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PRESENTATION ON CIVIL SERVICE RECRUITMENT: WHY TO CHANGE?

**By Mr. Osvaldas Šarmavičius
Director of the Public Service Department
under the Ministry of Interior
Lithuania**

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*Ladies and gentlemen,
Dear colleagues,*

Taking this occasion I should like to once again welcome here all the conference participants. The topic of this conference is especially relevant for our public service. The existence of modern public service recruitment mechanisms ensures the stability of the entire public service, high professionalism and reliability, public trust (or distrust) level. In my presentation I shall try to provide a review of and stress the key tendencies, problems and challenges related to public service recruitment in Lithuania.

Importance of Legal Regulation of Public Service Relations

Public service is one of the key elements of public administration. Public servants unlike other employees whose only duty is to comply with the employment contract must ensure public management of the state and sustainability of public service and to be able to serve and fulfil political will. Regulation of public service relations, unlike labour relations, cannot be limited only to establishing labour relations between employees and employers. The state assuming the *employer's role* and being directly in charge of ensuring efficient, professional and impartial public service must also regulate the transfer of the right to make decisions on behalf of the state, responsibility of public servants, the mechanism of control of public management enforcement and other similar issues. The performance of this duty involves special regulation of labour relations of state employees covering the most versatile aspects and **the regulation of public service recruitment**.

To ensure a clearer understanding of the scope of public service recruitment as an on-going process, let us look at some figures. At the beginning of this year public administration institutions of Lithuania employed almost 23,000 public servants (not including the statutory ones). Just last year those institutions recruited over 3,000 public servants, and the Department issued 2,760 permits to organise competitions.

Development of Public Service in Lithuania

Legal regulation of public service in Lithuania as compared with other fields has altered significantly within the last sixteen years. Since the restoration of the Independence the concept of public service along with the legal regulation of the public servant status drastically changed as many as three times.

The first labour laws were based on the so called labour law concept of “the broad sphere of operation”. It means that the Law of the Republic of Lithuania on Employment Contract adopted on 28 November 1991 was also applicable to all public servants, including officials of courts and the prosecutor's office and even professional military service staff. Certain peculiarities of work of those persons could be established in other laws or other legal regulatory acts defining their labour relations. Later that concept of very broad application of labour relations was gradually refused.

Own traditions were to be created by certainly using the experience of the EU Member States. There requirements to public servants are very similar. There are no mandatory regulations and common legal acts applicable to all the EU Member States. Every country develops its own public service model in accordance with the national customs, culture and traditions. In this case it might have been easier for Lithuania because it received significant support from the EU Member States through various projects and programmes.

In 1995 the Law on Public Servants was adopted, which constituted the first attempt to regulate relations of public servants. However, it regulated the activities of only a very small part of public servants, i.e. regulated only official relations of public servants attributing to them persons in positions at the *Seimas*, President, Government and other public institutions and municipal structural units in accordance with the list of public service posts.

The Law on Public Servants did not regulate the activities of a larger part of persons employed at public institutions and establishments and receiving salaries from the state or municipal budgets or from other sources and left the regulation of their status to various other laws not aligned with one another. The unstable situation in public service, high rotation of servants, low public trust and the absence of common legal regulation of public service soon determined the adoption of a new Law on Public Service.

In 1999 the purpose of the Law on Public Service was to provide complex regulation of all public service relations and align legal regulation thereof by concentrating everything in one legal act. Pursuant to that wording, a public servant was a natural person having acquired the public servant status stipulated in this and other laws and performing public administration, household and technical functions at public or municipal institutions or providing public services to the public. The main criterion according to which employees were attributable to the group of public servants was not the performance of certain duties or functions but a place of work (service). Lithuania thus moved from the narrow concept of public service to the broad one. It suffices to point out that the new Law having much broadened the concept of a public servant not only failed to solve all the problems but gave rise to new ones.

It soon became clear that the Law was unable to ensure uniform and coherent regulation of public service relations. Therefore, the drafting of a new law was commenced, and in July 2002 a new wording of the Law on Public Service was born. The new Law on Public Service again brought the concept of public service back to the narrow definition.

Concept of a Public Servant

The Law currently in effect defines public service as a sum total of legal relations in the service regulated by state legal acts specifying the acquisition, change and loss of the status of a public servant, also emerging from public administration activities of the public servant at a public or municipal institution or establishment implementing a certain public management policy or ensuring the coordination thereof, coordinating the activities of certain public management institutions, managing and distributing financial resources and controlling the use thereof, performing audit, adopting and implementing legal acts and public administration decisions by public and municipal institutions or establishments, drafting and coordinating legal acts, agreements or programmes and providing conclusions thereon, managing the staff or having public administration powers with regard to persons not subordinate thereto. Pursuant to the provisions of Article 2 of the Law on Public Service, a public servant is a natural person who must comply with two criteria — first, *having a position in public service*, and second, *performing the functions of public administration*. Public servants are recruited in accordance with the procedure laid down in the laws where they meet the requirements set.

We see that the concept of a public servant does not include persons who in state (central and municipal) institutions or agencies perform economic or technical functions, or provide public services to the public.

The problem related to the definition of public servants is also faced in other countries of the world. The difference between established public servants and non-established public servants — employees of the public sector who are employed by the state as ordinary workers under an employment contract — is recognised, and their legal status is normally regulated in different ways.

Therefore, public servants in Lithuania may be divided into:

- Those to whom the Law on Public Service applies without limitations;
- those to whom the Law on Public Service applies only to the extent their status is not regulated by statutes or the Law on Diplomatic Service – statutory public servants;
- those to whom the Law on Public Service does not apply.

Pursuant to Article 4 of the Law on Public Service, the following persons are those to whom the Law on Public Service does not apply:

- 1) State politicians;
- 2) judges of the Constitutional Court, the Supreme Court of Lithuania, other courts, and prosecutors;
- 3) the Chairman of the Board of the Bank of Lithuania, his deputies, members of the Board and other officers of the Bank of Lithuania;
- 4) managers of public institutions and agencies appointed by the *Seimas* or President of the Republic, other public officials appointed by the *Seimas* or President of the Republic, except for Article 33(3) of the Law. provisions of Chapter VI of the Law on Public Service apply to Director General of the National Defence Department, their deputies and Director of the Special Investigations Service and their deputies;
- 5) the chairmen of state commissions and councils, their deputies and members appointed by the *Seimas* or President of the Republic as well as chairmen and members of commissions, councils, fund boards established under special laws, except for Article 33(3) of the Law;
- 6) service men in the professional military service;
- 7) employees of state and municipal enterprises;
- 8) employees of public institutions;
- 9) employees employed under employment contracts and receiving their salaries from the state and municipal budgets and public monetary funds.

It is understood that only given broad reservations and doubts, we could refer to the aforementioned persons as to public servants to whom the Law on Public Service does not apply.

The division of servants into groups is also quite relevant for the topic of our workshop because namely the belonging to one or another group of servants determines the differences in regulations of their official relations, including recruitment. Public servants are divided into groups of: career servants, servants of political (personal) confidence, public managers and acting public servants.

Public servants are also divided into three levels of positions (linking them to the required level of education necessary for a certain position) and into categories.

Requirements to Applicants for Entrance to Public Service

Recruitment is one of the most specific fields of legal regulation of public service relations differing from the legal regulation of labour relations.

The right to work is regulated by Article 48 of the Constitution, which provides that *every person may freely choose an occupation or business, and shall have the right to have adequate, safe and healthy conditions at work, to receive fair remuneration for work and be provided social security in the event of unemployment*. This constitutional norm, in our opinion, covers and guarantees the same rights also for persons employed with public service. Although Article 33 of the Constitution stipulates that citizens shall have the right to take part in the conduct of public affairs, both directly and through democratically elected representatives, and *the right to seek employment, on general terms of equality, in the public service of the Republic of Lithuania* but this Article rather stresses the citizens' right to take part in the public affairs and not the right to seek employment and the related guarantees.

Comparing the provisions of the Law on the Public Service and the Labour Code, we see that applicants for entrance to public service are subject to special requirements. It must be noted

that the Constitutional Court of the Republic of Lithuania has stated that *the right of citizens to have equal opportunities to enter public service of the Republic of Lithuania* stipulated in Article 33(1) of the Constitution is not absolute, and the state cannot and does not undertake to recruit every person in public service. Taking into account of the nature of public service, the importance of every person in the life of the public and the state and with a view to ensuring efficient and effective of the activities of the state authorities, management and other institutions, corresponding requirements apply to public servants.

Pursuant to Article 9 of the Law on Public Service, persons entering public service must comply with the following four general requirements:

- Lithuanian citizenship:

In its Ruling of 11 November 1998 the Constitutional Court of the Republic of Lithuania stated that “*public institutions must employ only persons loyal to the state whose loyalty thereto and reliability are beyond any doubt*”. One of the warrants of ensuring the compliance with the loyalty and reliability requirements is the association of a person with the special citizenship links.

- Command of the Lithuanian language:

One cannot definitely state that this requirement is only applicable to public service. The Law on the State Language provides that all institutions, offices, enterprises and organizations which function in the Republic of Lithuania shall conduct business and keep records, reports, financial and technical documents in the **state language**, and all transactions of natural and legal persons of the Republic of Lithuania are carried out in the state language. The requirement to have command of the official language applies to all employees who in the performance of their official functions must often communicated with the public or whose work is related to the use of language in the public life of Lithuania.

- The minimum age being 18 years and the maximum age — 62.5 years (the requirements to be no older than 62.5 years of age does not apply to public servants of political (personal) confidence and acting public servants):

The Labour Code stipulates that a person shall acquire full legal capacity in labour relations and ability to acquire labour rights and undertake labour duties when he (she) reaches the age of 16 years. Meanwhile, the Law on Public Service provides that persons entering public service must not be younger than eighteen.

Unlike the laws regulating legal labour relations, the Law on Public Service also stipulated the upper age limit. The setting of this limit once gave rise to numerous debates — there were many divergent opinions stating that *the possibility of being employed in public service must be related to the ability to perform one’s functions and not to the age*.

- Education necessary for discharging the duties of a public servant of an appropriate category:

As has already been mentioned in the labour section below, public service positions depending on the education level necessary for discharging the duties of a public servant of an appropriate category are divided into three levels: A, B and C.

The Law on Public Service also sets out that **the position of a public servant may not be occupied by a person who:**

- is legally charged guilty for committing a grave or criminal activity against public service and having previous convictions that are still effective and have not been cancelled;
- is deprived of their right to serve as a public servant by court decision;

- whose spouse, close relative or relative-in-law serves as a public servant in a state or municipal institution if they are directly subordinate to one another according to their position;
- is legally hold incapable;
- is a member of a legally prohibited organisation;
- in cases laid down in other laws.

It must be pointed out that the Constitutional Court of the Republic of Lithuania has stated that the state implementing its obligation to ensure national security, proper education of the youth, education, a reliable system of finance, protection of public secrets, etc. is entitled to set additional special requirements to applicants for jobs in the most important economic and business sectors, which, in the law-makers' opinion, are exceptionally important for the public, for the state and security thereof so that the reliability and loyalty of persons employed therein would be beyond any doubt.

Recruitment Procedure

Certain peculiarities as compared to legal labour relations are characteristic of not only requirements to applicants for public service but also of the public service recruitment procedure. The grounds for recruitment is an employment contract. Meanwhile, *no contracts are executed with public servants.*

Persons are recruited for public service only to the already existing and approved positions. The list of unified public service positions is approved by the Seimas by resolution or by the Government depending on where the position is established. Descriptions and lists of public service positions at public and municipal institutions and agencies are normally approved by managers of public and municipal institutions and agencies. They are described in accordance with the Methodology for Description and Assessment of Public Service Positions subject to approval by the Government. The description of the position specifies the level of the position, its category, special requirements to the public servant holding this position and functions assigned to the position. So before recruiting a person in public service their *work functions and remuneration* are already known as their official wages are set in accordance with the position category and are the same for all positions within the same category (with the only exception that upon recruitment in public service a public servant may be assigned a qualification class adding a certain amount to the official wage) as well as their *place of work* is also known. All those *conditions based on which the employee and the employer must agree when executing an employment agreement are known before the person tries to apply for a public service position and no agreement is sought thereon when recruiting the person.* So the grounds for emergence of legal labour relations upon employment is agreement between the parties, and when recruiting a person in public service – a decision of the authorised person. It means that the applicant must without reservations agree with the working conditions offered thereto without negotiating them.

The procedure of recruitment in public service itself is different. Quite often, when selecting an employee the employer is not obliged to follow any rules determining their choice – they may select an employee by holding a competition, subject to successful passing of an examination, through an interview or in any other way which allows them selecting the most suitable candidate. When persons are recruited for public service, strict rules and procedures laid down in the laws must be followed.

It should be noted that the public service recruitment procedure *depends on what group of public service positions a person is recruited for.* Public manager positions are filled by holding a competition or in the cases stipulated in the laws based on political (personal) confidence while *recruitment for career public service positions, with certain exceptions, is carried out through competition.*

Servants of political (personal) confidence and acting public servants are recruited without competition. The procedure of recruitment of persons without competition is not regulated – the entire procedure covers only the adoption of a recruitment order by the person recruiting public servants. In this sense *public service recruitment without competition is close to employment under general labour laws.*

The procedure of public service recruitment on a competitive basis covers the following:

- competition notice;
- acceptance of documents to be submitted for competition;
- formation of a recruitment commission;
- competition;
- adoption of a recruitment decision by a recruiting person or a collegial public or municipal institution.

All these stages are regulated in great detail with a view to ensuring transparency thereof and that the best applicant would be recruited. Let us briefly overview each of these stages.

A person recruiting staff for public service can hold a competition for recruitment to a career public servant position only by registering in due course data with the database of the Register of Public Servants and by providing written *information about vacant public service positions to the institution performing public service management functions* (indicating the name, level and category of the position and providing a job description) and if within 7 working days following the provision of information they do not receive information from that institution as to the fact that there are persons who can be recruited for a career public servant position without competition. With a view to ensuring publicity of competitions, a notice of a competition for a public manager position or a career public servant position must be published in the *Informaciniai Pranešimai* Supplement to the Official Gazette.

The applicant must submit:

- an application for participation in the competition;
- a personal identification document, a document certifying education, citizenship and age, a state social insurance certificate and copies thereof;
- curriculum vitae;
- applicant's questionnaire filled in.

Within 14 calendar days following the publishing of the competition notice in the *Informaciniai Pranešimai* Supplement to the Official Gazette inclusive of the day of announcing the competition, applicants submit the above documents. The personnel department having received the documents checks whether the applicant meets the above general requirements set out in the Law on Public Service and the special requirements laid down in the job description. Where the applicant meets the requirements, they are informed of the competition date, time and place, and if not – within 5 working days they are informed that they are not admitted for the participation in the competition by sending a notice or familiarising them with the above information at the recruiting authority against their signature.

No later than within 3 working days prior to the competition the recruiting person or a collegial public or municipal institution adopts a decision by which a competition commission for recruitment of applicants for public service positions is formed. The list of the commission members must include the head of the personnel department of the recruiting authority and the immediate superior of the public servant to be recruited as well as a representative of the trade union if such an organisation exists within the institution.

The competition must be held within 30 calendar days following the deadline for the submission of documents. The competition consists of two parts: written examination (test) and oral test

(interview). The interview is used to reveal the person's ability to perform the functions set out in the description of the public servant position. The applicant sitting a written examination does the test which is drafted by the public service management authority and published on Mondays and Fridays (competitions are held only on these days of the week). The competition is won by the best scoring applicant. Where the highest score is received by several applicants, the successful candidate is selected by the immediate superior of the public servant to be recruited. The person who is deemed the successful candidate signs the protocol of the competition that they agree to take the position granted upon the successful completion of the competition.

It is stipulated that where the successful applicant refuses to uptake the position before the order on their appointment for the position is adopted, the second best-scoring applicant may be appointed for the position, and where they refuse it – the next applicant, etc. The successful applicant is appointed for the position no earlier than in 3 working days and no later than within 14 calendar days following the end of the competition. This period may be extended subject to agreement between the successful applicant and the recruiting person.

A person is deemed to be recruited for a position from the date set in the decision of the recruiting person or a collegial public or municipal institution concerning the recruitment for the public servant position. Legal acts do not set out within what time the recruiting person must make a decision concerning the appointment of the applicant for the position. Neither do they regulate circumstances where a person wins one more competition although they have won another competition and there is already a decision by a recruiting person concerning the appointment of the applicant for a certain position but the day from which they start performing their functions has not yet passed. A question arises whether the successful applicant appointed for the position but have not yet started performing their functions may refuse it.

It is important to take into account that *a private person recruiting an employee to work may also set special procedures but, unlike public service recruitment, is not obliged to do so.*

Thus, we may state that comparing public service recruitment and employment to work we find both similarities and differences. An essential difference is that irrespective of where the person is recruited – public service or a job – the purpose is to select the best candidate of the available ones best suitable for the performance of the corresponding functions. Essential differences are that the grounds for emergence of labour relations is an employment contract which is executed by the parties to such relations to agree upon the working conditions while the grounds for public service recruitment is the decision of the recruiting person and the fact that parties do not negotiate working conditions because they are known in advance even before the person is recruited, and the procedures are not equally regulated. Also, the Law on Public Service *does not provide for establishing a probation period* when recruiting persons for public service positions.

Public Service Recruitment Management

Criteria and procedures under which persons are selected for public servant positions are one of the most important factors influencing the effectiveness of the public service activities. More than 98% of public servants are recruited through competition (the remaining 2% are recruited as servants of political (personal) confidence or in other legally stipulated cases without competition). A competition is essentially a race between applicants which is won by the best of them. Does the public service recruitment system in place in Lithuania guarantee that?

As seen from the logic set in the Law on Public Service and the legal act implementing the same, there are certain minimum requirements which are essential for the applicant to be able to properly perform the functions assigned thereto. Therefore, applicants who do not meet such requirements are not allowed to sit for the examination. Which of the applicants for the public service position is the best suited for performing certain functions is established during the competition. Legal knowledge is examined during the test. The public service recruitment commission is just to check to what extent the applicant meets other requirements: command of a foreign language, ability to analyse information, to draft legal acts, computer literacy, ability

to independently plan for and organise own activities, to be responsible, diligent and creative and to communicate. True, there are certain requirements (computer literacy, diligence, responsibility, etc.) which cannot be verified while accepting documents and during the examination (at least the one provided for in legal acts currently in force). As regards conformity, the applicant assumes responsibility for indicating it in the documents submitted (documents certifying education, experience, etc., curriculum vitae).

The aforementioned Public Service Recruitment Procedure sets out that the public service recruitment commission consists of 5 to 7 members. Formally it may include anyone (exceptions are set only for politicians). In fact it is usually composed of the staff of the same institution. In other words, it comprises persons whose main function is to carry out certain public administration activities in a certain (usually very narrow) field. When forming such a commission, the best suited staff is selected (or at least such an opportunity is provided for the person forming the commission). However, in any case they are not professionals in the field and do not possess all the skills necessary for a recruitment specialist to verify the abilities of the applicant participating in the interview to perform functions which they may have to perform in the future. This means that there is quite a high probability that it is not always that the applicants who are best suited for the specific public service position are actually recruited in public service.

One may question not only the professionalism of the recruitment commission but also the effectiveness of the selection procedures proper. They are quite primitive and do not allow clarifying all the characteristics of the applicant which are required pursuant to the relevant job description. It must be noted that the same selection procedures apply when making the selection for the basic and senior public service positions. Thus, essentially the same selection criteria (with slight differences) apply for recruitment for positions where rather technical functions are performed requiring constant control of the performance thereof and for recruitment for positions where important public management decisions are made.

Another question arising when analysing the rules of public service recruitment is whether this system is transparent enough. The answer to this question is important as a non-transparent system allows abusing the right to recruit not the best applicant but the one under patronage.

Assessing public service recruitment procedures in effect, one may state that they lack transparency. Despite the fact the selection procedures comprise the mechanism of encoding the applicants' name, it is impossible to avoid subjective assessment where the selection commission directly communicates with the applicant and where there is some interest in a specific candidate. This is one of the arguments given in the *Seimas* in 2005 when registering the [draft Law No XP-736 on the amendment of Articles 11, 13, 26 and 33 of the Law on Public Service](#) which suggested to abandon the interviewing procedure at all when recruiting for public service positions and leave just a written examination (test). Such a proposal may not be treated as a way out when solving problems of organising public service recruitment procedures because the currently existing procedures would become even more primitive, and the possibilities of verifying the abilities of applicants for public service positions would still decrease.

It is important for us that legal acts would stipulate a mechanism which would allow ensuring that the best trained staff would be recruited for public service. It is doubtless that such a goal was posed by the developers of the recruitment rules currently in force. However, the experience of applying them for over three years shows that these rules must essentially be improved. As seen from public debates on public service recruitment (registration of draft laws, articles, comments in the Internet, etc.), the biggest problem is currently the lack of transparency of competitions. One of the ways to eliminate this problem is to reduce the number of entities having impact on the adoption of non-transparent decisions. This can be achieved through full or partial centralisation of public service recruitment. This would also be the way to solve the problem of non-professionalism of the selection commission and the problem of verifying abilities necessary for public servants.

Within these two days we shall listen to presentations about what constitutes the legal ground for recruitment and what practical procedures and mechanisms function in Ireland, Portugal, Spain, Belgium, France and certainly in the institutions of the European Union. Irrespective of peculiar circumstances of development of each country, today we all face similar challenges and routinely solve similar problems. Therefore, I am positive that such an exchange of experience and ideas will help us to find optimal solutions. I hope that the participants of the conference will be active and discussion will be constructive, interesting and useful.

Thank you for your attention.