in Georgia¹

Civil service recruitment procedures are enshrined in the Law of Georgia on Civil Service. The more in detailed regulations are given in the recently adopted decree of the Government of Georgia. Nevertheless public bodies are still entitled discretion in certain circumstances. It should be emphasized that Civil Service Bureau is responsible for the overall monitoring of public entities and developing general policy regulating civil service. The Civil Service Bureau is also given the mandate to oversee the implementation of the provisions of the law by public authorities and coordinates the work of public entities in the sphere of managing civil servants.

Main principles and the applications of the law

The Law of Georgia on Civil Service provides for the four types of civil servants, these are: State-political officials, Servants, Support personnel, Freelance Servants. The newly adopted law on civil service recruitment regulates the process of selecting and appointing certain persons for the vacant posts of servants. The aim of the open selection process is to find to which extent the qualifications of an applicants meet the requirements of the vacant post. The process should be based on the principles of publicity, fairness, transparency, objectivity and collegiality.

Selection Committees

With the aim of selecting suitable candidates for the vacant post of a servant permanent selection committees are created within public entities. The committees are chaired by the civil servants. The chairs are appointed by the Civil Service Bureau, on the proposal of the head of relevant public authority. Public entities are granted the discretion to establish *ed hoc* committees based on the territorial or professional grounds. The obligation of the members of the committee to disclose the information linked with the existence of a probable conflict of interest, that might cause a biased assessment of an applicant should be seen as one of the positive amendments of the legislation.

¹ The overview of the legislation of Georgia is based on the Law of Georgia on Civil service, the Statute of Civil Service Bureau and the Decree of the Government of Georgia on the Rules of Civil Service Recruitment.

Stages of selection process

With the aim of appointing a well suited candidate on the vacant post of a servant, open announcements are published on the official web-page of the Civil Service Bureau. Every interested person is given the period of 10 days to make the application on the vacant post. The selection process might include the stages of application selection, written assignments, tests and interviews. In every given case the committee is entitled to make a decision on the stages to be used based on the acceptance of the head of the public entity. The final decision of the committee is reflected in the minutes of the meeting. Those members of the committee who does not agree with the outcome of the selection process, can attach their dissenting opinions to the decision. As a result of the selection process, the committee selects the candidate best matching the job description to be appointed on vacant post or refuses to select any of the participants. In the latter case the selection process will be deemed void. The new regulation sets the maximum period of three months within which the committees are obliged to make the final decision. The committee is also responsible to inform every participant of the selection process on the outcome of their application.

In the case of necessity the Appeals Committee can be established within a public entity. The members of the committee are appointed by the head of the public entity. The Appeals Committee examines the appeal within the period of three days and sends its opinion to the permanent Selection Committee. The latter is entitled to make the final decision on the application. The applicant has the right to appeal the decision to the court.

Legislation in the UK²

First of all it should be highlighted that the main law regulating civil service recruitment procedures in the UK is the Constitutional Reforms and Governance Act, precisely its first chapter. The Civil Service Commission monitors the implementation of the recruitment procedures in practice. The Commission is the entity which based on its function best resembles the Civil Service Bureau. Nevertheless unlike the bureau its mandate is broader. The Commission publishes civil service recruitment principles, it also

² The overview of the UK legislation is based on the Constitution Reforms and Governance Act and the Recruitment Principles developed by the Civil Service Commission.

decides on the main procedural steps, which should be followed in the process of selecting civil servants. Moreover the Commission creates and publishes statistical information on the number of selection procedures held and their results, gender balance in the civil service, the previous working experience of the civil servants (e.g. whether this encompasses working in the private or public sector) and etc. the commission has the power to request the public entity to provide the commission with the report on the fulfillment of recruitment principles by the entity.

Main principles and the applications of the law

The civil service recruitment regulations are not applicable to the public sector such as the police, armed forces, intelligence service, diplomatic service and etc. The selection must be based on merit and conducted respecting the principles of fairness and transparency. In addition to this the principles of civil service recruitment published by the Civil Service Commission should be applied in practice.

Selection Panels

Selection panels are set up within the public entities to oversee the process of selection and appointment. The panels are composed of two or more persons and chaired by a civil servant or in the case of senior competition by the Civil Service Commissioner. It should be emphasized that there is no rule containing detailed provisions of conducting the selection process that would be widely applicable to every selection process. The rules might well differ depending on the vacancy announced. What is important though is that the recruitment principles are well observed in the process of selection. Each stage of the competition must ensure that the selection is made on merit, based on the fair and unbiased selection process. The Panel members must declare any conflict of interest including prior knowledge of the applicant that might cause a biased assessment of the candidate. As a result of the competition, the panel member select the applicant mostly suitable for the vacant post to be recruited in the civil service.

Selection process stages

The Civil Service Commission has the mandate to participate in the selection process and attend the meetings of the Selection Panels. The latter is the discretion of the Commission. After the best candidate has been selected by the Selection Panel, the approval of the Civil Service Commission is needed for the appointment of the selected candidate to be final.

At the end of the selection process the chair of the panel creates the minutes of the meeting, indicating the results of the selection, the information on the assessment criteria and the evidence on which the decision is based. If the selected candidate turn down the offer the panel will offer the vacant post to the second best candidate. A reserve list of the applicants ordered on merit might also be created for this purposes.

Individuals are entitled to appeal the decision if they find that the selection process was not based on merit, did not respect the principles of fairness and transparency and any other aspect of the Recruitment Principles has not been complied with. The complaints are filed to the Civil Service Commission. After looking into the case, the commission creates a set of recommendations that should be followed to solve the problem indicated in the complaint. The applicant as well as public entities are obliged to cooperate with the commission in the process of the latter looking into the complaint.

Legislation in Estonia³

It is interesting to note that there is no separate entity in Estonia, which would be created with the purpose of monitoring and administrating civil service. Instead the Ministry of Finance is the entity entrusted with these functions. The ministry is responsible for the development of civil service. The main law regulating the issues of civil service recruitment is the Civil Service Act of Estonia. The act enshrines in itself general principles that should be applied in the process of selection, more in detail provisions are included in the regulations published by the government of Estonia.

³ The overview of the legislation in Estonia is based on Public Service Act of Estonia (as amended in 2013).

Main principles and the applications of the law

According to the Civil Service Act civil service recruitment provisions are applicable to the central government as well as to the self government entities. In addition only limited number of the provisions are applicable to the police, security service, prosecutor's office and other special services. The competition for the purpose of appointing a well suitable candidate on the vacant post should be held based on the principle of equality and fairness. It should be highlighted that regardless of the fact that the law support the observance of the principle of transparency, in certain cases holding an open competitions can be avoided. This might well interfere in the process of the practical implementation of the principle of transparency.

Commission

According to the Civil Service Act with the purpose of selecting top managers Civil Service Commission is created. The composition of the commission is decided by the Government of the Republic. With the purpose of selecting other, lower rang servants the selection procedures and the rules of appointment are developed by the head of the public entity or a specially designated persons. Thus there is no one set of rules which would regulate the process of conducting the selection procedures in every given public entity.

Selection process stages

The general rule in Estonia is that the recruitment should be held based on the principle of transparency. Nevertheless in certain cases holding an open competitions can be avoided and the vacant post can be filled by the way of internal competition e.g, in the cases when holding an internal competition can be justified based on the specification of the vacant post, such as education, qualification, skills and etc.

The job announcements are published on the webpage of the relevant public entity. Anyone interested is given the period of 14 days to apply for the post. In case of an internal competition the information about the vacant post is exchanged via internal communication means. The announcement must include

the information on the functions of the post, the requirements that the candidates should meet and the provisions of employment.

The applicant best matching the requirements of the vacancy will be appointed to the vacant post. The second best candidate is appointed on the post in case if the selected applicant turns down the offer. Thus the need of conducting a repetitive selection process is avoided. The selection process will be deemed void *inter alia* in case when no application is received by the commission, none of the candidates matches the requirements of the vacancy and etc. Every applicant is informed about the results of the selection. The selected participant is appointed on the vacant post by the head of the public entity or a specially designated persons.

In case when the participant does not agree with the result of the selection or finds that the process has been held in violation of the legislation, he/she has the right to appeal the decision.

Conclusions

As a conclusion it should be stated that the Georgian legislation is in compliance with international standards and principles of civil service recruitment, and selection. It should be emphasized that in certain cases Georgian legislation sets higher standards than those enshrined in the legislations of the UK and Estonia. Despite the above mentioned there are number of gaps in the legislation applicable in Georgia. This might infringe the process of selection being conducted based on the principles of impartiality and objectivity. With the aim of avoiding the politicized process of civil service recruitment and ensuring that the appointment is done on merit, it is advisable for our recommendations (given above) based on the experiences of the countries stated above to be taken into consideration.