



Montenegro
Agency for Prevention of Corruption

No: 03-03-2162

14 May 2017, Podgorica

Pursuant to Articles 78 and 79 of the Law on Prevention of Corruption (Montenegro Official Gazette, no. 52/14) and Article 10 of the Statute of the Agency for Prevention of Corruption, the Agency for Prevention of Corruption, acting ex-officio, has passed:

THE OPINION

Lack of precision and ambiguity of the norms of the general law on education and upbringing, as well as proposed changes and amendments of the text of this law in part related to procedures of selection of directors and employment of teachers in the institutions identified in the given legislation, make it possible to jeopardise transparency and integrity in the area of education.

RATIONALE

Implementing ex-officio procedure, in line with Article 79 of the Law on prevention of corruption enabling the Agency to provide opinions for the purpose of improving corruption prevention, eliminating corruption risks and strengthening ethics and integrity in government bodies and other legal entities, the Agency has analysed provisions of the current **General law on education and upbringing, as well as proposed changes to the text of this law in the part related to selection of directors of the institution and employment of teachers.**

In the Opinion, the Agency calls upon provisions of the Constitution and relevant laws, not in the light of assessing their constitutionality and lawfulness, but in the light of application of Article 79 of the Law on prevention of corruption.

In April, the Agency has passed an Opinion focused on procedure for establishment of employment relation in line with general labour regulation, concluding that the given provisions make it possible to jeopardise public interest and may impact undermining integrity, equality and transparency of the employment procedure **in the public sector.**

Based on the given opinion, **as a next step the Agency analysed the procedures for**

selection of directors of the institutions (education and upbringing in the preschool institutions, school, education centre, resource centre, at the location of organisers for adult education and in dormitories of pupils (hereinafter: the institutions)... Article 3 of the General law on education and upbringing) **and employment of teaching staff, as well as manner of employment in the area of education and preconditions for professional and efficient management of the institutions of public interest.**

In the **Operational document for prevention of corruption in particularly vulnerable areas** of the Montenegro Government (July 2016), which is an Annex to the Action Plan for Chapter 23: Judiciary and fundamental rights, the area of 'Education' was identified as particularly vulnerable area. As a result of this the Agency carried out analysis of the employment issue as regulated under the General law on education and upbringing (also relevant based on the Proposal for changes and amendments), which will be presented in detail in this document.

This issue was identified in the **Report of the European Commission's peer review mission to Montenegro: Assessment of prevention of corruption in particularly vulnerable areas - education¹**: "Objective of the mission was assessment of the situation regarding corruption prevention in the overall education system of Montenegro, in the context of negotiation process through the Chapter 23"

The mission ToR included the list of corruption risks to be analysed by experts, including: "*Recruitment, appointment and promotion in the education system*".

In terms of this issue, the experts provided the following recommendations:

Recommendation 6(a):

Procedures for the appointment of School Directors should be more transparent. Specifically, an interview should always be part of the process, and the interview panel should include members external to the Ministry of Education, such as experienced Directors from other schools, and parents from the school to which the new Director will be appointed.

Recommendation 6(b):

Procedures for the appointment of teaching staff in schools should also be more transparent. Again, there should always be an interview as part of the process. The interview panel should be wider than staff from the school concerned, and should include a Director from another school, and perhaps also a parent from the school to which the teacher will be appointed.

As indicated above, the area 'Education' was identified as particularly vulnerable area in the Action Plan 23 and **Operational document** for prevention of corruption in particularly

¹ EC Peer Review Mission to Montenegro: Assessment of prevention of corruption in particularly vulnerable areas - education, Professor Ian Smith, University of the West of Scotland, and Professor Tom Hamilton, University of Sterling, November 2016

vulnerable areas, which is an Annex to the Action Plan for Chapter 23: Judiciary and fundamental rights. These documents include measures, deadlines, responsible persons/institutions and results indicators, which also influenced decision to carry out the issue of employment in line with General law on education and upbringing (also relevant in the Proposal for changes and amendments).

Measure 4.3 in the Operational document noted: *"Monitor implementation of the prescribed rules and criteria for employment of the managerial and teaching staff at all levels of education" with the following indicators of the results:*

"Number of controls and identified irregularities regarding employment of management and teaching staff (diplomas, contracts, etc.);

Number of identified cases of double employment;

Number and type of issued sanctions for each of the identified irregularities;

Establishment of panels in schools for rating/evaluating candidates who applied for work in schools and their applications, for the purpose of establishing objective criteria in the process of appointment."

In the six-monthly report on implementation of the Operational document for the second half of 2016, the following was listed under the results indicators:

- Number of controls and identified irregularities regarding employment of management and teaching staff (diplomas, contracts, etc.); Inspection department for education and sports, operating under the Inspection Administration, carried out 2 controls of management staff employment and 125 controls of teaching staff employment in education and upbringing institutions in 2016. Two irregularities were identified regarding employment of management staff (director and assistant director) and 101 irregularity regarding employment of teaching staff.

- Number of identified cases of double employment: No cases of double employment were registered.

- Number and type of issued sanctions for each of the identified irregularities: For identified irregularities, 90 decrees, 13 decisions and 2 proposals for dismissal of director, as well as 7 motions for initiating misdemeanour proceedings for unlawful employment of teachers, were issued.

- Establishment of panels in schools for rating/evaluating candidates who applied for work in schools and their applications, for the purpose of establishing objective criteria in the process of appointment: Not implemented.

The measure 4.3 from the Operational document, as well as objective and effects that it is expected to achieve, is also commented on by the experts in the **Report from the EC Peer Review Mission to Montenegro: Assessment of prevention of corruption in particularly vulnerable areas – education**:

"Measure/Activity 4.3: Monitor implementation of the prescribed rules and criteria for employment of the managerial and teaching staff at all levels of education"

School Director posts are Ministerial appointments. Within a small education system this is not an unreasonable approach to take but the process would benefit from greater clarity

and transparency. As it stands, the process is open to the accusation that only those whose views concur with the Government will be appointed to posts.

Currently there appears to be no need for an interview to be part of the process, although in practice the experts' understanding is that one normally takes place. However, the interview panel will consist of only personnel from the Ministry. To increase transparency, the experts would suggest that an interview should be made a formal part of the appointments process and that interview panels be supplemented by having members who are external to the Ministry. External membership might be drawn from various constituencies such as other experienced school Directors or parents from the school where the new Director is being appointed.

Staffing in Schools -Teacher Posts

Teacher post appointments are made by the school Director and could be subject to the same questions as the process for Director appointments. Again there is no requirement for an interview but in practice these may be used. Again there appears to be no externality to the application process and to that end the experts' suggestion is that interviews should be made mandatory and that the interview panel be wider than just school staff. Another school Director or perhaps a parental representative should be a member of the interview panel.”

Agency for Prevention of Corruption, through the Department for integrity and lobbying, has been monitoring adoption and implementation of the integrity plans, which represent an internal anticorruption document containing a collection of legal and practical measures for prevention and elimination of possibilities for occurrence and development of various forms of corrupt and unethical behaviour in government bodies overall, its individual organisational units, and working posts. Integrity plan is formulated based on the self-assessment of exposure of the government bodies to the risks for occurrence and development of corruption, unlawful lobbying and conflict of interest, as well as exposure to unethical or unprofessional conduct.

Based on the **Report on adoption of the integrity plans in 2016**, Department for integrity and lobbying analysed general risk areas in the **education** system that have been identified in the integrity plans of the institutions from the education sector based on their own risk analysis. Department applied procedure described in the Rules for development and implementation of the integrity plans to conduct the initial risk assessment. It identified the most represented risks, which were documented, assessed and ranked, and in the end provided certain recommendations relevant for the education area. Based on the analysis of integrity plans in the area of education, it was established that **the institutions have identified the following risks in the following general areas of work:**

1. *Administration and management:* **Full transparency in decision making procedures in the areas under the responsibility of the institution;** Lack of supervision regarding discretionary decisions on re-allocation of staff and variable part of the facility, as well as other legal acts which are relevant for work, education, development and material situation of the staff; Inadequate implementation of supervision over the work of units for upbringing; **Unclear division and demarcation of the control system and execution of authority, due to great concentration of tasks on one person only; Ensure participation of all relevant stakeholders in drafting development and management policies,** followed by regular reporting throughout the year on implementation of strategic documents, plans and programmes; Regular meetings with school board and parents' council, and reporting on implementation of the Development plan and curricula; **Complying with the Law on general education and upbringing, and promoting the principles of Code of Ethics and the need to adhere to them.**
2. *Staffing policy, ethical and professional conduct of the staff:* **Adequate staffing and control of the employment process; Check knowledge acquired at the end of education cycle and ensure regular implementation of the plan and programme for professional development, with reporting on implemented professional development and continuous education of the teaching staff;** Increase transparency of evaluation and remuneration of teachers, so that results and lists of rewarded staff are made public on the bulletin boards; Loss and decrease of public trust in the work of the institution due to lack of transparency and information shared with the public, **thus all relevant documents must be made available via school web page and bulletin board; Design systematisation per departments, based on the number of students, analyse contracts on additional work, harmonise with needs on the ground and conduct training,** and introduce the issue of integrity and prevention of corruption as one of the obligatory agenda items for all collegiums meetings."

Recommendations provided based on the analysis of the adopted integrity plans were compared with the findings of the Inspection department for education in their report for 2015, in an effort to provide as detailed as possible review of the level of exposure of the education system to risks of corruption and other irregularities and thus highlight which specific risks could occur in this area. Among the irregularities stressed in the Report of the Inspection department for education², the following were identified as relevant for the purpose of this Opinion:

"The most frequent irregularities identified in the area of preschool education and upbringing, elementary school education and upbringing, secondary school general education, vocational education and training, higher education, education and upbringing of persons with special needs, education of adults and standards for pupils and students were related to the following:

² 2015 report on the work of the Inspection Administration, Podgorica, March 2016

lack of professional teaching; **employment of teachers** (for up to 30 days, without advertised vacancy announcements, without passed professional exam and obtained licence for work, through agreement on additional number of lessons and agreements on transfer of teachers, at the University of Montenegro through internal and external vacancy announcements), **employment of teachers and selection of assistant directors to positions which have not been provided for in the systematisation of working posts, lack of valid proof of professional qualifications of the teacher in the professional dossier**", etc.

In the overall activities of the Inspection department for education in 2015, in addition to planned inspection supervision, there were 300 inspection visits conducted based on the submitted requests. Most requests for inspection visits in the education area were related to: **employment of teachers without public vacancy announcement, motions regarding selection of candidates though the advertised vacancy announcement, complaints regarding unlawful employment based on professional qualifications**", etc.

Based on the analysis of the General law on education and upbringing (hereinafter: the Law), the Agency noted that **education and upbringing constitute activity of public interest**, Article 4 of the Law, and that: **the institution is autonomous in performing its activities**, pursuant to Article 6 of the Law.

According to Article 43, which regulates founding of the institutions, public institutions can be founded by the State, i.e. the municipality, the major city or the capital city (hereinafter: the Municipality).

Private institution can be founded by domestic or foreign natural or legal person. Secondary school, as a public institution, can be established by the State, the major city or the capital city.

Article 43 stipulates that decision on foundation of the institution and cessation of its work shall be passed by the founder.

Decision on foundation of the institution and cessation of its work is passed by the Government, i.e. competent authorities at the municipal level.

The institutions have its Statute, Article 59, which among other things stipulates how legal acts of the institution are to be passed, while Article 60 stipulates that Ministry shall give the **approval for the Statute and legal act on internal organisation and systematisation of working posts in a public institution**.

The Law differentiates between *management and administration* of the institution. Managing is given to the school or managing board, which cannot have less than 5 or more than 7 members. The Ministry or the founder(s) hold majority in terms of the board members (4:3 or 3:2).

Representatives of the Ministry are appointed and dismissed by the Minister. Representatives of the staff are elected by the panel of teachers or professional panel by secret vote. Representatives of parents are elected by the parents' council by secret vote.

Criteria for selection of representatives in the school boards are not regulated by the Law.

Accordingly, there are no criteria for selection of representatives of the Ministry or founders; this leaves wide discretionary powers to the Minister regarding selection and management of the school (or managing) board, in view of the ratio of representatives in the boards and authorisations given to the boards as management bodies. Article 73 also does not include criteria for dismissal of the representatives in the school boards, be it that they represent the Ministry or Municipalities, staff or parents.

Article 77 stipulates that the institution shall be administered by the Director. The Director of the institution is at the same time pedagogical head.

In terms of the conditions for selection of the directors, the current General law on education and upbringing does not stipulate that directors elected to general high schools, vocational training schools, resource centres and organisers of adult education must have professional qualifications in the area of education, in line with special laws, for certain occupations. **Proposed changes and amendments to the Law provided more specific definitions, with a list of all types of institutions requiring the directors to fulfil the conditions for an educator or other professional positions in the area of education, in line with separate laws.**

Article 18 of the draft Law on changes and amendments of the general law on education and upbringing (Mandate of the director), which introduces Article 78a, stipulates that director of the public institution is elected for a period of four years and that he/she can be elected for two consecutive mandates at the most. This provision is imprecise; meaning of the term ‘two consecutive mandates’ is not defined. The possible interpretations include: ‘two consecutive mandates in the same institution’ or ‘more than two mandates in some other institution, in line with the law’. This raises the question of how to current mandates of the directors will be viewed in case of some new changes to the law (is in that case director’s mandate his/her first mandate), which makes it possible for directors to effectively stay in their positions for a period of time which is longer than the prescribed duration of two mandates (8 years). At the same time, dilemma appears as to whether the need to limit the number of director mandates is justified in case of those individuals who have - in terms of professional and organisational qualities and results in the communities where they work – justified performance of this responsible job.

In terms of the procedure for selection of the director, Article 80 of the current General law on education and upbringing stipulates the following:

The selection and release of the Director,

“Director of the public institution shall be selected based on the **public competition** and on the basis of submitted project for the institution development.

The public competition is announced by the school or managing board two months prior to expiry of the director’s mandate.

In addition to the application to the public competition, the candidate for director position is also obliged to submit the public institution development programme.

The public institution development programme is submitted by the candidate for director position based on the report on evaluation and self-assessment of the educational and upbringing activities of the institution.

Director in the private institution is selected and released by the founder.

Director in the public institution is **selected and released by the Minister**.

Public institution submits the full documents to the Minister, within the seven days from the day the public competition closes."

Current legislative framework is a centralised mode for selection of the directors of institutions. **Representatives of the profession or parents** are not included in decision related to professional references of the candidate, **who on the other hand are members of the management bodies in the institutions with significant formal authorisations in terms of management of the institution.**

Proposed changes and amendments to the General law on education and upbringing (Article 19), which in Article 80 improve and describe in more detail the procedure for selection of directors through **establishment of a three-member panel** appointed by the Minister, which subsequently interviews in person the applicants who meet the prescribed conditions and reviews the submitted institution development programme, **are not specific enough. Namely, the proposed paragraph does not identify the conditions, manner and process of selection of the three-member panel nor their obligation and authorities and criteria for scoring of the candidates results. Thus, their role in the process of deciding on selection of the director remains unclear.** Furthermore, with this proposal the proponent attempted to alleviate centralisation of the procedure for selection of directors of institutions, but due to lack of precision in terms of identifying authorisation, composition and mandate of the panel gave legitimacy to solutions already in place.

In terms of employment of teaching staff, Article 99 of the Law stipulates that teachers have the professional freedom in organisation of teaching, application of the teaching methods and in selection of the forms of work with pupils, as well as in the selection of the tasks they give their students, all within the framework of the established educational curriculum.

Article 100a stipulates conditions for employment of teachers:

In addition to general conditions stipulated in the Labour Law, to be employed a teacher must have:

- 1) Relevant education, in line with separate regulation;
- 2) Citizenship of Montenegro;
- 3) Passed professional exam for work in educational institutions, i.e. work permit. Foreigners with permanent residence in Montenegro may be employed as teachers, under conditions stipulated by a separate law.

The procedure of employment of teachers is regulated by Article 101:

A teacher in the public institution will be employed **based on the public competition**, in line with the law.

Public competition from Paragraph 1 of this Article is announced by the Director of the institution and remains open for the duration of 15 days.

Teachers in the institutions or special department of the institution which use minority group languages must, in addition to conditions prescribed by the law, also possess active knowledge of the spoken and written language of the given minority and the Montenegrin language.

Decision on employment of a teacher is passed by the director of the institution, within 15 days from the expiry of the deadline for submitting applications.

A specific condition for teacher's employment is the probation work.

Duration of probation work, the manner in which the probation work shall be carried out and evaluation of the probation work is regulated by the Ministry regulation.

For teachers who did not meet the requirements the employment shall cease with the end of probation work period, as identified in the contract on probation work.

Draft Law on changes and amendments of the general law on education and upbringing has improved the employment procedure. Thus in Article 29 **it stipulates that decision on employment of teachers shall be passed by the director of the institution, based on the proposal of the panel**, appointed by the Director in line with the Statute of the institution. Regardless of the introduction of the panel, **discretionary powers remain, since** there is still room for statutory decisions regarding composition, number of members and mandate of the panel, **which is an issue that should have been resolved through a legislative text. Namely, the above described solution leaves room to this issue being resolved unequally by different institutions. In addition, criteria for evaluating candidates have not been identified.**

CONCLUSION AND RECOMMENDATIONS:

- Unclear legislative norms regulating manner of selection, mandate and authorisations of the panel for conducting interviews in person with candidates for the position of the director of the institution and lack of criteria for evaluating the candidates in the draft Law on changes and amendments of the general law on education and upbringing leave room for the possibility of undermining integrity and transparency in the education area that has been identified as high risk sector for corruption.
- It is recommended to review the need to specify composition of the given panel for selection of director, as indicated in the expert report about **EC Peer Review Mission to Montenegro: Assessment of prevention of corruption in particularly vulnerable areas - education**, through introduction of the legal basis for defining the selection procedure and authorisation of the panel members regarding the procedure of director selection through by-laws, that would identify clear criteria for evaluation of the candidates.
- It is recommended to review more specific and legal definition of the composition and mandate of the panel for proposing selection of the teaching staff, as identified in the previously listed expert report. At the same time, due to lack of clear criteria and conditions that teaching staff must fulfil in the employment procedure, the Agency would like to stress the need to create legislative preconditions for defining procedures of obligatory evaluation

of the candidates, based on clear criteria.

- For the purpose of the institutions exercising the autonomy in line with the law, in view of the manner of organisation of management and administration in the institutions, competencies and responsibilities included as part of those competencies, and previously issued recommendations regarding selection of director and teaching staff, it is proposed to review composition of the school, i.e. managing boards, and introduce clear criteria for selection and dismissal of the representatives of school, i.e. managing boards through the legislation.

Drafted by:

Boris Vukašinović, Dalibor Šaban

/signed/

Checked by:

Gordana Laković

/signed/

HEAD
Mladen Tomović
/signed/