

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



DISMISSAL FROM PUBLIC SERVICE: FREQUENTLY ASKED QUESTIONS

The initiative of the Government of Georgia regarding the reduction of budget funds may cause a large-scale reduction in the number of posts in public institutions on the basis of reorganisation. Proceeding from high public interest in this issue, we consider it necessary to spread answers to questions frequently asked to our organisation.

This information will help public officers obtain information regarding the grounds for dismissal from public service and regarding the mechanisms for following the procedure and for protecting their rights.

1. What are the grounds for dismissal from public service?

Chapter 10 of the Law of Georgia on Public Service regulates the issues of dismissal of public officers from public service. **A public officer may be dismissed from public service if there are the following grounds:**

- a) expiration of the term of office;
- b) on the basis of personal initiative;
- c) liquidation of an institution;
- d) reduction in the number of posts;
- e) incompatibility with the occupied position;
- f) disciplinary fault, which entails dismissal;
- g) long-term disability;
- h) conscription for military or alternative service;
- i) entry into force of a judgement of conviction against him/her;
- j) due to the violation of recruitment requirements;
- k) transfer to another institution;
- l) death.

2. What does the reorganisation of a public institution mean?

The Law of Georgia on Public Service **in force (1997) does not define the reorganisation of a public institution and the procedure for reorganising public institutions.** Thus, public institutions have different approaches and non-uniform practice with regard to the concept and procedure of reorganisation.

According to the new Law of Georgia on Public Service (which will become effective from 1 July 2017), "reorganisation is changing of the institutional structure of a public

institution, resulting, in part or in whole, in a new structure of a public institution. Mobility and/or redundancy of the staff of a public institution shall also be considered as reorganisation. Reorganisation shall not be only the change of the subordination status or name of a public institution or its structural unit and/or the assignment of a new function to the structural unit of a public institution.”

3. In what cases does the reorganisation of a public institution cause dismissal of a public officer from public service?

According to the Law of Georgia on Public Service in force, **the reorganisation of a public institution causes dismissal of a public officer from public service only if the reorganisation of a public institution is accompanied by reduction in the number of posts.** Reduction in the number of posts must be connected with the need for a particular post in a public institution, taking into consideration the functions and duties determined for the post. When making a decision on the reduction in the number of posts, a public institution must substantiate it and clarify how the reduction in the number of posts will affect the structure of the organisation in whole.

If reorganisation of a public institution is accompanied by reduction in the number of posts, the head of the institution is authorised to take into consideration certification results, though no such obligation exists. **In the case of reduction in the number of posts, the head of a public institution shall not dismiss the employees on a selective or discriminatory basis.** A public institution is also not obliged to offer the transfer to an equal or lower position to the public officer dismissed as a result of reduction in the number of posts due to reorganisation.

On the basis of the new Law of Georgia on Public Service, the decision on the reorganisation of a public institution shall be immediately communicated to the Civil Service Bureau, which is obliged to provide the public institution with methodological assistance. In addition, **the new Law of Georgia on Public Service presents additional guarantees for protecting the rights of public officers dismissed as a result of reduction in the number of posts due to reorganisation.** In the case of reduction in the number of posts due to reorganisation, the respective **public officer may be transferred, with his/her consent, to an equal position in the same or another public institution, and if no such position is available, to a lower position, taking into account his/her competence.**

To achieve this purpose, a public institution is obliged to cooperate with the Civil Service Bureau for the purpose of searching for positions compatible with the competence of dismissed officers and their recruitment again. If the recruitment of the public officer is not possible, he/she shall be transferred to the reserve of officers and shall be paid compensation in the amount of last three months' salary.

Accordingly, **in the case of reduction in the number of posts in public institutions, it is important that the above be performed after the entry into force of the new Law of Georgia on Public Service.**

4. How lawful is an instruction issued to a public officer by the head official to resign on the basis of a personal application?

A personal application of a public officer for resignation shall be the product of free will of an applicant.

A head official may not demand from the public officer to write a personal application for resignation by deceit, by force, by threatening or by promising reappointment to office.

According to Article 169 of the Criminal Code of Georgia, “coercion of a person into writing a resignation application on his/her own initiative” constitutes a crime and shall be punished by a fine or imprisonment for up to two years, with or without the deprivation of the right to hold an official position or to carry out a particular activity for up to three years.

The Supreme Court of Georgia in its decision of 18 February 2017 considered an increasing tendency and malpractice of dismissing public officers on the basis of their personal applications. The Court finds the dismissals on the basis of personal applications to be a systematic problem: “When the disputes were reviewed by the court, public officers stated that they wrote personal applications by deceit, by force, by being threatened or by being promised reappointment to office.” Thus, the Court demanded from the public institutions to study the reason of resignation when the public officer files a resignation application and, if necessary, to conduct administrative proceedings.

5. In what case is it inadmissible to dismiss a public officer?

A public officer may not be dismissed **due to reduction in the number of posts or certification results during the period when his/her official powers are suspended**: during leave; in the case of conscription for compulsory military service or non-military, during training sessions or during the mobilisation of military reserves; when being nominated as a candidate in presidential elections or in the elections of a representative body, except for cases provided for by law.

During the period of pregnancy or raising a child up to three years a female public officer may not be dismissed due to reduction in the number of posts, long-term disability or the state of health, or certification results.

6. In what case and when is the public institution obliged to notify the public officer of dismissal?

A public officer must be notified one month before the dismissal his/her due to liquidation of the public institution, reduction in the number of posts or unsatisfactory

results of certification;

In the case of dismissal due to long-term disability, a public officer must be notified in writing at least two weeks before the dismissal.

7. In what case and in what amount is a public officer entitled to compensation due to dismissal?

In the case of dismissal due to liquidation of the institution or reduction in the number of posts, a public officer receives compensation **in the amount of two months' salary;**

In the case of dismissal due to long-term disability, conscription for military or alternative service, a public officer receives compensation **in the amount of one month's salary.**

8. What can the dismissed public officer do in the case of dismissal to protect his/her rights?

In the case of dismissal, the public officer may, in accordance with the procedure established by law, apply to court within one month after the dismissal and demand to invalidate the dismissal, to change the ground for dismissal and to receive salary. A public officer also may appeal to court orders, decrees or decisions issued in connection with work-related issues, as well as actions within one month.