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## THE ISSUE OF NEPOTISM AND THE PROBLEM OF BUILDING TRANSPARENT AND EFFICIENT CIVIL SERVICE IN GEORGIA

The problem of Nepotism is widespread almost everywhere, not only in developing countries, but also in many economically advanced countries. One of the most acute problems that Georgia is facing today is the widespread nepotism in all spheres of public life. Nepotism reduces country's economic development and leads to weakening of effectiveness of the government institutions. In case of nepotism a wide range of legal norms and principles are violated, such as equality before the law, impartiality and equal access to civil service for all citizens.

According to the research which was conducted by different non-Governmental Organizations, recruitment procedure in civil service is not conducted in accordance with the competition rules. This fact is also confirmed by those citizens that were dismissed from civil service. The violation of competition rules has become a common practice in civil service.

After the adoption of a revised EU-Georgia Association Agenda for the period 2017-2020, Georgian government has undertaken an obligation to establish a transparent, independent and impartial system of civil service. European Union demands from Georgia to reform the civil service and build a merit-based and professional civil service. The requirement to reform the civil service and the inclusion of this objective in the Association Agenda is a recognition of the fact, that the Georgian government has so far failed to create a competent and transparent civil service. The creation of a professional civil service can only be achieved if vicious practice of nepotism will be eradicated in all spheres of public life.

**Key words:** Nepotism, reform of civil service, recruitment procedure in civil service, dismissal of employees in civil service.

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### Непотизм және Грузияда тиімді мемлекеттік қызметке түру жолдары

Билікке туысқандарды тарту және сол жолмен мемлекеттік қызметке түру (непотизм) мәселесі дамушы елдерде ғана емес, сондай-ақ көптеген экономикасы дамыған елдерде де, яғни барлық жерде дерлік таралған. Бүгінгі күні Грузияда кездесетін ең өткір мәселелердің бірі непотизм болып табылады, ол қоғамдық өмірдің барлық салаларында кең таралған. Непотизм елдің экономикалық дамуын тежейді және мемлекеттік институттардың жұмыс істеу тиімділігін төмендетеді. Заң алдындағы теңдік, әділдік және барлық азаматтар үшін мемлекеттік қызметке тең қол жеткізу сияқты құқықтық нормалар мен қағидаттардың кең спектрі бұзылып отыр. Әр түрлі үкіметтік емес ұйымдарға жүргізген зерттеулерге сәйкес мемлекеттік және азаматтық қызметке қызметкерді іріктеу рәсімі конкурс ережесіне сәйкес жүргізілмейді. Бұл жағдайды мемлекеттік қызметтен босатылған азаматтар да растайды. Бәсекелестік ережелерін бұзу мемлекеттік қызметтегі әдеттегі тәжірибеге айналды. ЕО-Грузия қауымдастығы 2017-2020 жылдарға арналған қайта қаралған күн тәртібі қабылданғаннан кейін Грузия Үкіметі мемлекеттік қызметтің ашық, тәуелсіз және бейтарап жүйесін құру міндетін өзіне алды. Еуропалық Одақ Грузиядан мемлекеттік қызметті реформалауды және еңбектеріне негізделген кәсіби азаматтық қызметті құруды талап етеді. Мемлекеттік қызметті реформалау және осы мақсатты қауымдастықтың күн тәртібіне енгізу талабы Грузия үкіметі әлі күнге дейін құзыретті және ашық

мемлекеттік қызметті құра алмағанын мойындау болып табылады. Кәсіби мемлекеттік қызметті құруға, егер непотизмнің бұзылу практикасы қоғамдық өмірдің барлық салаларында жойылатын жағдайда ғана қол жеткізуге болады.

**Түйін сөздер:** непотизм, реформа, мемлекеттік қызмет, мемлекеттік және азаматтық қызметке таңдау, қызметкерлерді мемлекеттік қызметтен босату.

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### **Непотизм и проблема построения прозрачной и эффективной государственной службы в Грузии**

Проблема непотизма широко распространена почти повсеместно, не только в развивающихся странах, но и во многих экономически развитых странах. Одной из наиболее острых проблем, с которыми сегодня сталкивается Грузия, является широко распространенный непотизм во всех сферах общественной жизни. Непотизм снижает экономическое развитие страны и ведет к снижению эффективности государственных институтов. В случае непотизма нарушается широкий спектр правовых норм и принципов, таких как равенство перед законом, беспристрастность и равный доступ к государственной службе для всех граждан.

Согласно исследованию, проведенному различными неправительственными организациями, процедура отбора персонала на государственную гражданскую службу не проводится в соответствии с правилами конкурса. Этот факт подтверждают и те граждане, которые были уволены с государственной службы. Нарушение правил конкуренции стало обычной практикой на государственной службе.

После принятия пересмотренной повестки дня Ассоциации ЕС-Грузия на период 2017–2020 годов правительство Грузии взяло на себя обязательство создать прозрачную, независимую и беспристрастную систему государственной службы. Европейский Союз требует от Грузии реформировать государственную службу и создать профессиональную гражданскую службу, основанную на заслугах.

Требование реформировать государственную службу и включение этой цели в повестку дня Ассоциации является признанием того факта, что правительству Грузии до сих пор не удалось создать компетентную и прозрачную государственную службу. Создание профессиональной государственной службы может быть достигнуто только в том случае, если порочная практика непотизма будет искоренена во всех сферах общественной жизни. Грузии нужны профессиональные, компетентные и знающие государственные служащие, которые могут проводить эффективную политику и превращать страну в либеральную демократию западного образца. Эффективная и действенная государственная служба является необходимой предпосылкой экономического прогресса Грузии.

**Ключевые слова:** непотизм, реформа государственной службы, процедура отбора персонала на государственную гражданскую службу, увольнение работников с государственной службы.

## **Introduction**

Nepotism is a global problem. This problem is widespread not only in developing countries, but also in many economically advanced countries. One of the most acute problems that Georgia is facing today is the widespread nepotism in all spheres of public life (Louise Shelley, Erik R. Scott & Anthony Latta, 2007)

Nepotism is an unethical behavior, which has negative economic consequences and leads to weakening of economic performance of the government institutions. In case of nepotism a wide range of legal norms and principles are violated, such

as equality before the law, impartiality and equal access to civil service for all citizens. According to the article 17 of the law of Georgia on civil service “A person shall not be recruited for civil service if he/she comes under direct supervision or directly supervises his/her parent, spouse, sister, brother, child or the sister, brother, parent of his/her spouse after occupying the position;” Although Article 332 of the Criminal Code of Georgia (the abuse of office) theoretically prohibits the violation of the recruitment procedures in the civil service, in practice, the article is almost never interpreted in this manner. Influential politicians often employ relatives and family members in civil service.

According to the research, which was conducted by the non-governmental organization – Transparency International, the recruitment procedure in civil service is often conducted in the non-transparent manner. Legal loopholes and inadequate regulation have enabled nepotism to flourish in civil service. Transparency International proposes the adoption of stricter laws and regulations in order to eradicate this vicious practice and introduce the system of meritocracy.

Georgia needs professional, competent and knowledgeable civil servants, that can implement efficient policies and transform the country into western-style liberal democracy. Effective and efficient civil service is an essential prerequisite to Georgia's economic progress. Therefore, it is essential to reform the civil service and staff it with qualified and competent people.

Everyone knows that nepotism is extremely detrimental to a country's development. People who lack the ability and competence to do the job duties, very often are assigned offices, reducing the government's efficiency and effectiveness (Saltanat Liebert, Stephen E. Condrey

& Dmitry Goncharov, 2013). Incompetent and unqualified people often hold very important positions in civil service and government. When people are selected for important positions in civil service, nobody pays attention to qualifications and skills. Success is primarily determined through connections to the influential government officials. (Florian Biermann & Charles Johnson, 2015)

### **Problems that Georgia is currently facing with regards to building transparent and efficient Civil Service**

Currently Georgia does not have any legislation that prohibits or criminalizes nepotism in Civil Service. Non-governmental organization "Transparency International – Georgia" introduced a legislative initiative to the Parliament of Georgia, which envisaged the criminalization of nepotism in civil service (Council of Europe, 2017). This NGO created a draft law and recommended to add special provision to the article 332 in Criminal Code – violation of competition rules in civil service. This special provision implied the punishment of those people who intentionally violate the rules of the competition in order to create favorable conditions for a particular person. Transparency International – Georgia's legislative initiative provided for punishment with fine or imprisonment for up to two years and deprivation of the right to occupy

or exercise the term of office for up to three years. Deputies in Georgian Parliament did not support the Transparency International – Georgia's initiative to criminalize nepotism. This initiative was discussed at the Human Rights Committee, but was rejected by those politicians who often employ their relatives in civil service and government institutions.

Transparency International – Georgia has long been studying the issues of recruitment and dismissal of employees in civil service. According to the research which was conducted by this NGO, recruitment procedure in civil service is not conducted in accordance with the competition rules. This fact is also confirmed by other NGOs, as well as by those citizens that were dismissed from civil service. The violation of competition rules has become a common practice in civil service.

After the defeat of the United National Movement in the 2012 parliamentary elections, many people expected that the new regime would fight against nepotism and would do everything in its disposal to eradicate this vicious practice in civil service. But, in reality nothing has changed and the current government is continuing its predecessor's policy of employing relatives and friends in civil service. Since restoration of country's independence all governments displayed a lack of political will to fight nepotism and accepted it as something normal and unavoidable phenomenon. Sociological research which was conducted by Transparency International – Georgia after the massive cleansing of civil service by the government in 2012, revealed that people are often appointed to civil servants' vacant positions without due competition, mainly according to the party affiliation and nepotism. Out of 6500 employees appointed in civil service only 69 people passed the examination and were selected through the competitive recruitment procedure. It turns out that the regulations of the civil service selection procedures are no longer used since the change of government in 2012 (Emagogokhia, 2018).

Instead of reforming and reorganizing the civil service and making it more transparent, the new regime has allowed nepotism to flourish in all spheres of public life. According to the information that the non-governmental organizations of Georgia have obtained, a large number of people were unjustly fired from civil service and lost their jobs in public institutions. The unfair dismissal of civil servants is widespread in all public institutions and resignation of officials takes place both in the capital and different provinces of Georgia (Transparency International, 2013). The research has found that

that government often fails to follow fair dismissal procedures:

A large number of civil servants have submitted resignation letters and left the civil service. Taking into account very high unemployment rate in Georgia, this trend raises serious doubts that in many cases public employees did not voluntarily leave their positions. It turned out that in most cases these people were forced to resign from office by higher level public officials and influential politicians. The above mentioned facts about the unfair dismissal procedures were later publicly confirmed by some government officials. Article 332 of the Criminal Code of Georgia clearly prohibits the abuse of official powers by a public official. As it states:

“1. Abuse of official powers by an official or by a person equal thereto to the detriment of public interests, in order to gain some benefit or advantage for himself / herself or for another person, which has resulted in substantial violation of the rights of physical or legal persons, or of the lawful interests of the public or the state, -shall be punished by a fine or imprisonment for up to three years, with deprivation of the right to hold an official position or to carry out a particular activity for up to three years.

2. Abuse of official powers by a public political official, -shall be punished by a fine or imprisonment for a term of three to five years, with deprivation of the right to hold an official position or to carry out a particular activity for up to three years.

3. The act provided for by paragraphs 1 or 2 of this article which has been committed:

a) repeatedly;

b) using violence or a weapon;

c) by offending personal dignity, -shall be punished by imprisonment for a term of five to eight years, with deprivation of the right to hold an official position or to carry out a particular activity for up to three years.” (Criminal Code of Georgia, 2019)

Although government officials are well aware of the Article 332 of the Criminal Code of Georgia, which prohibits the violation of recruitment procedures, they still employ their relatives and friends in civil service and use unfair recruitment procedures for selecting civil servants. Law enforcement agencies do nothing to fight against these illegal practices.

Sometimes governmental agencies and public institutions make decisions on firing civil servants but fail to explain the reasons for dismissal. According to the survey conducted by Transparency International – Georgia, more than 5000 employees were released from state institutions in 2012 after

the Georgian Dream party came to power. Hundreds of civil servants were dismissed from the ministry of internal affairs, but the ministry failed to provide solid and adequate reasons for firing them. With regards to the selection of new civil servants in local government institutions, cases of nepotism are often revealed which means that recruitment is based on kinship relations rather than qualifications.

After the election the new mayor of Tbilisi in 2014, illegal dismissal of civil servants from Tbilisi City Hall took place. Many civil servants were forced to resign and the Tbilisi City Hall failed to provide adequate explanations for their dismissal. As the dismissed civil servants have themselves reported, they were forced to write a letter of voluntary resignation and were subjected to pressures to resign from office. Fired civil servants have also stated that these illegal acts were carried out with the involvement of heads and deputy heads of various departments of Tbilisi City Hall, citing their political views as grounds for dismissal (Transparency International, 2014).

Further research has found out that the dismissal of civil servants was politically motivated and they have lost their jobs because of their political views.

When new ministers are appointed they tend to restructure the staff of their ministries bringing in their own people. This is a very problematic issue given that since 2004 the Ministries have changed their Ministers on every 12 months. This creates enormous insecurity in civil service and civil servants live in constant fear of losing their jobs (George Welton, 2006).

After changes in the ruling elite, there is a widespread practice of dismissing civil servants and appointing new ones according to party affiliation and political loyalty (Pernille Rieker, 2016).

Supporters of the ruling party are often assigned to civil service positions without any competition. There is a widespread tendency to employ family members and relatives in the civil service. According to the research carried out by Freedom House, rules and regulations of recruitment of civil servants are often ignored in favor of preferential treatment for relatives and friends of high-ranking officials (Freedom House, 2006).

Non-governmental organization Transparency International (TI) Georgia discovered many cases of employment of family members and relatives in local authorities, as well as in the central government, parliament and judiciary (Tea Mariamidze, 2019). The problem is that in Georgia nepotism isn't often seen as illegal and unlawful act. Current and ex-

government officials, many influential politicians and people think that it is something normal and unavoidable in Georgian society.

After the adoption of a revised EU-Georgia Association Agenda for the period 2017-2020, Georgian government has undertaken an obligation to establish a transparent, independent and impartial system of civil service. European Union demands from Georgia to reform the civil service and build a merit-based and professional civil service. The requirement to reform the civil service and the inclusion of this objective in the Association Agenda is a recognition of the fact, that the Georgian government has so far failed to create a competent and transparent civil service (ErekleUrushadze, 2018). The creation of a professional civil service can only be achieved if vicious practice of nepotism will be eradicated in all spheres of public life. Nepotism conflicts so fundamentally with democratic principles and norms of egalitarianism and meritocracy. It is impossible to create an effective and efficient political system and civil service without eradicating first nepotism and illegal practices of recruitment of incompetent civil servants. Although the Government of Georgia often expresses the will to reform the civil service, in reality there is a lack of willingness to eradicate nepotism in public institutions and establish a genuinely independent and professional civil service.

The first legislative framework that regulated the organizational and legal basis of the civil service and defined the legal status of the employee, was adopted on 31<sup>st</sup> of October 1997. Since then the Law on Civil Service has undergone a number of fragmented changes and has been amended over a hundred times since its adoption. But, despite the introduction of so many amendments and changes, it fails to advance the legal regulations required for creating a strong body of civil service free from party influence, nepotism and vicious practice of patronage. Public institutions and governmental agencies are still staffed with incompetent people and there is an urgent need for a complex reform of the Georgia's civil service (Florian Biermann & Charles Johnson, 2015).

One of the most important aspects of civil service reform should be the introduction of laws that prohibits nepotism in public intuitions. Georgia needs to adopt strict laws that criminalize nepotism and employment of relatives in civil service. In addition, recruitment procedures in civil service should become more transparent. There is an urgent need to introduce a merit-based

recruitment of personnel and eradicate the non-meritocratic administrative culture. Recruitment of civil servants should be on the basis of merit determined through competitive examination. Public institutions and various government agencies should apply meritocratic instruments when hiring administrative staff. The recruitment and promotion of civil servants should be done due to their skills and merits rather than on patronage – political party affiliation, friendship or kinship. It should be taken into account that the recruitment based on merit is the guarantee of good and transparent governance (Egeberg, Gornitzka&Trondal, 2018).

Although a brand new law on civil service was adopted in 2015 and entered into force on 1st of January 2017, which includes detailed regulations of civil service procedures, requirement of competitive selection for all positions and aims to develop a merit-based civil service, nepotism and favoritism is still widespread in all spheres of public life. According to the article 11 of the law of Georgia on Civil Service: “A decision on the recruitment of an officer and other decisions on the career promotion of an officer shall be impartial and based on a fair and transparent evaluation of the officer's competence and skills to perform work, and shall aim at selecting the best candidate” (Law of Georgia on Civil Service, 2015). New law on Civil Service describes in detail how a person has to be appointed to a vacant officer position and how he or she shall be evaluated. According to the article 41 the evaluation of a candidate shall be objective and impartial and the recruitment procedure should be transparent and fair. However, widespread nepotism and favoritism raises serious doubts about the fairness of recruitment procedures in civil service. It is well known that Georgia's ruling parties have traditionally used civil service jobs to reward their activists and supporters (Alina Mungiu – Pippidi & Michael Johnston, 2017).

Article 13 of the law of Georgia on Civil Service guarantees equal access to civil service for all citizens of Georgia: “Every citizen of Georgia shall have an equal opportunity to be employed in civil service according to their skills, qualification and professional training.” (Law of Georgia on Civil Service, 2015) But are the citizens really equal, taking into account the widespread practice of employment of relatives, friends and political affiliates in civil service? In reality, during the selection of candidates, the kinship relations or friendship matter a lot and the person's abilities, knowledge and skills are of secondary importance (European Committee of the Regions, 2017).

## Conclusion

According to the research which was conducted by different non-Governmental Organizations, recruitment procedure in civil service is not conducted in accordance with the competition rules. This fact is also confirmed by those citizens that were dismissed from civil service. The violation of competition rules has become a common practice in civil service.

After the adoption of a revised EU-Georgia Association Agenda for the period 2017-2020, Georgian government has undertaken an obligation to establish a transparent, independent and impartial system of civil service. European Union demands from Georgia to reform the civil service and build a merit-based and professional civil service.

The requirement to reform the civil service and the inclusion of this objective in the Association Agenda is a recognition of the fact, that the Georgian government has so far failed to create a competent and transparent civil service. The creation of a professional civil service can only

be achieved if vicious practice of nepotism will be eradicated in all spheres of public life. Georgia needs professional, competent and knowledgeable civil servants, that can implement efficient policies and transform the country into western-style liberal democracy. Effective and efficient civil service is an essential prerequisite to Georgia's economic progress. Therefore, it is essential to reform the civil service and staff it with qualified and competent people.

We cannot expect Georgia to become a prosperous democratic country if the civil service will be staffed with unqualified civil servants, who cannot carry out their duties and responsibilities properly. Incompetent civil servants reduce government's efficiency and effectiveness. Georgia needs professional, competent and knowledgeable civil servants, that can implement efficient policies and transform the country into western-style liberal democracy. Effective and efficient civil service is an essential prerequisite to Georgia's economic progress. Therefore, it is essential to reform the civil service and staff it with qualified and competent people.

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