

Briefing on the Polish Civil Service Act: Risk of politicization in Polish civil service¹

Summary

The purpose of this brief is to provide international bodies with up-to-date information about the current situation of the Polish civil service. We have observed a process of politicization and lowering of the recruitment standards of the Polish civil service that started immediately after the parliamentary elections of 2015. We believe that an impartial and qualified civil service plays an essential role in ensuring the rule of law²; and we therefore recommend that the European Commission take account of the current situation in the Polish civil service through the Rule of Law Framework and the Venice Commission of the Council of Europe. We further recommend that the Polish government be asked to provide periodic information about changes to the civil service recruitment process.

Background

Only one month after the establishment of the new Parliament on 15th December 2015, the Members of Parliament (MPs) of the governing party (Law and Justice or 'PiS') proposed an amendment of the Civil Service Act. The proposed amendment was problematic for the following reasons:

1. The draft proposed to amend one third (1/3) of all substantive regulations in the Act but it was prepared in a hurry and without proper consultations;
2. The draft was prepared by a group of MPs, not the government, although the civil service is supervised by the Prime Minister³ and the range of changes in the act was considerable;
3. Neither the governing party's political programme nor the official governmental agenda had mentioned the need to change the Civil Service Act as proposed⁴.

By dint of bypassing the governmental legislative process stage, there was no obligation to run a public consultation concerning the draft. This allowed the entire parliamentary proceedings to be concluded in just 16 days. Critical opinions presented by experts⁵—which clearly indicated that the draft breached the Constitution—were ignored by the Parliament's majority and the President, who

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² Ustawa z dnia 21 listopada 2008 r. o służbie cywilnej, Dz. U. 2014, poz. 1111 [Civil Service Act of Nov. 21, 2008] (Dz. U. 2014, item 1111, with amendments).

³ See art. 153 of the Polish Constitution.

⁴ What is more, the PiS political programme underlined the need of "restoring the idea of professional, apolitical civil service". See *Program Prawa i Sprawiedliwości 2014*, p. 51, <http://pis.org.pl/media/download/528ca7b35234fd7dba8c1e567fe729741baaf33.pdf>.

⁵ Including *inter alia* Prosecution General, The Polish Bar Council, National Chamber of Legal Advisers, academics, and NGOs.

signed the new act on 7th January 2016. In consequence, the new law came into force on 23rd January 2016⁶.

The new regulation's constitutionality was called in question by the Ombudsman and opposition MPs but due to the Constitutional Tribunal crisis there is still no information on when the Court will deal with this case and whether the judgment will be respected and published by the government.

Justification of the changes introduced by the amendment

The laconic justification of the draft provided by PiS⁷ (less than 4 pages long) underlined that there is a need to change the recruitment process and raise the standards for higher posts in the civil service.⁸ PiS further claimed that there is an additional need to modernise the process because open and competitive recruitment (which was legally demanded by the previous Civil Service Act) tended to take a long time and was ineffective. The new system should—according to its authors—allow appointments of candidates who are well suited to “present needs of the office”.

National and international standards regarding the civil service

The biggest changes in the new Polish Civil Service Act are connected with recruitment process; below, we provide a brief overview of key national and international standards which should be met by the new regulation.

The Polish Constitution and the Constitutional Tribunal's jurisprudence

Pursuant to art. 153 of the Polish Constitution, “a corps of civil servants shall operate in the organs of government administration in order to ensure a professional, diligent, impartial and politically neutral discharge of the State's obligations”⁹.

The Constitutional Tribunal further discussed the above rule by stating that the basic and necessary element for achieving this goal is the formation of a statutory mechanism for the appointment and functioning of the civil service, which guarantees the absence of any, even temporary, possibility of governing politicians' interference in civil service. Therefore, one of the most important issues is a recruitment process that is “free from suspicion of partisan bias and based on the objective criteria procedure”.

The Constitutional Tribunal added that the concept of “legitimate needs of the office”¹⁰ is ambiguous and therefore subject to broad and arbitrary interpretation when applied in practice. It can therefore hardly be considered as a sufficiently objective, clearly-defined, and suitable criterion in a recruitment process¹¹.

⁶ Ustawa z dnia 30 grudnia 2015 r. o zmianie ustawy o służbie cywilnej oraz niektórych innych ustaw, Dz. U. 2016, poz. 34 [Civil service act and other acts changing act, Dec 30, 2015] (Dz. U. 2016, item 34).

⁷ <http://orka.sejm.gov.pl/Druki8ka.nsf/0/4671E0CCD9D01788C1257F1C00617727/%24File/119.pdf>.

⁸ Higher posts in civil service include *inter alia* general director of the office, chairman of the department, and their deputies. The number of people holding such posts is estimated to be 1600 persons.

⁹ See <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>. The same words describing qualities of the civil service—professional, diligent, impartial and politically neutral—were repeated in the first article of the Civil Service Act.

¹⁰ The concept of “present needs of the office”, used in the justification of the draft, should be treated in the same way.

¹¹ The Constitutional Tribunal verdict from 12th December 2002 in case K 9/02, <http://ipo.trybunal.gov.pl/ipo/Sprawa?cid=1&dokument=780&sprawa=2720>.

Council of Europe Recommendations¹²

The Council of Europe has stressed the importance of a strong civil service as the foundation of democracy, highlighting the importance of this issue for the rule of law and state-building:

- “public administrations play an essential role in democratic societies [...]”;
- “the establishment and consolidation of democratic institutions require a public administration that complies with the rule of law, is neutral and is loyal to the democratic institutions and is respectful of the people it serves”;
- “public officials are the key element of the public administration and [...] they should have the necessary qualifications [...]”.

Current Legislative Situation

The most important changes introduced in the amendment of the Civil Service Act are as follows:

1. removal of open and competitive recruitment process for higher posts in civil service, instead of which fully arbitrary appointment was introduced¹³;
2. removal of all conditions of dismissal, which can now be performed at any time¹⁴;
3. lowering the recruitment standards by removing a demand to have 3 or 6 years’ experience, depending on the post¹⁵;
4. changes in regulations concerning the Chief of the Civil Service and his/her deputy¹⁶:
 - a. candidates for these positions no longer have to be civil servants;
 - b. candidates cannot be members of a political party on the day of nomination—previously they had to be apolitical for at least 5 years before a nomination;
 - c. candidates do not have to have any experience anymore—it used to be between 5 to 7 years depending on the kind of experience;
 - d. nobody has to give an opinion about the candidates;
 - e. the Chief of the Civil Service and his/her deputy may be dismissed at any moment without giving a reason.

It is clearly visible that lowering the standards of the recruitment process for higher civil service posts creates the possibility for politicization of this group of public officials, which is inconsistent with national and international standards of neutral and apolitical public officials.

¹² Recommendation No. R (2000) 6 of the Committee of Ministers to member states on the status of public officials in Europe (Adopted by the Committee of Ministers on 24 February 2000 at the 699th meeting of the Ministers’ Deputies), <https://wcd.coe.int/ViewDoc.jsp?id=340693&Site=CM>.

¹³ See art. 53a of the Civil Service Act.

¹⁴ See art. 53a of the Civil Service Act.

¹⁵ See art. 53 of the Civil Service Act.

¹⁶ See art. 10 and 11 of the Civil Service Act.

Risks connected with the introduction of the new Polish Civil Service Act:

1. The amendment set a dangerous precedent by suggesting that the governing party may introduce new acts by fast-tracking the legislative process, ignoring the need to organize a public consultation and dissenting opinions from experts. In the long-term, such practice may threaten the rule of law and citizens' rights. This is all the more serious in conjunction with the current Constitutional Tribunal crisis.
2. No civil servants holding higher posts have any guarantees about keeping their positions and there is a risk that they will be dismissed if they cease to fit with the government's political agenda.
3. The Chief of the Civil Service and individuals holding higher posts in the civil service (who direct the work of all civil servants) may be politically appointed and controlled. In consequence, decisions made by civil servants that apply to all citizens may be partial and unjust.

Recommendations for international organizations:

We propose that the following steps should be taken:

- the European Commission should take account of the current situation in the Polish civil service during the present proceedings of the Rule of Law Framework;
- the Venice Commission of the Council of Europe should take account of the current situation in the Polish civil service;
- the Polish government should be prompted to periodically provide detailed information about the legal and practice changes that are made to the recruitment and nomination process for the civil service, particularly for nominations to higher posts.

Background

Frank Bold is a public-interest law organization with offices in the Czech Republic, Poland and Brussels, Belgium. At the EU-level, we are a steering group member of the European Coalition for Corporate Justice, which promotes corporate responsibility within the EU; a member of ALTER-EU, promoting lobby transparency across Europe; and a founding member of the Justice & Environment network. In Poland, Frank Bold is a member of the Open Government Coalition, advocating for Polish accession to Open Government Partnership, respecting the rule of law and transparent legislative process; and a founding member of the CSR Watch Coalition.



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