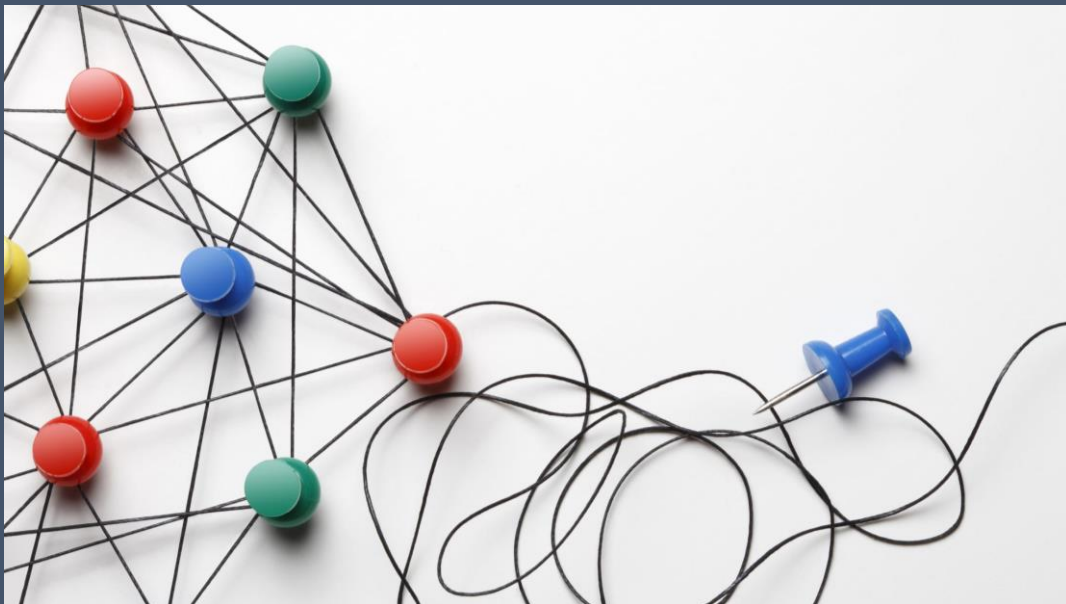


# Political Neutrality in Civil Service

## Legal Framework and Quality of Implementation



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## Introduction

This research touches upon the issue of political neutrality in the Georgian civil service, which represents one of the most critical aspects of the modern civil service. This topic is essential for almost all democracies, irrespective of the history of their civil service and the modern challenges.

There is a wide consensus that political neutrality and the development of merit-based civil service is one of the main goals of the public administration reform. The Public Administration Reform Roadmap 2015, adopted by the government of Georgia<sup>1</sup> (PAR-2020), highlighted that the civil service remains to be politically influenced at almost every level. The Roadmap is also unequivocal in indicating that *"the most sensitive and important problem in the civil service, with respect to the human resource management, is safeguarding the civil service from direct or indirect political influence at the management positions. For the maintenance of the merit-based, professional and effective civil service, it is essential to ensure its independence from political processes."*

During the past five years, many changes were implemented in the direction of civil service reform, which, among other issues, included the complete renewal of the regulatory framework. Specifically, two new main laws<sup>2</sup>, regulating this field and up to 20 by-laws have been adopted. Out of the six directions of the public administration reform, the civil service reform was characterized with the most activity.

At the same time, despite the renewal of the legal framework and the abundance of activities in the direction of civil service reform, stakeholders are not unanimous towards the quality of implementation and the results. Some of them have expressed certain skepticism on the quality of implementation and whether tangible results were achieved through adopting the new legislative framework and conducting other activities.

The goal of the research is to study political neutrality in the Georgian civil service and to assess the outcomes of the reform as of 2021. This is the period when the implementation of the PAR-2020 Roadmap has been completed<sup>3</sup>, and the new strategy for 2021 – 2024 is in the process of development. Specifically, the objective of the research is to study and, in the light of international best practice, to assess the existence of enabling/supporting mechanisms available in the Georgian legislation for the political neutrality of the civil service, and the quality of its implementation. Another objective of the research is to also study practical examples of possible political influence in the public sector, to see the effectiveness of the new legislation and the organization of the civil service, for the protection of the civil service from unfavorable party-political influence in the existing political and social environment.

The research is based on the literature review, the analysis of legal acts, data collected from public institutions, in-depth interviews with experts, representatives of donor organizations supporting the reform and acting, and former public servants.

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<sup>1</sup> [http://gov.ge/files/425\\_49309\\_322150\\_15.07.21-PublicAdministrationReformRoadmap2020\(Final\)\(1\).pdf](http://gov.ge/files/425_49309_322150_15.07.21-PublicAdministrationReformRoadmap2020(Final)(1).pdf)

<sup>2</sup> <https://matsne.gov.ge/document/view/3031098?publication=35>

<https://matsne.gov.ge/document/view/3971683?publication=16>

<sup>3</sup> In 2015 – 2020 three action plans were developed and implemented; the action plans for 2015-2016; 2017-2018 and 2019-2020

Due to the restrictions caused by the pandemic, difficulties of conducting face to face meetings, and rather strained post-election period, the research team decided to refrain from conducting online focus groups and limited itself to in-depth interviews<sup>4</sup>.

The research discusses mechanisms, which impact politicization of the civil service and preventive measures, like regulating the rules of appointment in public service – composition of competition commissions, the rules of conducting competition, methods of evaluating candidates, regulating the issue of dismissal and demotion, issues of professional development and other related matters, which in general are viewed as tools for promoting the independence of officials and their protection from adverse influences.

The research also provides findings, which can be used for the new 2021 - 2024 strategy.

## 1. Political Neutrality in Civil Service

### 1.1. Definition of key concepts

Political neutrality is one of the most critical aspects of the modern civil service system. This issue is relevant at varying degree to nearly all democracies, irrespective of their different historical path and modern challenges of the civil service development.

Politicization of the civil service, in general, can be defined as an expansion of the executive branch political officials' influence and control over the civil service, insofar as it becomes possible to make decisions prompted by party interests. Politicization has different forms and manifestations. The most widespread manifestation and instrument is the appointment prompted by political / party interests. However, given the context and circumstances of different countries, manifestations of politicization and, consequently, the instruments and approaches to their prevention are rather diverse.

Despite a lack of consensus in the academic circles and literature on the viability and necessity of the merit-based and fully depoliticized civil service, more Western countries nowadays are introducing merit-based human resource management systems to address political, social or economic problems. However, despite recognition of the importance of a politics-free, merit-based civil service, its practical implementation is rather problematic and only few countries have managed to succeed in this regard.

The political neutrality concept is not always used in the same sense and it could be said that there is certain ambiguity in the literature in this regard<sup>5</sup>. It can be used to describe a situation where the civil service (administration) does not take into account the government's political priorities and/or a situation where the administration is equally responsive to all elected governments. In other words,

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<sup>4</sup> Taking into consideration that the research coincided with a tense post-election period, which according to the influential observation organizations, besides other shortcomings, was characterized by the use of administrative resources for the party purposes, it was a challenge to recruit acting public servants, who would be willing to talk online on the matters related to the politicization of the civil service. Some of them agreed on an interview only on the condition of anonymity.

<sup>5</sup> p. 66/Matheson, A. *et al.* (2007), "Study on the Political Involvement in Senior Staffing and on the Delineation of Responsibilities Between Ministers and Senior Civil Servants", *OECD Working Papers on Public Governance*, 2007/6, OECD Publishing.

doi:10.1787/136274825752.

political neutrality in this case refers to the civil service (administration)'s attitude towards the elected politicians - how neutral and equitable it is when serving the elected politicians and/or how it addresses their priorities (and whether it is a resistant and self-serving bureaucracy). Another definition of political neutrality is partisan impartiality. It refers to a situation when the administration is not responsive and does not obey some narrow party and political interests. This notion of political neutrality is more relevant to the Georgian context and therefore will be used in this context in the present research.

In the international practice, politicization of the civil service is not used only in a negative sense, as is the case in Georgia. Politicization can be described as the extent of political leadership's influence on the civil service to achieve its effective control and responsiveness to political priorities. That is, it can be used in a positive context.

In this regard, there are certainly some arguments for strengthening the political leadership's capacity in the ministries so as to balance the interests/inclinations of the bureaucracy and ensure support for key government tasks and priorities. However, politicization often becomes excessive, arbitrary, chaotic, and overly focused on narrow party and individual interests.

As it has been already mentioned above, political neutrality in democracies, in the context of partisan impartiality of the civil service, certainly is a precondition for a well-tuned, effective civil service and for ensuring fair/equal treatment of citizens, irrespective of their political views. Such fairness and impartiality could be achieved through recognition of professionalism, merit and competence among civil servants. These values are important both, in terms of fairness, as well as for the effectiveness and continuity of the public administration. It could be said that it is an important determinant of the extent to which the citizens trust the government system. At the same time, it is important that civil servants be responsible/accountable to the government for the effective implementation of its programs. In other words, administration's responsiveness to the government as part of the law is essential for the effective implementation of the governmental policy.

Public administration-related literature to a greater extent points to the negative consequences of political involvement, emphasizing the advantages of decisions made from a purely administrative perspective during employee recruitment<sup>6</sup>. According to this stance, any manifestation of political involvement in this process and in functioning of the civil service, in general, inflicts substantial damage to the government.

Despite the prevailing opinion in numerous literary sources<sup>7</sup> on public administration about negative effect of any kind of political involvement, calling for decision-making on personnel-related issues solely from the administrative perspective, there are also some different views in this regard. In particular, there is an opinion that political involvement could be a rational<sup>8</sup> response to situations where

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<sup>6</sup> „There has been a tendency, particularly in Westminster-based systems, to assume that a completely apolitical appointment process is in some way the ideal, and that any evidence of political involvement is a departure from a preferred path.“ Matheson, A. et al. (2007), 2007), "Study on the Political Involvement in Senior Staffing and on the Delineation of Responsibilities Between Ministers and Senior Civil Servants (33. 6)

<sup>7</sup> Matheson, A. et al. (2007), "Study on the Political Involvement in Senior Staffing and on the Delineation of Responsibilities Between Ministers and Senior Civil Servants" (33. 6)

<sup>8</sup> „... political involvement can be a rational response to situations where the executive faces structural arrangements which generate a multiplicity of principals who might block change.“ .“ Matheson, A. et al. (2007), 2007), "Study on the Political Involvement in Senior Staffing and on the Delineation of Responsibilities Between Ministers and Senior Civil Servants (33. 6)

a structural arrangement provides for a large number of high-ranking individuals capable of blocking any change.

There are also opinions that political involvement is not only acceptable, but also necessary<sup>9</sup> to a certain extent. The ministers approved in accordance with the statutory procedure have a legitimate right to control public institutions under their jurisdiction and to reduce deviations from their policy course. This logic suggests that since in the public perception the ministers are responsible for the activities of their departments, the ministers can control their administration, in particular, appoint loyal like-minded persons who will be entrusted to implement their policy decisions. Consequently, there are arguments proving that political involvement in the administration is essential for the proper functioning of democracy. Without the aforesaid, a newly elected political administration will be unable to change its policy direction. However, at the same time it is necessary to maintain the right balance and protect the civil service so as to prevent abuse of civil service for the party purposes.

Thus, different countries try to have a civil service with the institutional arrangement where the above two values will be well-balanced. On the one hand, they seek to avoid overly self-serving civil service that is not responsive to political leadership (not responsive), and, on the other hand, overly politicized civil service with prevailing patronage, which serves the party interests rather than the national ones.

## 1.2. The Georgian understanding of civil service ‘politicization’

The issue of political neutrality of the civil service in Georgia is rarely considered in the context of possible resistance of civil servants, ‘self-serving’ bureaucracy or ‘responsiveness’ problem. In other words, politicization of the civil service in Georgia always has a negative context and it is never used in the context of striking the right balance between the two opposing values/interests. In this case, the two opposing values imply, on the one hand, the need for a fair, partisan/politically impartial civil service and, on the other hand, the need for responsiveness of civil servants to the government policies, policy objectives/priorities. The tension between these two values lies in the fact that an independent, neutral civil service can become ‘overly independent’, self-serving and not responsive to the government priorities, thus preventing the government with a democratic mandate from implementing its priorities, or, on the contrary, excessive political responsiveness and weaker political neutrality may condition the formation of an unfair civil service that is used for serving narrow party interests rather than the public interests.

As it has been mentioned above, when discussing the politicization of the civil service in Georgia, the issue of possible conflict and the need for balance between the two values is almost not considered.

In our case, politicization of the civil service is mostly understood/perceived in two ways – the first one implies the attitude towards civil servants themselves, the decisions made in their regard on political grounds, which are related to recruitment, promotion, dismissal and other similar issues. The second one implies the use of already employed civil servants to support narrow political objectives. The latter implies the use of civil servants for the implementation of political and partisan tasks, such as: election

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<sup>9</sup> „. . .Others argue that this is not only understandable but to some extent necessary. Ministers in a legally appointed government have a legitimate right to control their government’s organisation and reduce deflection from their policy direction.“ “ Matheson, A. et al. (2007), 2007), "Study on the Political Involvement in Senior Staffing and on the Delineation of Responsibilities Between Ministers and Senior Civil Servants (pg. 8).

campaigns, support for party sponsors in state procurements, tax incentives for businesses loyal to the ruling party, support in the privatization process, and, on the contrary, harsh/discriminatory treatment of the oppositional businesses.

Although the main decisions in this area are made by political officials and are perceived as political corruption rather than politicization of the civil service, but in many instances, it is impossible to carry out this process without the professional civil servants' involvement and 'signature'.

In the cases discussed here, a civil servant may sometimes act a victim who is forced to take part in such activities. However, it is also a common practice to select politically loyal civil servants from the very beginning so that they would voluntarily participate in such politically motivated decision-making, at the right time and without extra effort on part of the political leadership.

## **2. Mechanisms enabling political neutrality of civil service**

The civil service reform model is to a greater extent conditioned by a particular country's history, administrative/governance tradition, as well as the contemporary context of that reform. The success of the reform, among other factors, depends on proper understanding of this context and the development of well-tailored approaches. Consequently, countries use different approaches and tools to create politically neutral, merit-based and effective civil service, as they have different traditions, contexts and challenges. In this regard, the approaches that are used to protect the civil service against party and political influences and ensure the necessary balance are rather diverse.

Despite the fact that traditions and approaches vary from country to country, we can identify the main instruments and areas the detailed and explicit regulation of which is considered/used in most democracies as a mechanism of protection of the civil service against the party and political influence. These instruments are usually as follows:

- Defining the scope of civil service and clear delineation of political and administrative positions;
- Restriction and strict regulation of the political leadership's involvement in the personnel-related issues;
- Recruitment through transparent and fair competition;
- Transparent employee promotion and incentive system; detailed regulation and restriction of decision-makers' discretion;
- Precise/detailed regulation of disciplinary liability issue and restriction of the political leadership's involvement;
- Detailed regulation of the ground and procedures for officer dismissal and restriction of decision-makers' discretion;
- Restriction/strict regulation of the civil servants' political and party activities;
- Permanent/indefinite appointment of civil servants; merit-based professional development and remuneration system and other guarantees contributing to their independence.



It should be noted that the instruments enlisted here, which are regarded as the factors contributing to the depoliticization of the civil service, are not designed exclusively for this purpose and serve at varying degree to the attractiveness, professionalism, and overall effectiveness of the civil service.

Since the research aimed to assess Georgian approach to the depoliticization of the civil service in terms of internationally recognized standards and international good practices, the principles of public administration<sup>10</sup> and the relevant methodological framework<sup>11</sup>, developed by the OECD/SIGMA, were chosen as a reference standard. In particular, the principles and indicators that are related to the civil service and human resource management and are linked to the political neutrality issue.

This approach is relevant for a number of reasons - different countries have a very diverse practice, which is due to their history, administrative tradition, and the specifics of the present-day challenges/context. Therefore, measuring/comparing Georgian reform to individual countries may be impractical and less useful, especially as the research does not aim at conducting an in-depth comparative analysis.

At the same time, the SIGMA principles already represent a kind of international good practice toolkit. Its content is derived from the EU regulations and other international standards, as well as from the good practice of the EU Member States and the Organization for Economic Co-operation and Development (OECD), which is relevant to the ENP countries as well. At the same time, the practicality of this approach (keeping up with SIGMA standards) is conditioned by the fact that Georgia's public administration reform is part of the country's EU integration agenda and it will be further evaluated in accordance with the SIGMA principles and methodological framework.

### **3. Mechanisms enabling political neutrality of civil service in the Georgian legislation and the implementation thereof**

#### **3.1. General overview of the Civil Service Legislation**

Georgia has a uniform, basic law on civil service, which regulates the civil service relations at the central and municipal levels<sup>12</sup>, covering all the issues that can be regulated by a legislative act adopted by Parliament in a state with a legal tradition similar to Georgia.

The law sets the scope of the civil service, as well as defines the concepts of state service, civil service, civil servant, professional civil servant and other related concepts.

The concept of the civil service and the purpose of the civil service law are declared in the very first article of the law –**formation of a stable, unified civil service based on career promotion, merit, integrity, political neutrality, impartiality and accountability.**

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<sup>10</sup> *Principles of Public Administration: A Framework for ENP Countries*

<sup>11</sup> *The Methodological Framework for the Principles of Public Administration: ENP Countries 2018*

<sup>12</sup> The Law of Georgia on Civil Service entered into force on July 1, 2017, replacing the 1997 Civil Service Law.

The law lays down 12 civil service principles, including: equality before the law, impartiality, transparency and openness, accountability, political neutrality, merit-based civil service, equal access to civil services in Georgia. Those principles are essentially in line with the European principles of public administration.

**Political neutrality** – *A civil servant shall not use his/her official position for partisan (political) purposes and/or interests. A civil servant shall not participate in the election campaign or promotion either during working hours or when performing his/her official duties. A civil servant shall not misuse the administrative resources in the process of election campaign in support of or against a political party, an electoral entity, or a candidate for an electoral entity.*

**Merit-based civil service**- *A decision on officer recruitment or other decision related to his/her career development shall be impartial and be based on a fair and transparent evaluation of an officer's competence and skills to perform work, and shall aim at selecting the best candidate.*

As a general assessment, it could be said that Georgian Law on Civil Service provides rather specific regulations with respect to such issues as: officer recruitment, classification of officers (ranking/officer class), disciplinary liability, officer dismissal, evaluation system, career development, etc. In this respect, the legislative framework does not have any substantial shortcomings – none of the fundamental issues have been omitted and in principle it properly regulates all the issues arising from the chosen/declared concept of public service system.

This, however, does not mean that all the issues are covered in detail, clearly regulated at the bylaw level and do not require further improvement. It is often the details and procedures set out in the by-laws, rather than the general principles declared in the law that determine the formation and the right course of practice.

The research does not aim to provide an in-depth analysis of all the aspects of Georgian civil service legislation. Consequently, the next sections of the document will focus on the aspects of the Georgian civil service system on which the independence, security and, consequently, the political neutrality of the civil service depend significantly.

### 3.2. “Suspicious” amendments introduced to the Law of Georgia on Civil Service

The amendment introduced to the Civil Service Law in February 2020<sup>13</sup> was regarded by some stakeholders as a deviation from the declared principle of merit-based civil service and a step backward.

The legislative amendment expanded a circle of those to be appointed based on the administrative contract, namely, the mayor's representatives in the municipality and other persons employed<sup>14</sup> in the administrative entity within the municipality. This raised suspicions that the amendment was intended for the 2020 parliamentary elections and the motivation was to increase/facilitate the use of administrative resources in the regions.

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<sup>13</sup> <https://matsne.gov.ge/ka/document/view/4678724?publication=0>

<sup>14</sup> Except for Tbilisi Municipality.

More specifically, according to the statutory wording in effect before 2020 (Article 78), only the following categories of employees were recruited under administrative contract: a) an assistant to a state political official; b) an advisor to a state political official; c) an employee of the direct office/secretariat/bureau of a state political official. There was certain logic behind this list and the concept offered by the law – ‘A person recruited under the administrative contract’<sup>15</sup> definition, explaining the intended purpose of this category of civil servant, who was not a professional civil servant. In particular, it allowed a state political official to recruit a limited number of advisers and staff members through a simplified procedure for the period of his/her term in office, including for performance of tasks where political responsiveness is of paramount importance.

The most important feature in this regard is the recruitment and dismissal of a person under an administrative contract. In particular, according to the law, **‘as a rule, a person shall be recruited for civil service on the basis of an administrative contract without any competition’**. Whereas a contract with him/her can be also terminated (except for expiration of its validity period) at the initiative of a state political official/municipality mayor. In this case, an officer shall be notified at least one month in advance and shall be compensated in the amount of a one-month' salary. In Georgian reality this implies that an employer, in particular the municipality mayor, has an absolute discretion to decide who and when shall be recruited or dismissed.

It is noteworthy that the legislative amendment concerns the mayor’s representatives and other persons employed in the administrative entity within the municipality, in other words, those, who, as a rule, are considered to be ‘an important administrative resource’ in terms of the electoral practice.

As the initiators of the draft law pointed out in the explanatory note, the purpose of the amendment was to enable a mayor to appoint the persons who he/she has **“*concordance of political views*”**.

More specifically, the explanatory note indicates as follows:

- *“As of today, the majority of mayor’s representatives in administrative entities hold the professional civil servant positions, though the functions and duties to be performed by them are different from the those performed by a professional civil servant, which should serve the main goals of the public institution. The analysis of the mayoral representative’s functions and tasks assigned to them allows to conclude that their activity should be subjected to the category of those employed under an administrative contract... “*

*“To pursue the policy, he/she [a mayor], as an elected official, requires relevant support in the administrative entities. It is the mayor’s representative, as this title suggests, who should support and assists a political official in the administrative entity where a policy is pursued. At such time it is important that the mayor and his/her representative have concordance of political views. The aforesaid is equally important for the relationship between a state political official and a person employed under the administrative contract.”*

We believe that the aforesaid reasoning is fundamentally erroneous, since those employed in the administrative entity should perform the tasks that, as a rule, do not require **‘*concordance of political***

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<sup>15</sup> A person recruited under the administrative contract – a person assisting a state political official in exercising his/her powers by providing sectoral advice, intellectual and technical assistance and/or by performing organizational and managerial functions, who does not hold the position of a civil servant or a person employed under the employment contract provided for by this Law.

*views*’ with the mayor. Referring to the position title – ‘mayor’s representative’ is groundless, at least because the legislative amendment concerned not only the mayor’s representative, but also the rest of persons employed in the administrative entity within the municipality.

As it has been already mentioned, this amendment raised the stakeholders’ suspicion that the purpose of this amendment was to give municipality mayors more access to the” administrative resources“ and more freedom to act for electoral purposes ahead of the 2020 parliamentary elections. As a result of this amendment, the mayors have been given more opportunities and leverage to recruit/employ freely, without observing competition timeframe and procedures, thereby enhancing the motivation of their party’ political activists and, conversely, dismiss (or leave under the constant threat of dismissal) those who are not politically loyal and/or are less effective for the electoral purposes.

This assessment is further substantiated by the fact that, according to the reputable observer organizations, one of the major problems (violations) during the 2018 presidential and 2020 parliamentary elections was the so-called ‘unprecedented’ misuse of administrative resources, especially in the regions.

Certain part of key stakeholders believe that the reviewed legislative amendment is problematic not because it has aggravated the situation and substantially increased the degree of politicization of the civil service, but insofar as it has revealed the following tendency - when the party and political needs arose, the arguments were easily found to change the status of certain categories of professional civil servants, putting them in a more ‘controlled’ position, explaining/substantiating all the aforesaid by the intention to serve effective management purposes.

### 3.3. Officer recruitment – competition procedure

Recruitment process is one of the most high-risk areas in terms of politicization of the civil service. It is believed that this process features the most frequent manifestations of party and political interference. Therefore, the detailed regulation of the recruitment procedure in the civil service and the restriction of participation of political officials in this process are considered as one of the most important instruments for the prevention of undesirable political influences.

In this respect, when evaluating the recruitment procedure, the attention is paid to a number of aspects related to this process that directly or indirectly influence the decision-making. Many interrelated issues/details are considered in this regard, be it access to a vacancy related information, determination of the composition of the competition commissions or the mechanisms for appealing their decisions.

A person shall be recruited to a position in the Georgian civil service only through competition, except for the cases prescribed by the law – officer transfer and mobility. The procedure for publishing competition-related information is strictly regulated and is usually well-implemented in practice - information about job openings is published on the uniform governmental portal, offering easy access to any individual concerned. Mandatory information about the vacancy and the deadline for submission

of applications<sup>16</sup> is enough for those willing to participate in the competition to make an informed decision and apply.

Information on the announcement of the competition should contain the basic, special and additional qualification requirements for candidates; the functions defined in accordance with the job description set for a vacant professional civil servant position; information about remuneration for this position; a list of documents to be submitted and the deadline for submission; information on the candidate evaluation form; open and closed competition stages; deadline for making final decision by the commission, as well as some other details.

**The following is considered as the key mechanism for ensuring impartiality of the competition and protection against political and party interference according to the international practice, as well as according to the methodological framework developed by the OECD/SIGMA:**

- Competition commission's staffing procedure that ensures that political officials are not directly involved in the competition commission for the selection of a professional civil servant, do not directly appoint the commission members, or at least the requirements set for the commission members restricting politicians' freedom in this regard;
- Examination/evaluation of candidates during the competition through both, oral and written assignments, and application of the mechanisms, such as preserving anonymity when checking the written assignments (an evaluator is unaware of whose work is being checked); and a structured interview should be used during the interview-based evaluation of an oral assignment;
- Substantiation of the competition commission's decision;
- A possibility to appeal the competition commission's decisions both, in court and through an administrative procedure, in a separate body that is not under the jurisdiction of the body that issued the initial decision on the competition.

Although the Georgian legislation covers all the aforesaid issues, in general, but regulatory norms are lacking detail, leaving a possibility for turning the principles declared in relation to the competition into a fiction in practical terms.

**Competition commission-** The composition of the commission does not include political officials, though they directly appoint the commission chairperson, who then shall select other members of the commission herself/himself. The legislation sets the criteria and framework for both, the Minister and the commission chairperson selected by her/him - the Minister is not entitled to appoint any person as the commission chairperson.

*(A professional civil servant of rank I or II shall be appointed the commission chairperson by the head of the public institution, except for the cases when all rank I and II civil servant positions in this public institution are vacant).*

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<sup>16</sup> Under the law, a candidate shall be given at least 5 calendar days from the day of announcing the competition to submit an application for participation in the competition. According to the methodological framework of the OECD/SIGMA principles of public administration, it is recommended/considered as satisfactory that there be a 10-day period available.

The commission chairperson shall not be entitled to appoint any person as a commission member either *(the commission shall comprise a representative of the human resource management unit of the corresponding public institution, as well as a representative of the public institution's structural unit where a relevant vacant position is available...)*.

At the same time, to ensure the effectiveness and transparency of the commission's activity, the legislation provides that a trade union representative or an independent field expert, selected by the commission chairperson, should be included in the commission's composition. Under the law, the invited expert's activity in the commission may be remunerated, though the remuneration is not mandatory.

Another mechanism has been introduced in the legislation to ensure transparency and legitimacy of the commission's activity, that is, the Civil Service Bureau has been authorized to monitor the competitions and assign its representative to attend the competition commission sessions/candidate interviews.

Superficial observation allows to conclude that in terms of competition commission's composition there are sufficient preconditions for its objectivity and depoliticization of its activity. However, given the Georgian context, the real picture is different.

The opinion prevailing among field experts and key stakeholders is that 'the Minister still exercises full control over the commission' and whenever the head of a political institution intends/needs to interfere in the competition commission's work, she/he intervenes without any problem and gets a desired result, which can be condition by both, the partisan political tasks, as well as by nepotism or some other motives.

This situation is partly due to the fact that the officials' circle from which the minister is supposed to select the commission chairman still considers themselves to be dependent on the minister and, by an enrooted tradition, they are so loyal to their leader, that they can neither 'talk to the minister in law terms', nor can they refuse him/her. Here it could be argued that this is not a problem of the law, but rather a cultural problem that is deeply rooted and requires non-legislative solution. Though the problem with the law is that it does not address this aspect of the Georgian bureaucratic tradition and the issue of actual participation of the outsiders in the commission activity (as well as monitoring) is not properly regulated.

Mandatory participation of a trade union member or a field expert in the commission's activity can hardly have any influence or play a significant role in this regard. The commission chairperson can, at his/her own discretion, find an acquaintance - a specialist loyal to the ministry leadership and to have one and the same person as a member of almost all competition commissions. Given that the remuneration of a commission member is not mandatory (and he/she often is not remunerated), the invited specialists do not always participate in the commission sessions and/or their participation is a mere formality, and they unconditionally share the commission chairman's stance.

As for the monitoring to be carried out by the Civil Service Bureau – first of all, the Bureau does not possess sufficient human resources to conduct regular monitoring and ensure high coverage. This certainly does not imply participation in each and every competition commission session, but monitoring should not be conducted as an exception for achieving certain practical result.

At the same time, the legal acts do not provide a clear-cut definition and there is a certain level of ambiguity as to what the Bureau’s monitoring implies - what functions and mandate a Bureau representative has in the monitoring process, specifically, what aspects of the competition should be subject to monitoring, how she/he should respond to this or that violation/non-compliance with the law or methodological errors and what should be included in her/his report, etc.

**Candidate evaluation** – under the law, candidates shall be evaluated at the second stage of the competition. Candidate evaluation shall be done in two ways: through a written and/or oral assignment and through an interview. Given that the law offers an alternative opportunity – evaluation through ‘**a written and/or oral assignment**’, in the majority of public institutions it has been a common practice either not to give written assignments at all, or rarely apply this form of evaluation. As for oral assignments, they are usually combined into the interviewing process. This, in turn, results in a situation where essentially only an interview is conducted.

*Data on the number of competitions held and written assignments issued in 10 public institutions in 2017-2020 are provided in the Table (#1)*

	Name of institution	Number of competitions	Written assignment-based evaluation	Written assignment through testing
1	Ministry of Environmental Protection and Agriculture	140	21	0
2	National Environmental Agency	74	0	0
3	National Agency of State Property	69	5	0
4	Ministry of Regional Development and Infrastructure	48	2	0
5	Municipal Development Fund	64	6	0
6	Ministry of Finance	126	42	0
7	Revenue Service	698	403	0
8	Ministry of Education and Science	267	36	0
9	National Center for Education Quality Enhancement	55	7	0
10	Ministry of Economy and Sustainable Development	190	124	0

In addition, the interview management and candidate evaluation system is also problematic. The law sets forth as follows: “Candidate evaluation shall be objective, impartial and shall be consistently and equally applied to every candidate at all stages of selection and recruitment. A candidate shall be evaluated based on her/his work experience, the quality of performance and on the establishment of compliance of her/his professional knowledge with the job description for the vacant position and with special and additional requirements and qualifications.”

The given statutory provision is good in terms of declaration of the key principles but putting it into practice is problematic. In particular, the competition commission is not required to conduct a structured interview, i.e., there is no guarantee that a candidate will be asked the same pre-designed questions in the same sequence. In addition, the majority of institutions almost never issue written assignments, and where they are issued, there is a problem preserving anonymity when checking the assignments.

**Evaluation method and substantiation of decision-making** - under the present-day procedure, the competition commission usually makes a decision based on scoring system, though it is entitled to make

a voting-based decision, while the commission's substantiated decision should be reflected in the session's minutes. Although the 'commission usually' has to make a decision based on the scoring system, in some institutions, it has become common to make voting-based decision. Even where a decision is made based on scoring system, an institution is not obliged to assign separate scores to a contestant on various issues subject to evaluation - work experience, compliance of her/his professional knowledge with the job description set for a vacant position, special and additional requirements, etc. That is, assigning an overall total score without a breakdown by various skills/knowledge subject to evaluation, gives an evaluator more 'freedom' and she/he can easily be subjective. As for substantiation of the competition commission's decision, although the law provides for such a commitment, but in Georgian reality the institutions have different "substantiation standards" and the substantiation of decisions is oftentimes ostentatious. The fact that video/audio recording is not made at the interview stage and its implementation solely depends on the institution's good will further contributes to subjectivity of the commission members. Although it requires consent on part of a contestant, but even if she/he agrees or request to do so, the commission may refuse to make a recording. In addition, recording only part of the contestant interviews may not reveal biased decisions.

To sum up the aforesaid, despite the principles of objective competition declared by the law, we have the picture as follows:

1. Evaluation, usually, takes place only through an interview;
2. in the presence of a written assignment, a candidate's anonymity is not protected when assessing it;
3. Structured interviews are not mandatory at the interview stage;
4. frequently evaluation takes place through simple voting;
5. when evaluating based on the point system, frequently a summary point is given without providing further breakdown;
6. substantiating a decision is mandatory, however, there are no requirements toward this substantiation shall reflect;
7. video/audio recording of interviews depends on the goodwill of the commission and consent by individual candidates.

This situation offers broader opportunities for the commission to hold a non-objective, biased competition on any grounds. It could be done easily, and it is hard to prove the contrary. In particular, the commission will only conduct interviews and give oral assignments, asking simple questions to a preferred candidate. As for other candidates, on the contrary, it will apply either a vote-based or a single-score system, where an individual commission member will not have to substantiate her/his decision. In addition, a protocol (record) will be superficial i.e., formally substantiated and there will be no video/audio records of the interview available so that a candidate seeking to challenge the results of the interview can prove nothing.

**Challenging competition commission's decision** – the competition commission's decision could be challenged only in court. The administrative appeal mechanism has no effect with respect to the results of the second, basic round of competition. The contestants can apply to the Civil Service Bureau only to challenge the results of the first round of the competition- a decision on their compliance with the basic statutory requirements. The latter mechanism actually works in practical terms - there have been such precedents when the contestants have applied to the Bureau and the commission has had to change its decision and share the decision against the Bureau. However, in terms of appeal, the results of the second round of the competition are more important and they can only be challenged in court. Given the timeframe of the judicial proceedings and the abovementioned circumstances - only an oral



interview, a vote-based evaluation system, unavailability of audio records - and the standard for substantiating the commission's decisions, it could be concluded that the contestants have an extremely limited opportunity to challenge the commission's biased decisions.

### 3.4. Merit-based career development

#### 3.4.1. Training/Professional development

Starting from January 2019, a new commitment has been set as part of the civil service reform - introduction of the civil servant professional development system in organizations, regulated by the Georgian Government's Decree on Approval of the Procedure for Determining Civil Servant Professional Development Needs, Professional Development Rules and Standard<sup>17</sup>.

Under this regulation, an organization shall conduct the training needs analysis, carry out civil servant professional development planning, develop a professional development plan, implement the activities provided for in the aforesaid plan and evaluate the training. At the legislative level, the professional development procedure is a rather consistent and an effective system, stipulating that at the end of each year a manager and an officer should identify the training needs based on the evaluation of the officer's performance. And also, the management shall identify organization's needs based on the analysis of the strategic development plan and other data, on the basis of which the training needs will be determined. Afterwards, the human resources manager shall perform the analysis of individual and organizational needs and a professional development plan should be developed based on the available resources. The next step is the implementation of the activities under the professional development plan and final evaluation of the officer training.

Introduction of the **basic programs** for newly recruited employees is an important novelty in terms of professional development. The essence of these trainings is to introduce the newly recruited officers to the basic values, specifics, available regulations and approaches of the civil service.

**Budgeting** - budget allocated for trainings is an important precondition for successful implementation of the professional development system. Central government and municipalities have different legislative regulations in this regard. The Organic Law of Georgia – the **Local Self-Government Code** provides professional development regulations, under which “A municipality shall direct at least 1% of the total amount of budgetary allocations, intended for officer remuneration, to the civil servant professional development.” It is noteworthy that no similar regulation could be found either in the Civil Service Law or in any by-laws. Consequently, there is no such commitment for central public institutions and most of them do not make any budget allocations for professional development at all. This area, including the basic (mandatory) training courses, is entirely financed by donors.

Here it should be noted that in the majority of municipalities those funds are spent throughout the year on some other needs rather than on professional development. **It is advisable that the regulation be improved in this regard and the monitoring process be further intensified.**

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<sup>17</sup> Georgian Government's Decree on Approval of the Procedure for Determining Civil Servant Professional Development Needs, Professional Development Rules and Standards <https://matsne.gov.ge/document/view/4201136?publication=0>

The present-day professional development experience shows that most public institutions do not perform the **training needs analysis**, the evaluation results and the organizational needs are not taken into account and the officers and their managers pay little attention to this issue. Under the law, all organizations are obliged to submit an annual staff development plan to the Civil Service Bureau. Most of the municipalities comply with this commitment, though it is more formal in nature and the professional development plan is not based on the results of officer evaluation and organizational needs. Part of the organizations do not use the information identified as a result of the evaluation, but rather the survey method and the information received is reflected in the professional development plan, while another part reflects only the basic (mandatory) training in the annual professional development plan.

As for the **monitoring** of the professional development process, all organizations submit the professional development plans and training related information to the Civil Service Bureau. However, the Bureau does not process this data at this stage due to unavailability of a relevant electronic program. It is advisable that the data be stored in the electronic program, allowing to analyze and compare the data on planned and conducted trainings, as well as to identify undelivered trainings, etc.

Due to the present situation, we do not possess any statistical data on which part of the professional development plan is being implemented, the number of officers for whom the professional development is planned, interrelation between the evaluation results and professional development planning, the rate of the planned activities carried out, as well as the extent to which the training topics have changed over the years, etc.

Interviews with human resource experts revealed a tendency of **inconsistency between the professional development plans and the actually delivered trainings**. It could be so that conducted trainings are completely different from those enlisted in the plan. The main reason is that the organizations do not implement professional development themselves and they act spontaneously, using the donor organizations' proposed trainings and offering them to employees. The primary focus is on the development of soft skills, while there is more demand for professional training on part of officers and managers.

At the initial stage of introduction of the professional development procedure, the Civil Service Bureau developed **supplementary guidelines** and instruments intended to help the human resource specialists and managers properly implement the professional development process. And also, a uniform professional development plan form has been developed that is mandatory to be filled out by every organization.

**Evaluation of training courses** is an important part of professional development. The law sets forth an obligation to evaluate and rate the trainings, though no such ratings are available at this stage. "Upon selection of the educational institution and/or undergoing the training program (both in Georgia and abroad), a public institution shall include in the uniform human resource management e-system the information on the number and identity of the employees participating in the training programs, the method applied during the training program, as well as evaluation of the training program by an officer in accordance with the form developed by the Bureau, which shall be approved by an individual administrative-legal act issued by the Head of the Bureau."

The Bureau is currently developing a software that will further enable to get information about officers' evaluation of the taken trainings. This will allow to generalize the information obtained through data analysis and to identify the challenges, thus making it possible to improve them in future.

### 3.4.2. Evaluation system

Introduction of the evaluation system was one of the important changes brought by the civil service reform. It was determined at the legislative level that starting from 2018, all organizations have been committed to perform civil servant evaluation. The Georgian Government's Decree<sup>18</sup> set forth the framework regulations that all organizations should take into account in the process of introduction of the evaluation system.

**Evaluation method** - The evaluation procedure defines the methods that could be applied for officer evaluation - in accordance with the results of evaluation of the officer's functions, competencies, skills, rules of conduct and/or the goals and objectives (components) to be implemented by her/him. The aforesaid list is rather general, allowing for different interpretations.

**Civil Servant Awareness and Transparency of the Evaluation Procedure** - The law stipulates that a civil servant should be informed in advance about the evaluation procedure, methods, evaluation criteria and indicators. In this regard, it is important that this requirement be properly implemented.

**Grievance mechanism** - The law prescribes that a civil servant shall be entitled to challenge the evaluation outcome inside the organization and afterwards to appeal in court. However, there are no grievance procedures or recommendations that organizations would consider in their evaluation rule. Given that a grievance-related record in the organization's approved evaluation procedures is general, in many cases, civil servants are unaware of this regulation, and it is not often used.

**Supplementary guidelines** – Supplementary evaluation guidelines were developed on the Civil Service Bureau's initiative, which was an important tool for the parties involved in this process to improve the evaluation process and master the skills needed for evaluation. At this stage, it is advisable that supplementary guidelines on the specific issues that represent a challenge for public institutions at this stage be developed: grievance procedure, evaluation results, performance management monitoring by the manager, etc.

**Evaluation results – civil servant classification and within-class increment payment** - Examination of the current situation has shown that some organizations fail to comply with their office classification commitment, and it could be so that none of the officers within the organization or only part of those eligible for being assigned a class under the law, are assigned a certain class. There is also an ambiguous situation with regard to within-class increment payments. There are organizations that assign a class to officers but do not provide a statutory within-class increment.

As regards within-class increments, the amount of within-class increment payments is also noteworthy. Under the current regulation, the amount of within-class increment payment is so small that it could hardly serve as motivation for the officer, and within-class increment loses the significance that it should normally have.

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<sup>18</sup> Georgian Government's Decree on Approval of the Civil Servant Evaluation Rule and Conditions  
<https://matsne.gov.ge/ka/document/view/3652594?publication=0>

**Professional development planning** - under the current procedure, it should be one of the important results of the evaluation. The analysis of existing practice allows to conclude that at this stage, the majority of organizations do not perform the evaluation-based professional development planning. In most cases, the professional development-related fields in the evaluation form are completely empty and this issue is not paid due attention to. In some organizations, managers issue professional development recommendations, but the implementation process is flawed - officer trainings suggested by the managers are not delivered.

**Monetary rewards** - The law stipulates that a monetary reward shall be granted only based on the results of evaluation, though it does not specify a particular level out of four levels of evaluation (very good, good, satisfactory, unsatisfactory) when a monetary reward can be granted. In this respect, the situation in organizations is different: some organizations do not issue any monetary rewards at all, some pay the same amount (salary rate) to all evaluated officers and do not differentiate them according to the evaluation results, while other organizations differentiate them even in case of such evaluation, based on subjective decision of the organization's management. It is vitally important for the Civil Service Bureau to intensify its work in this regard, to profoundly study the current situation, to identify the shortcomings and issue relevant recommendations, suggesting the ways for regulating the monetary reward issue.

**Non-material incentives** - In this regard, the law provides only for expression of gratitude and it is advisable that the organizations be given an opportunity to use some other forms of non-material motivation.

**Dismissal** – Under the current legal regulations, an officer should receive two successive negative evaluation so as to be dismissed from service. Two successive negative evaluation implies evaluation for two years in a row. Managers believe, this regulation is long-drawn-out and ineffective, as two years is a too lengthy period to dismiss a poor performer. Therefore, most managers avoid assigning lower ratings, as they believe that this two-year evaluation is more likely to result in a conflict rather than improve the employee performance.

### **3.4.3. Civil servant promotion and mobility**

A new Civil Service Law, that came into effect on July 1, 2017, did not provide for an officer promotion mechanism. Officers only had a possibility to participate in a closed competition. The law was amended in 2020 and a new regulation on internal competitions was introduced. The latter implied that a job opening shall be announcement within the organization's system and any individual concerned is free to apply for it. The internal competition procedure is similar to that of the open competition. The only difference is the competition stages – the internal competition does not include a written and oral assignment stage, and the candidate evaluation only covers the interview stage, where the evaluation results should be taken into account. It is advisable that a regulation on the importance of evaluation results be clearly laid down, since the current record on the evaluation results is too general and could be easily circumvented.

As for the application of this procedure and the existing practice, despite the fact that this norm has been in effect for years, it is too early to speak of its results and effectiveness. Due to the current situation caused by the COVID-19 pandemic, the pace of employee selection and promotion in the organizations has slowed down and it is advisable that this area be further studied.

**As far as the officer mobility is concerned**, it is a procedure applied following reorganization, merger or liquidation. An officer who quits the job on the organization's decision is involved in a mobility process which includes two stages. First, a person in charge of human resources will look for an equivalent or a lower vacant position within the organization and, if any, will offer it to an officer. Where it is impossible to employ an officer within the organization, the organization shall apply to the Civil Service Bureau and the latter shall search for an appropriate vacancy (equivalent and lower positions) throughout the civil service. Afterwards, the organizations with vacant positions are contacted and the officers are nominated for those positions. It is up to the recruiting organization to independently decide on the officer mobility. There have been several cases of employment through mobility in other organizations since 2017, which is suggestive of the formal nature rather than of effectiveness of this regulation.

It is noteworthy that the mobility procedure has been meticulously and precisely followed and there have been no circumventions of the law or any kind of violations. However, mobility is a procedure that does not produce any result. It does not allow to create some additional alternatives for officers so that they do not lose their jobs.

It is hard to imagine what could be done to make the mobility procedure effective. It is important that the dismissal process be streamlined so as to ensure that constant reorganizations would not serve as the grounds for dismissal of undesirable employees.

### 3.5 Civil Servant Dismissal

Civil servant dismissal is considered to be one of the high-risk areas in terms of politicization of the civil service<sup>19</sup>.

Given the aforesaid, maximal regulation of the dismissal issue and, consequently, reduction of the risks of politically motivated interference, are viewed as the factors contributing to protection of the civil service against political influence. In this regard, the objective of our research was to review the Georgian legislation in terms of regulation of the civil servant dismissal issue and to evaluate it in the context of principles recognized under the international best practice.

Civil servant dismissal issue is regulated in detail by the Georgian legislation. The grounds for civil servant dismissal are exhaustively enlisted in the Georgian Parliament's adopted legislative act – the Law of Georgia on Civil Service.

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<sup>19</sup> Usually, it is rather difficult to obtain unequivocal evidence that a dismissal in a particular case was politically motivated. Sometimes, even when the officer's dismissal is unequivocally considered illegal by court, the judge avoids discussing the political motives behind the dismissal, despite the claimant's assertion and will, as it is quite difficult to obtain conclusive evidence of political motivation. However, various circumstances and collateral evidence, such as linking dismissals to a political events calendar/change of leadership, as well as statements made by political officials and other similar circumstances, often leaves an impression that a decision to dismiss an officer was politically motivated.

The Law of Georgia on Civil Service recognizes two categories of grounds for civil servant dismissal – **“Mandatory grounds for dismissal of a civil servant”** and **“other grounds for dismissal of a civil servant”**.

Mandatory grounds imply that a civil servant is subject to unconditional dismissal in the event of occurrence/confirmation of certain circumstances. In particular, the mandatory grounds for dismissal include confirmation of the following facts: - e.g., termination of person’s Georgian citizenship; his/her recognition as a person with limited capacity in the manner prescribed by the law; if he/she is recognized as a missing person or declared dead by court; person’s death etc.

It is noteworthy that the list of mandatory grounds for dismissal also includes the grounds the occurrence of which depends on the decisions and assessment of the public institution itself. For example, such grounds are provided in subparagraphs “e” and ‘f’ of Paragraph 1, Article 107 of the given law – *“serious disciplinary misconduct committed intentionally, provided that a dismissal has been applied as a disciplinary sanction” ... two successive evaluations of a person that produce the results provided for in Subparagraph ‘d’, Paragraph 3, Article 53 of the given law<sup>20</sup>“.*

The difference is that unlike the first category, when a public institution does not contribute to the occurrence/confirmation of the grounds mentioned in the first part and takes for granted the facts confirmed by other bodies - the act of termination of citizenship, the court ruling recognizing limited capacity of a person, a certificate issued by the civil registration agency, etc., the occurrence/confirmation of the second category of **“mandatory grounds**, i.e. when certain circumstances are assessed as such, depends on the decisions of the public institution, for example – ‘a serious disciplinary misconduct committed intentionally, provided that dismissal has been applied as a disciplinary sanction’

As for the second category of grounds for dismissal - **“other grounds for civil servant dismissal”, they include as follows:**

a) civil servant’s personal application; b) staff reduction due to reorganization, liquidation and/or merger of the public institution with another public institution; c) health condition and/or long-term incapacity for work; d) in case of violation of the requirements set by the Georgian legislation when appointing a civil servant to a position; e) in case of violation of the requirements of the Law of Georgia on Conflict of Interest and Corruption in Public Institution.

The aforesaid grounds for dismissal are also referred to as the ‘discretionary’ grounds, since the law makes no mentioning of them as the mandatory grounds for officer dismissal and uses the wording as follows – “A civil servant may be dismissed from service...”

In practical terms, there are just three grounds for civil servant dismissal that can be applied for dismissal of a civil servant on the initiative of a public institution:

- staff reduction as a result of reorganization, liquidation and/or merger of the public institution with another public institution
- commission of a serious disciplinary misconduct

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<sup>20</sup> It implies unsatisfactory evaluation.

- two successive negative evaluations

Of these three, two are perceived as the most problematic by both, the civil servants and other respondents interviewed as part of the research. Namely, the first one – “*staff reduction due to reorganization, liquidation and/or merger with another public institution*” and the second – “*dismissal on the basis of disciplinary misconduct*.” As far as two successive unsatisfactory evaluations are concerned, civil servant dismissal on such grounds has not been the case so far.

**Disciplinary misconduct as the ground for dismissal** – Disciplinary liability related issues are regulated in detail by law. The types of disciplinary misconduct, as well as the circumstances and conditions under which a misconduct is considered a serious disciplinary misconduct (Article 85) are defined by law in a comprehensive manner. The law also defines in detail the rights and obligations of the parties involved in the disciplinary proceedings and the procedures related thereto.

**The law also offers a comprehensive definition of the disciplinary measures and sets the proportionality principle** - “*A disciplinary measure shall be proportionate to the disciplinary misconduct.*”

**The law also enlists the circumstances that should be taken into account** when imposing a disciplinary sanction. For example: ... *disciplinary misconduct committed either through negligence or intentionally; severity of the consequences of the disciplinary misconduct; . . . possibility to avoid the consequences of disciplinary misconduct; an attempt of a person committing disciplinary misconduct to prevent or reduce the consequences of disciplinary misconduct;*”

At the same time, the law clearly states that “*A civil servant shall be dismissed only if she/he has intentionally committed a serious disciplinary misconduct*”. (Article 98).

It could be said that the law does not allow for a broad interpretation of disciplinary liability, especially for politically motivated arbitrariness when using disciplinary liability as the ground for dismissal. In this regard, it is safe to say that disciplinary liability issue is well-regulated by the Georgian legislation and the law does not have any significant drawbacks in this regard. Based on the example of 10 public institutions studied as part of the research, it could be said that disciplinary misconduct is rarely the ground for dismissal.

Nevertheless, there are certain cases in the judicial practice when the fact of dismissal on the grounds of disciplinary misconduct has been appealed. In 15 out of 40 cases of civil servant dismissal reviewed by court, that have been examined by the IRC, disciplinary misconduct was used as grounds for dismissal. 7 out of 15 claims were sustained and in 4 cases the court found that dismissal was disproportionate to the committed misconduct. In 2 cases, the court found that disciplinary misconduct/illegal act was not committed at all.

**Reorganization, liquidation and/or merger with another public institution (staff reduction) as the ground for dismissal** – unlike the disciplinary liability related issues that are regulated in detail, the relations related to staff reduction due to reorganization, liquidation, and/or merger with another public institution are less accurately regulated by law. Article 108 of the given law that **sets out ‘other grounds’ for civil servant dismissal, provides for such grounds as** staff reduction due to the reorganization, liquidation and/or merger of a public institution with another public institution. While Article 110 of the same law additionally indicates a possibility of mobility – “*An officer may be dismissed from service*

*due to staff reduction as a result of reorganization, liquidation and/or merger of the public institution with another public institution, provided that the mobility of the officer under Article 52 of the given law is impossible.”*

At first glance, the staff reduction in itself does not imply officer dismissal, because under Article 52- *In the case of staff reduction due to the reorganization, liquidation and/or merger with another public institution, an officer, upon his/her consent, may be transferred to an equal position in the same or another public institution, and where no such position is available – to a lower position, with due account for her/his competence.”*

However, it should be mentioned that the mobility mechanism does not actually work nowadays. This is evident from an extremely small number of mobility cases. While hundreds of employees have been dismissed since the enactment of the aforesaid law due to staff reduction, there are fewer cases of officers transfer through the mobility mechanism. An institution that has undergone reorganization and is facing staff reduction does not usually offer a transfer to an ‘equivalent position’, while an officer cannot be transferred to another institution, as other institutions refuse to recruit a mobility employee, irrespective of whether they have a vacant position or not. According to Part 2, Article 52 of the given law, “An officer can be transferred to another public institution through mobility only with the consent of that institution”.

Consequently, the staff reduction usually implies officer dismissal. At the same time, reorganization and, consequently, the staff reduction is the most ‘suspicious’ mechanism, which is often used for artificial/deliberate creation of grounds for the officer dismissal, allowing the political leaderships to maneuver and make subjective decisions. Those ‘subjective decisions’ can be conditioned by party and political motives, as well as by some other factors. In practical terms it is rather difficult to prove political motivation.

A lack of clear-cut statutory criteria determining who should be given priority in terms of maintaining one’s office to some extent contributes to the use of reorganization and staff reduction as the grounds for dismissal of undesirable persons. Such criteria have not been set out by law either in a specific form or at the principles level.

Staff reduction was used as the ground for officer dismissal in 21 out of the total 40 cases of dismissal reviewed by court, that have been studied by the IRC as part of the research. In 16 out of those 21 cases, the claim was sustained (either fully or partially) on various grounds:

- In 5 cases, the advantage of those who maintained their job over the dismissed ones was not substantiated;
- In 3 cases, an officer was not evaluated/the issue of her/his possible compliance with the requirements set for another position was not considered;
- In 3 cases, the court found that the matter concerned fictitious/hypocritical reorganization;
- In one case, the court found that the officer met the requirements set for an equal position.



## 4. Possible manifestations of politicization of the civil service

*(Civil servant involvement in the election campaign and state procurements with the signs of corruption)*

The previous section of the report touched upon the factors (enablers) contributing to depoliticization of the civil service, in other words, the institutional and legal instruments facilitating protection of the civil service against the political influence.

In this section of the report, we will review possible manifestations of politicization of the civil service in certain areas that are viewed as the high-risk areas. Namely, it concerns civil servants' direct involvement in the party (mostly electoral) activity and/or the decision made with their participation, that could be prompted by party interests. The latter, for the most part, implies the state procurement sphere, which is often 'suspected' of serving the party interests.

In this regard, the IRC has not directly studied the state procurement cases and/or those related to misuse of administrative resources for electoral purposes, but rather relied on secondary sources, in particular the reports by other reputable international and local organizations, that have been profoundly studying and observing the electoral processes and manifestations of political corruption for the past 2-3 years.

### State Procurements

As mentioned in Part I of the Report, state procurements and the decisions made in this process with the involvement of professional civil servants are perceived as a high-risk area and one of the manifestations of politicization of the civil service in Georgia. It is often the case that state procurements give rise to suspicion that the businesses (donors) who are loyal to the ruling party are 'awarded' state contracts, especially when the matter concerns simplified procurements.

This issue particularly came into focus in 2020, within the context of procurements in the time of pandemic, when hundreds of simplified procurements worth of over GEL 100mln. were carried out.

Although the state procurements go beyond the civil service politicization issue and have some other dimensions too, it was still deemed necessary to view such cases as a manifestation of civil service politicization, as it is often regarded as being such. At the same time, it is difficult and sometimes even impossible, to make such decisions without the professional civil servants' involvement.

The 2020 reports<sup>21</sup> by the reputable Georgian NGOs that regularly monitor and analyze the state procurements issue, describe dozens of cases of state procurements, with a contractor's stakeholders or persons otherwise affiliated with a company acting as the ruling party's sponsors. It should be noted that in many instances the receipt of a state order/contract is suspiciously timed to coincide with donations made to the ruling party. It is also frequently the case that the donor-related companies are selected through a simplified procurement procedure and/or those companies actually participate in bids without any competition.

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<sup>21</sup> <https://transparency.ge/ge/post/sagangebo-mdgomareobis-periodshi-ganxorcielebuli-saxelmcpo-shesqidvebi-ziritadi-monacemebis>  
<https://transparency.ge/ge/post/sakartvelos-erovnuli-antikorupciuli-sistemis-shepaseba-2020>  
[https://idfi.ge/public/upload/EU/FULL%20-%20the%20covid-19 related state procurements GEO.pdf](https://idfi.ge/public/upload/EU/FULL%20-%20the%20covid-19%20related%20state%20procurements%20GEO.pdf)

Several state procurement cases from the reports by the Institute for Development of Freedom of Information (IDFI) and Transparency International Georgia (TI) are discussed below to illustrate this point.

The report by the Transparency International-Georgia<sup>22</sup>, covering the state procurements during the state of emergency (a period from March 21, till May 22, 2020), reads as follows: - “1,495 public tenders worth a total of GEL 557 million were announced during the state of emergency and only one bidder participated in more than half of the tenders.”

“11,316 contracts worth a total of GEL 127.2 million were signed through simplified procedures during the state of emergency... Companies related to the Georgian Dream’ and Salome Zurabishvili’s donors of different years were awarded contracts worth of at least GEL 45 million through direct procurement during the state of emergency, which is 35% of the total amount spent through simplified procedures during that period”.<sup>23</sup>

The TI study focuses on 21 specific state procurement cases, indicating a link between the ruling party’s donors and the contracts won. Among them there are two cases, when the contracts with supplier companies were signed within a few days after the donation.

Here are a few examples from the IDFI report:

#### **The case of Natural 7 LLC. and the persons related thereto**

*Natural 7 LLC. donated GEL100.000 to the ruling party on November 29, 2019. No other donations have been made on part of this company in previous years. Natural 7 LLC. has two shareholders - Vazha Kuchukashvili and Merab Kuchukashvili. As far as personal donations are concerned, Vazha Kuchukashvili donated GEL 18.000 and Merab Kuchukashvili - GEL 15.000 to Salome Zurabishvili’s campaign in 2018. In addition, Merab Kuchukashvili made an individual donation amounting to GEL 50.000 to the ruling party on December 12, 2019.*

*Alongside the Natural 7 LLC., Vazha and Merab Kuchukashvili own several other companies, through which **they have been awarded GEL 1.5 mln. worth direct procurement contracts** throughout the period from 2012 to 2019. Most of these contracts were signed with one procuring entity, **JSC Akura**, which is 99% owned by the State.*

*It is noteworthy that the aforesaid companies were awarded direct state procurement contracts throughout 2012-2017. Afterwards, no such contracts could be found up until 2019. However, after the Kuchukashvili donated funds to Salome Zurabishvili for the 2018 presidential election, one of their companies, **Tempi + Ltd**, received a GEL 110.000 worth direct contract from JSC Akura, in September 2019. Afterwards, the Kuchukashvilis donated a total of GEL 150.000 to the ruling party in November and December 2019.”*

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<sup>22</sup> <https://transparency.ge/ge/post/sagangebo-mdgomareobis-periodshi-ganxorcielebuli-saxelmcipo-shesqidvebi-ziritadi-monacemebis>

<sup>23</sup> <https://transparency.ge/ge/post/sagangebo-mdgomareobis-periodshi-ganxorcielebuli-saxelmcipo-shesqidvebi-ziritadi-monacemebis> - p.3

## **The case of Kvareli Cellar Ltd. and the persons related thereto**

*Kvareli Cellar Ltd. donated GEL 100.000 to the Georgian Dream on September 6, 2019. The company is engaged in alcoholic drinks production, and it has received more than GEL500.000 worth direct procurement contracts since 2015. However, the Kvareli Cellar Ltd. was not awarded any direct procurement contracts from October 2017 till 2019. On September 20, 2019, fourteen days after the donation was made, the company received a contract worth of GEL 164.000. After the 2019 donation, Kvareli Cellar Ltd. has been awarded contracts worth of up to GEL 200.000 in total. JSC. Akura acted as a purchaser in all the aforesaid cases. Interestingly, Davit Topuridze, who held a stake in the Kvareli Cellar Ltd., simultaneously held a position of director at JSC Akura from September 26 through December 25, 2014, under the decree of the Agricultural Projects Management Agency. From 2013 till December 2014, Topuridze also held the position of director at another state-run enterprise under the Agricultural Project Management Agency - Gruzvinprom Ltd. (which is now privatized).*

*Tiflis Ltd. was also among those who donated funds to the Georgian Dream in 2019. Its donation to the ruling party totaled GEL100.000. It is noteworthy that the founder and director of this company is the abovementioned Davit Topuridze and this company also produces alcoholic drinks. Tiflis Ltd. is not reported to have any state procurement contracts under its name. As for Topuridze, he donated GEL 50.000 to Salome Zurabishvili's campaign.”*

## **The case of Weekend Ltd. and the persons related thereto**

(IDFI Report published on April 24, 2020)<sup>24</sup>

*“Alongside the face masks, the ministry also purchased contactless thermometers, special medical clothing and medical shoe covers from this company, for a total of US\$ 1.33mln (at the official exchange rate as of April 6 – up to GEL 4.2 mln). Weekend Ltd. is fully owned by Bondo Goletiani, who is a contributor to the ruling party-backed presidential candidate, Salome Zurabishvili. In particular, Bondo Goletiani donated GEL25.000 to Salome Zurabishvili ahead of election, while his business partner, Chichiko Goletiani, donated GEL35.000. Shalva Eristavi, another business partner of Goletiani, donated GEL60.000 to Salome Zurabishvili. <sup>25</sup>”*

## **The case of Geo Ferrum LLC. and the persons related thereto**

*“On April 6, 2020, the procurement contract was signed with a biological suit supplier company - Geo Ferrum LLC., which is primarily engaged in realization of metal building materials. Founded in 2019, the company has never participated in state procurements since then. With that purchase, Geo Ferrum LLC. received over GEL 500.000 and, in its turn, agreed*

<sup>24</sup> [https://idfi.ge/public/upload/EU/FULL%20-%20the covid-19 related state procurements GEO.pdf](https://idfi.ge/public/upload/EU/FULL%20-%20the%20covid-19%20related%20state%20procurements%20GEO.pdf)  
[https://idfi.ge/ge/procurement %20related to covid 19](https://idfi.ge/ge/procurement%20related%20to%20covid%2019)

<sup>25</sup> [https://idfi.ge/ge/procurement %20related to covid 19](https://idfi.ge/ge/procurement%20related%20to%20covid%2019)

*to supply 14.100 units of biological protection suits within 10 business days. The company founder is Levan Lursmanashvili. Interestingly, he owns a 100% stake in Geortho Ltd., a medical device importer with extensive experience in both, electronic and simplified state procurements. Presumably, the reason why Lursmanashvili has failed to get the Health Ministry's contract on behalf of this company is that Geortho Ltd. is currently blacklisted (for committing an unconscionable act in order to obtain the right to enter into a state procurement contract).*

*Lursmanashvili donated GEL 25.000 to the Georgian Dream in 2016, and GEL 10.000 to Salome Zurabishvili in 2018. Lursmanashvili also owns 50% of shares in Tandem Ltd., the other two shareholders of which, Davit Kapanadze and Mamuka Khelaia, donated a total of GEL 50.000 to the Georgian Dream and Salome Zurabishvili's election campaign.”*

According to the IDFI report, “fifteen companies donated GEL100.000 to the ruling party in 2019. Of these, nine companies and other companies affiliated to their owners, have been actively participating in public tenders, mostly through a simplified procurement procedure.”<sup>26</sup>

### *Misuse of administrative resources for political purposes – civil servants' involvement in election campaign*

Misuse of administrative resources for the party and political purposes, which is considered to be a problematic issue with respect to almost all elections in Georgia, has become particularly acute and urgent in the context of the past two elections – the 2018 presidential and 2020 parliamentary elections.<sup>27</sup>

This issue is usually considered in terms of electoral legislation - as one of the challenges to the legitimacy of the electoral process. However, misuse of administrative resources in elections is essentially a manifestation of politicization of the civil service and an indicator that the available mechanisms and preventive instruments fail to ensure adequate protection of the civil service against politicization.

There isn't any uniform, universally accepted definition of misuse of administrative resources<sup>28</sup>. For the purposes of this report, we have shared the notion of misuse of administrative resources established by the international and local observer organizations<sup>29</sup>.

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<sup>26</sup> <https://idfi.ge/ge/idfis-research-political-donations>

<sup>27</sup> Estimation of the scope of misuse of administrative resource can often be speculative and controversial, because it is difficult to obtain conclusive evidence of individual manifestation, there is no uniform approach for qualifying this or that behavior as a misuse of administrative resources, it is difficult to collect accurate quantitative data, as well as some other reasons. Despite this, the observer organizations and experts in the relevant field manage to identify certain trends and talk about the dynamics.

<sup>28</sup> “Misuse of administrative resources during Georgia's 2018 presidential elections” [https://transparency.ge/sites/default/files/administraciuli\\_resursebis\\_gamoqeneba\\_2018\\_clis\\_sakartvelos\\_saprezidento\\_arche\\_vnebisvis\\_1.pdf](https://transparency.ge/sites/default/files/administraciuli_resursebis_gamoqeneba_2018_clis_sakartvelos_saprezidento_arche_vnebisvis_1.pdf)

<sup>29</sup> “The Georgian legislation provides a narrow definition for the misuse of administrative resources during the electoral process, often leaving a number of issues beyond regulation. In particular, an administrative body may carry a series of activities that, though in compliance with the law, might provide goods to the society in a way to bear a significant impact on voters' behavior. In such cases, it is usually difficult to draw a line between the state and a political party, as required under the 1990 OSCE Copenhagen Conference Document. Hence, when referring to the misuse of administrative resources during

The reports by the reputable international and local observer organizations reflecting the results of monitoring/observation of the 2018 presidential and 2020 parliamentary elections in Georgia, point to the cases of wide-scale misuse of administrative resources.

Not all the cases of misuse of administrative resources mentioned in the aforesaid reports are related to the professional civil servants. A considerable portion of those involved in this process do not formally fall into the category of professional civil servants, though the matter generally concerns misuse of public funds for the party and electoral purposes and the involvement of individuals funded through the state/local budgets, though only part of them hold a professional civil servant status.<sup>30</sup>

The cases of misuse of administrative resources, including civil servants' involvement in election campaign, are discussed in the **final report by the OSCE Office for Democratic Institutions and Human Rights International Election Observation Mission (ODIHR/IEOM), covering the 2018 presidential election in Georgia**. The report reads as follows: *“Throughout the campaign, there were incidents of misuse of administrative resources... These incidents blurred the line between the state and the ruling party.”*

As it is also pointed out in the report, *“In an attempt to prevent the misuse of administrative resources, state authorities issued several instructions and conducted trainings to increase stakeholder awareness about the ban of such activities. However, those efforts lacked enforcement and were formalistic. Further, the law lacks requirements for prompt action to be taken by authorities in cases of misuse of administrative resources.”*<sup>31</sup>

According to the report, the ODIHR EOM observed instances of high-ranking public officials using institutional web-pages for campaigning and public employees participating in campaign events during working hours.<sup>32</sup>

As it is stressed in the report, *“the misuse of administrative resources increased between rounds. The ODIHR EOM continued to observe the use of institutional web-pages by high-ranking public officials for campaigning; no case was addressed by the authorities. Several instances took place during the unregulated period before the announcement of the second round. While not prohibited by law, the campaign of the Georgian Dream-backed candidate continued to benefit from the participation and support of numerous senior officials from the ruling party.”*<sup>33</sup>

As it is stressed in the **ISFED (International Society for Fair Election and Democracy) Final Report on Monitoring of the 2018 Presidential Elections**, *“Misuse of administrative resources was widespread during the pre-election period, especially during the runoff campaign period. During the*

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the electoral processes, we mean not only violation of the Georgian legislation, but also acts against the spirit of the Copenhagen Document and universally accepted electoral principles.

<sup>30</sup> For example, after the 2020 legislative amendments, the municipality mayor's representative in the territorial unit and other persons employed there are no longer formally considered to be professional civil servants.

<sup>31</sup> <https://www.osce.org/files/f/documents/a/c/414827.pdf> - pp.20-21

<sup>32</sup> <https://www.osce.org/files/f/documents/a/c/414827.pdf> - pp.21-22

<sup>33</sup> <https://www.osce.org/files/f/documents/a/c/414827.pdf> - p.52

*first and second round pre-election period, the ISFED revealed 35 instances of abuse of administrative resources.* “<sup>34</sup>

As it is pointed out in the report, “*there was a trend of mobilization of civil servants for campaign events of the Georgian Dream-backed independent candidate, Salome Zurabishvili. Also, in individual cases, communication means of administrative resources were used in favor of Georgian Dream-backed independent candidate, Salome Zurabishvili.*”

Numerous instances of misuse of institutional administrative resources are described in the **Transparency International – Georgia’s Report on Misuse of Administrative Resources During 2018 Presidential Elections in Georgia**. Namely, particularly noteworthy is the fact that “*people employed in budgetary organizations were mobilized on mass scale to attend campaign events and were urged to provide supporter lists. Some cases of illegal campaigning and use of state communication means for the electoral purposes were also observed. Similar to the previous elections, the Central and District Election Commissions did not consider campaigning through personal social media accounts of civil servants as electoral agitation. This issue still remains problematic.*”<sup>35</sup>

The report describes two different types of civil servant involvement in the election campaign – “. . . *Firstly, the employees of budgetary organizations were mobilized for the campaign meetings and, secondly, they were tasked to collect a list of supporters.*”

The report focuses on mobilization of budgetary organization employees for campaign meetings in Georgian region “...Employees of budgetary organizations, including civil servants, traditionally attended en masse the election campaign meetings of the ruling party-backed presidential candidate, Salome Zurabishvili.”<sup>36</sup>

Alike other observer organizations, in its report Transparency International-Georgia also focuses on civil servants campaigning through Facebook social media. – “*In the reporting period, public officials were actively campaigning on Facebook. Various campaign materials were published or shared on Facebook during working hours by public officials in Zugdidi, Kutaisi, Gori, Batumi and Tskaltubo municipalities. However, the Central Election Commission (CEC) did not satisfy any of our complaints in this regard. The CEC followed the previous years’ practice and did not consider campaigning through Facebook as a sphere of its regulation.*”

The report also touched upon the use of budgetary organizations’ communication means for campaigning, describing the use of the Facebook page of the Autonomous Republic of Abkhazia - “...*On November 21, 2018, the campaign materials of the presidential candidate Salome Zurabishvili were published on the agency’s official Facebook page, calling on the ‘internally displaced compatriots’ to support Salome Zurabishvili and vote against the United National Movement. In addition, citizens received the material with the same content through the government’s official e-mail.*”

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<sup>34</sup> <https://isfed.ge/geo/news/2018-tslis-saprezidento-archevnebis-saboloo-angarishi> - p.27

<sup>35</sup> [https://transparency.ge/sites/default/files/administraciuli\\_resursebis\\_gamoqeneba\\_2018\\_clis\\_sakartvelos\\_saprezidento\\_arc\\_hevnebisvis\\_1.pdf](https://transparency.ge/sites/default/files/administraciuli_resursebis_gamoqeneba_2018_clis_sakartvelos_saprezidento_arc_hevnebisvis_1.pdf) - p.24

<sup>36</sup> [https://transparency.ge/sites/default/files/administraciuli\\_resursebis\\_gamoqeneba\\_2018\\_clis\\_sakartvelos\\_saprezidento\\_arc\\_hevnebisvis\\_1.pdf](https://transparency.ge/sites/default/files/administraciuli_resursebis_gamoqeneba_2018_clis_sakartvelos_saprezidento_arc_hevnebisvis_1.pdf) - p.24

<sup>37</sup> [https://transparency.ge/sites/default/files/administraciuli\\_resursebis\\_gamoqeneba\\_2018\\_clis\\_sakartvelos\\_saprezidento\\_arc\\_hevnebisvis\\_1.pdf](https://transparency.ge/sites/default/files/administraciuli_resursebis_gamoqeneba_2018_clis_sakartvelos_saprezidento_arc_hevnebisvis_1.pdf) - p.27

**Similar challenges associated with misuse of administrative resources can be found in the reports of those three organizations prepared in connection with the 2020 parliamentary elections.**

In its **Final Report on October 31, 2020 Parliamentary Elections in Georgia**, the ODIHR Limited Election Observation Mission once again stressed that - *“the line between the ruling party and the state was often blurred, contrary to the OSCE commitments and international good practice.”*<sup>38</sup>

**The Final Report on the Monitoring of October 31, 2020 Parliamentary Elections in Georgia by the International Society for Fair Elections and Democracy (ISFED)** also refers to the civil service and public officials’ wide-scale involvement in the election campaign – *“Regrettably, the misuse of administrative resources by the ruling power still remains a characteristic feature of the campaign period.”*<sup>39</sup>

*“The facts identified by ISFED prove that mayor’s representatives in various administrative entities often were not politically neutral when fulfilling their official duties and served as agitators and representatives of the ruling party.”* *“A tendency of using municipalities’ official Facebook pages in favor of the ruling party and its backed candidates is also noteworthy”*.<sup>40</sup>

The report refers to the ‘blurred line’ between the ruling party and the state - *regulations and constraints introduced to prevent the spread of coronavirus and the economic crisis in the country triggered the need for further increasing social assistance. The government started to provide relief packages to the most vulnerable groups, which was usually distributed by persons affiliated with the ruling party. A line between the ruling party and the government was often blurred in this process, bearing the signs of voter-buying and misuse of administrative resources for the party purposes.*<sup>41</sup>

As it is stressed in the report, *“the local self-government officials, mayor’s representatives, as well as the employees of the municipal NNLEs, public schools and kindergartens frequently attended the Georgian Dream’s party meetings and candidate nomination events during the working hours. Such instances were observed practically throughout the country. Although prohibition of engagement in the campaign and electoral promotion activities entered into force only on September 1, but their participation in the campaign events bore the signs of misuse of administrative resources.”*

**Transparency International - Georgia’s Report on Misuse of Administrative Resources During 2020 Parliamentary Elections in Georgia** focuses on the cases of dismissal of municipality City Hall and/or NNLE employees allegedly on political grounds in various municipalities (Ninotsminda, Kvareli, Mtskheta) in the pre-election period.

**The case of Ninotsminda municipality is particularly noteworthy in this regard.** Twenty-two employees of the City Hall and various non-profit organizations (NNLE) quit the job there within the period from July 1 through September 4. (pp. 17-18). Fourteen out of that number were the mayor’s representatives in the territorial entity, whose administrative contracts expired and were not further extended (which is regarded as the mayor’s legal power). This case is noteworthy in the context of the amendments introduced to the Civil Service Law in February 2020, under which a status of the mayor’s representative in the territorial entity was changed, making her/him a person appointed under the

<sup>38</sup> <https://www.isfed.ge/geo/angarishebi/2020-tslis-saparlamento-archevnebis-saboloo-angarishi> - p.5

<sup>39</sup> <https://www.isfed.ge/geo/angarishebi/2020-tslis-saparlamento-archevnebis-saboloo-angarishi> - p.33

<sup>40</sup> <https://www.isfed.ge/geo/angarishebi/2020-tslis-saparlamento-archevnebis-saboloo-angarishi> - p. 33

<sup>41</sup> <https://www.isfed.ge/geo/angarishebi/2020-tslis-saparlamento-archevnebis-saboloo-angarishi> - p.28

administrative contract. Those changes were expected to give ‘more flexibility’ to the municipality mayors for mobilizing administrative resources ahead of the 2020 elections.

As it is pointed out in the report, *“a total of 50 cases of the budgetary organization employees’ participation in the pre-election meetings in favor of the ruling party were recorded by the organization in the reporting period.”*<sup>42</sup>

In its report, the organization gives positive assessment to the July 2, 2020, amendments to the Electoral Code of Georgia, under which LEPL and NNLE (state-owned nonprofit organization) employees, including the public-school teachers, are prohibited from participating in pre-election campaign during working hours. However, it is pointed out that although civil servants were particularly active in campaigning through Facebook social network, the *“Central Election Commission has had a long-established wrongful practice in this regard, as it does not consider examination of the cases involving agitation from personal Facebook accounts during the campaign period as the area of its regulation. This practice has not changed in these elections either.”*<sup>43</sup>

As far as the use of civil servants for the electoral and political purposes is concerned, it is noteworthy that the assessment of the use of administrative resources in the election monitoring reports is somewhat stricter in relation to the 2018 and 2020 elections than those with regard to several elections conducted in 2013-2016. In other words, by the time the new Civil Service Law took its effect, the situation with misuse of administrative resources in the electoral process has deteriorated.

In view of the aforesaid, it could be said that amidst high political motivation, the available legal mechanisms promoting depoliticization are insufficient to withstand such a political will. The majority of stakeholders believe that there is a possibility to improve the legal framework of the civil service that could have some positive impact on depoliticization of the civil service, though introduction of amendments to the civil service regulatory legislation is hardly a solution that can yield the desired result.

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<sup>42</sup> <https://transparency.ge/ge/post/administraciuli-resursebis-gamoqeneba-sakartvelos-parlamentis-2020-clis-archevnebstvis-sabolo> - p.35

<sup>43</sup> <https://transparency.ge/ge/post/administraciuli-resursebis-gamoqeneba-sakartvelos-parlamentis-2020-clis-archevnebstvis-sabolo> pp.35-36



## 5. Main findings

### 5.1. The understanding of politicization/political neutrality

In international practice/literature, the issue of political neutrality is considered in the context of attitudes of public service (administration) towards elected politicians – whether it equally/neutrally serves elected politicians, to what degree are their priorities taken into consideration, whether is resistant and self-serving bureaucracy.

*Hence, the politicization of public service is not used only with a negative connotation, as in Georgia. Politicization can be describing a certain degree of influence of political leadership on public service to achieve its effective control and responsiveness towards political priorities; i.e. it can be used in a certain positive context.*

The issue of political neutrality of public service in Georgia is rarely discussed in the context of resistance, self-serving bureaucracy, or responsiveness. None of the respondents have raised self-serving bureaucracy or the issue of political responsiveness as a problem of the modern Georgian public service. In Georgia "politicization of public service" is always used in a negative context and is never viewed in the context of establishing a correct balance between two competing values/interests.

#### **In Georgia “politicization of public service” is mainly used with two meanings:**

1. "politicized" attitudes towards public servants, decisions towards them, related to their appointment for employment, career development, dismissal or related issues, dictated by party/political influence;
2. The use of public service and already acting public servants for supporting party-political objectives, which in turn can be divided into several groups: supporting politically loyal businesses in the process of state procurement; rewarding for political support through providing advantages in various state programs; using public service/public servants for “punitive” purposes; engagement/participation of public servants in election processes (the use of so-called administrative resources).

#### **In the context of politicization the areas considered as entailing the highest risk are:**

- Appointment in public service, promotion, dismissal;
- engagement of public servants in the election process - administrative resources;
- state procurement – “rewarding” party donors through simplified procurement.

### 5.2. Mechanisms enabling political neutrality of public service (legal/institutional enablers)

**In international practice the following mechanisms are considered as enablers of political neutrality of public service:**

- Defining the scope of public service and clearly distinguishing between political and administrative positions;
- Restriction of the participation of the political leadership in human-resource-related issues and its strict regulation;
- Appointment in public service through transparent and fair competition;
- A transparent system of promoting and rewarding, its detailed regulation and limiting decision-makers' discretion;
- Precise/detailed regulation of the issue of disciplinary responsibility and restriction of the participation of the political leadership;
- Detailed regulation of grounds and procedures for dismissal and limitation of decision-makers' discretion;
- Restriction/strict regulation of party-political activities of public servants;
- Permanent appointment of civil servants, merit-based professional development and remuneration system;
- Other mechanisms promoting independence.

### 5.3. “Suspicious” amendments to the Law of Georgia on Civil Service

In February 2020 amendment was made to the law of Georgia on Public Service, which (Article 78) expanded the list of persons to be appointed with administrative contracts; more precisely a representative of a municipality's mayor and other persons employed in an administrative unit offer municipality were considered as such<sup>44</sup>. According to the law, a person is usually hired in public service under an administrative contract **without competition**. Termination of the contract with him/her, in addition to the expiration of the term, is also possible at the initiative of a state-political official/mayor;

Notably, the legislative change concerns the mayor's representative and other persons employed in the administrative unit of the municipality, ie those who are usually considered as an important "administrative resource" in the presence of vicious electoral practices. The authors of the bills explicitly indicated in the explanatory note that the purpose of the amendment was to enable the mayor to appoint persons with whom he/she *“shares political views”*.

The change has raised suspicions among stakeholders that its goal was to grant mayors of municipalities more access to "administrative resources" and more freedom to act for electoral purposes in the run-up to the 2020 parliamentary elections. This opinion was further backed by the fact that, according to authoritative observer organizations, in the process of the 2018 presidential elections, one of the main problems (violations) was the use of so-called administrative resources, especially of mayors' representatives in the regions.

According to key stakeholders, the legislative change under consideration is problematic not because it in itself has worsened the situation and substantially increased the degree of politicization of the public service, but because it shows the trend - *„When the party-political need arose, arguments were easily found to change the status of certain categories of professional public servants to a more "controlled" position, and all this was explained/justified with the management efficiency.”*

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<sup>44</sup> Except for Tbilisi Municipality.

#### 5.4. Appointment in public service - regulation of open competition

**In international practice, as well as according to the methodological framework developed by the OECD/SIGMA, the following are considered as main mechanisms for impartial competition and protection from party-political interference**

- The rule of forming competition commissions, where political officials do not directly participate in the competition commission for the selection of a professional public servant, do not directly appoint commission members, or at least there are requirements for members of the competition commission that restrict the freedom of politicians in this area;
- Examination/evaluation of candidates during the competition with both oral and written assignments and the use of mechanisms for the objectivity of evaluations such as maintaining anonymity when assessing written assignments (the evaluator does not know whose work is being assessed); a structured interview should be used when evaluating through oral assignments;
- Substantiation of the decisions by the competition commissions;
- Ability to appeal the decisions of the competition commission both in court and administratively, in a body that is separate and not subject to the body issuing the initial decision on the outcome of the competition.

**Competition commission** - The commissions do not include political officials, although they appoint a chairman of the commission, who then elects other members of the commission. The legislation defines criteria and provides limits for a minister, as well as the chairman of the commission elected by him/her – a minister cannot appoint any person as the chairman of the commission.

The prevailing opinion among experts and stakeholders in this field is that "the Minister still has full control over the commission" and when a political official has a desire/need to interfere in the work of the competition commission, he/she can do so without a problem and get the desired result, which can be conditioned by party-political objectives, as well as by nepotism or other factors.

The Law of Georgia on Public and acts deriving from it provide for certain rules aimed at promoting the political neutrality, objectivity, and efficiency of competition commissions, including:

- *Prohibiting participation of political officials in competition commissions;*
- *Authority of the Civil Service Bureau to monitor the competitions and to have its representatives at the meetings of the competition commission/ interviews with candidates;*
- *Participation of trade union representatives or independent experts in the competition commission.*

However, the prevailing opinion among the specialists/experts working in the field and the surveyed stakeholders is that the combination of the above rules is insufficient in the current context and administrative culture and does not ensure the fulfillment of the set tasks, specifically:

- The pool of officials from which the minister has to elect the chairman of the commission is still dependent on the minister and, according to the tradition still ingrained in the public service, is usually so loyal to the minister that he/she cannot "communicate with the minister in legal terms " and/or "say no to minister";
- The obligation of a trade union member or an expert in the field to participate in the competition commission does not substantially affect the process. The commission chairperson has an opportunity to find an acquaintance - a specialist loyal to the leadership of the ministry at his/her discretion and to have the same person as a member of almost all competition commissions. Taking into consideration that it is not mandatory to remunerate such members of the Commission (and usually they are not remunerated), invited specialists do not always participate in the Commission meetings and/or their participation is formalistic, and they unconditionally share the opinion of the Commission chairperson;
- Concerning monitoring by the Bureau - its human resources are insufficient for the monitoring to have systematic character and wide coverage. At the same time, illegal acts do not define and there is a certain vagueness in what is implied under monitoring conducted by the Bureau - what is the mandate and functions of the Bureau representative in the monitoring process, specifically what, which aspects of the competition shall they observe, how shall he/she react in case of any violation / non-compliance with the law or methodological errors, what should his/her report reflect, etc.

**Evaluation of a candidate** - according to the law the second stage of the competition is the evaluation of a candidate. The evaluation shall happen through two means: through written and/or oral assignments and an interview. Given that the law allows for such an alternative - "**written and/or oral assignment**", the practice has been established in most institutions, according to which written assignment does not occur at all (or rarely does), and oral assignment is virtually integrated with the interview process. As a result, we get a situation where essentially only an interview is conducted.

The provision in the law on "objective, impartial" evaluation of the candidate is good in terms of declared principles, however, the competition commission is not obliged to conduct a structured interview, i.e. it is not guaranteed that candidates will be asked the same questions, prepared in advance, in the same order. At the same time in the majority of institutions, written assignments are rarely provided, and in those cases when they do happen, anonymity is not ensured when evaluating the assignment.

**The method of evaluation and substantiation of the decision** - according to the existing rule the Competition Commission usually makes a decision using the points-based system, however, it is authorized to make a decision based on voting, while the substantiated decision of the commission must be reflected in the minutes of the meeting.

Although the "commission as a rule" has to make a decision based on the points system, in some institutions it has become a common practice to make a decision based on voting. Even when the decision is made based on the points system, the institution is not obliged to assign separate points to a

candidate in various evaluative issues - work experience, adequacy of his / her professional knowledge with the job description of the job opening, special and additional requirements, etc.

Giving a summary point, without the breakdown of different skills/knowledge provides more "freedom" to an evaluator and he/she can easily be biased.

**Substantiation of the decision by the competition commission** – the law provides for the substantiation of the decision by the competition commission, however in Georgia institutions have a different "standard of substantiation" and the substantiation of a decision is frequently illusional. Substantiation is frequently the grounds for the courts to annul a decision by the competition commission. The subjectivity of the commission members is also facilitated by the fact that no video/audio recording takes place at the interview stage and its implementation depends on the goodwill of the institution. Logically, a contestant's consent is required for the video recording, however, even if he/she consents or is requested to do so, the commission may refuse to make the recording. In addition, recording interviews of part of contestants cannot reveal biased decisions.

**Appealing a decision by the competition commission is also problematic, as** the administrative appeal mechanism is not available for the second, the essential stage of the competition.

Contestants can appeal only the results of the first stage at Civil Service Bureau - the decision on the compliance of the contestant with the basic requirements of the law. This mechanism works in practice – there are precedents, when contestants refer to the Bureau with their application, the commission is forced to change its decision and share the decision of the Bureau. However, the results of the second stage of the competition are more important/critical, which can be appealed only in court. Given the actual timeframes of court proceedings and circumstances described above - merely an oral interview, evaluation through voting, absence of audio recording, and a standard for substantiating the commission's decisions, we can conclude that contestants have a limited opportunity to appeal the commission's biased decisions.

**In the light of the existing regulations/practice:**

- Evaluation, usually, takes place only through an interview;
- In the presence of a written assignment, a candidates anonymity is not protected when assessing it;
- Structured interviews are not mandatory at the interview stage;
- Frequently evaluation takes place through simple voting;
- When evaluating based on the point system, frequently is a summary point is given without providing further breakdown;
- Substantiating a decision is mandatory, however, there are no requirements toward this substantiation shall reflect;
- Video/audio recording of interviews depends on the goodwill of the commission and consent by individual candidates.

## 5.5. Dismissal from employment

Georgian legislation regulates the issue of the dismissal of a public servant in detail. The exhaustive list of grounds for dismissal is defined by the legislative act adopted by the Parliament – with the law of Georgia on Public Service. In practical terms, there are only three grounds for dismissal of a civil servant, which can be used for dismissal at the initiative of a public institution:

- Reduction of staff due to a public institution's reorganization, liquidation, and/or a merger with another public institution
- The commitment of a serious disciplinary misconduct
- Two consecutive unsatisfactory appraisals

Among the officials and other respondents surveyed, the first is perceived as problematic - *"reduction of staff due to reorganization, liquidation and/or a merger with another public institution"* and the second - dismissal based on disciplinary misconduct.

The issue of disciplinary liability is sufficiently regulated by the legislation of Georgia and the law does not have any significant weaknesses in this part. When using disciplinary liability as a basis for dismissal, the legislation does not allow for broad interpretation, especially politically motivated arbitrariness.

Ministries rarely use disciplinary liability as the grounds for dismissal, while when dismissal is applied as the form of disciplinary liability, it is frequently appealed in court.

Out of 40 dismissal cases investigated by the IRC, which were referred to court, disciplinary misconduct was used as a basis for dismissal in 15 cases. Out of 15 claims, seven (7) claims were satisfied, in 4 cases, the court found that the dismissal was a disproportionate penalty for the misconduct committed. In 2 cases, the court considered that the illegal act/disciplinary misconduct was not committed at all/was not confirmed.

Reorganization/liquidation and reduction of the respective staff is one of the most "suspected" mechanisms, most often used to create a basis for artificial/deliberate dismissal of officials, which allows political leadership to make certain maneuvers and biased decisions. These "subjective" decisions can be motivated by both partisan political motives and other factors. It is rather difficult to prove political motivation in practice.

Unlike detailed regulation of disciplinary matters, reorganization, liquidation, and/or merger of a public institution with another public institution, the issues concerning the reduction of staff are less precisely regulated by the law.

The mechanism of mobility practically does not work. The proof of this is extremely low instances of mobility. An institution that has undergone a reorganization and is facing a reduction in staff usually does not offer a transfer to an "equivalent position" and an officer cannot be transferred to another institution because other institutions refuse to employ through mobility, regardless of whether they have a job opening or not. Consequently, staff reductions usually mean the dismissal of public servants.

Part of the legal specialists surveyed in the study believes that the use of reorganization and reduction of the relevant staff as a basis for dismissal of unwanted persons is partly facilitated by the lack of legal criteria for who should be given priority in terms of retaining the job.

The analysis of the 2014 - 2020 court practice demonstrated that the rate of dismissal based on reorganization and reduction of the corresponding staff is quite high.

- Out of 40 cases of dismissal of public servants studied by IRC, which proceeded to court, in 21 cases the reduction of staff was the basis of 21 instances of dismissal;
- Out of 21, 16 claims were satisfied (fully or partially);
- In 5 cases the advantage of those, who retained jobs as compared to those dismissed, was not substantiated;
- In 3 cases there was no assessment of whether the public servants satisfied requirements provided for other positions;
- In 3 cases the court established a fictitious/hypocritical reorganization;
- In 1 case the court ruled that the public servant satisfied requirements for the equal position.

#### 5.6. Manifestations of Civil Service Politicization – Participation of Public Servants in Election Campaigns and State Procurement

One of the manifestations of civil service politicization and the high-risk area is public procurement and decisions made with the involvement of professional public servants in this process. There are multiple instances when the state procurement raises suspicions that businesses loyal to the ruling party (donors) are “rewarded” with state contracts, this particularly concerns simplified procurement.

In 2020 reports of Georgian influential non-governmental organisations<sup>45</sup>, which systematically monitor and analyze the issue of state procurement, describe a dozen of cases of state procurement, where shareholders of a contractor or persons otherwise linked to a contractor are donors of the ruling party. It is noteworthy that in many cases the timing of receiving a state order/contract coincides with donations to the ruling party. There are also frequent cases when companies related to donors are selected through simplified procurement and/or these companies participate in tenders without any competition.

In the report<sup>46</sup> prepared by Transparency International Georgia, concerning the state procurement in the period of the state of emergency (21 March 2020 to 22 May 2020) we read that *“During the state of emergency, a total of 1,495 e-tenders worth a total of GEL 557 million were announced and only one supplier participated in more than half of the tenders.”*

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<sup>45</sup> <https://transparency.ge/ge/post/sagangebo-mdgomareobis-periodshi-ganxorcielebuli-saxelmcipo-shesqidvebi-ziritadi-monacemebis>  
<https://transparency.ge/ge/post/sakartvelos-erovnuli-antikorupciuli-sistemis-shepaseba-2020>  
<https://idfi.ge/public/upload/EU/FULL%20-%20the%20covid-19%20related%20state%20procurements%20GEO.pdf>

<sup>46</sup> <https://transparency.ge/ge/post/sagangebo-mdgomareobis-periodshi-ganxorcielebuli-saxelmcipo-shesqidvebi-ziritadi-monacemebis>

*“The contracts worth 127.2 million GEL were signed through simplified procurement during the state of emergency. . . . In different years, the companies affiliated with Georgian Dream and Salome Zurbashvili's donors received contracts worth more than 45 million GEL through direct procurement during this period, which is 35% of the amount spent on direct procurement during the period.”<sup>47</sup>*

According to the report by IDFI – *“Out of 2019 donors there were in total 15 companies, which donated 100,000 GEL to the ruling party. 9 out of these companies and other companies affiliated with their owners actively participate in state tenders and mostly this happens through direct procurement.”<sup>48</sup>*

The issue of using administrative resources for party-political purposes is considered problematic concerning almost all elections held in Georgia, however, it has acquired special urgency and became particularly acute in the context of the last two - the 2018 presidential and 2020 parliamentary elections.<sup>49</sup>

Reports from authoritative international or local observer organizations, which reflect the results of the observation/monitoring of 2018 presidential and 2020 parliamentary elections in Georgia, indicate cases of widespread use of administrative resources. Although not all of the cases mentioned in the reports concerning the use of administrative resources are related to professional public servants (not all of them fall into the category of professional public servants), they generally refer to the use of public finances for party-election purposes and the involvement of those funded by state/local budgets, even though only part of them hold the status of a professional public servant<sup>50</sup>.

In terms of the use of public servants for election-political purposes, it is noteworthy that in the election monitoring reports the assessment of the use of so-called administrative resources is more stringent concerning the 2018 and 2020 elections than they were in relation to several elections held in 2013-2016. This means that in the period when the new law on Public Service entered into force, the situation with regards to the use of administrative resources in the election process has worsened. In the light of the above-mentioned, it can be said that in the conditions of high political motivation, the existing legal mechanisms promoting depoliticization are not sufficient to resist such political will. A majority of stakeholders believe that there may be room for improvement of the legal framework regulating public service, which could have a certain positive impact on the depoliticization of public service. However, the search for a solution will not be fruitful only through changes in public service legislation.

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<sup>47</sup> [https://idfi.ge/ge/monitoring\\_covid-19\\_related\\_public\\_spending\\_during\\_the\\_state\\_of\\_emergency\\_and\\_after](https://idfi.ge/ge/monitoring_covid-19_related_public_spending_during_the_state_of_emergency_and_after)

<sup>48</sup> <https://idfi.ge/ge/idfis-research-political-donations>

<sup>49</sup> Estimating the scale of the use of administrative resources can often be speculative and controversial - due to the difficulty of obtaining conclusive evidence of individual manifestations, the inconsistent approach towards qualifying behaviour as the use of administrative resources, the difficulty of collecting accurate quantitative data, or due to other reasons. Despite this, observer organizations and specialists in the relevant field can detect certain trends and discuss dynamics.

<sup>50</sup> For example, the mayor's representative in the territorial unit and other persons employed there after the 2020 legislative changes are no longer formally considered professional public servants.



## Executive summary

The degree of political neutrality of the civil service is usually the subject of disagreement between stakeholders. Indeed, assessments of the politicization of civil service can often be speculative and based on differing interpretations of the same events, especially in the absence of universally recognized indicators and difficulty in obtaining direct evidence proof.

Despite this challenge, the observations made in the framework of the research give us grounds to presume/conclude that despite the implemented reforms, the issue of political neutrality of the civil service in Georgia remains problematic.

As a recommendation, it can be said that when planning the next steps in the reform of the civil service, it is important to pay attention to strengthening the legislative framework in such areas as:

- extending the scope of the Public Service Law to a wider circle of public servants - reduce the pool of persons not covered by the law, including the rules of hiring through open competition;
- improving the rules for hiring/organizing open competition for a professional public servant in the public service;
- existence of alternative mechanisms for the protection of the rights of contestants, other than the court. For example, in the form of an institution not falling under the control of a ministry organizing a competition/having a job opening, etc.

However, it should be noted that the challenges related to the political neutrality of the civil service have deeper political and socio-cultural roots, and in this regard, focusing only on the refinement of the Public Service Law and other relevant acts will not be sufficient. An overwhelming majority of stakeholders surveyed in the framework of the study share opinion, that besides further refinement of the legislative framework, activities in other directions are essential, including in terms of supporting public servants, wider systematic informing, and the actualization of the idea of political neutrality.