

Warsaw, 06.09.2012

UN report on the public service as an essential component of good
governance in the promotion and protection of human rights
- **Polish contribution**

***Open and competitive recruitment in the Polish civil service¹
as an aspect of human rights protection***

The **Universal Declaration of Human Rights** adopted on 10 December 1948 by the General Assembly of the United Nations in art. 21 paragraph 2 provides that every person has the right of equal access to public service in his/her country. This international standard for basic political rights was also reflected in the supreme law of the Republic of Poland. By the provision of art. 60 of the **Constitution** of 2 April 1997 it has been decided that Polish citizens enjoying full public rights shall have a right of access to public service on equal terms. This norm has been supplemented by granting i.a. citizens of the European Union the right to apply for positions in the Polish civil service (as a result of Poland's membership in the EU). Thus the standard for access to the Polish public service has been established.

Following this guideline, the model of recruitment to the Polish civil service since its beginning, i.e. for more than 15 years, was formed upon the principle of openness and competitiveness. The current understanding of this principle was shaped by many years of experience in recruitment in the civil service supported by the practice of the

¹ Civil service in Poland is a concept of a narrow scope of government administration existing in ministries and central offices at national (central) level and voivodship offices at regional level as well as services, guards and inspectorates strictly defined by law, operating at the regional and supra-local levels. It does not encompass employees working e.g. in self(local)-government administration or in other sectors like health, education, judiciary, armed forces. Taking this into account the civil service constitutes a part of public administration.

application of the general labour law, which implies the equal treatment of candidates applying for the job. Currently, it is assumed that the openness and competitiveness of recruitment includes equal treatment of candidates at all stages of recruitment, such as **equality in access to information** about the recruitment (announcement of the recruitment is published on the Internet) and **equal treatment** during the selection process (assessment) – thus creating the conditions to ensure competition between candidates, based on the principles of fair play. Another aspect of openness is the **transparency** of the selection process (accommodating the need of protection of personal rights of candidates), and thus subjecting it to public scrutiny. That implies, among others, application of the most clear and objective criteria, and a comprehensible, logical and efficient recruitment procedures – which also provides the guarantee of equal access to the public service.

The process of recruitment is carried out by members of the civil service, on whom the Constitution imposed a **duty to act in a professional, reliable, impartial and politically neutral way**. It leads to the strengthening of the principles of openness and competitive recruitment. Any violation of this obligation elicit disciplinary responsibility and may lead to - in the most egregious cases - discharge from the civil service without the right to return to it for a period of 5 years. Moreover, in line with art. 76 paragraph 1 point 2 of the Civil Service Act, civil service corps members are obliged to protect the interests of the State and human and civil rights.

Such legal guarantees of equality in applying for positions in the Polish civil service are strengthened by the **code of ethics** for civil servants – a set of ethical rules and principles of the civil service including some guidance clarifying how to comply with them. In this way, over several years the ethos of the civil service has been created, placing the value of open and competitive recruitment in the civil service. Furthermore, specific types of desirable behaviours listed in the code mentioned above, which enable the implementation of these principles, in a direct way contribute to the creation of positive attitudes towards the process of recruitment in the civil service among its

members. This process is a kind of manifestation of the activities of the civil service, through the prism of which it is perceived and evaluated by citizens. One principle of the civil service (out of nine) refers directly to the protection of human and civil rights².

Another category of actions promoting equality in applying for a position in the Polish civil service is connected with the development and implementation of **human resource management standards in the area of recruitment**. These standards and best practices for recruitment currently developed and distributed by the Head of Civil Service, central organ of government administration competent in civil service issues, should contribute with their substantial practical value to further strengthening of implementation of the principle of openness and competitiveness in the civil service. This was also the intention of the Head of Civil Service in development and dissemination of the **“Recommendation of the Head of Civil Service of conducting recruitment for senior positions in the civil service”**. It is worth noting that the document - issued shortly after the entry into force of the current Civil Service Act - was a guide for those involved in carrying out recruitment in the civil service and recommended specific actions aimed at the fullest implementation of the principle of open and competitive recruitment.

It should also be noted that in the current state of the law, candidates participating in recruitment in the civil service, whose rights, including the right to equal treatment have been infringed in the course of recruitment, are entitled to submit a complaint to the Labour Court (**appeal procedure**). The resignation from the administrative appeal procedure in favour of judicial path specific for the labour law, shows the concern of Polish legislators about maintaining the highest standards of legal protection of persons questioning observance of equal treatment during recruitment in the civil service.

² Paragraph 3 of the The Ordinance of the Prime Minister on the guidelines for compliance with the rules of the civil service and on the principles of the civil service code of ethics of 29 September 2011: *“While respecting the principle of the protection of human and civil rights, a member of the civil service corps does not propose nor undertake actions that violate human and civil rights, and has in mind that an effective protection thereof improves the authority of the State”*.

A new solution in the Polish legal regulations governing the access to civil service was introduced last year in the form of the mechanism of priority entitlement to employment for persons with disabilities. It is an **affirmative measure**, a manifestation of the so-called positive discrimination. As its result, if a disabled person participating in recruitment in the civil service is one of the chosen candidates – he/she should be employed first. Discussed priority does not mean preferential treatment for persons with disabilities in the process of assessing their competence (which is an expression of equal treatment of candidates and the competitive nature of recruitment). Yet by introducing priority in employment of these persons, a compromise between equal access to positions in the civil service (based on a competitive and merit process) and promotion of employment of persons with disabilities has been achieved.

In conclusion, worthy of note is the fact that the efforts taken so far in protecting the idea of human rights by ensuring equal access to public service, especially in the civil service, have met with **acclaim of the Supreme Audit Office** - the state audit institution autonomous from the government (SAO report titled “Functioning of the civil service within the currently binding legal regulations”, published in 2012). This provides a solid base for the formulation of a thesis that the existence of the legal environment, adoption of the best practices and ethical requirements of the Polish civil service, promotes the realization of the right of every person to access to public service in his/her country, expressed in the cited art. 21 paragraph 2 of the Universal Declaration of Human Rights.