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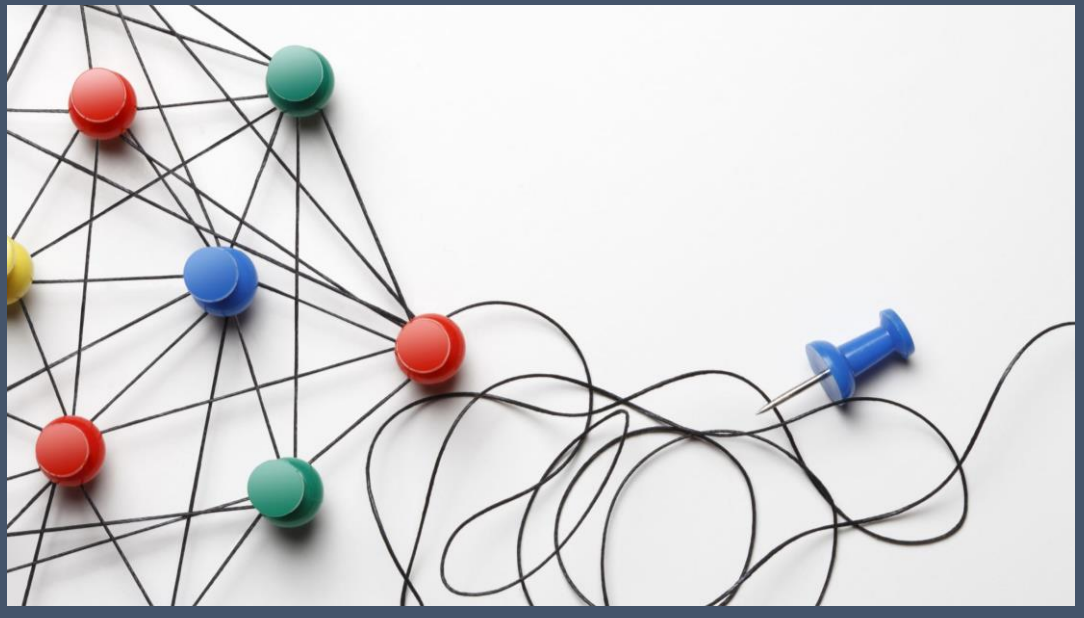
Analysis of Court Practice on Reinstatement of Dismissed Civil Servants



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Purpose and Methodology of the Research

The research aims to study the data on employee dismissal from the civil service and court disputes related thereto, as well as to identify the corresponding tendencies regarding the circumstances / legal grounds for dismissal, judicial proceedings and the outcome thereof. This approach allows to evaluate the civil service system in the employee dismissal and reinstatement context.

For the research purposes, the following objectives have been set:

- the most common legal grounds for dismissal from civil service (based on appealed cases);
- proportion between appeals against dismissal decisions and granted claims;
- average timeframe from dismissal to reinstatement/redress payment;
- legally effective court judgments on invalidation of civil servant dismissal and reinstatement, whether they prevent other similar cases or not;
- the practice of continuation of reinstated employees' work in the civil service;
- the dynamics / tendency revealed with respect to a number of legal disputes before and after the enactment of the new Law on Public Service.

The following was done in accordance with the research purposes to accomplish the set objectives:

- Desk research – study/analysis of the court (three instances) judgments, normative acts and the data requested from public institutions.
- In-depth interviews – problems/barriers faced by dismissed civil servants when seeking restitution of the violated right.

Information / documents required for the effective implementation of the research were identified at the initial stage of the research. First of all, the statistical data on the number of cases appealed in court and the outcome thereof was requested from several courts. In addition, the letters were sent to the LEPL Civil Service Bureau, as well as to all Georgian ministries, municipality city halls and city councils (Sakrebulo), in order to obtain statistical data on the cases appealed in court.

Upon requesting the statistical data, the judicial cases / decisions were requested from courts, as well as from the ministries and several municipalities, based on different criteria.

The problem obtaining the data / documents required for the research purposes was revealed in course of the research. In particular, in some cases, public institutions did not process the requested information at all, or the provided data was incomplete.

Despite additional communication, it was impossible to obtain certain data from certain institutions. The most clear example in this case is the request for information submitted to the LEPL National Bureau of Enforcement - two different letters were sent requesting, on the one hand, statistical data on the enforcement of judicial decisions on reinstatement, and, on the other hand, statistical data on employee dismissal and reinstatement directly from the LEPL National Bureau of Enforcement as a state institution. LEPL National Bureau of Enforcement provided only its own organization's statistical data. Despite additional communication, it was impossible to obtain statistical data on the performance of statutory functions (enforcement of judicial decisions) vested in the LEPL National Bureau of Enforcement.

Forty selected judicial cases/decisions were subjected to in-depth analysis as part of the research. Part of the judicial decisions was obtained through FOI (freedom of information) request, while another part was collected through the online search portal - https://ecd.court.ge/ , which is operating in test mode.

In addition, individual in-depth interviews were conducted with 10 individuals (dismissed persons, human rights advocates). Given the COVID-19 pandemic, all interviews as part of the research were conducted remotely.

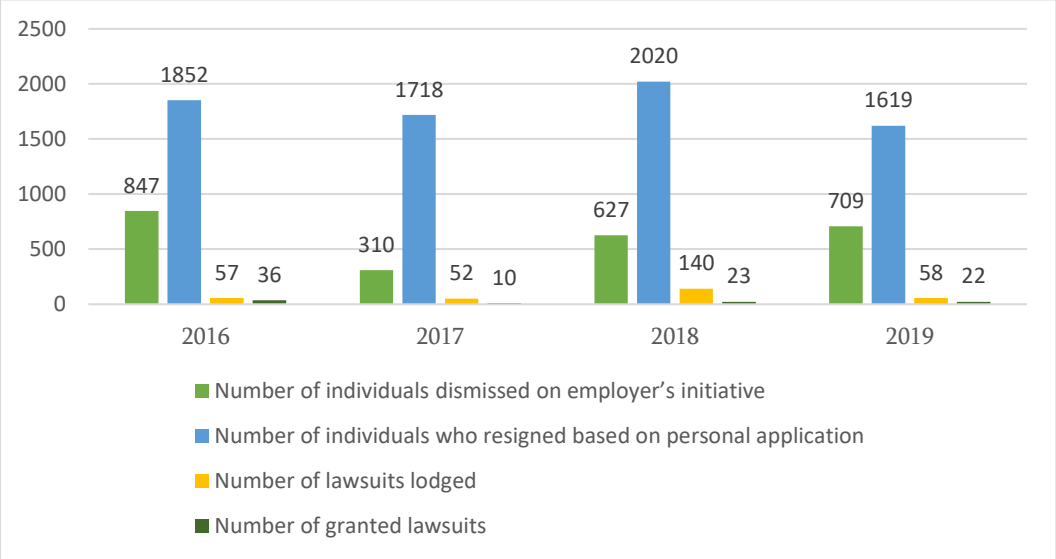
As a result of the analysis of the data obtained from various sources the key findings of the research were identified and the recommendations were developed.

1. Dynamics of dismissals and appealed cases (appealed and granted cases)

1.1.

According to the information provided by the LEPL Civil Service Bureau, the rate of employer-initiated servant dismissals in the civil service considerably dropped in 2017, as compared to the previous year, though the increasing tendency could be still observed in 2018-2019. The dynamics of labor-related litigations against state institutions is also noteworthy. Unlike a period from 2016 through 2019 (except 2018), when the dynamics of labor litigations against state institutions tended to be relatively stable, in 2018 the number of such litigations increased almost trice. The proportion of lodged and granted lawsuits against state institutions is also noteworthy, since this proportion was different for each within the period between 2016-2019. The proportion of granted lawsuits made 63% in 2016, whereas in 2017 it dropped significantly and made only 19%. It made 16% in 2018 and 38% - in 2019.

Relying on the data provided by the LEPL Civil Service Bureau, the civil servant dismissal statistics looks as follows:

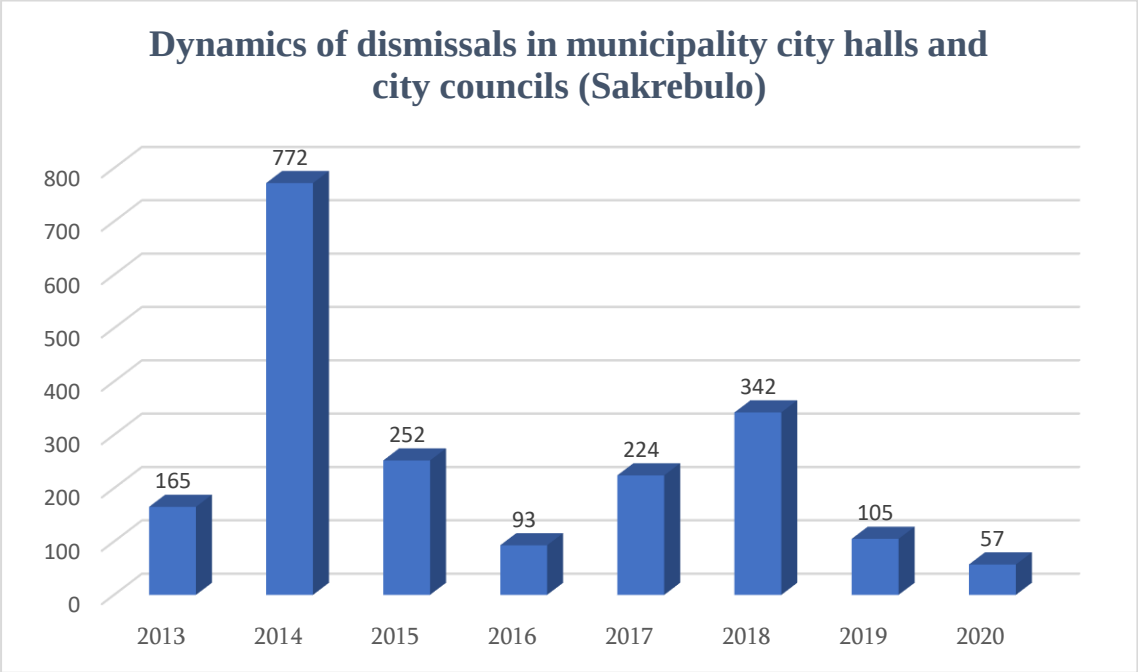


1.2.

As part of the research, all municipality city halls and city councils (Sakrebulo) were requested to provide detailed (year-wise) information, though only 99 institutions provided such information and 43 of them provided the data breakdown by years. The rest of the institutions provided the summarized data.

According to the provided information, 2,684 servants employed in the municipality city halls and city councils were terminated labor relationship on employer's initiative in 2013-2020. 217 of that number appealed their dismissal in court; 129 persons were granted lawsuits (including 84 reinstatements, of which 49 were enforced), whereas 57 persons' claims were rejected.

The year-wise dynamics of dismissals (within the framework of 43 institutions) looks as follows:



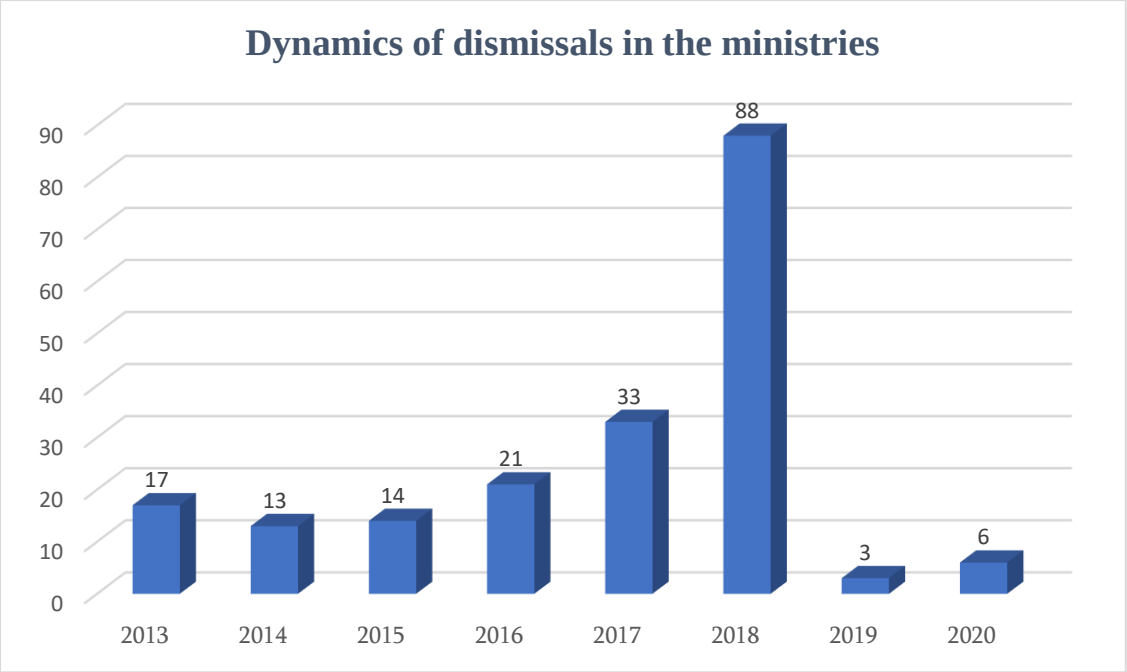
Thus, 2014 and 2018 were the most peak periods, when the number of the dismissed in 43 municipal institutions (city hall and city council/Sakrebulo) alone totaled 772 and 342, respectively. However, the employer-initiated dismissal tendency has sharply declined in the recent years (2019-2020).

1.3.

Statistical data on employee dismissal was also requested from the Georgian ministries. In this case, the aforesaid information was provided by nine ministries, including seven of them that provided the information by years.

According to the provided data, in 2013-2020, labor relations were terminated to 216 servants employed in the ministries and 49 of them challenged their dismissal in court.

The year-wise dynamics of employee dismissal in the ministries (according to the data provided by 7 institutions) looks as follows:



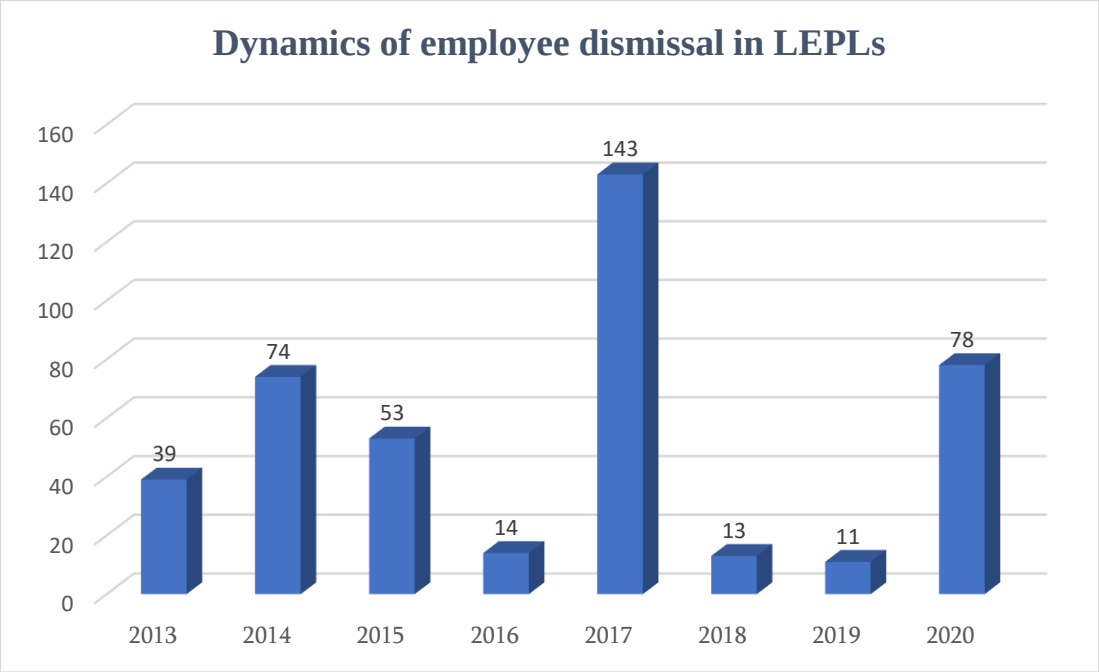
In case of the ministries, employee dismissals peaked in 2017-2018, and a sharp decline was reported in 2019-2020.

1.4.

Ten legal entities of public law (LEPL) were also requested to provide detailed statistics on employee dismissal. Nine of them provided the aforesaid information.

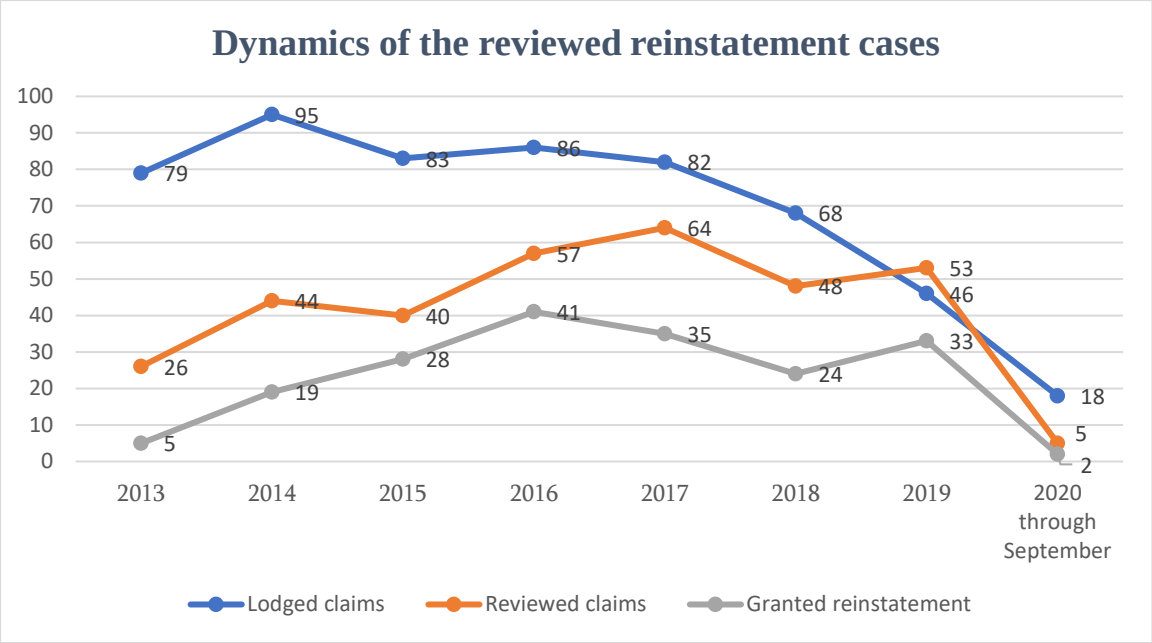
According to the provided information, in 2013-2020, labor relations were terminated to 429 servants employed in the LEPLs; 80 of them challenged their dismissal in court; 30 individuals' lawsuits were granted and 15 were rejected.

The year-wise dynamics of employee dismissals in LEPLs (as in the case of 9 LEPLs) looks as follows:



1.5.

According to the Tbilisi City Court' data, a total of 3,200 labor disputes, including 557 cases related to reinstatement, were considered by this court through administrative proceedings in 2013-2020 (the court couldn't separate the cases involving state institutions from the overall mass of cases considered through civil proceedings). As a result of consideration of the cases on their merits, the judgments were rendered with regard to 337 cases, including 187 decisions on sustaining the claim, i.e. on reinstatement. The dynamics of sustaining/granting the cases considered on the merit is more or less stable - more than 50% of the considered cases.



1.6.

According to the data provided by Tbilisi and Kutaisi Courts of Appeals, a total of 1,060 appeals on labor relations related cases (with one of the parties representing the state-administrative body) were lodged with the aforesaid courts in 2013-2020.

As of 2018-2020 (Sept.), 178 judgments rendered by the court of first instance were upheld and 46 were annulled as a result of the review of appeals filed by state institutions through administrative and civil procedure.

1.7.

According to the data provided by the Supreme Court of Georgia, 1,903 cassation appeals concerning the labor relations related cases (with one of the parties represented by the administrative body) were lodged through administrative procedure in 2013-2020.

The provided data revealed that 467 out of the total number of cassation appeals on this category of disputes lodged by the administrative body through civil and administrative procedure were declared inadmissible; the Court of Appeals judgments rendered on 19 cases were upheld, while 69 judgments were annulled.

289 out of the total number of cassation appeals filed by a dismissed person in the same period and through the same procedure were declared inadmissible; the Court of Appeals judgments rendered on 10 cases were upheld, while 36 judgments were annulled.

1.8.

Data provided by the Appeals and Cassation Courts show that the judicial system, for the most part, has developed a sustainable practice of settlement of labor disputes and the majority of lodged appeals and cassation petitions do not bring the desired effect for the claimant, i.e. the annulment of lower instance court judgment. This problem is particularly noticeable in the case of court judgments appealed by state (administrative body).

2. Circumstances and basic grounds for dismissal

The analysis of the judicial decisions studied as part of the research revealed that termination of employment in the civil service system is the subject to court proceedings mostly in case of dismissal of a person as a result of reorganization of the institution or imposition of disciplinary liability. Naturally, those two are not the only grounds for termination of employment in the civil service that are to be considered by court. Though, according to the judicial decisions studied as part of the research, those two grounds account for up to 90% of disputes.

2.1. Reorganization

Under the Article 103 of the Law of Georgia on Public Service, "Reorganization is the alteration of the institutional structure of a public institution, resulting in a completely or partially new structure of the public institution. Reshuffling or reduction in the number of posts in a public institution is also considered as reorganization. The change in subordination or name of a public institution or its structural unit, and/or assignment of a new function to a public institution shall not be considered as reorganization." Under subparagraph 'b', Article 108 of the same law, reorganization could be the ground for dismissal of a civil servant provided that reorganization is accompanied by staff reduction.

The studied judicial decisions revealed that in their claims the dismissed civil servants cite the aggravated relationship with the management, subjective attitude / discriminatory approach towards them, including discrimination on political grounds, as the real reason behind the decision to dismiss them as part of the reorganization. However, this does not mean that the existence of those circumstances is further confirmed in all cases by a judicial decision.

The analysis of the judicial decisions showed that the cases of servants dismissed as a result of reorganization account for 52% of the total number of dismissal cases reviewed by court (21 out of 40 cases examined). The decisions on servant dismissal as a result of reorganization are most often annulled by court on the grounds that the employer had not considered all the circumstances relevant to the case and the decision had not been made based on their assessment and juxtaposition[1]. In particular, in those cases:

- the advantage of employees who maintained their job (including the newly reappointed ones) over the dismissed servants has not been identified and the pre-designed, transparent, clear and fair criteria / procedures for assessing employee competence and skills have not been applied;

[1] 16 out of 21 lawsuits were sustained.; 11 out of 16 decisions were based on the lack / ambiguity of relevant criteria or procedures for the evaluation of civil servants during the reorganization, the advantage of the maintained / newly reappointed persons over the dismissed civil servant, as well as the failure to assess the dismissed servant's skills and competences for occupying vacant positions in the reorganized institution.

- The reorganization and, consequently, the staff reduction had been actually carried out, though vacant positions remained / were created after the reorganization, but the employer did not assess the compliance of the dismissed servant's skills and competencies with the criteria set for a vacant position.

Another common ground for the annulment of decisions on dismissal of civil servant as part of the reorganization (3 decisions) is the so-called 'deceptive reorganization', when an employer institution abolishes one of the available structural units (or a particular position) and establishes a new one under a different name but with essentially the same functions (in some instances the functions could be redefined and have different wording, but the semantic charge will remain the same). Such manipulations are typically applied to create 'legitimate conditions' for dismissal of undesirable employees.

Some other grounds for the annulment of employer's decision to dismiss an employee as a result of reorganization are, for example, procedural irregularities, the decision made by an unauthorized person, though their share in the total number of sustained judicial decisions in this category is very small.

2.2. Disciplinary Liability

A civil servant could be imposed disciplinary liability in case of disciplinary misconduct. Under Article 85 of the Law of Georgia on Public Service, the following shall be regarded as disciplinary misconduct:

- failure to perform official duties;
- neglect and breach of the ethical norms and the general rules of conduct that are intended to discredit an officer or a public institution, irrespective of whether it is committed at or outside work;
- damage to the property of the public institution or creation of danger of such damage intentionally or through negligence.

Under Article 98 of the same law, a servant shall be imposed disciplinary liability and dismissed from service only in case he/she has intentionally committed serious disciplinary offence. A disciplinary offence (misconduct) shall be regarded as serious, provided that:

- it causes the discrediting of the reputation of the person who committed the disciplinary misconduct, which precludes proper performance of official duties by this person in the future;
- it prejudices the reputation of the public institution;
- it causes significant damage to the property of the public institution;
- it causes harm to other public servants employed in the public institution, to third parties or to public interests;
- an officer refuses to undergo the evaluation provided for by this Law;
- a person who has committed disciplinary misconduct before, engages in disciplinary misconduct again.

The analysis of the decisions as part of the research revealed that almost all the decisions challenged in court were issued on the grounds of non-performance of official duties or violation of ethical norms / general rules of conduct.

The analysis showed that the cases of employee dismissal through imposition of disciplinary liability account for over 37% of the total number of dismissal cases reviewed in court (15 out of 40 cases examined)[2].

The most common grounds for the annulment of those decisions (for this category of cases - 4 out of 7 decisions on granting the claim) are based on application of disproportionate liability measure. As regards one of the cases, the court explained that when making the decision, the existing factual-legal circumstances justifying the restriction of a person's labor rights (dismissal) shall be assessed - whether the action taken by an employer is adequate and whether an employee's constitutionally guaranteed right to freedom of labor is unreasonably restricted. In other words, even in case the fact of disciplinary misconduct is confirmed, the court emphasizes the importance of protection of an employee's (servant's) constitutionally guaranteed labor right, allowing imposition of the most severe disciplinary liability only on condition of observance of the principle of proportionality. Consequently, the court always requires a public institution to justify why it was impossible to achieve the purpose of disciplinary action (prevention of future misconduct) through application of another, softer measure of punishment (e.g. reprimand etc.).

Apart from imposition of disproportionate penalty, this category of decisions are also annulled due to improper assessment of the factual circumstances, i.e. when a claimant's action / inaction, which was assessed by an employer as a disciplinary misconduct, is not regarded as such by the court (2 cases). And also, in one case when imposition of disciplinary penalty followed by employee dismissal was considered as illegitimate, the court decided to sustain the claim due to a discriminatory approach revealed.

When considering labor disputes, the court treats with particular caution the matter of employer's discretionary powers, explaining that although it is beyond the court's competence to examine the expedience of selecting the most acceptable way of resolving the issue by the administrative body when exercising its discretionary powers, but the court oversees proper substantiation of such acts, which is achieved through legality, transparency, objective evaluation, observance of proportionality, thorough and comprehensive examination when resolving the issue. The analysis of decisions as part of the research revealed that the employer public institutions often find it difficult to properly substantiate the objective assessment, observance of proportionality and thorough and comprehensive examination of the circumstances when making a decision.

3. Preventive impact of case law on protection of legality during employee dismissal

The present research covers the period of 2013-2020. Examination of the decisions allows to say that before 2017, the grounds for employee dismissal were somewhat more diverse as compared to the subsequent period. However, it is noteworthy that the total number of decisions obtained in course of the research made 19, including 10 decisions related to reorganization (8 of them sustained) and 8 decisions related to dismissal due to disciplinary misconduct (3 of them sustained). It is noteworthy that even amidst the enactment of a new law, a failure to properly assess employee's skills and competency, to apply a fair, non-discriminatory and transparent procedure / principle during employee dismissal due to reorganization and staff reduction, whereas in case of employee dismissal as a result of imposition

[2] The decision to sustain the claim was rendered on 7 out 15 cases.

of disciplinary punishment – a failure to substantiate application of the most severe disciplinary sanction – dismissal, still remain the most pressing problems.

4. Challenges for enforcement of reinstatement-related judicial decisions

4.1. Application of 'provisional measures' in labor disputes

Georgian legislation, namely the Civil Procedure Code of Georgia, recognizes the 'provisional measures' as a procedural instrument for ensuring protection of rights. Although, the regulatory norms do not contain any specific guidelines for possible application of this instrument in labor disputes, but they do not restrict their application either. Therefore, in order to avoid delay and obstruction of enforcement of the judicial decision on labor disputes, a claimant shall apply to the court on the basis of Subparagraph 'b', Part 2, Article 198 of the Civil Procedure Code of Georgia (restricting a respondent/defendant from taking certain actions), requesting restriction of a respondent's powers to appoint a new employee to a disputable position.

Public information was requested from courts as part of the research so as to profoundly study the case law regarding application of this instrument. However, all the courts (including the appellate and cassation instances) that were requested to provide such information (except for Kutaisi City Court) responded that such type of decisions were not processed in terms of their content. This, in turn, raises questions in the context of introduction of a uniform case law in this regard.

Judicial decisions on this issue could not be accessed through the online platform (https://ecd.court.ge/) either.

Kutaisi City Court provided 4 judicial decisions (rulings), including three of them rejecting applicants' request on the grounds that the court decision on reinstatement (if any is issued in future) shall be enforced irrespective of whether the position to which a claimant was reinstated is vacant or not. The court issued one judicial decision granting a claimant's request on the grounds that the appointment of another person to a vacant position (through competition) would make it difficult or impossible to enforce a possible decision in favor of the claimant.

The analysis of the aforesaid decisions allows to conclude that even within a single, separately taken judicial body, there is a non-uniform practice, which, for the most part, focuses on non-application of this instrument in the disputes related to reinstatement of illegally dismissed persons. This argument is supported by the information obtained through interviews with specialists (lawyers) employed in the field of labor law protection. They referred to a single judicial decision (ruling) made in recent years on application of provisional measure in labor dispute.

In addition, according to the information provided by the Ministry of Internal Affairs of Georgia, a total of 21 criminal cases related to the offence provided for in Article 169 of the Criminal Code of Georgia (coercion of a person into filing a resignation application on his/her own initiative or **non-compliance with the court's decision on reinstatement)** were launched in 2013-2020. However, according to the information provided by the Supreme Court of Georgia, none of the cases related to Article 169 of the Criminal Code were among the cases reviewed by the Georgian common courts in that very period.

Thus, the arguments stating that there is no need for applying the provisional measure, referring to the availability of a legal mechanism for enforcement of reinstatement-related judicial decision, could be rightly subjected to criticism.

4.2. Barriers to the enforcement of judicial decisions

In labor disputes, restitution of the violated right is usually related to the reinstatement of illegally dismissed person. However, given the present-day reality and the current legal regulation, the judicial decision on employee reinstatement does not often guarantee that this person will be actually reinstated to a position.

Under Paragraph 3, Article 118 of the Law of Georgia on Public Service, "In the case of annulment of a decision on dismissal of civil servant by a superior body or court, the public institution shall immediately reinstate civil servant to the same position or, if this position is no longer available, shall reinstate him/her to an equal position within the same public institution's system. If an illegally dismissed servant cannot be reinstated to a position due to unavailability of an equal vacant position within the system of that very institution, the public institution shall immediately apply to the Civil Service Bureau, requesting to find an equal position within the civil service system. An illegally dismissed servant may be reinstated to an equal position in another public institution with the consent of the civil servant and the public institution."

Under Paragraph 5 of the same article, "in the cases provided for by Paragraph 3 of this article, where a civil servant cannot be reinstated to service, he/she shall be transferred to the reserve of officers and shall receive missed pay, as well as compensation in the full amount of the last salary for the period of six months."

Interviews conducted as part of the research with human right advocates and former civil servants, who were illegally dismissed and reinstated under the court ruling, revealed as follows:

- A public institution often tries to hamper employee reinstatement and delays execution of judicial decision under the pretext of conducting negotiations at this stage of the procedure. A new tendency has been recently revealed in this regard - at the beginning of the court ruling enforcement procedure, a public institution appeals to court requesting clarification of the operative part of the judicial decision, thus hampering the enforcement of the judicial decision for up to six months.

- If sufficiently motivated, the public institution manages to avoid reinstatement of a civil servant to a position by conducting reorganization during the trial or by appointing another person to a disputable position (including an equal position) through the competition procedure.

- If a civil servant has been reinstated to a former or equal position under the court ruling, but there is no such position available in the public institution, an illegally dismissed servant who has been restituted his/her violated right shall be referred to the LEPL Civil Service Bureau. The latter shall select to this servant an equal position in another institution in accordance with

Paragraph 3, Article 118 of the Law of Georgia on Public Service. However, reinstatement is not the case in practice, as none of the public institutions agree to employ a servant reinstated under the court ruling. In the end, instead of being reinstated, a servant receives only a compensation amounting to 6 months' salary.

Information obtained from the Civil Service Bureau also points to ineffectiveness of the legal mechanism of employing reinstated servant in another institution for the enforcement of the judicial decision. According to this information, only 1 out of 23 persons subject to reinstatement was employed in another public institution (in 2019) through application of the aforesaid mechanism within the period from 2017 till December 2020. At the same time, a total of 8 individuals seeking reinstatement to an equal position applied to the Civil Service Bureau during 2020, though none of them was employed.

Public institution's non-compliance with the reinstatement commitment following the annulment of the decision (order) on officer's dismissal by court, puts an officer in a difficult situation and reduces the effectiveness of justice. It should be taken into account that under Article 33 of the Law of Georgia on Public Service, "A person shall be appointed to an officer position for an indefinite term,", which, on the one hand, creates preconditions for a stable income, and, on the other hand, as the court explained with regard to one of the cases – „a workplace is not just a source of income, it is closely related to the social status of the employee and his/her family members." Thus, in case of the state's failure to ensure the enforcement of a judicial decision on reinstatement in civil service, considering a compensation provided for in Paragraph 5, Article 118 of the mentioned law as an equal, relevant alternative to restitution of the violated right also instills a feeling of unfair treatment in the officers who were dismissed and reinstated through court.

4.3. Length of employment after reinstatement based on judicial decision

Interviews with former civil servants who were illegally dismissed and reinstated to service under the court ruling revealed that in case the public institution's management is unwilling to work with a reinstated civil servant, it artificially creates the conditions under which the civil servant will voluntarily file a resignation and leave the service - for example, putting the reinstated officer in a workplace isolation, - i.e. when he/she is not assigned to perform tasks within his/her authority and a sense of alienation towards him/her has been developed in his/her colleagues.

Public data provided by the city hall of one of the municipalities also proves the acuteness of the aforesaid problem. According to the received data, 14 individuals were reinstated to a position based on the judicial decision in 2013-2020 and 12 of them voluntarily resigned no later than within three months after the reinstatement. Naturally, there is no information about the motives behind each resignation. However, given the timeframe of the judicial proceedings, the very fact that individuals who had been seeking reinstatement for years quit the job for which they fought after 2-3 months, raises legitimate questions about the reinstated officers' workplace environment.

5. Findings

5.1. Basic grounds for dismissal from civil service

Although the grounds for employer-initiated dismissal are more or less regulated and there is a relatively limited possibility for making subjective decisions, dismissals on various subjective grounds/motives still remain a challenge. The research revealed that reorganization / liquidation / merger and imposition of disciplinary penalties are the basic grounds for dismissal in such cases.

The study of judicial decisions on 40 labor disputes revealed that up to 52% of court appeals were related to employee dismissal as a result of reorganization, 37% were the cases where dismissal was applied as a disciplinary sanction against an officer.

The most common grounds for court annulment of the decisions on employee dismissal as a result of reorganization are as follows:

- failure to apply pre-designed, transparent, clear and fair criteria / procedures for evaluating employee skills and competence;
- failure to evaluate and compare the advantages of those who maintained their job (including those reappointed to a new position) and those who were dismissed from service;
- failure to evaluate the compliance of the dismissed officer's skills and competence with the criteria set for the remaining/newly created vacant position.

More than 50% of grounds for court annulment of the studied decisions on dismissal as a result of imposition of disciplinary sanctions are related to the practice of unjustified application of a disproportionately severe penalty – dismissal on part of the employer.

5.2. Timeframes of judicial proceedings

The analysis of the reviewed decisions revealed that in more than 50% of cases, consideration of a wrongful dismissal claim in the court of first instance lasts for a period of 1 year or more. The study of the interview results showed that in the best-case scenario, case review in the courts of all three instances will take a year and a half (one case), and a maximum delay period is 5 years (one case).

The study of public information obtained from public institutions (for example, by the time of conducting the research, a lawsuit filed in 2018 was still pending in the Batumi City Court, i.e. in the Court of First Instance), interviews and judicial decisions revealed that a 1-month time limit for consideration of the case (per instance) set under the Georgian legislation (Article 59 of the Civil Procedure Code of Georgia), was not applied by courts in any case.

5.3. Shortcomings of the restitution mechanism

The mechanism of protection of the violated labor rights through court is ineffective - the judicial decision on reinstatement of civil servants does not guarantee that he / she will be actually reinstated:

- when it comes to reinstatement-related disputes, the court usually focuses on the failure to apply provisional measures for securing the claim (restriction of the right to appoint another person to a vacant position before the end of the dispute);
- the analysis of interviews conducted as part of the research showed that an employer (public institution) manages to prevent employee reinstatement through various manipulations, for example, by conducting reorganization during the trial or by appointing another person to a disputable position (including to an equal position);
- there are different ways for an employer institution to impede the enforcement of a judicial decision. For example, the interviews conducted as part of the research revealed that after an officer applied to the LEPL National Bureau of Enforcement, the employer delayed his reinstatement for half a year, referring to the ongoing negotiations with the officer;
- The Law of Georgia on Public Service sets out a mechanism of reinstatement of dismissed civil servant. In particular, an employer institution shall immediately reinstate a dismissed civil servant to the same position, and where no such position is available, to shall reinstate him/her to an equal position within the system of the same public institution. In case it is impossible to reinstate an illegally dismissed civil servant due to unavailability of an equal vacant position in the same public institution system, the public institution shall immediately apply to the LEPL Civil Service Bureau, requesting to find an equal vacant position within the civil service system. However, civil servant reinstatement to an equal vacant position in another public institution is possible only with the consent of that very institution. According to the information provided by the LEPL Civil Service Bureau, only 1 out of 23 persons subject to reinstatement was employed in another public institution (in 2019) through application of the aforesaid mechanism within the period from 2017 till December 2020. At the same time, a total of 8 individuals seeking reinstatement to an equal position applied to the Civil Service Bureau during 2020 (till December 9), though none of them was employed, which indicates that despite the availability of judicial decisions, this mechanism cannot ensure restitution of the violated right.
- The analysis of data obtained from the municipality city halls and city councils across Georgia (99 in total) revealed that as of 2013-2020, the court issued reinstatement decision with respect to 85 persons (former City Hall / City Council employees), though only 49 of them were reinstated to the same or equal position. That is, 42% of judicial decisions were not / could not be executed.

5.4. Length of employment on reinstated position

Reinstated officers often resign from their positions on their own initiative, which is mostly due to the working environment created in the employer organization and the attitude towards them. For example, the interviews conducted as part of the research revealed that after being reinstated in the employer organization, an officer had no possibility to perform the assigned duties. More specifically, the management would not give the officer any assignments, neither would coordinate with him /her the issues that fall within his/her competence, leaving the reinstated officer in a workplace isolation and urging him/her to resign ‘on his/her own initiative’ within a month after the reinstatement.

Public information provided by one of the municipality City Hall also points to the aforesaid circumstances. According to this information, a total of 14 civil servants were reinstated to a former or equal position in 2013 – 2020. 12 out of the total reinstated civil servants voluntarily resigned from the

occupied position within a 3-month employment period. The analysis of the data provided by other municipalities revealed that 9 out of 49 persons who were actually reinstated in the same period terminated the employment on their own initiative within 3 months after the reinstatement and one person was terminated labor relations on the employer's initiative. In other words, about 20% of the reinstated persons failed to continue working on their position.

6. Recommendations

6.1. Introduction of the personal responsibility mechanism

It is advisable that a personal responsibility mechanism (s) be developed so as to prevent the cases of unlawful dismissal. This mechanism could imply restriction of decision-makers' right to carry out career promotion activities for a certain period of time, provided that dismissal of officer/officers was found illegal by court.

In case of introduction of such a mechanism, it is important that administration of this issue be regulated by a relevant act and a body exercising this administration be determined (it could possibly be the LEPL Civil Service Bureau).

In case the decision on officer(s) dismissal made by the head of the public institution is recognized as illegal by court and the institution is imposed payments (lost earnings, compensation, official fee etc.) the total amount of which exceeds 1% of the institution's average annual budget (conventional), but is not less than GEL 20,000 (conventional), a manager shall be restricted career development opportunities in the civil service (including in the LEPLs) - appointment to managerial positions in other institutions, the activity of which involves decision-making on appointment/ dismissal issues or allows to influence those decisions (e.g. deputy minister).

The proposed approach will stimulate the public institutions to refrain from artificially dragging the disputes - if it becomes obvious to a public institution that the decision of the court of first instance is not much different from the Supreme Court's established practice, it will be more motivated to terminate a dispute, which is contrary to the present-day practice, when an employer institution usually tries to dispute the matter in court till the very end, and that despite the expected and foreseeable consequences, resulting in considerably increased amounts payable (tens of thousands, sometimes even hundreds of thousands of Lari), those amounts are ultimately deducted from the institution / state budget, and consequently, the institution faces a lack of funds required for the development of relevant fields.

This restriction should preferably be of a temporary nature and a timeframe be set, covering a certain period of time (for example, a 3–5-year period) after the decision takes its effect.

At the same time, a person authorized to appoint/dismiss a manager who has issued unlawful decision (s) shall decide whether it is expedient for the latter to further continue his/her activity on this position (or on another position, provided that he/she was transferred to another managerial position) and shall substantiate this decision with a relented administrative act.

Administration component of the given mechanism implies data collection, processing and its provision to relevant agencies/officials. In particular, an administrative act shall additionally provide for/determine the following:

- an institution in charge of administration (e.g. LEPL Civil Service Bureau);
- court's commitment to forward to the institution in charge of administration the judicial decisions that have taken their legal effect;

- a commitment assumed by the LEPL National Bureau of Enforcement / Bailiff to provide the institution in charge of administration with information on the amount of lost earnings and / or volume of compensation paid upon completion of the enforcement procedure;
- a commitment of the institution in charge of administration to process the obtained data (decisions) and, in case the circumstances of application of the restriction have been revealed, to notify the head of the institution (whose decisions have been annulled by court) and the official authorized to appoint or dismiss him / her.

6.2. Introduction of additional mechanisms for ensuring enforcement of judicial decision

Given that a state institution has an opportunity to create, through various manipulations, the formal grounds actually preventing civil servant's reinstatement to the position – a civil servant's position is already occupied, abolished and an equivalent position is not available, the research has shown that the official cannot be reinstated in other institutions within the civil service system either. Obviously, there is a need for improving the mechanisms ensuring reinstatement of an illegally dismissed official.

In this case, it is appropriate to consider introduction of amendment to the procedural law, directly determining the possibility of restricting the respondent's right to appoint a new employee to a disputable position as a provisional measure in reinstatement-related labor disputes. However, the same law may provide for the specific conditions under which this type of provisional measure shall not be applied (for example, institutions of specific strategic importance, rare professions, etc.).

6.3. Refinement of the restitution mechanism

It is advisable that the mechanism of restitution of the violated labor right provided for in Paragraph 3 of Article 118 of the Law of Georgia on Public Service be based on the assessment of qualification requirements. In particular, if the so-called 'equal position' is available in another institution and a civil servant subject to reinstatement meets the qualification requirements for this position, then the aforesaid civil servant should be employed in the identified position without any additional barriers.

At first glance, it is possible to overcome the shortcomings in the existing mechanism by imposing on the 'employing institution' a commitment to substantiate its decision, though imposition of such a commitment is unlikely to adequately address the problem and there is a likelihood that in practical terms everything will be limited down to a formal / standard justification.