

POLICY BRIEF

კოლიტიკის დოკუმენტი

Labour Rights of Public Officers in Georgia (Dismissal)

THE GOAL OF THE STUDY:

The project/study was carried out by the association “European Time” with the support of the Friedrich-Ebert-Stiftung and the partnership of the Caucasus University. **The study aims** to evaluate the dynamics of protecting the labour rights of public officers and the outcomes of public administration reform by studying the dismissal policy of public officers.

BACKGROUND:

The Public Service in Georgia is continuously and constantly undergoing many changes. However, the following remained a problem:

- a) stability of the legal conditions of public officers – employment stability;
- b) institutional stability of the public service - preservation of institutional memory and political neutrality.

The principle of the rule of law was often violated in terms of the dismissal of public officers.

Society had no legitimate trust in the dismissal of public officers.

Over the years, in Georgia dismissals based on reorganization or personal applications prevailed in the indicators of dismissed public officers, which, taking into account the ongoing political processes and socio-economic situation in the country, constantly raised reasonable doubts about the fairness of dismissals.

FOUNDATIONS OF REFORM:

Since 2013 (the period when Georgia launched the Visa Liberalization Action Plan), Georgia has been intensively reforming the public service. The European Commission positively evaluated the legislative and enforcing policies in Georgia. However, strengthening democracy requires constant monitoring of the processes and results of the reform.

In accordance with Article 25(1) of the Constitution of Georgia:

“Every citizen of Georgia shall have the right to hold any public office if the individual meets the requirements established by legislation. Conditions for civil service shall be determined by law”.

In 2014, an Association Agreement was concluded between Georgia and the European Union, Article 4 of which states:

“The Parties shall cooperate on... further pursuing the public administration reform and on building an accountable, efficient, effective, transparent and professional civil service; and on continuing effective fight against corruption...”

In 2014, the Government of Georgia approved the concept of public service reform, according to which:

A professional public officer is a person who is appointed or elected for an indefinite term in a public administration institution... The public officer shall start his/her professional career from a lower position in the public service and move up based on his/her professional knowledge, experience and the results of the evaluation system... The public officers shall be protected from the influence of political decisions of state political officials. The institute of a professional public officer is a guarantee of the stability of the public service...

On 27 October 2015, the Parliament of Georgia adopted a new law “On Public Service”. In 2017, the Parliament of Georgia adopted the Law “On Remuneration in Public Institutions”. During the reform period, many ordinances of the Government of Georgia were adopted, which serve to implement the Law of Georgia “On Public Service”.

On 3 March 2022, Georgia officially applied for the membership of the European Union. An important part of the questionnaire, delivered by the European Commission, touched the issue of appointments and dismissals of public officers.

COMPONENTS OF THE STUDY:

- The state of dismissal of public officers in the period 2017-2021 was studied (based on the information of the Public Service Bureau);
- Decisions of the Supreme Court of Georgia (some important practices) have been reviewed;
- A sociological survey with dismissed public officers has been conducted (remote inquiry/online platform).

OUTCOMES OF THE STUDY:

- **In 2017-2021, in total 6434 public officers were dismissed:**
 - 5340 public officers were dismissed based on a personal application;
 - 860 public officers were released due to reorganization, liquidation or merger;
 - 34 public officers were dismissed for disciplinary misconduct;
 - As a result of the evaluation, 10 public officers were dismissed;
 - 6 public officers were released based on the entry into force of the final judgment of conviction;
 - 4 public officers were dismissed due to violation of the requirements of the law of Georgia "On Conflict of Interest and Corruption in a Public Institution";
 - 168 public officers were released due to death, transfer to another institution and other grounds.
- **In 2017-2021, 279 public officers applied to the court** for dismissal; At this stage, 58 claims have been satisfied. Some disputes are pending.
- **In 2019-2021, 420,078 GEL was paid as a compensation for 25 satisfied claims.** Data from other years are not processed.
- As of 31 December 2021, there are **totally 4,927 persons employed on the basis of an employment agreement in the public service.**
- **The online questioning was conducted with 52 dismissed public officers. As a result of the survey:**
 - The highest percentage of dismissals from public service was recorded on the basis of a personal application or reorganization. 44.2% of respondents left public service on the basis of a personal application and 34.6% - on the basis of reorganization.
 - Some of the respondents noted that the personal application on dismissal contradicted their real free will.
 - 78.6% of the respondents indicated that the official grounds for dismissal were not true.
 - Most of the respondents considered themselves discriminated when they were dismissed from public service.
 - Most of the respondents, after being dismissed from the public service, were not employed anymore in another public service. Only 15.6% of respondents are still working in the public sector (they returned to public service after being dismissed from official positions).

* According to the information of the Public Service Bureau, the error between the total number of dismissed public officers and the total number of grounds for dismissal is due to incomplete data presented by public bodies and changes in the methodology of requesting data over the years.

- 42.2% of respondents do not work in their specialty after being dismissed.
- **During the project implementation period, about 50 decisions of the Supreme Court of Georgia were studied.** The texts selected for the study included some important practices related to discrimination, reorganization, dismissal on the basis of a personal application, as well as the standard of substantiating the decision of an administrative body on the dismissal of an officer.
- The Labour Inspection Service is mainly contacted by persons employed on the basis of an employment agreement and not by public officers.

OPINION

- **During 2016-2022, 38 amendments were made to the Law of Georgia “On Public Service” adopted in 2015.** The purpose of any change should be in line with the goal of the law itself: to establish a legal framework for the formation and functioning of a stable, unified public service in Georgia based on career promotion, merit, integrity, political neutrality, impartiality and accountability.
- Taking into account the past experience and background, the new law was tasked with qualitatively changing the unhealthy policy of dismissal of public officers, functionally strengthening public institutions, creating practical guarantees of protection for the realization of the principle of political neutrality, as well as preserving merit-based institutional memory (of public officers with career-development).
- **Among the three categories of public servants*, only public officers are appointed for an indefinite term,** are recruited through competition, are subject to evaluation and career promotion, are included in mandatory professional development programmes, are assigned an officer’s class based on merit and years, and are the central persons of public administration.
- **According to the law, a public institution, depending on the goals of the law, ensures the participation of officers in the mandatory professional development programs.**
- **The law establishes specific and clear grounds for the dismissal of a public officer.** The law does not leave the possibility to consider legal such dismissals which are based on grounds other than those defined by the law.
- **In the process of the European association, the creation of solid legal foundations for the implementation of the principle of good governance is of special interest.** The stability of democratic institutions (including the protection of the civil officers’ class), the rule of law and corruption-free public administration are part of the Copenhagen political criteria of the European Union. Compliance

* Public servants are: 1. Public officer; 2. person employed on the basis of an employment agreement; 3. person employed on the basis of an agreement under public law.

and compatibility with them is a political and moral value of the state and people of Georgia, following the path of European integration and democracy building, at the same time, it is a devotion to Article 78 of the Constitution of Georgia.

➤ **Based on official data and study results, the following was highlighted:**

- In 2017-2021, there was a large rate of outflow of public officers from the public service based on a personal application: 5,340 officers (out of a total of 6,434 dismissed officers) left the public service based on a personal application. One of the most important tasks of the public administration reform was the stability and lifelong employment of public officers, merit-based career development and freeing the public service from political/party influence. It is particular to emphasize the fact that the processes of involving public officers in mandatory and non-mandatory professional development programmes require time, finances, and other resources. The professional development of officers assists in strengthening institutional, functional and systemic aspects of public institutions. Retention of trained and empowered public officers are vital for the realization of the principle of good governance. Nevertheless, a vicious practice of dismissal on the basis of a personal application persists to this day, and even after the public administration reform for those officers, who were appointed to public office through a hard and complex competition; who were evaluated annually (attested once every three years according to the old law); who participated in mandatory professional development programmes; who devoted a lot of time and efforts to their career development in bureaucracy; who received class ranks and allowances. It should also be taken into account that Georgia is not among those countries where the employment index in the private sector is high or stable or the labour market offers decent conditions in terms of remuneration or tenure. Against this background, leaving the public service based on a personal application raises reasonable doubts about the legality of dismissal. Former officers remain unemployed or cannot continue to work in their specialty and according their qualifications; their social-economic conditions are deteriorating. Expressing willingness by officers to be fired does not inspire confidence in a country where social-economic existence and unemployment rates are still facing challenges.
- **Cases of reorganization/liquidation/merger in public services are quite large.** As a result, 860 public officers were dismissed on this basis. As before, this indicator is still leading. Unfortunately, the negative practice continues to exist even after the reform. Unlike the private sector, in the public service, as a rule, the sustainability of the functioning of public institutions does not depend on changes in market demands, trade and financial shocks/fluctuations. The stability of public service is part of the stability of democratic institutions; public institutions serve to fulfil functions established by the Constitution and other laws, which are of a long-term or permanent nature. Therefore, frequent changes in public service (reorganization, liquidation, merger) are not justified except for objectively exceptional cases. Court decisions also witness that dismissal due to reorganization is in most cases unlawful.
- **Monetary compensation of illegally dismissed public officers (on the basis of satisfied claims) for 3 years (2019-2021) reaches 420,078 GEL. The source of financial remedies is the state budget/taxpayers.** These are not complete and accurate statistics. Some legal disputes of public officers are pending; The data until 2019 is not recorded. At the same time, public officers are also entitled to severance pay. The total amount of compensation/remedy may

be enormous. This is the burden of taxpayers (state budget). No one in the state service or public service is responsible for initiating and carrying out illegal dismissals. **Only taxpayers are responsible!!!**

- **The number of persons of one category of public servants, namely, employed on the basis of an employment agreement, is impressively large (4927 as of December 2021). Public service is based on fixed and permanent functions, which are provided by appropriate permanent posts. The duties of persons employed on the basis of an employment agreement are not permanent. The public service should use persons employed on the basis of an employment agreement to perform only temporary, non-permanent tasks.** Employment agreements may not be allowed to be used in public institutions for a long time or as a chain/renewal contract. In case of admissibility of long-term or renewal employment contracts, a logical question should be answered: **if the public service permanently and fixedly needs a person and his/her work, why there are no permanent posts?** The statistical numbers of persons employed on the basis of an employment agreement are noteworthy, as well as to the extent that the **indicators of dismissals/outflow of public officers from the public service are alarming against the background of the growing number of persons employed on the basis on an employment agreement.**

- **The Court of Cassation (Supreme Court of Georgia) interprets in a number of decisions/judgments that the creation of effective mechanisms for the protection of the labour rights of individuals in the private and public sectors, is the obligation of the state/government. The need for strict and thorough observance of this obligation by the government/state is especially evident in the public service.**
- As judicial practice shows, the success of a claim in an individual examination of the circumstances of the case, despite the fact that the disciplinary proceedings are characterized by inquisitorial elements, largely depends on the completeness of the factual circumstances indicated in it and their supporting evidence; For example, if a plaintiff (officer) bases his/her action/claim on the fact that discriminatory treatment was the real ground for his/her dismissal, simply stating that he/she was discriminated against - would be insufficient. The plaintiff must convincingly and reliably describe the circumstances related to unequal treatment and logically justify his/her position. On the other hand, **the assertion of a defendant (respondent administrative body) that it made a decision based on discretionary powers shall not be sufficient, since according to the definitions of common courts of Georgia, the exercise of discretionary powers is checked for their legality, so as not to encroach on the legally protected rights of dismissed officers.** The study of the legality of a dismissal is related to many components. Accordingly, pre-dismissal circumstances and the dismissal procedure must meet the criteria of fairness, transparency and objectivity.

RECOMMENDATIONS

- **In order to protect the labour rights of public officers and check the effectiveness of law enforcement, it is necessary to collect, process highly accurate data and have classified statistics, including:**
 - dismissal rates by age;
 - dismissal indicators taking into account the resources spent on the public officers (for example, how many years of service the dismissed officer had; how many mandatory professional programs the dismissed officer participated in; which public class rank the dismissed officer belonged to; which political party the dismissed officer belonged to, etc.);
 - regional dismissal indicators;
 - indicators of repeated conclusion/renewal of employment agreements with the same person/public servant;
 - indicators of the minimum and maximum contractual terms of persons employed on the basis on an employment agreement.
- **Alongside the reforms, it is essential to increase public confidence in the processes of dismissal and appointment of public officers; Policy should, in fact, be based on the rule of law; The people/business/taxpayers must be sure that their capital serves the execution of the purposes of the public service and legal protection of public officers.**
- **Dismissal of officers must be the subject of a high standard and detailed justification.** The grounds for dismissal must meet not only the declaration of formal legal requirements but also the assessment of a complex picture of the relations between an officer and a public institution, taking into account the dynamics of the officer's service history. Dismissal must only take place in case of extreme necessity.
- **In a country of hybrid democracy, such as Georgia, accountability mechanisms (proportional, effective and dissuasive) should be in place for those who initiate and implement the illegal dismissal of public officers** (which is confirmed by court decisions and the amount of compensation awarded to illegally dismissed officers).
- **It is important to raise the awareness of public officers about the functions of the Labour Inspection Service and promote the introduction of healthy appeal practices for officers.** At the same time, the practical use of the authority and legal power of the Labour Inspection Service in the direction of protecting the labour rights of public officers and strengthening control over their labour conditions is of fundamental importance.

Ekaterine KARDAVA
Ekaterine GASITASHVILI
Daviti OMSARASHVILI

Translation: Nana GOGIA



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